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 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 state 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 initial 120-day moratorium period was never extended and expired on July 24, 2020. Yet the 30-day CARES Act notice requirement remains in effect. Nevertheless, advocates continue to report widespread noncompliance with this notice provision and a troubling lack of consistency in judicial enforcement. A poll of Housing Justice Network members taken in the late 2021 found that 78% of respondents observed seeing courts in their service areas either sometimes or always fail to enforce the notice requirement—including 20% of respondents seeing courts in their service areas decline to enforce the provision at all.[3] In 2022, NHLP again surveyed HJN and found that a staggering 88% of respondents reported inconsistent or no court enforcement of the CARES Act notice requirements.[4]

Determining whether a property is covered

Since initial passage, probably the most challenging aspect of enforcing CARES Act protections has been determining whether a particular tenant's rental unit is a "covered dwelling."[5] The Act 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.[6] The

[1] *See* 15 U.S.C. § 9058(b).

[2] *See* 15 U.S.C. § 9058(c).

[3] 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

[4] 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.

[5] *See* 15 U.S.C. § 9058(a)(1).

[6] See 15 U.S.C. § 9058(a)(1)(A).

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term "covered property" then includes any property that participates in certain federal housing programs or that has a federal backed mortgage loan.[7]

- *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.[8] VAWA coverage extends not only to HUD-subsidized low-income housing programs (such as public housing and housing choice vouchers) 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, the RD voucher program was separately and explicitly identified as a covered under the CARES Act.[9]

The 2022 reauthorization of VAWA expanded the definition of "covered property" to include several additional programs by name (including the Section 202 Direct Loan Program,[10] RD vouchers,[11] the federal housing trust fund,[12] VASH vouchers and other programs for providing federal housing assistance to veteran families,[13] and transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking[14]), as well as 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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[7] *See* 15 U.S.C. § 9058(a)(2).

[8] 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).

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

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

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

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

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

[14] *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 the Act.[15]

- *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."[16] While the Fannie Mae and Freddie Mac-owned loans are best-known for being covered under the CARES Act, 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.[17]

For advocates representing tenants who themselves participate in housing subsidy programs or benefit from low-income housing tax credit rent limits, determining that the CARES Act notice requirement applies 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+ selling unit) properties, a number of public and private databases are available by which advocates may look up whether they have coverage:

- National Low-Income Housing Coalition[18]
- HUD Multifamily Assisted Properties[19]

[15] *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.

[16] 15 U.S.C. § 9058(a)(4).

[17] *See* 15 U.S.C. § 9058(a)(5).

[18] https://nlihc.org/cares-act

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

- FHA-insured Multifamily Properties[20]
- Fannie Mae Multifamily Lookup Tool[21]
- Freddie Mac Multifamily Lookup Tool[22]

Note that advocates and reporters reported 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[23]

…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.[24]

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.[25]

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

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

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

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

[24] *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

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

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. Some federally-insured mortgage loans are likely to have this information in certain public filings. However, loans subsequently acquired by federal enterprises 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 officers.

Though tenants will often lack the ability to determine whether a property is subject to CARES Act coverage, a landlord should know or 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 notes or mortgage 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.[26]

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 the CARES Act during the original 120-day eviction moratorium.[27] At present, such rules remain active in Georgia, Iowa, Oklahoma, and New Jersey.[28] 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 substantially the same.[29]

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[26] *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

[27] *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.

[28] *See* Georgia Uniform Superior Court Rule 49: Emergency Dispossessory (May 4, 2020); *see* Iowa 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); *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.

[29] 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

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.[30] 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.'"[31] The Vermont rule, like many of the prior rules, also provided for a form declaration which lists different avenues of coverage the landlord must decline the applicability of.[32] Hopefully more states will see the wisdom of either retaining rules adopted during the initial filing moratorium or adopting new rule specific to implementing the notice requirement.

Whether or not such a 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 zealously 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. Even if such investigation is not successful, courts will likely be more inclined to require landlords to plead or prove the absence of CARES moratorium 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

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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).

[30] See Vt. R. of Civ. Pr. 9.2.

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

[32] 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.

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 particular path, or claims the property is not covered under a particular 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. Though courts should not require tenants to admit affirmative proof that a property is covered,

doing so anyway is obviously desirable where such evidence is present.

What about courts that don't enforce the statute?

With the initial 120-day filing moratorium having long expired, many landlords, attorneys, and courts appear to have presumed that the CARES Act notice provision must have also have expired at some time in the past.[33] This is, of course, inaccurate; 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). Yet, as enforcement of the CARES Act notice requirement remains spotty and inconsistent,[34] advocates should be prepared to correct such misplaced assumptions about the notice requirement's duration and other information deficiencies that may contribute to the problematic compliance.

Importantly, there are now multiple court decisions interpreting and enforcing the CARES Act notice provision. At the time of this writing, probably the most important of these decisions is a decision from the intermediate appellate court in Washington State, *Sherwood Auburn LLC v. Pinzón,* 521 P.3d 212 (2022). The tenants in *Pinzón* 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.[35] 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 your eviction from the premises."[36] 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."[37] In net effect, the scheme of these notices was to say that the tenants 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.[38]

In the event, the *Pinzón* tenants neither cured the default nor vacated the premises so the landlord commenced an eviction lawsuit.[39] The tenants moved to dismiss, arguing the eviction notices were deficient and summary proceeding prematurely filed because they landlord had

[33] *See, e.g., In re Arvada Village Gardens LP v. Ana Garate,* Colorado Supreme Court No. 23SA34, 2023 WL 1101956 (Jan. 27, 2023) (directing landlord to show cause why relief should not be granted on a petition for extraordinary relief from a trial court ruling that "Subsection (c) [of 15 U.S.C. § 9058] is not independent or separate from subsection (b), they both expire 120 days from March 27, 2020.").

[34] *See supra,* notes 3-4.

[35] See *Pinzón* at 214-15.

[36] *Id*. at 215.

[37] *Id*. at 215.

[38] *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.").

[39] *See Pinzón* at 215.

not given them the full 30 days in which to vacate the premises.[40] The trial court, however, 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.[41] The trial court entered judgment for the landlord and the tenants appealed.[42]

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[.]"[43] 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.[44] "Sherwood Auburn['s] interpretation of the CARES Act notice provision," the panel observed, "would replace the word 'lessor' with the words 'superior court.'"[45]

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 provision meaningless.[46] 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."[47]

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."[48] As the panel went on to explain, "it is the landlord—not the superior court—that

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[40] *See Id.* at 215.

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

[42] *See Id.* at 215

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

[44] See *Pinzón* at 217.

[45] *Id*. at 217.

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

[47] *See Pinzón* at 218.

[48] *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…").

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."[49] "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."[50]

Finally, the Court of Appeals made clear the dual notices the landlord provided in *Pinzón* were confusing and thus deficient as a matter of law, for having failed 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."[51] Implicit in the ruling 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."[52]

Though state appellate decisions are obviously not binding on courts in other states, *Pinzón* should serve as highly persuasive authority in trial courts throughout the U.S.—and especially in states that, like Washington, follow the rule that a landlord may not commence a summary eviction proceeding until the deadline to vacate has expired and tenant's continued occupancy has become unlawful and in violation of the landlord's right to possession.[53] Appendix 1 to this memorandum shows that substantially every U.S. state and territory follows this basic rule at least to some extent.

Advocates should note the *Pinzón* landlord has filed a petition seeking discretionary review in the Washington Supreme Court, and that appellate cases remain pending in at least one other jurisdiction (Colorado) at the time of this writing.

Otherwise, two additional reported trial court decisions reflect judicial acknowledgement of the CARES Act notice provision. Both primarily concerned the question of whether compliance the 30-day notice is required for eviction cases based on grounds other than nonpayment of rent (or other charges)—but in answering that question, backhandedly acknowledged the duty to give that notice in nonpayment cases. One of those cases was *West Haven Housing Authority v. Armstrong*, in which the 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."[54]

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[49] *Id*. at 218.

[50] *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.").

[51] See *Pinzón* at 221.

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

[53] *See Pinzón* at 217.

[54] *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.).

The second case, *Watson v. Vici Community Development Corp.,* was a disability discrimination action in U.S. District Court.[55] But the case also involved a separate claim seeking a declaratory judgment to invalidate an eviction lawsuit the defendant had filed against the tenant in August 2020 without having given the 30 days' notice required by the CARES Act. The defendant admitted having filed the eviction suit without serving the CARES Act notice but claimed that 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."[56]

The court found the factual question as to the landlord's reason for the eviction precluded summary judgment for either party—effectively holding that, if the eviction was indeed motivated by nonpayment of rent (or other charges), then it was unlawful due to noncompliance with the CARES Act.[57]

In addition to court decisions, advocates may wish to consider drawing 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.[58] 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."[59] 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."[60] 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

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

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

[57] *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.").

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

[59] 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

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

existing and future loan agreements to require a 30-day notice to vacate at multifamily properties with Enterprise-backed mortgages."[61]

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 a property is covered.[62] 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.

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.[63] 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 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.[64] The notice is still in effect, and per the White House Blueprint for a Renters Bill of Rights, HUD intends to issue a notice of proposed rulemaking "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."[65]

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[61] 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.

[62] *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 June 14, 2022.

[63] 86 Fed. Reg. 55693 (Oct. 7, 2021).

[64] 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).

[65] 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.

Appendix A: Ripeness of summary eviction proceedings by jurisdiction

Eviction lawsuits become ripe only once the plaintiff has acquired the present right to possession. *See* 36A C.J.S., Forcible Entry & Detainer, § 7 (Sept. 2020). This has significance for interpretation and enforcement of the CARES Act notice provision, 15 U.S.C. § 9058(c), because the CARES Act provision entitles a tenant in a covered dwelling unit to at least 30 days' notice before eviction for nonpayment of rent or other charges. If a landlord does cannot acquire the right to possession of a covered dwelling unit without first giving 30 days' notice, then effectively this rule bars a landlord in such jurisdiction from commencing a summary eviction lawsuit until 30 days' notice to vacate has been given and the deadline to vacate has expired. As the chart below indicates, substantially every jurisdiction follows this basic rule to a greater or lesser extent. Notably, in some states a trial court lacks subject matter jurisdiction over a premature eviction suit, such that the defense is non-waivable, non-curable, and may be raised at any time, whereas in other states a court that is given jurisdiction over summary eviction matters is considered always to have subject matter jurisdiction in such cases. In the latter states, a premature filing will preclude judgment for the landlord, but the defense may be subject to waiver.

Jurisdiction	Authority
Alabama Follows rule, moderate clarity	*Moss v. Hall,* 245 Ala. 612, 613, 18 So. 2d 368, 369 (1944) ("Our holdings are to the effect that the provisions of Section 6, Title 31, Code of 1940, have reference to a notice for the termination of the tenancy; and where such notice is necessary to terminate the tenancy, still another ten-days' notice must be given as condition precedent to institution of the unlawful detainer suit under Section 967, Title 7, Code of 1940. This question is discussed in *Myles v. Strange,* 226 Ala. 49, 145 So. 313, cited approvingly in the more recent case of *Garrett v. Reid,* 244 Ala. 254, 13 So.2d 97. And the latter case was approvingly cited upon this point in *Hackney v. Griffin,* 244 Ala. 360, 13 So.2d 772.")
Alaska Follows rule, high clarity	*Caswell v. Ahtna, Inc.,* 511 P.3d 193, 200 (Alaska 2022), *reh'g denied* (June 23, 2022) (affirming dismissal of premature eviction suit; "Alaska Statute 09.45.110 allows a lessor to file an FED action 'on or after the date the tenant or person in possession unlawfully holds possession of the dwelling unit or rental premises by force.' The statutory definition of 'unlawful holding by force" includes when 'following service of a written notice to quit ... a person in possession continues in possession of the premises ... at the expiration of the time limited in the lease or agreement under which that person holds." AS 09.45.090(b)(2)(F)(i). 'The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person for the possession of the premises ... until the expiration of the period for which that tenant or person may have paid rent for the premises in advance.' AS 09.45.130.")
Arizona Follows rule, high clarity	*Alton v. Tower Cap. Co.,* 123 Ariz. 602, 604, 601 P.2d 602, 604 (1979) ("Tower claims that, because the September 8th letter informed Alton that forcible entry and detainer proceedings would begin if he did not pay rent by September 15, the five day notice requirement of A.R.S. s 12-1173(A)(1) was met. We disagree. To allow the five day notice to be given before rent is due and unpaid strips the notice requirement of any meaning. A landlord

	could thereby inform his tenant each month, five days before rent was due, that he intended to commence forcible entry and detainer proceedings if rent was not paid on time. It is clear to this Court that A.R.S. s 12-1173 was not intended to authorize this type of action. We hold, therefore, that the written demand to surrender, which is a prerequisite to filing a forcible entry and detainer action against a month to month tenant whose rent is due and unpaid can only be made after rent has become due and unpaid. Accordingly, a proper demand to surrender the premises was never made upon defendant and the trial court incorrectly found that defendant had committed a forcible detainer."). *See also Bank of New York Mellon v. De Meo,* 227 Ariz. 192, 195, 254 P.3d 1138, 1141 (Ct. App. 2011) (dismissing eviction case for failure to provide 90-day eviction notice required by Protecting Tenants at Foreclosure Act: "Obviously, a five-day notice, even when followed by an unannounced 90–day delay, is at best misleading. The noticed tenant could reasonably conclude that all arrangements to vacate the property and relocate must be concluded within the five-day notice period.")
Arkansas Follows rule, low clarity	*Whitner v. Thompson,* 188 Ark. 240, 65 S.W.2d 28, 30 (1933) (rejecting appellant's argument that unlawful detainer action had been filed without the required three days' notice because "the day of serving the notice may be counted. The notice was served on appellant to vacate on September 2, and suit was not brought until September 5, which was after three days' notice had expired, counting the day of service.").
California Follows rule, high clarity	*Hsieh v. Pederson*, 23 Cal. App. 5th Supp. 1, 7, 232 Cal. Rptr. 3d 701, 705–06 (Cal. App. Dep't Super. Ct. 2018) ("Where an unlawful detainer proceeding is based on the tenant's breach, the cause of action does not arise until the expiration of the notice period without the default being cured by the tenant. (§ 1161, subd. 2; *Downing v. Cutting Packing Co.* (1920) 183 Cal. 91, 95-96, 190 P. 455.) The complaint cannot be filed until the full notice period has expired, since the tenant is not guilty of unlawful detainer until the full three days—or in the instant matter, 14 days—have expired. (*Nicolaysen v. Pacific Home* (1944) 65 Cal.App.2d 769, 773, 151 P.2d 567 ['tenancy is not terminated upon the giving of the notice but upon the expiration of the period therein specified']; *Lamanna v. Vognar* (1993) 17 Cal.App.4th Supp. 4, 6, 22 Cal.Rptr.2d 501 ['cause of action for unlawful detainer does not arise until the three days required for proper notice have expired without the tenant having paid the rent during that time"].) A complaint which is filed prior to expiration of the full notice period can be dismissed as premature. (*Lamanna v. Vognar*, *supra*, 17 Cal.App.4th at pp. Supp. 7-8, 22 Cal.Rptr.2d 501 [landlord's complaint was premature and had to be dismissed]; *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1, 7, 167 Cal.Rptr. 353.)").

Colorado Follows rule, high clarity	*Hix v. Roy,* 139 Colo. 457, 459, 340 P.2d 438, 439 (1959) ("[I]t has been the law in this state that in an action for unlawful detainer the plaintiff to recover must aver and prove a demand in writing for possession of the premises as required by the statute, C.R.S. '53, 58–1–1 to 58–1–26. In this instance the demand was defective in that (a) it did not unequivocally terminate the lease pursuant to the terms thereof; (b) suit was brought prior to January 17, 1959, the announced date of termination; (c) it was conditional, and (d) the co-lessor did not join in the notice.") (underline added).
Connecticut Follows rule, high clarity	*Towers v. Kelly,* 199 Conn. App. 829, 837, 238 A.3d 732, 737 (2020) ("If the tenant fails to vacate the premises within the designated time, the landlord may cause a complaint to be served; see General Statutes § 47a-23a; and the merits may be decided by the Superior Court."); see also *Lampasona v. Jacobs,* 209 Conn. 724, 730, 553 A.2d 175, 179 (1989) ("[B]ecause proper notice to quit is a jurisdictional necessity, in order to determine whether there was proper notice in this case the court had to determine which summary process provision, §§ 47a–23 or 21–80, controlled. The dispositive question in resolving which summary process scheme applied was whether the defendant was such a resident of the plaintiff's mobile home park. If he was such a resident, § 21–80 applied and the notice to quit had to be for a duration of sixty days, and if he was not a resident, the general summary process provision, § 47a–23, applied and an eight day notice to quit would have been sufficient. The court, O'Connell, J., on remand, found that . . . the defendant was a resident of the park. As a resident, the court applied the summary process procedure for mobile home park residents pursuant to § 21–80 and found that the plaintiff had not given the defendant the required sixty day notice to quit under subsection (b)(3)(B). Upon its finding, the court dismissed the plaintiff's case for lack of subject matter jurisdiction and did not rule on the merits of the plaintiff's constitutional claims."
Delaware Follows rule as to nonpayment of rent, high clarity	Del. Code Ann. tit. 25, § 5502(a) ("A landlord or the landlord's agent may, any time after rent is due … demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.") (underline added).
Appears to follow the rule as to holdover after lease expiration in residential tenancies, low clarity	Del. Code Ann. tit. 25, § 5702 (Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because: (1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant; …

	(10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained[.]"
District of Columbia Follows rule, high clarity	*Tatum v. Townsend*, 61 A.2d 478, 480 (D.C. 1948)("Here we are dealing with a special statute which throws its protective cloak around all tenants of dwelling property in the District of Columbia and says that no landlord shall have the right to disturb their possession unless he can show that one of the excepted situations exists. This cannot mean, as we read the Act, that a landlord may sue first, at a time when he has no right to sue, and then by a new set of circumstances which he manages to develop later on, obtain a valid judgment.), *cited with approval in Zanakis v. Brawner Bldg., Inc.,* 377 A.2d 67, 68 (D.C. 1977).
Florida Follows rule in residential tenancies, moderate clarity Compliance with unlawful detainer procedures is not jurisdictional, but failure to give required lease termination notice will preclude entry of judgment for landlord.	*Bell v. Kornblatt,* 705 So. 2d 113, 114 (Fla. Dist. Ct. App. 1998) (holding that trial court had subject matter jurisdiction in summary eviction suit "even assuming that the three-day notice failed to substantially comply with the requirements of section 83.56(3) . . . Compliance with the statutory notice requirement is merely a condition precedent to an eviction action under part II of Chapter 83" – with Part II of Chapter 83 pertaining to residential landlord-tenant relations); court notes further that a purported waiver of an eviction notice, though permissible in non-residential tenancies, would be "inapplicable to residential tenancies, since it provides that a provision in a rental agreement is void to the extent that it 'purports to waive ... the rights, remedies, or requirements set forth in this part,'" *citing* Florida Statutes Ann. Sec. 83.41(a)(a)); see *Inv. & Income Realty, Inc. v. Bentley,* 480 So. 2d 219, 220 (Fla. Dist. Ct. App. 1985) ("A statutory cause of action cannot be commenced until the claimant has complied with all the conditions precedent. *Perry-Morse Seed Co. v. Hitchcock,* 426 So.2d 958 (Fla.1983). Since the landlord failed to comply with the notice requirements, this action was properly dismissed."). *See also* Fla. Stat. Ann. § 83.59 ("If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.")
Georgia Follows rule, low clarity	Ga. Code Ann. § 44-7-50(a) "In all cases when a tenant holds possession of lands or tenements over and beyond the term for which they were rented or leased to such tenant or fails to pay the rent when it becomes due and in all cases when lands or tenements are held and occupied by any tenant at will or sufferance, whether under contract of rent or not, when the owner of such lands or tenements desires possession of such lands or tenements, such owner may, individually or by an agent . . . demand the possession of the property so rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession when so demanded, the owner or the agent . . . may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject

	matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts." *Trumpet v. Brown,* 215 Ga. App. 299, 300, 450 S.E.2d 316, 317 (1994) ("OCGA § 44–7–50 provides that in cases where a tenant fails to pay rent when it becomes due, the owner may demand possession of the property. If, after demand, the tenant fails to deliver possession of the property, the owner may file an action to recover possession."). *Outfront Media, LLC v. City of Sandy Springs,* 356 Ga. App. 405, 408, 847 S.E.2d 597, 604 (2020) ("Under Georgia law, once a lease has been terminated and the tenant refuses to vacate, the tenant becomes a tenant holding over beyond the term of the lease, and the landlord is entitled to institute a dispossessory proceeding."). *But see Green Room, Inc. v. Confederation Life Ins. Co.,* 215 Ga. App. 221, 222, 450 S.E.2d 290, 292 (1994) ("Because a demand for possession would have been useless, Confederation was not required to make it."), *quoting Henderson v. Colony West,* 175 Ga.App. 676, 678(2), 332 S.E.2d 331 (1985) ("[I]t is not necessary for a landlord to prove a demand for possession when it appears that the demand, if made, would be refused.")
Guam Follows rule, high clarity	*Archbishop of Guam v. G.F.G. Corp*., 1997 Guam 12, ¶¶ 10-11 (Guam Oct. 17, 1997) ("Guam's unlawful detainer statute, 21 G.C.A. § 21103, was derived from California's former unlawful detainer statute, Cal. Civ. P.Code § 1161. Unlike a common law breach of contract action, the purpose of an unlawful detainer action is to recover possession. Proceedings in an unlawful detainer action are intended to be summary in nature and are required by law to be expedited. 21 G.C.A. § 21120. Also, because an unlawful detainer action is a summary remedy, the unlawful detainer statute must be complied with strictly. *Cal–American Income Property Fund IV v. Ho,* 161 Cal.App.3d 583, 585, 207 Cal.Rptr. 532 (Cal.Ct.App.1984). To maintain a valid unlawful detainer action under Guam law, the landlord must establish that the tenant has defaulted in the payment of rent, is in possession of the property without the landlord's permission, and that the tenant has been served with a valid notice demanding payment or surrender of possession. 21 G.C.A. § 21103. <u>To be valid, the default notice must be served at least five days prior to the filing of the action</u>, must state the amount of rent which is due, and must be served within one year of the date that the rent became due. 21 G.C.A. § 21103(b)). (underline added). 21 G.C.A. § 21103. Unlawful Detainer Defined. "(a) When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord . . . (b) When he continues in possession . . . after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and five (5) days' notice in writing, requiring its

	payment, stating the amount which is due, or possession of the property, shall have been served upon him . . ."
Hawaii Follows rule, high clarity But tenant must move for dismissal before commencement or trial or waives prematurity defense (i.e., not jurisdictional)	*Winston v. Lee,* 102 Haw. 334, 76 P.3d 577 (2003), *amended on reconsideration in part* (Nov. 12, 2003) ("Termination of a lease is not a prerequisite element of summary possession.); *see also 4000 Old Pali Rd. Partners v. Lone Star of Kauai, Inc.,* 10 Haw. App. 162, 187–88, 862 P.2d 282, 293 (1993) ("[I]f the tenant, before the expiration of the cure period or the commencement of the trial, moves for dismissal of the landlord's complaint on the ground that it was filed prematurely, landlord's complaint should be dismissed . . . On the other hand, if the tenant, after the expiration of the cure period and the commencement of the trial, moves for dismissal of the complaint on the ground that it was filed prematurely, it would be an unreasonable benefit to the tenant, burden on the landlord, preference for form over substance, and waste of judicial resources to dismiss the complaint and require the landlord to file a new complaint. In that situation, the landlord's complaint should not be dismissed.").
Indiana Follows rule, low clarity	*O'Day v. Hanes,* 111 Ind. App. 617, 40 N.E.2d 366, 370 (1942) ("The court in disposing of the matter, in speaking of the action for possession of real estate and for damages for the detention thereof by the tenant after his possession became unlawful, we think correctly held that the proceeding under said statutes is possessory in its nature and that the wrongful possession of the defendant is of the gist of the action; that the proceeding sounds in tort; that in the detention of the premises after the termination of the tenancy, the occupant is a tort-feasor…") *discussing Campbell v. Nixon,* 2 Ind. App. 463, 28 N.E. 107 (1891).
Iowa Follows rule, high clarity	*AHEPA 192-1 Apartments v. Smith,* 810 N.W.2d 25 (Iowa Ct. App. 2011) ("AHEPA's FED cause of action was premised upon the ground that Smith was holding over after the termination of the lease accrued when the lease was terminated. According to the notice provided to Smith, he was informed the lease was terminated on October 31, 2010. The FED petition filed November 2 was not barred by section 648.18 as clearly thirty days had not expired between the date of termination of the lease and the date of filing the FED action."); *see also Bernet v. Rogers,* 519 N.W.2d 808, 811 (Iowa 1994) (Iowa FED action proper once occupant's continued possession has become unlawful)
Kansas Follows rule, high clarity	*Gunter v. Eiznhamer,* 165 Kan. 510, 516, 196 P.2d 177, 181 (1948) (3-day termination "notice statute prescribes the time which must elapse 'before commencing the action' for possession.")
Kentucky Follows rule, high clarity	*Shinkle v. Turner,* 496 S.W.3d 418, 421–22 (Ky. 2016) ("In Kentucky, a tenant is guilty of a forcible detainer when he refuses to vacate the premises *after* his right of possession has ended. KRS 383.200(a) provides: 'A forcible detainer is ... [t]he refusal of a tenant to give possession to his

	landlord after the expiration of his term[.]' [B]y operation of KRS 383.195, Shinkle's tenancy and right of possession did not terminate until one month after being notified to remove himself from the premises. It follows that he could not be guilty of forcible detainer until after his right of possession ended. KRS 383.210(1) creates a statutory cause of action for 'a person aggrieved by a forcible entry or detainer.' To assert a valid claim for forcible detainer, the plaintiff must allege a current and immediate right to possession of the premises; otherwise, he is not 'aggrieved by a forcible detainer.' Turner . . . alleges [Shinkle] unlawfully and forcibly detain[s] the premises, and demand(s) possession of the premises be delivered to Plaintiff.' … These allegations were obviously inaccurate when made because Shinkle's one-month period to vacate had not yet expired, and thus his right of possession had not yet ended. Because Turner did not yet have the right to possession of the premises, he was manifestly not 'a person aggrieved by a forcible entry or detainer.' He had no statutory right at that time to commence the action asserting the claim. A forcible detainer action focuses upon and determines which party is entitled to present possession of the property at the commencement of the action, not at some later date. *Bledsoe v. Leonhart,* 305 Ky. 707, 205 S.W.2d 483, 484 (1947) ("The question for decision was whether or not appellant was guilty of forcible detainer at the time the [forcible detainer] warrant was issued.") (emphasis added)").
Louisiana Follows rule, low clarity	*Louisiana State Museum v. Mayberry,* 348 So. 2d 1274, 1276 (La. Ct. App. 1977) (not abuse of discretion to dismiss eviction suit based on defective notice, but noting court had option allowing landlord to amend the notice; "[i]f the lessee fails to vacate after the notice required by Article 4701 of the Code of Civil Procedure, he may be cited summarily to show cause why he should not be ordered to surrender possession of the premises to the lessor."); *see also New Orleans Hat Attack, Inc. v. New York Life Ins.* Co., 95-0055 (La. App. 4 Cir. 11/30/95), 665 So. 2d 1186, 1189 (1995) ("When a lessee's right of occupancy ceases for any reason, the lessor is entitled to utilize summary eviction proceedings to obtain possession[.]").
Maine Follows rule, high clarity	*Rubin v. Josephson,* 478 A.2d 665, 668 (Me. 1984) ("[T]he plaintiffs' contention that forfeiture or expiration of the term is not a prerequisite to maintenance of a forcible entry and detainer action is only correct if the legislature, when amending the statute in 1933, intended to relieve the lessor of the obligation of alleging and proving expiration or forfeiture. Such does not appear to be the case. The legislative history surrounding the 1933 amendment gives no indication of an intent to change the statute in such manner.").
Maryland Follows rule, high clarity	*Hunter v. Broadway Overlook,* 458 Md. 52, 58, 181 A.3d 745, 749 (2018) ("The landlord does not have a viable claim on which to base its complaint of breach of lease until the notice period has expired and the tenant has refused to comply with the notice to vacate. Furthermore, 'it is not

	appropriate to find that a defective notice became effective through the simple passage of time. The obligation to provide advance notice is a forward-looking requirement intended to allow the tenant to plan for the future.'"), *quoting Curtis v. U.S. Bank Nat'l Ass'n,* 427 Md. 526, 539, 50 A.3d 558, 566 (2012).
Massachusetts Follows rule, high clarity	*Adjartey v. Cent. Div. of Hous. Ct. Dep't,* 481 Mass. 830, 835, 120 N.E.3d 297, 304 (2019) ("Before filing a summary process action in court, a landlord must serve his or her tenant with a 'notice to quit' informing the tenant that after a specified period of time, the landlord intends to evict the tenant. Once the period specified in the notice to quit has ended, a landlord may serve his or her tenant with a 'summons and complaint' specifying, among other things, the reasons for the requested eviction and the entry date by which the case will be commenced in the court."), citing *Cambridge St. Realty, LLC v. Stewart,* 481 Mass. 121, 122, 113 N.E.3d 303 (2018) ("legally effective notice to quit is a condition precedent to a summary process action and part of the landlord's prima facie case").
Michigan Follows rule, moderate clarity	*Park Forest v. Smith,* 112 Mich. App. 421, 425, 316 N.W.2d 442, 444 (1982) (M.C.L. § 600.5714(1)(b)(iii); M.S.A. § 27A.5714(1)(b)(iii) permits a landlord to recover possession of a premises only after termination of a tenant's month to month tenancy by notice to quit. If a tenant refuses to vacate the premises after being served with a notice to terminate the tenancy, summary eviction proceedings are then commenced."); *Ypsilanti Hous. Comm'n v. O'Day,* 240 Mich. App. 621, 628, 618 N.W.2d 18, 22 (2000) ("Because defendant did not receive one month's notice of the termination of her lease as required by subsection 34(1), the summary proceedings in the district court were premature, and thus defendant's resultant eviction was improper.")
Minnesota Follows rule, high clarity But note: MN does not require pre-suit notice in some non-payment cases	*See Hoglund-Hall v. Kleinschmidt,* 381 N.W.2d 889, 895 (Minn. Ct. App. 1986) (reversing eviction judgment because "no written notice of termination was given the Kleinschmidts prior to service of the unlawful detainer summons and complaint," as was required by lease in federal rural housing program); *but see also Minneapolis Cmty. Dev. Agency v. Smallwood,* 379 N.W.2d 554, 556 (Minn. Ct. App. 1985) ("landlord's right of action for unlawful detainer is complete upon a tenant's violation of a lease condition"); *see also, c.f.,* Minn. Stat. § 504B.147(b) ("If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.").
Mississippi Follows rule, low clarity	*Glenn v. Caldwell*, 74 Miss. 49, 20 So. 152, 153 (1896) (unlawful detainer cause of action accrues against occupant "after the expiration of his right")
Missouri	*McIlvain v. Kavorinos,* 236 S.W.2d 322, 327 (Mo. 1951) ("there could be no unlawful detainer until after the notice [to vacate] was given and the time provided therein had expired."); *Gordon v. Williams,* 986 S.W.2d 470, 473

Follows rule, high clarity	(Mo. App. 1998) ("There can be no unlawful detainer action until the lease has been terminated"), *citing Davidson v. Kenney,* 971 S.W.2d 896, 899 (Mo. App. 1998). *But see KC Tenants v. Byrn,* 504 F. Supp. 3d 1026, 1029 (W.D. Mo. 2020) (CDC eviction halt order which prohibited "any action by a landlord ... with a legal right to pursue eviction or a possessory action, to remove, or cause the removal of a covered person" did not prohibit "activity preceding an eviction, including lawsuits"), vacated, No. 4:20-CV-00784-HFS, 2022 WL 3656453 (W.D. Mo. Aug. 24, 2022).
Montana Follows rule, low clarity but MT law based on California law	*Boucher v. St. George,* 88 Mont. 162, 293 P. 315, 318 (1930)
Nebraska Follows rule, moderate clarity	*Connell v. Chambers,* 22 Neb. 302, 34 N.W. 636, 640 (1887) ("In order to give any effect to the statute requiring notice to be given before the commencement of summary proceedings against a tenant holding over after the termination of his lease, we must hold that such notice must, either in direct terms or by clear and unmistakable implication, point out a day upon which the tenant is required to quit, which day must be at or after the termination of the lease."); *I.P. Homeowners, Inc. v. Morrow,* 12 Neb. App. 119, 127–28, 668 N.W.2d 515, 522 (2003) ("The statutory notice is not for the purpose of terminating the tenancy but is a necessary preliminary to bringing the action and is jurisdictional."), quoting 2 Edward Cole Fisher, Practice and Procedure in Courts of Limited Jurisdiction in Nebraska § 398 at 736 (1950)
Nevada Follows rule, moderate clarity	*Roberts v. Second Jud. Dist. Ct. in & for Washoe Cnty., Dep't 2*, 43 Nev. 332, 185 P. 1067, 1069 (1920) ("Before a landlord can resort to the summary remedy of an action for unlawful detainer under subdivision 2, he must terminate the tenancy by serving a notice to quit possession as required therein. The notice to quit, being a part of the statutory definition of the offense, necessarily enters into the gist of the action, and must be made to appear by express averment in the complaint.").
New Hampshire Follows rule, low clarity	Liam Hooksett, LLC v. Boynton, 157 N.H. 625, 629, 956 A.2d 304, 307 (2008) ("After the landlord provides the tenant with proper notice, see RSA 504:2–:5,:12, the landlord may commence a possessory action based upon nonpayment of rent by filing a writ in district court. See RSA 540:13"); *see also Buber & Brideau v. Blais,* 79 N.H. 516, 112 A. 396, 396 (1920) ("It is suggested that this action cannot be maintained because no entry on the demanded premises has been shown, but it is conceded that the plaintiffs gave the defendant a notice to quit on a definite day, which was more than seven days after the day the notice was served on him, and P. S. c. 246, § 4,

	as amended by Laws 1905, c. 57, provides that such a notice is equivalent to entry for condition broken.")
New Jersey Follows rule, high clarity	*Hous. Auth. of City of Newark v. Caldwell,* 247 N.J. Super. 595, 598, 589 A.2d 1088, 1089 (Law. Div. 1991) ("All of the subsections in N.J.S.A. 2A:18–61.2, imposing time periods for a Notice to Quit, actually refer not to the time periods of the Notice to Quit, but rather to the time periods "prior to the institution of the action." The significance is that filing a complaint before the expiration of the required period means that the cause of action has not yet accrued. The consequence is that the court has no jurisdiction to act in a summary dispossess action."
New Mexico Follows rule, high clarity	*New Mexico Motor Corp. v. Bliss,* 27 N.M. 304, 201 P. 105, 108 (1921)
New York Follows rule but determines ripeness by time of service, not time of filing. High clarity	*Langdoc v. Warden,* 71 Misc. 3d 211, 215, 141 N.Y.S.3d 678, 681–82 (N.Y. Sup. Ct. 2021) ("Here, service represents the critical moment in a holdover action. Indeed, the law provides for the initiation of a holdover proceeding via Order to Show Cause 'on the day of the expiration of the lease' (RPAPL 733)—which means that a holdover proceeding technically can be commenced in anticipation of a tenant holding over. This lends support to the proposition that service of the Petition rather than its filing is the key to determine ripeness. After all, it is the service of the Petition, not its filing, that places the tenant under legal compulsion to respond. Therefore, the court holds that commencement occurs upon service for the purposes of determining ripeness in the context of a notice to quit.")
North Carolina Follows rule but determines ripeness by time of service, not time of filing. High clarity.	*Cherry v. Whitehurst,* 216 N.C. 340, 4 S.E.2d 900, 901 (1939) ("The defendant contends that the action should have been dismissed for the reason that it appears it was commenced on December 31, 1938, before the expiration of the term, and therefore before the cause of action accrued[.] Plaintiff . . . contends that it was commenced on January 2, 1939, and that defendant's motion for dismissal was properly denied. … An action is commenced when the summons is issued against the defendant, C.S. § 404, and a civil action is commenced by issuing a summons, C.S. § 475. So the question presented is when was the summons issued in this action, on December 31, 1938, or on January 2, 1939. If on the former date the defendant's motion to dismiss should have been granted, if on the latter date the motion should have been denied.").
North Dakota Follows rule, moderate clarity	*Gasic v. Bosworth,* 2014 ND 85, ¶ 7, 845 N.W.2d 306, 308 ("An eviction to recover possession of land may be maintained when a lessee holds over after a lease termination or expiration of the lessee's term or fails to pay rent for three days after the rent is due. N.D.C.C. § 47–32–01(4)."); *see also*

	Nelson v. Johnson, 2010 ND 23, 778 N.W.2d 773
Ohio Follows rule, moderate clarity	*Amick v. Sickles,* 2008-Ohio-3913, ¶ 17, 177 Ohio App. 3d 337, 341, 894 N.E.2d 733, 736 ("Appellant also correctly points out that before any complaint may be filed in forcible entry and detainer, R.C. 1923.04(A) requires a three-day notice."); *Voyager Vill. Ltd. v. Williams,* 3 Ohio App. 3d 288, 290, 444 N.E.2d 1337, 1340 (1982) ("In general, a park operator desiring to file a complaint in forcible entry and detainer against a tenant of residential premises must first serve both a notice of termination of tenancy and notice under R.C. 1923.04(A) upon the tenant before he files his complaint.")
Oklahoma Follows rule, high clarity	*Bonewitz v. Home Owners Loan Corp.,* 1942 OK 431, 191 Okla. 654, 132 P.2d 644, 644 ("Defendants contend that proof of service of notice to terminate tenancy for nonpayment of rent and proof of service of the three day notice to vacate before filing the action was not properly made. We agree with this contention."); *see also Watson v. Vici Cmty. Dev. Corp.,* No. CIV-20-1011-F, 2022 WL 910155, at *9 (W.D. Okla. Mar. 28, 2022) ("The CARES Act requires certain landlords to give tenants at least 30 days' notice to vacate a covered dwelling before filing a petition for eviction. See, 15 U.S.C. § 9508(c).").
Oregon Follows rule, high clarity	*C.O. Homes, LLC v. Cleveland,* 366 Or. 207, 219, 460 P.3d 494, 501 (2020) ("A landlord may not file an action for the return of possession until after the expiration of the time period provided in the notice terminating the tenancy. ORS 105.115(2)(b).").
Pennsylvania Follows rule, low clarity	*Mercer Cnty. Agric. Soc. v. Barnhardt,* 313 Pa. Super. 206, 212–13, 459 A.2d 811, 815 (1983) ("[Al]though the notice to quit, delivered on November 8, 1978, was ineffective to terminate the tenancy on the stated date of December 10, 1978, was effective to terminate the periodic tenancy on December 30, 1978, which was the 'earliest possible date after the date stated.' This ruling will not affect the verdict and judgment entered in the instant matter, since the Agricultural Society did not file its action for a writ of ejectment until March 3, 1980, and the court did not reach a verdict until November 25, 1980. Therefore, there was no ejectment until well after appellant's term had expired."); *see also Fulton Terrace Ltd. P'ship v. Riley,* 4 Pa. D. & C.4th 149, 153 (Com. Pl. 1989)
Puerto Rico Follows rule but does not require pre-suit notice in nonpayment cases	32 L.P.R.A. § 2821("The action of unlawful detainer (eviction) may be initiated by [any] person or persons entitled to the enjoyment of such property or by persons claiming under them."); *see also Mora Dev. Corp. v. Hilda Gonzalez De Sandin,* 118 D.P.R. 733 (P.R. 1987).

Rhode Island Follows rule, moderate clarity	*Whitman v. Curtin,* 72 R.I. 341, 344, 51 A.2d 185, 186 (1947) ("In those instances where the service of a notice to quit the premises is prescribed it is a necessary step antecedent to the right to pursue the legal remedy to eject."
South Carolina Follows rule, moderate clarity	*Richland Drug Co. v. Moorman,* 71 S.C. 236, 50 S.E. 792, 793–94 (1905) ("The duty of the magistrate to issue his warrant of ejectment does not arise *794 until after the expiration of five days from service of notice to quit, and upon its appearing that the defendant, being a trespasser, refuses or neglects to quit after such notice.")
South Dakota Follows rule, moderate clarity	*Meservy v. Stoner,* 50 S.D. 147, 208 N.W. 781, 782 (1926) ("The statute means that the three days' notice must be given before the summons can be issued. This statute makes the service of the notice jurisdictional. In special statutory proceedings of this class, substantial compliance with the statute is a jurisdictional requirement.")
Tennessee Follows rule, high clarity	*Morrison v. Smith,* 757 S.W.2d 678, 681 (Tenn. Ct. App. 1988)
Texas Follows rule, high clarity	*Geters v. Baytown Hous. Auth.,* 430 S.W.3d 578, 584 (Tex. App. 2014) ("BHA's combined notice to terminate and notice to vacate delivered to Geters expressly allowed her 30 days to vacate the premises. Geters received those notices on June 11, 2012, and therefore had until July 11, 2012 to vacate under their terms. BHA, however, filed its forcible detainer action in justice court earlier, on June 28, 2012. This was a clear violation of section 24.005(a).")
Utah Follows rule, moderate clarity	*Sovereen v. Meadows,* 595 P.2d 852, 854 (Utah 1979) ("Until the tenancy is terminated by proper notice to quit there is no unlawful detainer. The notice to quit is necessary to give rise to the cause of action. Where a landlord commences suit without first terminating the tenancy by giving proper notice to quit, the tenant can certainly appear and show his tenancy is lawful. When it appears that the tenancy has not been terminated by proper notice, the court should dismiss the suit on the grounds that there is no cause of action."), *citing Carstensen v. Hansen,* 107 Utah 234, 152 P.2d 954 (1944).
Vermont Follows rule, low clarity	Case law unclear but multiple decisions hold that proper notice is required before tenant may be evicted. *See Houle v. Quenneville,* 173 Vt. 80,, 787 A.2d 1258 (2001); *see Vermont Small Bus. Dev. Corp. v. Fifth Son Corp.,* 2013 VT 7, 193 Vt. 185, 67 A.3d 241 (2013).
Virgin Islands (US)	*Oliver v. Bonelli*, No. ST-08-CV-497, 2009 WL 10742398, at *3 (V.I. Super. Ct. Jan. 21, 2009) ("Under V.I. Code Ann. tit. 28, § 843 (1996), the written notice to quit "must have been served upon the tenant or person in

Follows rule, moderate clarity	possession for a period of [thirty] 30 days before the commencement of such action" to regain possession of the property.")
Virginia Follows rule, low clarity Compliance with unlawful detainer procedures is not jurisdictional, but failure to give required lease termination notice will preclude entry of judgment for landlord	*Johnson v. Goldberg,* 207 Va. 487, 490, 151 S.E.2d 368, 370 (1966) ("It is settled in Virginia that if the defendant holds the land not adversely, but under the plaintiff, a notice to quit, or a demand of possession, must be shown before an action of unlawful detainer can be maintained."); *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."), *citing Allen v. Gibson,* 25 Va. 468, 473 (1826); *but see also In Re Bonner* __ WL ___ (2023*)* ("Contrary to the petitioners' contention, we discern no limitation on that jurisdiction in the interplay of statutes found in other Titles of the Code that prescribe how and when a landlord may initiate an unlawful detainer action . . . The petitioners also misread *Parrish v. Fed.* and *Johnson v. Goldberg* as holding that adequate notice of a lessor's intent to terminate a lease for non-payment of rent or the lessor's right to possess the subject premises are prerequisites to a court's subject matter jurisdiction over an unlawful detainer action[.]") (underline added, internal citations omitted).
Washington Follows rule, high clarity	*Sherwood Auburn LLC v. Pinzón,* 521 P.3d 212, 217 (2022); *see Wooding v. Sawyer,* 38 Wn.2d 381, 387; 229 P.2d 535, 539 (1951) ("Until the notice has been served and has remained uncompiled-with for a period of three days after its service, the tenant, though in arrears in his rent, is rightfully in possession, but thereafter he is guilty of unlawful detainer."); *Christensen v. Ellsworth,* 162 Wn.2d 365, 371; 173 P.3d 228, 231 (2007) ("a tenant is guilty of unlawful detainer four days after the notice is properly posted and mailed. Once a tenant is guilty of unlawful detainer under RCW 59.12.030(3), a landlord may commence an unlawful detainer action..."); *IBF, LLC v. Heuft,* 141 Wash. App. 624, 633, 174 P.3d 95, 100 (2007) ("when IBF served Heuft with a summons and complaint for unlawful detainer on March 31, 2006, which was only nine calendar days after Heuft received notice, it did not comply with the notice period to which Heuft was entitled. Although IBF did not *file* its complaint with the court until 20 calendar days after giving Heuft notice, it misled her by serving the summons before the 10-day notice period expired.") (italics in original).
West Virginia Follows rule, moderate clarity	*Lewis v. Welch Wholesale Flour & Feed Co.,* 90 W. Va. 471, 111 S.E. 158, 160 (1922) ("After notice to the tenant at will, of the execution of the lease, expiration of the reasonable time allowed by it, and demand for vacation, the plaintiff was entitled also to invoke the remedy[.]")
Wisconsin	*Hotel Hay Corp. v. Milner Hotels,* 255 Wis. 482, 487, 39 N.W.2d 363, 366 (1949)

Follows rule, high clarity	
Wyoming Follows rule, moderate clarity	*Knight v. Boner,* 459 P.2d 205, 207 (Wyo. 1969) ("upon her failure to vacate after proper notice terminating the tenancy, the plaintiff was well within his rights in bringing an action for unlawful detainer")