Enforcing the CARES Act 30-Day Eviction Notice Requirement

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), took effect on March 27, 2020, and imposed in its Section 4024 a partial residential eviction moratorium that restricted lessors of "covered properties" from filing new eviction lawsuits for non-payment of rent or other charges.[1] The CARES Act and also prohibited "fees, penalties, or other charges to the tenant related to such nonpayment of rent," and stated that the lessor of a covered property could not require a tenant to vacate except on 30 days' notice—which notice could not be given until the original moratorium period expired.[2] The statute is now codified at 15 U.S.C. § 9058 (and this memo will alternatively refer to the provision as "Sec. 9058").

Unlike many other provisions of the CARES Act, the post-eviction moratorium notice requirement carried no sunset date. This may have been because the CARES Act—itself the largest economic stimulus package ($2.2 trillion) in U.S. history, was not, at the time of passage, expected to be the last in the series of federal Covid-19 relief bills that the 116th Congress would pass. On May 15, 2020, for instance, the U.S. House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which contained a provision that would have entirely repealed and replaced Sec. 4024 of the CARES Act.[3] The new text would have expanded the eviction filing moratorium to cover substantially all U.S. rental housing and extended the period of the moratorium to the end of 2020—but was never enacted by the full Congress.

Indeed, the Senate never voted on the HEROES Act or any other eviction relief provision before the original 120-day eviction filing moratorium period under the CARES Act expired on July 24, 2020. The 30-day CARES Act notice requirement remained in effect. Congress then left Sec. 9058 undisturbed in future Covid-19 relief measures and in the 2021 budget bill, which recognized and extended an eviction halt order the Centers for Disease Control & Prevention had issued in September 2020.[4]

Nevertheless, advocates continued to report widespread noncompliance with the Sec. 9058 notice provision and a troubling lack of consistency in judicial enforcement long after the statute's enactment. A poll of Housing Justice Network members taken in late 2021 found that 78% of respondents observed seeing courts in their service areas either sometimes or always

[1] *See* 15 U.S.C. § 9058(b).

[2] *See* 15 U.S.C. § 9058(c).

[3] *See* H.R. 6800 of 2020, Title II, Sec. 110203.

[4] *See* Consolidated Appropriations Act, 2021, Pub.L. 116–260, Title V, Sec. 502 (Dec. 27, 2020); *see* 85 Fed.Reg. 55292 (Sept. 4, 2020).

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fail to enforce the notice requirement—including 20% of respondents seeing courts in their service areas decline to enforce the provision at all.[5] In 2022, NHLP again surveyed HJN and found that a staggering 88% of respondents reported inconsistent or no court enforcement of the Sec. 9058 notice requirement.[6] The strange disregard of this federal statute perhaps had seemingly reached its apex in the 2023 case of *Arvada Gardens v. Garate,* in which the Colorado Supreme Court was forced to reverse a trial court judge who declined to enforce the CARES Act notice because it had supposedly expired.[7] But since then additional state appellate courts have continued to confront arguments both that no part of Sec. 9058 is still in effect,[8] as well as challenges centering on questions of interpretation and mechanics of the notice requirement.[9]

Determining whether a property is covered

Since initial passage, probably the most practically challenging aspect of enforcing CARES Act protections has been determining whether a particular tenant's rental unit is a "covered dwelling."[10] Sec. 9058 defines "covered dwelling" to include substantially any type of residential tenancy, so long as the premises is in a "covered property" and the tenant actually occupies the premises.[11] Any kind of residential property can be a "covered property" if it participates in certain federal housing programs or has a federally-backed mortgage loan.[12]

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[5] National Housing Law Project, "Evictions Survey: What's Happening on the Ground" at 4 (Fall 2021), https://www.nhlp.org/wp-content/uploads/NHLP-evictions-survey-2021.pdf

[6] National Housing Law Project, "Rising Evictions in HUD-Assisted Housing: Survey of Legal Aid Attorneys" at 1 (July 2022), https://www.nhlp.org/wp-content/uploads/HUD-Housing-Survey-2022.pdf.

[7] *Arvada Vill. Gardens LP v. Garate,* 529 P.3d 105, 108 (Colo. 2023).

[8] *See, e.g., MIMG CLXXII Retreat on 6th, LLC v. Miller,* No. 23-0670, 2025 WL 284961 (Iowa Jan. 24, 2025) (finding CARES Act 30-day notice provision to have functionally expired, being applicable only to rent defaults that occurred during the initial 120-day moratorium); *Olentangy Commons Owner LLC v. Fawley,* 228 N.E.3d 621, 633 (Ohio App. 2023) ("We cannot insert an expiration date in 15 U.S.C. 9058(c) when Congress omitted one from that subsection . . . According to the plain language of the statute, the moratorium provision expired, but the notice provision did not. Consequently, Olentangy Commons' interpretation of 15 U.S.C. 9058(c) is contrary to the unambiguous text of the statute. Moreover, Olentangy Commons' interpretation is nonsensical.") (internal citations omitted); *see also Hazelwood v. Common Wealth Apartments,* 231 N.E.3d 284, 288 (Ind. Ct. App. 2024) (following *Arvada Village* and others in holding "that the notice provision did not expire with the temporary eviction moratorium").

[9] *See, e.g., Woodrock River Walk LLC v. Rice,* 82 Va. App. 355, 365; 906 S.E.2d 682, 687 (2024) (interpreting CARES Act notice provision not to bar the commencement of an unlawful detainer action within the 30-day notice period, only the physical removal of the tenant)*; see King County Hous. Auth. v. Knight,* 30 Wn.App.2d 95, 117; 543 P.3d 891, 902, review granted, 551 P.3d 431 (Wash. 2024) (holding "the plain meaning of the CARES Act is that it requires 30 days' notice to vacate only for evictions stemming from nonpayment of rent."), *compare with Pendleton Place, LLC v. Asentista,* 29 Wn.App.2d 516, 526; 541 P.3d 397, 402 (2024) ("15 U.S.C. § 9058(c)(1) applies to situations beyond nonpayment of rent.").

[10] *See* 15 U.S.C. § 9058(a)(1).

[11] *See* 15 U.S.C. § 9058(a)(1)(A).

[12] *See* 15 U.S.C. § 9058(a)(2).

- *Coverage via participation in a federal housing program*

Under the participation in federal housing programs prong, a "covered property" includes any property that is covered by the Violence Against Women Act.[13] VAWA coverage extends not only to HUD-subsidized low-income housing programs (such as public housing, subsidized multifamily housing, housing choice vouchers, and McKinney-Vento homelessness assistance programs) but also reaches properties participating in the (U.S. Dept. of Agriculture's) Rural Development housing programs and the Low-Income Housing Tax Credit program (administered through the U.S. Dept. of Treasury). Note that while RD vouchers were not covered under VAWA at the time of passage, Congress separately and explicitly identified properties participating in the RD voucher program as covered under the CARES Act.[14]

The 2022 reauthorization of VAWA expanded the definition of "covered property" to include RD vouchers,[15] as well as naming several additional programs (including the Section 202 Direct Loan Program,[16] the federal housing trust fund,[17] VASH vouchers and other programs for providing federal housing assistance to veteran families,[18] and transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking[19]), and adding a catch-all provision making VAWA applicable to:

> "any other Federal housing programs providing affordable housing to low- and moderate-income persons by means of restricted rents or rental assistance, or more generally providing affordable housing opportunities, as identified by the appropriate agency through regulations, notices, or any other means." Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(A), to be codified at 34 U.S.C. § 12491(a)(3)(P).

The changes in the 2022 VAWA reauthorization took effect on October 1, 2022.

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[13] The VAWA -covered housing programs include: Public housing (42 U.S.C. § 1437d), Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f), Section 8 project-based housing (42 U.S.C. § 1437f), Section 202 housing for the elderly (12 U.S.C. § 1701q), Section 811 housing for people with disabilities (42 U.S.C. § 8013), Section 236 multifamily rental housing (12 U.S.C. § 1715z–1), Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d)), HOME (42 U.S.C. § 12741 et seq.), Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.), McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.), Section 515 Rural Rental Housing (42 U.S.C. § 1485), Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486), Section 533 Housing Preservation Grants (42 U.S.C. § 1490m), Section 538 multifamily rental housing (42 U.S.C. §1490p-2), and Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42). *See* 34 U.S.C. § 12491(a)(3).

[14] *See* 15 U.S.C. § 9058(a)(2)(A)(ii).

[15] *See* Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)C).

[16] *See* Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(A).

[17] *See* 12 U.S.C. § 4568; *see* Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(K).

[18] *See* Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(L-N).

[19] *See* Consolidated Appropriations Act, 2022, Pub.L. 117-103, Div. W, Sec. 601(2)(O).

Under 15 U.S.C. § 9058(a)(2)(A), participation (in a federal housing program affording coverage) on behalf of any resident makes the entire property a "covered property." That means if there is one participating dwelling unit in a property, then all of the other, non-participating dwelling units in the same property also qualify as occupants of "covered dwellings" entitled to the notice required by Sec. 9058.[20]

- *Coverage based on a federally-backed mortgage or multifamily mortgage loan*

Federally-backed mortgage loans include loans secured by any lien on a residential property with 1-4 units that is "made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by [HUD] or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association."[21] While the Fannie Mae and Freddie Mac-owned loans are best-known for triggering CARES Act coverage, other federally-backed loans include those insured by the Federal Housing Administration, Veterans Administration, U.S. Department of Agriculture and HUD's Section 184 Indian Home Loan Guarantee program. A federally-backed multifamily mortgage loan has the same definition, except that is secured by a property with five or more dwelling units.[22]

For advocates representing tenants who themselves participate in housing subsidy programs or benefit from low-income housing tax credit rent limits, determining that their residence is a covered dwelling unit should not be difficult. But discerning whether a property has a federally-backed mortgage loan, receives voucher subsidies on behalf of other residents, or participates in VAWA-covered programs with respect to tenants other than the advocate's client can be considerably more difficult—and potentially impossible without cooperation from the landlord or other third-parties.

Finding out whether a multifamily property is covered by the CARES Act

For multifamily (i.e., 5+ dwelling unit) properties, a number of public and private databases are available by which advocates may look up whether they have coverage:

- HUD Multifamily Assisted Properties[23]
- FHA-insured Multifamily Properties[24]

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[20] *See* 15 U.S.C. § 9058(b); *see also Stacy Burleson v. Sun Plaza Ltd. P'ship,* No. D-202-CV-02851 (Bernalillo Cty, New Mexico, July 13, 2021), https://www.nhlp.org/wp-content/uploads/NM-Order.pdf.

[21] 15 U.S.C. § 9058(a)(4).

[22] *See* 15 U.S.C. § 9058(a)(5).

[23] https://www.hud.gov/program_offices/housing/mfh/hsgrent/mfhpropertysearch

[24] https://hudgishud.opendata.arcgis.com/datasets/hud-insured-multifamily-properties

- Fannie Mae Multifamily Lookup Tool[25]
- Freddie Mac Multifamily Lookup Tool[26]

Note that advocates and journalists have reported finding significant numbers of errors, omissions, and outdated entries in at least some of these databases—yet these are the best tools available for ascertaining coverage without cooperation from the housing provider. Of arguably even greater concern than inaccuracies, some significant potential sources of CARES Act coverage are simply absent from these lookup tools altogether. This includes multifamily properties that participate in tenant-based voucher programs (such as housing choice vouchers, RD vouchers, or the Shelter+Care program) but which receive no other federal financial assistance, as well as some multifamily properties financed through loans backed by the Government National Mortgage Association ("Ginnie Mae")—such a USDA or VA loans. While Ginnie Mae does have a lookup tool available:

- Ginnie Mae Multifamily Search Pool Search[27]

…the tool is not user-friendly and may not be searched by identifiers commonly available to tenants, such as street address, development name, or even owner or legal description.

Tenants will also generally not know or have access to information from which to determine whether *other residents* participate in tenant-based subsidy programs, particularly as tenant privacy protections may limit housing authorities or other administrators in disclosing or identifying properties where participants reside. In one case, a Nebraska trial court found a landlord's statement in advertising materials that it accepts housing choice vouchers as sufficient to establish participation in that program for purpose of CARES Act coverage.[28]

Finding out whether a 1-4 unit property is covered by the CARES Act

Single-family homes and other rental properties with fewer than five units are generally not listed in publicly-available databases that reveal CARES Act coverage. Though Fannie Mae and Freddie Mac both maintain lookup tools that borrowers can use to find out if their loans are owned by either enterprise, running a search in either database requires a user to include the last four digits of the borrower's social security number and check a box confirming the user either owns the property or has the owner's consent to access the information.[29]

An advocate might also be able to detect the presence of a federally-related loan by reviewing the contents of any mortgages, deeds of trust, or other instruments recorded for a property. Federally-*insured* mortgage loans are likely to have this information in certain public filings.

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[25] https://www.knowyouroptions.com/rentersresourcefinder

[26] https://myhome.freddiemac.com/renting/lookup

[27] https://www.ginniemae.gov/investors/investor_search_tools/Pages/multifamily.aspx

[28] *See* William C. Stanek v. Jessie Reed, No. C120-9102 (Douglas Cty., Nebraska, June 12, 2020), https://www.nhlp.org/wp-content/uploads/Douglas-County-Order-of-Dismissal.pdf

[29] *See* https://ww3.freddiemac.com/loanlookup/ and https://www.knowyouroptions.com/loanlookup#.

However, loans *subsequently acquired* by federal enterprises (e.g., purchased by Fannie Mae or Freddie Mac) are not. Also, localities differ in making mortgage documents available to the public; in some communities, land records are up-to-date and available on-line, which other communities may require in-person visits to land records offices.

Though tenants will often lack the ability to determine whether a property is subject to Sec. 9058, a landlord will know or should have access to the documents from which to find out. For federal housing programs, these may include housing assistance payments contracts, HUD lease addenda, or other documents or correspondence with public housing agencies, voucher administrators, or other such entities. For mortgage loans, landlords should have copies of the mortgage notes or security instruments themselves, other closing documents, servicing notices, account statements, or other correspondence. As noted above, both Fannie Mae and Freddie Mac maintain websites that borrowers (but not others) may use to look-up whether each enterprise owns their loan.[11] Landlords can also contact their servicers to ask about the presence of federal mortgage insurance.[30]

Given this discrepancy in access to information, courts should find that landlords who file eviction actions (for nonpayment of rent or other charges) bear the burden of proving and pleading either that the tenant was given 30 days' notice or else that the premises is not covered under the CARES Act. Consistent with this interpretation, a number of state and local court systems implemented rules and pleading forms for landlords to verify non-application of Sec. 9058 during the original 120-day eviction moratorium.[31] Such rules remain active in Georgia, Oklahoma, and New Jersey.[32] Regrettably, many other courts that adopted such rules rescinded or allowed them to expire after the 120-day filing moratorium ended, even though the need to ascertain CARES Act coverage for purposes of the ensuing notice provision is

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[30] *See, e.g.,* Joey Campbell, "How do I know if my loan is FHA insured?" *Sapling.com,* https://www.sapling.com/6030875/do-loan-fha-insured, last visited June 13, 2022

[31] *See, e.g.,* Iowa's CARES Act Landlord Verification Form, https://www.iowacourts.gov/static/media/cms/CARES_Act_Landlord_Verification_5_D550A0B615603.pdf, and Michigan Form DC 540, https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/dc504.pdf. Advocates in jurisdictions that adopted such rules and forms should review the relevant Covid-19 emergency orders to determine whether these requirements remain in effect.

[32] *See* Georgia Uniform Superior Court Rule 49: Emergency Dispossessory (May 4, 2020); *see* Oklahoma Supreme Court Order Regarding the Coronavirus Aid, Relief, And Economic Security Act, 2020 OK 22 (May 01, 2020); *see* New Jersey Directives Dir. 21-21 at 2 and attachment 9 at 21-22 (Aug. 23, 2021), New Jersey Request for Residential Warrant of Removal (CN 12836, 2022), https://fill.io/Request-For-Residential-Warrant-Of-Removal. Note also that the Iowa rule (Supreme Court Order In the Matter of Ongoing Provisions for Coronavirus/Covid-19 Impact on Court Services at pp. 11-12, para 38 May 22, 2020)) remains in place, though of dubious application given the Iowa Supreme Court's ruling in *MIMG CLXXII Retreat on 6th, LLC v. Miller*, No. 23-0670, 2025 WL 284961 (Iowa Jan. 24, 2025) (finding CARES Act 30-day notice provision to have functionally expired, being applicable only to rent defaults that occurred during the initial 120-day moratorium).

substantially the same.[33]

On October 1, 2022, Vermont became the first state to adopt a court rule specifically designed to enforce the CARES Act notice requirement when Rule of Civil Procedure 9.2 went into effect.[34] The rule provides that an eviction complaint must "contain or be accompanied by a declaration showing either compliance with the 30-day notice requirement of the CARES Act . . . or that the dwelling from which the plaintiff seeks to evict the tenant is not located on or in a 'covered property.'"[35] The Vermont rule, like many of the prior rules, also provides a form declaration which lists different avenues of coverage the landlord must decline the applicability of.[36] Unfortunately, to date no other states have similarly adopted new court rules to implement the notice requirement—even though the broad definition of "covered property" means the statute "impacts substantial numbers of landlords, tenants, and property managers."[37]

Whether or not any such court rule is in effect in the jurisdiction, advocates should move to dismiss any eviction complaint that does not aver the lack of participation in a VAWA-covered program or RD voucher program or the absence of a federally-backed mortgage loan (for a property with four or fewer dwelling units) or federally-backed multifamily mortgage loan (for a property with five or more units). And even if the pleadings contain such averments, advocates should not accept such claims at face value.

Before trial, advocates should endeavor to learn whether a property is covered using whatever means are available. This includes conducting formal discovery (if allowed) into the presence of any contracts the landlord may have with PHAs or federal housing contract administrators or participation in any tenant-based voucher or subsidy programs, as well as regarding any financing, liens, or security interests on the property. Though courts should not require tenants

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[33] See 2020 Ark. 166 (Apr. 28, 2020) (Arkansas rule expired July 25, 2020); Idaho Supreme Court Order In Re Eviction Moratorium under the CARES Act (May 4, 2020) (expired July 25, 2020); In re: Illinois Courts Response to COVID-19 Emergency – CARES Act (May 22, 2020 (expired Aug. 24, 2020); Michigan Supreme Court Administrative Order 202-08 (Apr. 16, 2020) (expired July 25, 2020); In re Filing an Affidavit of Compliance with Fed. Cares Act in Landlord-Tenant Cases, Judicial Administration Docket No. 537, (Pa. Jul. 16, 2020) (Pennsylvania rule expired Aug. 24, 2020); South Carolina Supreme Court Order 2022-09-12-01 RE: Rescission of Orders Regarding Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions and Foreclosure Forms (Sept. 12, 2021). Texas repeated extended its rule, Texas Supreme Court, Fifteenth Emergency Order Regarding the Covid-19 State of Disaster, Misc. Docket No. 20-9066 (May 14, 2020), but allowed it to expire on March 31, 2021. *See* Texas Supreme Court, Thirty-Fourth Emergency Order Regarding the Covid-19 State of Disaster, Misc. Docket No. 21-9011 (Jan. 29, 2021) (expired Mar. 31, 2021).

[34] *See* Vt. R. of Civ. Pr. 9.2.

[35] *See* Vt. R. of Civ. Pr. 9.2(b).

[36] *See* Vermont Court Form 100-00031 - Declaration of Compliance with the CARES Act (10/2022, https://www.vermontjudiciary.org/sites/default/files/documents/100-00031%20Declaration%20of%20Compliance%20CARES%20ACT_0.pdf.

[37] *Olentangy Commons Owner LLC v. Fawley,* 228 N.E.3d 621, 631 (Ohio App. 2023).

to admit affirmative proof that a property is covered, doing so anyway is obviously desirable where such evidence is present. Even if such investigation is not successful, courts will likely be more inclined to require landlords to plead or prove the absence of Sec. 9058 coverage when tenants can show they were unable to verify coverage despite diligent efforts.

When cases come to trial, advocates should utilize cross-examination to ensure that landlords who fail to give 30 days' notice have verified the lack of coverage through every possible means. The general approach should entail asking landlords, as to each federal housing or loan program it might plausibly participate in, whether (i) the landlord knows if the property participates in the program and (ii) if the landlord claims to know that the property does not participate, how and by what steps the landlord determined that lack of coverage. Advocates may consider using the following checklist to guide such cross-examinations:

- Public housing;
- Project-based Section 8 housing or other HUD-subsidized multifamily;
- Housing Choice Voucher program;
- Section 202 housing for the elderly;
- Section 202 direct loan program
- Section 221 below market rate housing;
- Section 236 multifamily housing;
- Section 811 housing for people with disabilities;
- HOME Investment Partnership Program;
- Housing Opportunities for People with Aids;
- McKinney-Vento Act housing programs (including Shelter+Care voucher);
- Section 515 Rural Development rural rental housing;
- Section 514/516 farm labor housing;
- Section 533 USDA preservation grant housing;
- Section 538 USDA multifamily housing;
- Rural housing voucher program;
- Low-income housing tax credit program;
- Federal housing trust fund program;
- VASH vouchers (or any other program that provides federal housing assistance to veteran families);
- Transitional housing for survivors of domestic violence, dating violence, sexual assault, or stalking;
- Fannie Mae owned mortgage loan;
- Freddie Mac owned mortgage loan;
- HUD Section 184 Indian Home Loan Guarantee;
- Ginnie Mae backed mortgage loan:
    - Federal Housing Administration
    - Veterans Administration
    - USDA direct or guarantee loan
- Any other federal program providing affordable housing to low- or moderate-income persons by means of restricted rents or rental assistance;
- Any other federal program providing affordable housing opportunities as identified through agency regulations, notices, or any other means

Any time a landlord denies knowledge as to whether the property is covered through any plausible path, or claims the property is not covered under such path but demonstrates an insufficient basis for reaching that conclusion, the court should dismiss the case because the landlord will have failed to meet its burden to prove the immediate right to possession.

In preliminary proceedings the possibility that a property *might* be covered tends to at least raise a triable fact issue, meaning the court should at minimum set a trial date that allows an opportunity for the parties to investigate and determine whether the property is covered.

What about state summary eviction laws that provide notice periods shorter than 30 days?

Multiple state appellate court decisions hold that, despite state eviction notice periods shorter than 30 days, a landlord must give 30 days' notice before commencing a summary proceeding to evict a tenant from a covered property for nonpayment of rent.[38] In addition, at least one U.S. District Court and multiple reported trial court orders have so concluded.[39] However, advocates should be aware that one case (*Woodrock River Walk v. Rice*) did reach the opposite conclusion—though based on an interpretation of Virginia eviction law, and in a case with a petition for review now pending in the Virginia Supreme Court.[40]

- Most courts hold notice period must expire before summary eviction lawsuit is ripe

The two most important cases holding that a summary eviction lawsuit against a tenant occupying a covered dwelling unit is not ripe until the notice period expires are *Sherwood Auburn LLC v. Pinzón* and *Olentangy Commons Owner LLC v. Fawley,* from the intermediate appellate courts of Washington and Ohio, respectively.[41]

In *Pinzón,* the tenants had fallen behind in rent and were given two written eviction notices, which (this author) refers to as a "state law" notice and a "CARES Act" notice.[42] The state law notice directed the tenants either to pay the delinquent rent or vacate the premises within fourteen days, and stated that failure to do so "may result in a judicial proceeding that leads to

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[38] *See Sherwood Auburn LLC v. Pinzón, 521 P.3d 212 (2022); Olentangy Commons Owner LLC v. Fawley, 228 N.E.3d 621, 625 (Ohio App. 2023); D.H. v. Common Wealth Apartments,* 231 N.E.3d 284, 288 (Ind. Ct. App. 2024), *as amended* (June 12, 2024); *Arvada Vill. Gardens LP v. Garate,* 2023 CO 24, ¶ 17, 529 P.3d 105, 108 (Col0. 2023).

[39] *See Watson v. Vici Cmty. Dev. Corp.,* No. CIV-20-1011-F, 2021 WL 1394477, at *11 (W.D. Okla. Apr. 12, 2021); *see West Haven Housing Authority v. Armstrong,* 2021 WL 2775095 (Conn. Super. Ct. Mar. 16, 2021), *citing Nwagwu v. Dawkins,* BPH-C-21-5004438S (March 2, 2021, Spader, J.).

[40] *See Woodrock River Walk LLC v. Rice,* 82 Va. App. 355, 362; 906 S.E.2d 682, 685 (2024), *petition for review filed* Dec. 2, 2024, Record No. 241025.

[41] *Sherwood Auburn LLC v. Pinzón,* 521 P.3d 212 (2022); *Olentangy Commons Owner LLC v. Fawley,* 228 N.E.3d 621, 625 (Ohio App. 2023).

[42] See *Pinzón* at 214-15.

your eviction from the premises."[43] The CARES Act notice referenced the state law notice, and went on to say that "if a court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice."[44] The net scheme of the two notices was that the tenants supposedly had 14 days in which to pay or vacate, after which a summary eviction suit could be filed—and result in the tenants' physical eviction after 30 days.[45]

In any event, the *Pinzón* tenants neither cured the default nor vacated the premises so the landlord commenced an eviction lawsuit.[46] The tenants moved to dismiss, arguing the eviction notices were deficient and summary proceeding prematurely filed because they landlord had not given them the full 30 day notice period.[47] The trial court, ruled that although the notices could have been confusing as to the actual deadline to vacate , the tenants must not have been *actually* confused because they remained in the premises beyond 30 days—and, in fact, the landlord did not commence the eviction lawsuit until more than 30 days after the notices were given.[48] The trial court entered judgment for the landlord and the tenants appealed.[49]

The Court of Appeals set up the core issue as whether the CARES Act notice provision "requires that tenants residing in 'covered dwellings' receive an unequivocal 30-day notice to pay rent or vacate the premises before the landlord may commence an unlawful detainer action [or] simply prohibits state trial courts from evicting tenants during the 30-day period following service of a pay or vacate notice[.]"[50] For numerous reasons, the Court embraced the former interpretation.

First, the *Pinzón* court highlighted the statutory text of the CARES Act, which imposes the 30-day notice restriction on lessors (of covered dwelling units)—not on courts or judicial officers.[51] "Sherwood Auburn['s] interpretation of the CARES Act notice provision," the panel observed, "would replace the word 'lessor' with the words 'superior court.'"[52]

Next, the court recognized that interpreting the CARES Act notice provision only to require 30 days' notice before a judicial eviction could be executed would render the federal notice

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[43] *Id*. at 215.

[44] *Id*. at 215.

[45] *Id*. at 217 ("Sherwood Auburn's preferred interpretation of the notice provision would merely preclude the superior court from enforcing a breach of a lease agreement during the 30-day notice period. It would not preclude the landlord from commencing an unlawful detainer action during that time.").

[46] *See Pinzón* at 215.

[47] *See Id.* at 215.

[48] *See Id.* at 214-15 (eviction notices served Dec. 21, 2021, unlawful detainer action commenced Feb. 12, 2022).

[49] *See Id.* at 215

[50] *Id*. at 216-17.

[51] See *Pinzón* at 217.

[52] *Id*. at 217.

provision meaningless.[53] In the court's words:

> "In Washington, where our state's unlawful detainer statute provides for a 14-day pay or vacate notice in residential tenancies, a landlord subject to the CARES Act would nevertheless be permitted to commence an unlawful detainer action after 14 days. Thus, the CARES Act would provide no additional protection for tenants."[54]

Critically, the court rejected the landlord's argument that even if an eviction case is filed after 14 days, tenants still benefit by being assured the right to remain in possession an additional 16 days because "service of the pay or vacate notice *is* the landlord requiring the tenant to quit the premises."[55] As the panel went on to explain, "it is the landlord—not the superior court—that requires the tenant to vacate the premises" by serving a notice to vacate, "[t]he superior court simply enforces that requirement if the tenant refuses."[56] "Indeed," wrote the court, "only after the proper notice is provided and the cure period has expired can the tenant be said to be unlawfully detaining the premises."[57]

Finally, the *Pinzón* court made clear the dual notices the landlord provided were confusing and deficient as a matter of law for failing to "unequivocally inform [the tenants] that, pursuant to the CARES Act, they had 30 days from the date of notice to cure the alleged nonpayment of rent or to vacate the premises."[58] Implicit was the court's rejection of any requirement for actual confusion on the part of the tenant; rather, "when the notice provided does not accurately convey the correct time period to cure or vacate, the notice is not sufficient."[59]

In *Olentangy Commons*, the landlord served a tenant only a "three-day 'Notice to Leave the Premises'" after she defaulted in rent, then commenced a summary eviction suit.[60] The tenant asserted that her apartment was a covered dwelling unit and moved to dismiss for failure to give 30 days' notice under Sec. 9058.[61] The trial court assumed arguendo that the premises were covered, but nevertheless reasoned that the CARES Act notice period only required 30 days' notice before the physical eviction could be conducted—not before a summary eviction

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[53] *Id*. at 217-18.

[54] *See Pinzón* at 218.

[55] *Id*. at 218 (italics in original); see also 15 U.S.C. § 9058(c) ("The 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...").

[56] *Id*. at 218.

[57] *See Pinzón* at 217, *citing Indigo Real Est. Servs., Inc. v. Wadsworth,* 169 Wn. App. 412, 421, 280 P.3d 506 (2012) ("Once a tenant is in the status of unlawful detainer, the landlord may commence an unlawful detainer action by serving a summons and complaint.").

[58] *See Pinzón* at 221.

[59] *See Id.* at 221, *citing IBC, LLC v. Heuft*, 141 Wn. App. 624, 633; 174 P.3d 95 (2007).

[60] *See Olentangy Commons* at 625.

[61] *See Id.* at 625.

lawsuit could be brought.[62] The trial court denied the motion and the tenant appealed.[63]

The Court of Appeals viewed the critical question as "what type of action by the lessor constitutes 'requir[ing] the tenant to vacate"—i.e., whether filing an eviction lawsuit was sufficient, or only a physical eviction would suffice.[64] As in *Pinzón,* the *Olentangy Commons* court recognized that the act a landlord takes to lawfully remove a tenant is to bring an eviction lawsuit—and the duty to give notice before taking that act belonged to the landlord, not the court or law enforcement officers performing the physical eviction.[65] Accordingly, the court concluded that "the plain language of 15 U.S.C. § 9058(c)(1) mandates that a landlord must provide a tenant with a notice to vacate 30 days before filing such an [eviction] action."[66]

- *Woodrock River Walk v. Rice:* a cautionary outlier

In late 2024, the Virginia Supreme Court ruled in *Woodrock River Walk v. Rice* that while the CARES Act notice provision bars a landlord from physically removing a non-paying tenant from a covered dwelling unit without 30 days' notice, the statute does not prevent a landlord from commencing a summary eviction lawsuit before the notice period has expired.[67]

The result in *Woodrock* conflicts with the basic rule, which substantially every U.S. state and territory follows at least to some extent, that a summary eviction lawsuit is not ripe unless and until the tenant remains in possession of premises in violation of the landlord's present right to possession.[68] Indeed, *Woodrock* is in considerable tension with prior Virginia law,[69] so advocates should stay tuned as the tenant has filed a petition for review in the Virginia

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[62] *See Olentangy Commons* at 625 "the magistrate interpreted 15 U.S.C. 9058(c)(1) as requiring a landlord to provide a tenant with a notice to vacate 30 days before a court-ordered set out. Consequently, a landlord could file a forcible entry and detainer action less than 30 days after providing the tenant with a notice to vacate the premises, as long as the set out occurred after the 30-day period elapsed.").

[63] *See Id*. at 625.

[64] *Olentangy Commons* at 632.

[65] *See Id.* at 632-33.

[66] *Id*. at 632.

[67] *See Woodrock River Walk LLC v. Rice,* 82 Va. App. 355, 365; 906 S.E.2d 682, 686 (2024) ("Woodrock filed a summons 29 days after issuing a notice of failure to pay. As a summons does not require a tenant to leave their premises, Woodrock's action did not violate the CARES Act.").

[68] *See, e.g.,* 49 Am.Jur.2d, Landlord and Tenant § 812 (Jan. 2025 update) ("Unlawful detainer applies to a tenant who holds over against a landlord after there has been a termination of the tenancy and an unsuccessful demand for possession. . . An unlawful detainer action may only be used when the tenant is unlawfully holding over.").

[69] *See, e.g., Parrish v. Fannie Mae,* 292 Va. 44, 50, 787 S.E.2d 116, 121 (2016) (Unlawful detainer is an action against a defendant who lawfully entered into possession of real property but whose right to lawful possession has since expired. It is brought by a plaintiff lawfully entitled to possession at the time of suit, which the defendant is then unlawfully withholding.").

Supreme Court (which remains pending at present).[70]

Regardless what further transpires in *Woodrock*, advocates outside Virginia should urge their courts to follow *Pinzón* and *Olentangy Commons* instead. Both opinions should serve as highly persuasive authority in jurisdictions where a landlord may not commence a summary eviction proceeding until the deadline to vacate has expired (i.e., when a tenant's continued occupancy has become unlawful and infringes upon the landlord's right to possession).[71] By contrast, *Woodrock* conflicts with state appellate rulings in Washington, Ohio, Colorado, and Indiana, as well as other reported decisions enforcing the CARES Act notice provision, from Connecticut[72] and Oklahoma.[73] Notably, *Woodrock* did not discuss (or even mention) any of these other CARES Act notice decisions, confining its analysis exclusively to the interplay of Sec. 9058 with Virginia's state summary eviction law.[74] Even the Iowa Supreme Court's unfavorable decision in *Retreat* (discussed *infra*),--which ultimately determined the CARES Act to be substantially inapplicable—declined to follow *Woodrock* as poorly-reasoned and result-driven.[75]

Does the CARES Act require 30 days' notice to evict a tenant for reasons other than nonpayment of rent?

To date, most courts have interpreted the CARES Act notice provision as applying only to evictions for nonpayment of rent or other charges). In the first reported case to consider that question, *West Haven Housing Authority v. Armstrong*, a Connecticut trial court ruled on a statutory construction analysis that that "the 30-day notice requirement is applicable to nonpayment of rent cases only and not to cases such as this one brought for serious nuisance."[76] Shortly after *Armstrong*, the U.S. District Court in Oklahoma reached a similar ruling in *Watson v. Vici Community Development Corp.*[77]

Watson was primarily a disability discrimination lawsuit, but also involved a declaratory judgment claim seeking to defeat an eviction claim the defendant had filed against the tenant

[70] Advocates seeking more detailed arguments with which to persuade their local courts not to follow Woodrock may wish to review the brief of amicus curiae that NHLP filed with partners in support of the petition for review, available on NHLP.org at https://www.nhlp.org/wp-content/uploads/241025.amicus.brief_.final_.pdf.

[71] *See Pinzón* at 217.

[72] See *West Haven Housing Authority v. Armstrong,* 2021 WL 2775095 (Conn. Super. Ct. Mar. 16, 2021); *see also Vandersluis v. Hilton,* 2023 WL 4738059, at *1 (Conn. Super. Ct. July 18, 2023).

[73] *See Watson v. Vici Cmty. Dev. Corp.,* No. CIV-20-1011-F, 2022 WL 910155 at 9-10 (W.D. Okla. Mar. 28, 2022).

[74] *See Woodrock* at 361-66.

[75] *See MIMG CLXXII Retreat on 6th, LLC v. Miller,* No. 23-0670, 2025 WL 284961, at *4 (Iowa Jan. 24, 2025) (describing the Woodrock opinion as intended to "mitigate [the] effects" of the CARES Act notice provision.).

[76] *See West Haven Housing Authority v. Armstrong,* 2021 WL 2775095 (Conn. Super. Ct. Mar. 16, 2021), citing *Nwagwu v. Dawkins,* BPH-C-21-5004438S (March 2, 2021, Spader, J.).

[77] *Watson v. Vici Cmty. Dev. Corp.,* No. CIV-20-1011-F, 2022 WL 910155 (W.D. Okla. Mar. 28, 2022).

in August 2020 without having given the 30 days' notice.[78] The defendant admitted having filed the eviction suit without serving 30 days' notice but claimed such notice was not required because the action was not based on nonpayment of rent:

> "Instead, they assert that section 9058(c)'s notice requirement does not apply because its eviction filing was not based upon the "nonpayment of rent." See, 15 U.S.C. § 9058(b). Defendants maintain that they commenced the August 25, 2020, eviction proceeding because there was no valid lease agreement in existence (the lease agreement had been non-renewed in March, 2019 and it expired at the end of May, 2019) and they sought to remedy an alleged jurisdictional defect in the July 2019 eviction filing."[79]

The court found the factual question as to the landlord's reason for the eviction precluded summary judgment for either party—effectively holding that the eviction was unlawful for noncompliance with the CARES Act if, but only if, the eviction was indeed motivated by nonpayment of rent (or other charges).[80]

Though *Armstrong* and *Watson* were generally favorable cases for tenants in backhandedly acknowledging the duty to give 30 days' notice in nonpayment suits at a time when no other reported decisions yet existed, those rulings were challenging for advocates asserting that the CARES Act notice provision applied to evictions for reasons other than nonpayment. At the time, the best authority to the contrary was a Congressional Research Service report which stated, equivocally, that the notice provision "*arguably* prohibits landlords from being able to force a tenant to vacate a covered dwelling for nonpayment or any other reason" without 30 days' notice.[81]

In January 2024, a division of the Washington Court of Appeals ruled in *Pendleton Place, LLC v. Asentista* that the CARES Act notice requirement is *not* limited solely to evictions for nonpayment of rent.[82] Relying upon the CRS report's reasoning that unlike the "protections of Section [9058(b)], which are expressly limited to nonpayment, Section [9058(c)] does not expressly tie the notice to vacate requirement to a particular cause," the court "conclude[d] that the 30-day notice provision in 15 U.S.C. § 9058(c)(1) applies to all evictions of tenants living in covered dwelling units, not just those for nonpayment of rent."[83]

Yet just one month later, a different division of the Washington Court of Appeals reached the

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[78] *See Watson,* 2022 WL 910155 at *9-10.

[79] *Watson*, 2022 WL 910155 at *10.

[80] *Id*. at 10 ("The court concludes the issue as to defendants' reason for commencing the August 25, 2020 eviction proceeding and whether they violated the CARES Act is for one trial.").

[81] Maggie McCarty & David H. Carpenter, Cong. Rsch. Serv., "Cares Act Eviction Moratorium," p. 1 (April 7, 2020) ("In contrast to the eviction and late fee protections of Section 4024(b), which are expressly limited to nonpayment, Section 4024(c) does not expressly tie the notice to vacate requirement to a particular cause.")

[82] *See Pendleton Place, LLC v. Asentista,* 541 P.3d 397, 402 (Wn. App. 2024).

[83] *Pendleton Place* at 402 ("Pendleton Place's argument would require us to add the limiting language in 15 U.S.C. § 9058(b) to 15 U.S.C. § 9058(c)(1). We decline to add language that Congress did not include.").

opposite conclusion.[84] The court in *King County Housing Authority v. Knight* articulated three separate bases for finding that Congress intended the notice requirement in Sec. 9058(c) to apply only in evictions for nonpayment:

- Because Congress "intertwined" the text of the different subsections within Sec. 9058, reflecting an intention that they be read together;
- Because the CARES Act was intended to alleviate the economic shocks of Covid-19, including nonpayment evictions—not prevent evictions for other conduct; and
- Because applying the notice requirement to all evictions "would result in a far-reaching ban on a range of evictions that Congress likely would not have intended."

Though a formidable opinion with which advocates asserting CARES Act coverage for evictions not based on nonpayment must contend, *Knight* also bears a number of transparent errors and unsupported assumptions. For instance, the opinion posits that the eviction suit filing moratorium in Sec. 9058(b) would have been superfluous if the notice provision (in Sec. 9058(c)) applied to all evictions, because "if no notices to vacate could issue during that moratorium, no unlawful detainer actions could be initiated."[85] Yet the moratorium provision would still have been necessary to prevent filings based on notices given before the CARES Act was passed, or in states that require no pre-suit notice; furthermore, even if subsection (b) had been superfluous, it would have been equally superfluous as to nonpayment cases as to other cases that might have been covered.

Knight also cites no basis for its presumption that Congress would not have intended to prohibit evictions for "in response to circumstances such as a tenant's substantial breach of a rental agreement or a landlord's desire to sell the unit or, in more extraordinary circumstances, a tenant's criminal conduct or nuisance behavior on the premises[.]"[86] While the opinion may have been correct that the CARES Act was intended to counteract the economic shocks of the Covid-19 pandemic, the CARES Act was also intended to protect the public health—and eviction, regardless of cause, contributed to disease spread and death.[87] *Knight* also failed to grapple with the ambiguity of the statutory text, which is generally interpreted strictly in favor of tenants in the eviction context.[88]

Whether these and other flaws in the *Knight* analysis will suffice to persuade courts not to follow the opinion remains to be seen. Either way, arguments that the Sec. 9058 notice

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[84] *King County Hous. Auth. v. Knight,* 543 P.3d 891, 895 (Wn. App. 2024).

[85] *Knight* at 898.

[86] *Knight* at 898.

[87] *See, e.g.,* Centers for Disease Control and Prevention, Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed.Reg. 55292 (Sept. 4, 2020).

[88] *See, e.g., Hartson P'ship v. Goodwin,* 99 Wash. App. 227, 235–36, 991 P.2d 1211, 1215 (2000) ("[statute] is the functional equivalent of an unlawful detainer statute. As such, we must construe it strictly in favor of the tenant).

provision applies to eviction cases not based on nonpayment also appears likely to remain an issue well into the near future.

At the very least, courts interpreting the notice provision as applying only to nonpayment cases should apply the provision to all cases *motivated* by nonpayment of rent (or other charges), and not only those cases based on a formal state law nonpayment notice.[89]

What about contentions that the CARES Act notice statute has expired?

With the initial 120-day filing moratorium having long expired, many landlords, attorneys, and courts seemingly presumed that the CARES Act notice provision must have also have expired at some time in the past.[90] It did not; the notice provision carries no expiration date or sunset clause and remains in force as a federal statute codified at 15 U.S.C. § 9058(c)—and multiple courts have now explicitly held as much.[91]

In *Arvada Village,* the Colorado Supreme Court rejected arguments that the CARES Act notice provision expired at the same time as the moratorium provision (i.e., 120 days from March 27, 2020) and a second reading that the notice provision "must have expired thirty days after the expiration of the Moratorium Provision" as simply contrary to the plain language of the Act.[92] "[T]he Notice Provision includes no expiration date. We cannot insert an expiration date where Congress omitted one," the court wrote, "we must presume that Congress meant what it said."[93] The Indiana Court of Appeals reached the same conclusion in *Hazelwood v. Common Wealth Apartments,* recognizing simply that "the notice provision did not expire with the temporary eviction moratorium."[94]

Advocates should use caution in relying upon *Hazelwood*, however. For one reason, the majority opinion failed to appreciate the difference between the statutorily-imposed CARES Act eviction moratorium under 15 U.S.C. § 9058 and the subsequent eviction halt order that the Centers for Disease Control & Prevention imposed in the fall of 2020.[95] This error did not seriously affect the court's reasoning, but its presence could undermine the persuasiveness of the ruling in the eyes of other courts.

More importantly, a wild concurrence in *Hazelwood* opined that the CARES Act notice provision

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[89] *C.f. CP Com. Properties, LLC v. Sherman,* 318 So. 3d 445, 449 (La. App. 2 Cir. 4/14/21),writ not considered, 2022-00022 (La. 2/22/22), 333 So. 3d 445 (deciding without analysis that "CARES Act eviction moratorium was not applicable because "[t]he eviction at issue is premised upon the ending of the lease period.").

[90] *See, e.g., Arvada Vill. Gardens LP v. Garate,* 529 P.3d 105, 108 (Colo. 2023); *see also Olentangy Commons Owner LLC v. Fawley,* 228 N.E.3d 621, 634 (Ohio App. 2023).

[91] *See Arvada Village* at 108.

[92] *See Arvada Village* at 107-08.

[93] *Arvada Village* at 108.

[94] *See Hazelwood v. Common Wealth Apartments,* 231 N.E.3d 284, 288 (Ind. Ct. App. 2024)

[95] *See Hazelwood* at 288.

expired with the termination of the national Covid-19 emergency on April 10, 2023.[96] Its author stated that once the Covid-19 emergency ended, "the laws enacted by Congress specifically to address that national emergency also expired."[97] Yet the authority cited for this proposition, the National Emergencies Act, grants authorities to the president and other executive officials that may be exercised only during a federal emergency period—it is those authorities which expire upon conclusion of the emergency, not independent acts of Congress.[98]

Other provisions of the CARES Act unrelated to evictions of residential tenants also carried explicit sunset provisions—including the provision at 15 U.S.C. § 9057 extending certain consumer protections to borrowers on federally-related mortgage loans, which was set to expire at the sooner of the termination of the "the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak" or December 31, 2020.[99] By including a sunset provision tied to the emergency period in one provision of the CARES Act, Congress is presumed to have acted purposefully in omitting such provisions elsewhere.[100]

The contention set forth in the *Hazelwood* concurrence, that upon termination of the Covid-19 emergency "15 U.S.C. § 9058 and the related rules and regulations—which were created specifically to address the COVID-19 national emergency" all spontaneously expired, was accordingly without merit.[101] Nevertheless, the argument remains a burden for tenants and advocates. In Minnesota, for example, a trial judge followed the *Hazelwood* concurrence and rejected all the previous cases enforcing the CARES Act notice provision as having been arisen from evictions commenced during the Covid-19 emergency period.[102] The tenant's appeal was then dismissed as not concerning "a jurisdictional limitation on the adjudicative authority of Minnesota's district courts," as statutorily required to appeal in Minnesota.[103]

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[96] *Hazelwood* at 290 (Bailey, J., concurring).

[97] *Hazelwood* at 290.

[98] *See* 50 U.S.C. § 1621 *et seq*.

[99] 15 U.S.C. § 9057(f)(5).

[100] *See Salinas v. United States R.R. Ret. Bd.,* 592 U.S. 188, 196 (2021) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."), *quoting Russell v United States*, 464 US 16, 23 (1983).

[101] One wonders whether the author of the *Hazelwood* concurrence labored under the same misconception as the majority, that the CARES Act eviction moratorium and the CDC eviction halt order were the same. *See Hazelwood* at 288. This misunderstanding could perhaps explain how the concurrence author came to view the CARES Act eviction moratorium's notice provision as being the product of an agency-invoked emergency power rather than a stand-alone act of Congress.

[102] *Ludwig Property Management LLC v. Najah Mitchell,* Blue Earth County Dist Ct. No. 07-CV-23-4019 (Minn. Apr. 5, 2024).

[103] *See Ludwig Prop. Mgmt., LLC v. Mitchell,* No. A24-0658, 2024 WL 2765248, at *2 (Minn. Ct. App. May 28, 2024) ("We conclude that the April 5, 2024, order denying appellant's motion to dismiss based on the 30-day notice period in the CARES Act is not immediately appealable as an order denying a motion to dismiss for lack of subject-matter jurisdiction.").

Advocates contending with claims that Sec. 9058 expired in its entirety may also draw attention to various administrative or regulatory materials reflecting the continuing viability of the CARES Act notice. Perhaps of greatest importance is Vermont Rule of Civil Procedure 9.2, as discussed above.[104] Otherwise, the HUD Office of Multifamily Housing Programs issued guidance to multifamily owners on April 26, 2021, making clear that "[n]otwithstanding the expiration of the CARES Act eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in [15 U.S.C. § 9058](c)(1), is still in effect for all CARES Act covered properties."[105] HUD later promulgated its own regulatory requirement for 30 days' notice for nonpayment cases, applicable to PHAs and project-based owners, which repeatedly acknowledged the ongoing statutory requirement for 30 days' notice in the CARES Act.[106] HUD's Office of Public and Indian Housing issued a notice on October 7, 2021, directed to the special attention of housing authorities, multifamily housing owners and operators, and other stakeholders, stating similarly that, as of then, "the CARES Act provision requiring 30-days' notice to vacate for nonpayment of rent remains in effect for all CARES Act-covered properties, including both public housing and properties assisted under HUD's project-based rental assistance programs."[107]

Beyond HUD, the Rural Housing Service adopted a rule in 2024 requiring operators of housing subsidized under RD's Section 515 Rural Rental Housing and Section 514 & 516 farmworker housing programs to "provide tenants with written notification a minimum of 30 days prior to a lease termination or eviction action for nonpayment of rent, as statutorily required by the Coronavirus Aid, Relief, and Economic Security Act, (CARES Act)."[108] The Federal Housing Finance Administration announced on September 14, 2022, its interpretation of "CARES Act section 4024(c)(1) to permanently require a 30-day notice to vacate. As a result of this statute, the Enterprises changed both existing and future loan agreements to require a 30-day notice to vacate at multifamily properties with Enterprise-backed mortgages."[109] The Consumer Financial Protection Bureau has posted extensive information on its website advising tenants that they may "have the right to a CARES Act 30-day notice before [a] landlord can ask [them] to leave or file an eviction" and describing different types of covered tenancies and resources to find out if

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[104] *See supra* notes 28-29.

[105] HUD OFFICE OF MULTIFAMILY HOUSING PROGRAMS, "Questions and Answers for Office of Multifamily Housing Stakeholders" at 18 (Q. 25) (Last Updated Aug. 9, 2021), https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19%20QA_8_4_21.pdf

[106] See 89 FR 101270 (Dec. 13, 2024).

[107] HUD PIH Notice 2021-29 (Oct. 7, 2021), https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2021-29.pdf

[108] 89 FR 20539 (Mar. 25, 2024).

[109] Letter from Sandra L. Thompson of FHFA to Diane Yentel of NLIHC and Shamus Roller of NHLP (Sept. 14, 2022); *see also* FHFA.gov, "Tenant Protections for Enterprise-Backed Rental Properties in Response to Covid-19 (rev'd Sept. 14, 2021), https://www.fhfa.gov/Media/PublicAffairs/Pages/Tenant-Protections-for-Enterprise-Backed-Rentals_7282021.aspx.

a property is covered.[110] These federal resources exist in addition to information and materials from many states and local governments and nonprofit organizations advising of the CARES Act notice requirement and to whom it pertains.

Similar to the argument that the CARES Act notice provision expired, the Iowa Supreme Court ruled in the recent case of *Retreat on 6th v Miller* that the provision only applies to eviction cases brought for nonpayment of rent or other charges that occurred during the initial 120-day moratorium period.[111] This would effectively render the notice provision a dead letter, since practically no eviction lawsuits are currently pending or likely to be brought in the future alleging nonpayment of rent or other charges during the 120-day filing moratorium in 2020.

The Iowa Supreme Court's reasoning in *Retreat* begins from its view that "the statute has to be read as a whole, and as a whole it is ambiguous."[112] Having determined the statute to be wholly ambiguous, the court then asserts that the statute must be read as "an integrated whole," and must be interpreted to minimize federal preemption of state landlord-tenant laws as well as avoid supposedly absurd results such as "it could tie a landlord's hands for thirty days in evicting a tenant who is operating a meth lab in their apartment."[113] While admitting its result is not "intellectually satisfying," the court concludes:

> "In the end, we believe that the most correct interpretation of 9058(c)(1) is that it applies only to rent defaults that arose during the moratorium—the subject of the rest of section 9058—and not to any default at any time for any reason. Congress federalized the law of evictions to some degree in March 2020, but it only did so temporarily."[114]

Though *Retreat* marks the functional demise of the CARES Act notice provision only in Iowa, the obvious danger is that landlords outside Iowa will urge their local courts to ignore the multiple precedents recognizing the notice provision as continuing in force. Advocates should therefore be prepared to highlight the many flaws and logical fallacies in *Retreat*, in hopes that courts will continue to follow *Arvada Village*, *Sherwood Auburn*, and *Olentangy Commons* instead.

The first serious problem with the reasoning of *Retreat* is the determination that nothing in the text of Sec. 9058 purports to limit the notice requirement to evictions based on nonpayment of rent or other charges during the 120-day moratorium period. Rather, the text suggests the notice requirement applies to all notices to vacate given to tenants in covered dwelling units.[115] It is fundamental that "a court's proper starting point lies in a careful examination of the

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[110] *See* CONSUMER FINANCIAL PROTECTION BUREAU, "Protections for renters in multi-family housing or federally subsidized housing," https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/federally-subsidized/#30-day-notice, last visited May 24, 2024.

[111] *MIMG CLXXII Retreat on 6th, LLC v. Miller,* No. 23-0670, 2025 WL 284961 (Iowa Jan. 24, 2025).

[112] *Retreat*, 2005 WL 284961 at *3.

[113] *Id*. at *3.

[114] *Id*. at *10.

[115] *See* 24 C.F.R. § 9058(c).

ordinary meaning and structure of the law itself [and if] that examination yields a clear answer, judges must stop."[116] Here, the text provides a clear answer as to whether the notice provision applies to notices to vacate given for defaults occurring before or after the 120-day moratorium period: yes. So the analysis should have terminated at the point.

Instead, however, the *Retreat* court determined that the text of Sec. 9058 was ambiguous—not because the text failed to clearly say whether the notice provision applies to nonpayment occurring outside the 120-day moratorium window, but because the text of Sec. 9058 is ambiguous *on a completely different question*, i.e., whether the notice provision also applies to notices to vacate given for reasons other than nonpayment.[117]

Having found the text of the CARES Act notice provision ambiguous as to this unrelated issue, the Iowa Supreme Court thus gave itself the green light to undertake freewheeling statutory interpretation. Beginning from the premise that Sec. 9058 must be read as an "integrated whole," the opinion leaped to the conclusion that since subsection (b) was in effect for 120 days then the notice period (in subsection (c) too must relate to that same time period in some way.[118] Seeking to connect the 120-day moratorium period to the notice provision, the court concluded that "[l]ogically, the relationship is that the default must have arisen during the period of the moratorium."[119]

Had the CARES Act notice provision only applied to defaults that "ar[ose] during the period of the moratorium," however, then not only would the notice provision be inapplicable to defaults occurring after the moratorium expired but it would also have been inapplicable to evictions based on defaults that occurred *before* the moratorium went into effect. That is, *Retreat* would essentially have enabled landlords to give eviction notices for nonpayment of debts predating the moratorium period even while the moratorium remained in effect, and those notices would not need to have provided at least 30 days to vacate. Such an interpretation is fully irreconcilable with the text of Sec. 9058(c) and would have deeply undermined the statutory purpose of stabilizing tenants in their homes amid the panic and uncertainty of the early pandemic period. Hence there truly is no logical implication that for the notice period to apply, the nonpayment giving rise to the eviction must have occurred within the 120-day moratorium period.[120]

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[116] *Food Mktg. Inst. v. Argus Leader Media,* 588 U.S. 427, 436 (2019) (internal citations omitted).

[117] *See Retreat* at *6.

[118] *See Retreat* at *6.

[119] *Retreat* at 6.

[120] Faced with this logical fallacy, a proponent of the *Retreat* approach might contend instead that the CARES Act notice provision applies only to notices to vacate given for nonpayment that occurred during *or before* the 120-day moratorium period. Yet this argument disregards the *Retreat* court's rationale—that the notice provision in Sec. 9058(c) can only apply to nonpayments that occurred within the moratorium period specified in Sec. 9058(b). If the notice provision applies to nonpayments that occurred outside the 120-day period, there is no basis whatsoever to say the provision applies to nonpayments that preceded the moratorium but not those which post-dated it. If *Retreat* did not itself simply re-write the statute to its liking under the guise of interpretation already, then to suggest that Sec. 9058(c) applies only to nonpayments

The opinion nevertheless goes on to bolster its conclusion by asserting both that Congress must not have intended "a permanent rewrite of certain state landlord–tenant laws jammed into otherwise temporary legislation,"[121] as well as invoking a "heightened presumption" against preemption "when federal law would intrude on an area of traditional state responsibility."[122] Yet calling the CARES Act notice provision a "rewrite" of state landlord-tenant laws is charitably a stretch; the provision merely establishes a minimum notice period before which certain evictions can be carried out and coverage is limited to dwelling units in properties either having federal financing or participating in federal housing programs.[123] The Act does not preempt state landlord-tenant laws generally, and establishing basic notice rights and protections for tenants in federally-related housing programs is a well-established federal responsibility.

In a final irony, *Retreat* referenced language in the U.S. Supreme Court's opinion in *Alabama Ass'n of Realtors v. Department of Health & Human Services,* which struck down the CDC's Covid-19 eviction moratorium because it "intrud[ed] into an area that is the particular domain of state law: the landlord–tenant relationship" without (the Supreme Court said) "exceedingly clear language."[124] Yet there is no lack of clarity in the language of Sec. 9058 insofar as the statute requires landlords of covered properties to give 30 days' notice to terminate tenancies after the moratorium period, and the CDC eviction moratorium was not limited, as is Sec. 9058, only to properties with federal financing or program participation.[125]

In summary, *Retreat* was incorrect because the CARES Act notice provision is not ambiguous as to its duration or application to nonpayment cases. That ambiguity may exist as to whether the notice provision reaches other types of evictions does not give a court carte blanche to reinterpret clear statutory language. The Act regulates only the lessors of properties that participate in federal housing programs or have received federal financing, and pre-empts state law only insofar as inconsistent with requirements applicable to those actors. Hence the statute does not excessively intrude on state landlord-tenant law, and the text is sufficiently clear even if it did. *Retreat* is an outlier that is inconsistent with the statutory text and purpose, and at odds with court decisions from at least six other states, as well as federal regulatory materials. With regrets to the tenants of Iowa, no other court should follow it.

Any other arguments advocates should be concerned about?

In *Olentangy Commons,* the landlord also raised a bizarre argument that the CARES Act notice

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before and during the moratorium period but not after certainly would.

[121] *Retreat* at *9.

[122] *Retreat* at *9.

[123] See 15 U.S.C. § 9058(a)(2).

[124] *Retreat* at *9, *quoting Alabama Ass'n of Realtors v. Dept. of Health & Human Svcs.,* 594 U.S. 758, 763–66 (2021).

[125] *See* 85 FR 55292 (Sept. 4, 2020).

provision violated the Tenth Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.").[126] Though advocates should be aware of it, the argument appears spurious and will not be further analyzed here. Note the *Olentangy Commons* court did not consider the argument because it had not been presented to the trial court.[127]

Alternative grounds that require 30-day notice prior to eviction for some HUD tenants

HUD published an interim final rule (IFR), Extension of Time and Required Disclosures for Notification of Nonpayment of rent, which went into effect on November 8, 2021.[128] The IFR mandates HUD housing providers to give 30-day notice to public housing and PBRA tenants prior to eviction for nonpayment of rent. The 30-day notice must also include information about local emergency rental assistance programs. The IFR applies when HUD determines an extended notice period is necessary to allow tenants more time to access federal funding when the President has declared a national emergency. In the case of the Coronavirus pandemic, HUD published supplemental guidance detailing the Secretary's determination for making the IFR effective during the current public health crisis.[129]

The IFR states that it "remains in effect until a subsequent HUD notice is issued rescinding the determination" (that "tenants must be provided adequate notice to secure funding that is available due to a Presidential declaration of a National emergency."). Though the national emergency declaration has terminated, to date HUD has not issued a new notice rescinding the IFR and some federal rental assistance funds may remain available in some locations.

In December 2023, HUD issued a notice of proposed rulemaking[130] "to build upon the previously issued [IFR and] propose to require that PHAs administering a public housing program and owners of project-based rental assistance properties provide no less than 30 days advanced notification of lease termination due to nonpayment of rent."[131] HUD recently

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[126] *Olentangy Commons Owner LLC v. Fawley*, 228 N.E.3d 621, 634 (Ohio App. 2023).

[127] *See Id.* at 634.

[128] 86 Fed. Reg. 55693 (Oct. 7, 2021).

[129] DEP'T. OF HOUS. & URBAN DEV., Supplemental Guidance to the Interim Final Rule, Extension of Time and Required Disclosures for Notification of Nonpayment of Rent PIH 2021-29 (Oct. 7, 2021).

[130] HUD, 30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent, 88 Fed.Reg. 83877 (Dec. 1, 2023).

[131] DOMESTIC POLICY COUNCIL AND NATIONAL ECONOMIC COUNCIL, "White House Blueprint for a Renters Bill of Rights" at 17 (January 2023), https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights-1.pdf.

finalized the rule on December 13, 2024.[132] NHLP has prepared a separate analysis of this HUD rule, available to HJN members on request.

[132] HUD, 30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent, 89 Fed.Reg 101270 (Dec. 13, 2024), https://www.federalregister.gov/documents/2024/12/13/2024-28861/30-day-notification-requirement-prior-to-termination-of-lease-for-nonpayment-of-rent.