

**SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee**

NOTICE OF PROPOSED ORDER

Proposed Order Relative to Federal CARES Act and Landlord-Tenant Cases

The Minor Court Rules Committee is considering recommending to the Supreme Court of Pennsylvania that it enter an Order requiring the filing of an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 ("CARES Act") in every action by a landlord against a tenant for the recovery of real property filed on or after March 27, 2020 through July 25, 2020 for the reasons set forth in the accompanying Publication Report. The proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by **June 16, 2020**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,

Honorable Margaret A. Hunsicker
Chair

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

Proposed Order Relative to CARES Act and Landlord Tenant Cases

The Minor Court Rules Committee (“Committee”) is considering recommending to the Supreme Court of Pennsylvania that it enter an Order requiring the filing of an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (“CARES Act”) in every action by a landlord against a tenant for the recovery of real property filed on or after March 27, 2020 through July 25, 2020. The comment window for this proposal is narrow given the need for expedited consideration.

Background

The CARES Act was enacted on March 27, 2020. Among other things, it provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, *i.e.*, through July 25, 2020, a landlord 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.” CARES Act, § 4024(b)(1). The moratorium also applies to the charging of “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” *Id.* § 4024(b)(2).

A “covered dwelling,” as defined by the CARES Act, is a dwelling occupied by a tenant pursuant to a residential lease, or without a lease or with a lease terminable under state law, and that “is on or in a covered property.” See *id.* § 4024(a). The definition of “covered property” includes a property that participates in a covered housing program (as defined in section 12491(a) of Title 34), the rural housing voucher program under section 1490r of Title 42, or has a federally backed mortgage loan, or federally backed multifamily mortgage loan. CARES Act, § 4024(a)(2). “Federally backed” mortgages include those that are secured by “a first or subordinate lien on residential real property ... including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property” and

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 the Secretary of [HUD] or a housing or related program administered by any such other officer or agency, or is purchased or

securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Id. § 4024(a)(4)-(5).

The CARES Act further prohibits evictions or the initiation of eviction actions by landlords who are borrowers under federally backed multifamily mortgage programs and have received forbearance of mortgage payments under the CARES Act. Such a landlord may not, for the duration of the forbearance, evict or initiate the eviction of a tenant from the applicable property solely for nonpayment of rent or other fees or charges. *Id.* § 4023(d).

The CARES Act also provides that the landlord may not require the tenant to vacate the property before a date that is 30 days after the landlord provides the tenant with a “notice to vacate” and that the notice to vacate cannot be given before the expiration of the moratorium, *i.e.*, July 25, 2020. *Id.* § 4024(c).

In summary, the CARES Act does not prohibit all eviction actions, but is generally limited to new landlord-tenant filings for nonpayment of rent in covered dwellings. Cases filed on or prior to March 26, 2020, cases that do not involve covered dwellings, and cases that are not based on nonpayment of rent (*i.e.*, end of rental term or breach of lease conditions) are not subject to specific prohibitions in the CARES Act.

Discussion

The Committee was asked to consider a recommendation to require additional pleading requirements in landlord-tenant cases to ensure compliance with the CARES Act. Specifically, the Committee was asked to review the use of an affidavit supported by documentation designed to demonstrate that the property was not subject to CARES Act protections. An area of particular concern was federally backed mortgages, since that information is only available to the landlord; moreover, it raises the issue of mortgage bundling and resale of which the landlord may not even be aware.

The Committee is considering recommending to the Court that it require the filing of an affidavit with the landlord-tenant complaint through the pendency of the CARES Act protections. The proposed affidavit is set forth in this publication. The affidavit would require the landlord to affirm that neither the landlord, tenant, nor the property participates in a number of federal programs, that the property is not subject to a federally backed mortgage or federally backed multifamily mortgage loan, that the landlord has confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”), and that if the property is the subject of a federally backed multifamily mortgage loan, that there is no mortgage on the property that has

been granted deferral or forbearance status since March 27, 2020 and there is no pending application for mortgage deferral or forbearance. The affidavit would be accompanied by supplemental instructions describing the CARES Act, relevant definitions, and advising that, in addition to filing the affidavit with the landlord-tenant complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence at the time of the hearing for the recovery of real property. A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act. The Committee believes that this approach would give the tenant the opportunity to evaluate the landlord's averments when served with the complaint prior to the hearing and to present evidence at the time of the hearing, if appropriate.

The Committee proposes that the affidavit be filed with all landlord-tenant complaints during the duration of the CARES Act protections. While the landlord-tenant complaint contains an averment as to the basis of the complaint, court staff cannot review all complaints and make a determination as to whether the complaint should or should not contain an affidavit based upon an averment in a given case. The proposal will require some landlords to file an affidavit that might not otherwise be required; however, it is necessitated by the need for efficient administration of the courts at a time when many are just now reopening due to the statewide judicial emergency. The inapplicability of the CARES Act in those situations can be addressed at the hearing.

The supreme courts of six other states (Arkansas, Idaho, Illinois, Iowa, Michigan, and Oklahoma) have adopted orders relating to the eviction moratorium set forth in the CARES Act. These orders require various means of demonstrating compliance with the CARES Act, including affidavits and affirmative pleadings.

The Committee is aware of competing views to this approach. One school of thought is that the issue of whether or not a leased property is not a "covered property" is one that is best left for trial and should not be a required part of the landlord-tenant complaint. Alternatively, there is a view that an affidavit without attachments is insufficient for the tenant and the court to determine compliance with the CARES Act.

All comments, concerns, and suggestions regarding this proposal are welcome.

[CAPTION]

To the Landlord or Authorized Agent: Please see Supplemental Instructions for information about the CARES Act and definitions of terms used in this affidavit.

AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT

In order to support my assertion that this filing complies with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, enacted March 27, 2020 ("CARES Act"), I affirm that:

Neither I, the property, nor any tenant of the property participates in or receives subsidies or benefits under any of covered housing programs or rural housing voucher programs listed:

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher (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 Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 1715l(d))
- HOME (42 U.S.C. §§ 12741 *et seq.*)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. §§ 12901 *et seq.*)
- Continuum of Care or other 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)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)
- Rural Housing Voucher Program (42 U.S.C. § 1490r)

- The property is not subject to a federally backed mortgage loan or a federally backed multifamily mortgage loan. Examples of a federally backed mortgage loan or federally backed multifamily mortgage loan include mortgage loans guaranteed by the Federal Housing Administration, HUD, the Department of Veterans Affairs, or the USDA, and those that were purchases or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

- I have confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”) by checking the property via the mortgage lookup tool for Freddie Mac (www.FreddieMac.com/mymortgage) and Fannie Mae (www.KnowYourOptions.com/loanlookup).

- If the property is the subject of a federally backed multifamily mortgage loan, there is no mortgage on the property that has been granted deferral or forbearance status since March 27, 2020, and there is no pending application for mortgage deferral or forbearance. See CARES Act, § 4023(d)

I, _____, verify that the facts set forth in this affidavit are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 related to unsworn falsification to authorities.

Date

Signature of Landlord or Authorized Agent

AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT
Supplemental Instructions

The federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (“CARES Act”) was enacted on March 27, 2020. Among other things, the CARES Act provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, *i.e.*, through July 25, 2020, a landlord 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.” CARES Act, § 4024(b)(1). The moratorium also applies to the charging of “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” CARES Act, § 4024(b)(2).

On _____, 2020, the Supreme Court of Pennsylvania ordered that every action by a landlord against a tenant for the recovery of possession of real property filed in a magisterial district court or the Philadelphia Municipal Court shall be accompanied by an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 as available on the website of the Administrative Office of Pennsylvania Courts at <http://www.pacourts.us/forms/for-the-public> (for actions in magisterial district courts) or from the Philadelphia Municipal Court, respectively. The requirement is in effect through July 25, 2020.

In addition to filing the affidavit with the complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence at the time of the hearing for the recovery of possession of real property. A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act.

Terms used in the affidavit have the following meanings:

“Covered dwelling” means a dwelling that is occupied by a tenant pursuant to a residential lease or without a lease or with a lease terminable under State law, and is on or in a covered property. CARES Act, § 4024(a)(1).

“Covered property” means any property that participates in one of the covered housing programs or the rural housing voucher program listed on the affidavit or has a Federally backed mortgage loan or a Federally backed multifamily mortgage loan. CARES Act, § 4024(a)(2).

“Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that **(A)** is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and **(B)** 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 the Secretary of Housing and Urban Development 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. CARES Act, § 4024(a)(4).

“Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that **(A)** is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and **(B)** 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 the Secretary of Housing and Urban Development 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. CARES Act, § 4024(a)(5).