



TEXAS APARTMENT ASSOCIATION

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To All Courts of Texas:

RE: Continuing Applicability of CARES Act Requirements

Due to the continuing confusion and inconsistent application of the CARES Act in various courts throughout the state of Texas, TAA is writing this letter to clarify its perspective regarding the state of the law and address various misunderstandings. It is important to note that although the Supreme Court of Texas issued orders relating to the CARES Act, those provisions were not substantive in nature and have expired.

There is No On-Going, Permanent 30-Day Notice to Vacate Requirement

Many groups and courts are under the mistaken belief that the CARES Act continues to require a 30-day notice to vacate for nonpayment of rent for covered dwellings. We believe this is not accurate. The only time there was a requirement to provide 30-days' notice was immediately following the 120-day eviction moratorium established by section 4024(b) of the CARES Act. After August 23, 2020, any limitation on the eviction process created by the CARES Act ended.

This position is backed by the plain language of the CARES Act as well as decades of United States Supreme Court case law. The eviction process has been solely regulated by the states, which is seen through the widely varying rights and obligations of landlords and tenants from state to state. To determine that the federal government has now decided, for the first time in our country's existence to regulate this area of law should not be done lightly. In determining whether federal law is intended to preempt and displace state law, there is a presumption that it does not. *Maryland v. Louisiana*, 251 U.S. 725, 746 (1981). This is particularly true if the law involves a field which the states have traditionally occupied. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Thus, any court should begin the analysis with the presumption that Congress did not intend to supplant state law and to do so on a perpetual basis. *New York State Conf of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995).

Considering the temporary nature of the pandemic in which the CARES Act was enacted, the limited period of 120 days for its eviction moratorium ending July 25, 2020, and the fact that Congress is presumed not to preempt state law in traditionally state-regulated areas, it is clear that the CARES Act should be construed to have no ongoing, permanent 30-day notice to vacate requirement with the effects created by section 4024(b) and 4024(c) ending as of August 23, 2020. It is not reasonable to interpret this section entitled "**TEMPORARY MORATORIUM ON EVICTION FILINGS**" as requiring a permanent modification of the eviction laws of each state. Rather, a reasonable interpretation is that the notice to vacate provisions of Section 4024(c) relate to an eviction that could have otherwise been filed during the 120-day moratorium period. This is supported by HUD's interpretation as provided in its FAQs on HUD.gov and explained below as well as the temporary designation of Section 4024.

The CARES Act 30-day Notice to Vacate Requirement Only Applied to Nonpayment Cases

Additionally, we strongly believe the 30-day notice to vacate requirement only applied to eviction cases based upon nonpayment of rent. That is demonstrated by the text which shows that it was limited to cases where the sole basis to evict was for a tenant's nonpayment. This is because if the 30-day requirement applied to ALL notices to vacate, there would be no need for the CARES Act to have 4024(c)(2).

UNIFYING TEXAS RENTAL HOUSING PROFESSIONALS THROUGH EDUCATION, LEGISLATIVE ADVOCACY AND MEMBER SERVICES

24 LOCAL AFFILIATES ACROSS THE STATE OF TEXAS: ARLINE • AMARILLO • AUSTIN • BEAUMONT • BRYAN • CORPUS CHRISTI • CORSICANA • DALLAS • EL PASO • FORT WORTH • GALVESTON • HARLINGEN
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The moratorium on evictions under 4024(b) only applied to nonpayment of rent evictions because (b)(1) states that during the 120-day period following the CARES Act's enactment a lessor of a covered dwelling may not "make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant **for nonpayment of rent or other fees or charges** (emphasis added)."

This means that evictions for any reason other than nonpayment of rent, such as holdover or conduct, were permitted during the 120-day period of the moratorium. The canon of statutory construction, the express mention of one thing excludes all others, confirms this interpretation. Thus, because the 120-day moratorium expressly states that it applies to nonpayment of rent cases, it implicitly does not apply to evictions based upon holdover, conduct, or any other reason.

Sections 4024(c)(1) & (2) then provides "[t]he lessor of a covered dwelling unit— (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b)."

Section 4024(c)(2) says a landlord of a covered dwelling cannot give a notice to vacate under 4024(c)(1) until after the 120-day period. But as shown above, the only evictions the 120-day period applied to were nonpayment of rent evictions. In order to proceed with the various advocates' position that 4024(c)(1) and (2) apply to notices to vacate for holdover or conduct, you must read the CARES Act in one of two ways, both of which create an absurd result.

The first way is that the CARES Act allowed notices to vacate for reasons other than nonpayment to be 3 days during the 120-day moratorium and then after the moratorium ended, required the same notices to vacate for reasons other than nonpayment to be 30 days. The second way is that the 120-day moratorium applied to all evictions. But as is shown by the emphasized language of 4024(b)(2) above, the express language of the CARES Act established that the moratorium only applied to nonpayment cases. That only leaves the first interpretation. Which is obviously absurd; why would the statute provide less protection during the moratorium than afterward?

If the 30-day requirement applied to all notices to vacate, there would have been no need for 4024(c)(2). 4024(b) already made it clear that no notices to vacate for nonpayment could be given during the moratorium, so (c)(2)'s clarification that the notice could not be given until after it ended makes no sense unless it is limiting 4024(c)(1)'s application to only notices to vacate for nonpayment. And one cannot ignore (c)(2) because of the use of the word "and" between (c)(1) and (c)(2). When reading subsection (c) with the other two sections of Section 4024, a reasonable interpretation is that a lessor of a covered dwelling may not require a tenant to vacate a unit before 30 days after the end of the temporary moratorium period relating to delinquencies incurred during the moratorium. This language in no way suggests that a 30-day notice to vacate is a permanent requirement.

All of this is confirmed by HUD's guidance. In its COVID-19 FAQs for Public Housing Agencies, Version 5, July 16, 2020 HUD states "[t]he eviction moratorium found in Section 4024(b) of the CARES Act only applies to evictions related to nonpayment of rent or nonpayment of other charges to the tenant related to nonpayment of rent." HUD's guidance further states that "[a]fter the moratorium expires, the [landlord] can proceed with their standard process." Finally, the best illustration that HUD believes the effects of the CARES Act requirements of section 4024 have expired is found in its Version 6 FAQ which removed the question-and-answer section on evictions under the CARES Act as of September 29, 2020.

Various advocates' citing of the Congressional Research Service's April 7, 2020 report on the CARES Act Eviction Moratorium discussing the statute's notice to vacate requirement are entirely unpersuasive. Not because TAA thinks so, but because *CRS itself says so*. As a part of the document's disclaimer, it states "**Information in a CRS Report should not be relied upon for purposes other than public understanding of information** that has been provided by CRS to Members of Congress in connection with CRS's institutional role (emphasis added)." Thus, that document is of no value to courts interpreting the CARES Act.

Further, on March 22, 2021, CRS published its report on Federal Eviction Moratoriums in Response to the COVID-19 Pandemic. This updated report, co-written by one of the same co-authors from the first report, flips its prior entirely unsupported position that the 120-day moratorium applied to all evictions and now states that it only applied to nonpayment cases. This further undercuts any weight or reliability that this entity's interpretations of the law have.

In sum, the statutory construction of the CARES Act shows that it no longer requires 30-day notices to vacate and even when it did, such notices were only for nonpayment of rent cases. "Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme. . ."). *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And when section 4024 subsection (b) and subsection (c) are read together it confirms that this is the only logical possible interpretation.

These interpretations are not universally accepted. The information in this brief is intended to provide general information about the CARES Act from our perspective and does not constitute legal advice. It is informational only and does not replace the advice of your own legal counsel. We continue to monitor the developments surrounding Coronavirus (COVID-19) and update our members in due course.

Sincerely,



Sandy Garcia Hoy
General Counsel
Texas Apartment Association