THE CARES ACT, VAWA ACT, & SHERWOOD AUBURN V. PINZON

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THE CARES ACT

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Section 4024 of the CARES Act. “Temporary moratorium on eviction filings”
- Subsequently codified at 15 U.S.C. 9058(1)

- “The CARES Act, or the Coronavirus Aid, Relief, and Economic Security Act, was the U.S. government’s response to this unprecedented economic crisis spurred by the COVID-19 pandemic. Congress passed the Act on March 25, 2020, and it was signed into law by President Donald Trump on March 27, 2020.
- “CARES was a mammoth $2.2 trillion relief package that provided direct payments to millions of American families and forgivable loans to small businesses and corporations, among other things…The CARES Act placed a temporary moratorium on eviction filings and provided certain other protections to tenants of federally assisted rental properties. This moratorium was eventually extended through August 26, 2021.”
- https://www.thestreet.com/dictionary/c/what-is-cares-act-is-it-still-in-effect

SEC. 4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.

- "In March 2020, Congress passed the CARES Act, legislation that included a temporary 120-day moratorium on evictions and late fees for federally-backed and federally-assisted housing**. The moratorium featured what should have been a temporary notice to vacate requirement. Due to a drafting error in the legislation, however, this provision – which intrudes state and local notice periods – has remained in place long past the moratorium's expiration, and remains a disputed issue in courts today."**

- https://www.naahq.org/bill-end-federal-cares-act-notice-vacate-reintroduced

(A) DEFINITIONS

- **(a) DEFINITIONS.**—In this section:
- (1) COVERED DWELLING.—The term ‘‘covered dwelling’’ means a dwelling that—
  - (A) is occupied by a tenant—
    - (i) pursuant to a residential lease; or
    - (ii) without a lease or with a lease terminable under State law; and
  - (B) is on or in a covered property.
-
- (2) COVERED PROPERTY.—The term ‘‘covered property’’ means any property that—
  - (A) participates in—
    - (i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12 12491(a))); or
    - (ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or
  - (B) has a—
    - (i) Federally backed mortgage loan; or
    - (ii) Federally backed multifamily mortgage loan.

(B) MORATORIUM & (C) NOTICE

- **(b) MORATORIUM.**—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—
  - (1) 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; or
  - (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
-
- **(c) NOTICE.**—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; and
  - (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

“COVERED PROPERTY”

- “Under the participation in federal housing programs prong, a “covered property” includes any property that is covered by the Violence Against Women Act. 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.
- 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, RD vouchers, the federal housing trust fund, VASH vouchers and other programs for providing federal housing assistance to veteran families, and transitional housing for victims of domestic violence, dating violence, sexual assault, or stalking), 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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

- “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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

- It is a ‘Covered Property’ if:
  - The property has a federally-backed mortgage
  - There is a single unit at the property that is under any type of federal housing program (Section 8, tax credit, etc.)

(3) DWELLING

- (3) DWELLING.—The term ‘‘dwelling’’—
  - (A) has the meaning given the term in section 802 of the Fair Housing Act (42 U.S.C. 3602); and
  - (B) includes houses and dwellings described in section 803(b) of such Act (42 U.S.C. 3603(b)).

- “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.”
- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

(4) FEDERALLY BACKED MORTGAGE LOAN

- (4) FEDERALLY BACKED MORTGAGE LOAN.— The term ‘‘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.

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.”
- “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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

COVERAGE WHEN PROPERTY HAS FEDERALLY BACKED MORTGAGE

- “If a market rate property has an HCV holder in one unit, does Section 4024 of the CARES Act extend to the entire property or only the voucher holder?
- “If the market rate property has a federally backed mortgage, then Section 4024 of the CARES Act applies to the entire property. If the market rate property does not have a federally backed mortgage, then Section 4024 of the CARES Act only applies to the voucher holder. HUD does not have the authority to extend jurisdiction over unassisted tenants or the property that does not have a federal backed mortgage. However, owners should review their state and local laws, as many are also enacting their own moratorium on evictions.”

- https://www.hud.gov/sites/dfiles/PIH/documents/COVID19_Round3-FAQs_04-22-20.pdf

(5) FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN

- (5) FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN.—The term ‘‘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.

THE VIEW FROM THE DEFENSE

nhlp NATIONAL HOUSING LAW PROJECT

ABOUT RESOURCE CENTER INITIATIVES GREEN BOOK & OTHER RESOURCE

INITIATIVES

HOME »INITIATIVES »Enforcing the CARES Act 30-Day Eviction Notice Requirement

Enforcing the CARES Act 30-Day Eviction Notice Requirement

INITIATIVES / JUNE 23, 2022

Enforcing the CARES Act 30-Day Eviction Notice Requirement memorandum discussing continuing applicability of 30-day notice requirement for certain evictions in properties participating in federal housing programs or with federally-backed financing.

Highlights of the new version include:

- Discussion of the Washington Court of Appeals' ruling in *Sherwood Auburn LLC v. Pinzon,* 521 P.3d 212 (Wash. Ct. App. 2022) and other case law developments;
- Updated information regarding state court rules implementing CARES Act eviction restrictions;
- Chart summarizing law regarding ripeness of summary eviction lawsuits in every U.S. state and territory (bearing on circumstances under which initiation of summary eviction proceeding before expiration of CARES Act notice is mandatory grounds for dismissal).

- “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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

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
  - HUD Multifamily Assisted Properties
  - FHA-insured Multifamily Properties
  - Fannie Mae Multifamily Lookup Tool
  - Freddie Mac Multifamily Lookup Tool

  - https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

- “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. At present, such rules remain active in Georgia, Iowa, Oklahoma, and New Jersey. 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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

TENANT ADVOCATES' APPROACH TOWARD THE CARES ACT

- "When cases come to trial, advocates should utilize cross-examination to ensure that landlords who fail to give 30 days' notice have verified the lack of coverage through every possible means. The general approach should entail asking landlords, as to each federal housing or loan program it might plausibly participate in, whether (i) the landlord knows if the property participates in the program and (ii) if the landlord claims to know that the property does not participate, how and by what steps the landlord determined that lack of coverage. Advocates may consider using the following checklist to guide such cross-examinations:
- • Public housing; • Project-based Section 8 housing or other HUD-subsidized multifamily; • Housing Choice Voucher program; • Section 202 housing for the elderly; • Section 202 direct loan program • Section 221 below market rate housing; • Section 236 multifamily housing; • Section 811 housing for people with disabilities; • HOME Investment Partnership Program; • Housing Opportunities for People with Aids; • McKinney-Vento Act housing programs (including Shelter+Care voucher); • Section 515 Rural Development rural rental housing; • Section 514/516 farm labor housing; • Section 533 USDA preservation grant housing; • Section 538 USDA multifamily housing; • Rural housing voucher program; • Low-income housing tax credit program; • Federal housing trust fund program • VASH vouchers (or any other program that provides federal housing assistance to veteran families); • Transitional housing for survivors of domestic violence, dating violence, sexual assault, or stalking; • Fannie Mae owned mortgage loan; • Freddie Mac owned mortgage loan; • HUD Section 184 Indian Home Loan Guarantee • Ginnie Mae backed mortgage loan: o Federal Housing Administration o Veterans Administration o 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"
- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

RECENT CARES ACT RULING IN WASHINGTON, REGARDING CARES ACT APPLICABILITY ONLY TO NON-PAYMENT CASES

SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF THURSTON

WELCOME HOME RENTALS et al,

Plaintiff,

vs.

PATRICIA MARTIN et al,

Defendant.

No. 22-2-03468-34

ORDER GRANTING PLAINTIFF'S MOTION TO REVISE COMMISSIONER'S ORDER DENYING RECONSIDERATION

CLERK'S ACTION REQUIRED

I. INTRODUCTION

Plaintiff brought an unlawful detainer action against Defendant based on nuisance, damage to the property, and repeated violations to the rental agreement—reasons other than failure to pay rent. Defendant argued that the tenancy termination notice was deficient because it did not comply with the federal CARES Act[1] 30-day notice provision, 15 U.S.C. § 9058(c)(1). Thurston County Superior Court Commissioner Rebekah Zinn agreed with Defendant that the CARES Act provision applied, dismissed the action, and denied Plaintiff's motion for reconsideration.

The issue before the Court is a pure question of law: does the 30-day notice provision in 15 U.S.C. § 9058(c)(1) apply to unlawful detainer tenancy termination notices that are unrelated

[1] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W.
Olympia, WA 98502
(360) 786-5560

to nonpayment of rent, and instead are based on other grounds such as nuisance, damage to the property, or other violations to the rental agreement.

This matter came before the Court for hearing on July 28, 2023, on Plaintiff's Motion to Revise Commissioner's Ruling on Reconsideration. The Court, having reviewed the motion and responsive pleadings, and being fully advised of the contents of its file and the arguments of counsel, hereby finds and concludes as follows:

II. FINDINGS AND CONCLUSIONS

1. Plaintiff Welcome Home Rentals, V Mary Ann Bryant Trust rents premises to Defendant Patricia Martin and Angela Holmes through a rental agreement. It is undisputed that the premises are a "covered dwelling" subject to the CARES Act. (15 U.S.C. § 9058(a)(1)).

2. In December 2022, Plaintiff commenced an unlawful detainer action against Defendant. Plaintiff issued to Defendant at least one 3-day tenancy termination notice alleging nuisance, damage to the property, and unlawful use for premises. (Complaint, Attachment 2, "Washington 3-Day Notice to Quit for Waste, Nuisance, or Unlawful Use for Premises.") Defendant, through counsel, answered and asserted numerous defenses including that Plaintiff's notice failed to comply with the 30-day notice period required by 15 U.S.C. § 9058(c)(1) of the CARES Act.

3. At the contested Show Cause Hearing on April 19, 2023, Thurston County Superior Court Commissioner Rebekah Zinn dismissed the action "based upon Plaintiff's failure to issue a notice in compliance with CARES Act." (Order Dismissing Action, filed April 21, 2023.) The Commissioner reasoned that subsection (c)(1):

> is a 30-day notice that is not related to the [expired subsection (b)] moratorium. … [I]t doesn't say anywhere in there [subsection (c)(1)] related to this that it is only for notices to pay or vacate.
> The plain reading of the statute is that a 30-day notice is required in all situations in which it is a covered property.

(Transcript of Proceedings, April 19, 2023, Hearing at 12.)

4. Plaintiff moved for reconsideration, which the Commissioner denied. (Order Denying Reconsideration, filed June 02, 2023.) The Commissioner stated it was not necessary to "go into the legislative intent because the statute, when you read through the various provisions of the Cares Act [sic], it does not limit the 30-day notice to rent failure cases." (Transcript of Proceedings, June 02, 2023, Hearing at 13.) In response to Plaintiff's argument that the ruling produced an absurd result by delaying evictions based on criminal or nuisance conduct, the Commissioner reasoned "[g]iving everybody who is subject to federally subsidized housing more time to move out, whether it's a rent failure case or not a rent failure case, is within the public policy that the federal government was trying to institute in order to prevent houselessness during the COVID pandemic." *Id.* at 13-14.

5. The issue before this Court is whether the Commissioner erred by interpreting the CARES Act to apply to unlawful detainer notices based on grounds other than failure to pay. (Motion for Revision at 3.) The Court reviews this pure question of law *de novo*. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (the meaning of a statute is a question of law reviewed *de novo*).

6. Courts review the meaning of a statute with the principal objective of effectuating the legislature's intent. *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007); *Campbell & Gwinn*, 146 Wn.2d at 9-10. When interpreting a federal statute, the court's objective is to ascertain the intent of Congress. *Sherwood Auburn, LLC v. Pinzon*, 24 Wn. App. 2d 664, 670, 521 P.3d 212 (2022). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Campbell & Gwinn*, 146 Wn.2d at 9-10. Plain meaning is "derived from what the Legislature has said in its enactments but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id.* at 11. "[I]f, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history." *Id.* at 12.

7. 15 U.S.C. § 9058(c)(1) provides that the lessor of a covered dwelling unit "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[.]"

8. The Commissioner ruled that subsection (c)(1)'s 30-day notice applies to all eviction notices, including notices unrelated to nonpayment of rent. The Commissioner reasoned that because subsection (c)(1)'s language does not expressly state that it is limited to notices for failure to pay rent, the 30-day notice provision applies to all covered properties.

9. But considering subsection (c)(1) in isolation produces an erroneous result, because Congress did not enact it in isolation. To discern the meaning of subsection (c)(1), the Court must consider "all that [Congress] has said in the statute and related statutes which disclose legislative intent about the provision in question." *Campbell & Gwinn*, 146 Wn.2d at 11.

10. The statute, 15 U.S.C. § 9058, titled "Temporary Moratorium on Eviction Filings," consists of three subsections.[2] Of relevance here, subsection (b) establishes a temporary 120-day moratorium on evictions and section (c) addresses notice, as follows:

> (b) Moratorium—During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not—
> (1) 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*; or
> (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
>
> (c) Notice—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; *and*
> (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period *described in subsection (b)*.

15 U.S.C. § 9058 (b), (c) (emphasis added).

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[2] Subsection (a) sets forth definitions that identify the properties to which the section applies, thereby circumscribing the statute's scope. 15 U.S.C. § 9058(a).

11. The plain language of subsections (b) and (c) indicates that the two subsections are integrally related. The word "and" is conjunctive -- it connects subsection (c)(1) to subsection (c)(2). In turn, subsection (c)(2) refers back to subsection (c)(1) and expressly connects it to subsection (b).

12. Reading subsection (c)(1) in context, it is clear that Congress intended the 30-day notice to apply specifically to notices for nonpayment of rent. Subsection (b) expressly provides a 120-day moratorium related to unlawful detainer actions commenced based on nonpayment of rent. Subsection (c) describes requirements for notice to vacate and expressly refers back to subsection (b). Subsection (c) expressly states that the lessor of the covered dwelling unit must provide 30 days' notice "and" may not issue the notice "until after the expiration of the period described in subsection (b)."[3] Both subsection (b) and (c) address evictions for nonpayment of rent, the topic of 15 U.S.C. § 9058.

13. There is no indication in the statutory language that Congress intended subsection (c)(1), and only subsection (c)(1), to *all* evictions for covered properties, including those unrelated to nonpayment of rent. The simple conclusion, and the only conclusion that harmonizes subsections (b) and (c), is that subsection (c)(1) imposes a 30-day notice requirement applying to notices for nonpayment of rent only—not those proceeding on other grounds.

14. No Washington authority is to the contrary. The only published Washington decision to address 15 U.S.C. § 9058(1)(c), *Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, 679, 521 P.3d 212, 220 (2022), *review denied*, 526 P.3d 848 (Wash. 2023), does not answer the issue presented here. In *Pinzon*, the notice at issue was based on nonpayment of rent. Accordingly, the decision had no call to consider whether subsection (c)(1) applies to notices issued on other grounds.

15. Considering 15 U.S.C. § 9058 as a whole, subsection (c)(1) does not remain susceptible to more than one reasonable meaning. As subsection (c)(1) is not ambiguous, it is not appropriate to resort to other aids to construction, such as legislative history.

16. For the reasons set forth above, the Court concludes that the 30-day notice provision in 15 U.S.C. § 9058(c)(1) applies only to tenancy termination notices that are related to nonpayment of rent, and does not apply to notices based on other grounds such as nuisance, damage to the property, or violation to the rental agreement.

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's Motion to Revise the Commissioner's Order Denying Reconsideration is GRANTED.

2. This matter is REMANDED to the unlawful detainer calendar for additional proceedings to address other raised defenses of Defendant on the merits.

3. Plaintiff's motion for attorney fees is DENIED because the matter is not yet resolved.

4. The Commissioner's Order Granting Attorney Fees to Defendant, issued June 02, 2023, is vacated.

DATED: August 10, 2023

Judge Allyson Zipp

[3] The same conclusion was reached in *W. Haven Hous. Auth. v. Armstrong*, NHHCV206013057S, 2021 WL 2775095, at *3 (Conn. Super. Ct. Mar. 16, 2021).

CARES ACT IN OTHER STATE COURTS – COLORADO

Original Article (3/22/2023) - Colorado Court Holds CARES Act Notice Requirement Has Expired

In a win for a local housing provider, a Colorado county court denied a resident's motion to dismiss for lack of subject matter jurisdiction in an eviction action focused on the **federal CARES Act notice to vacate requirement**.

Prior to filing its Complaint in Forcible Entry and Detainer, the housing provider issued a 10-day Demand for Rent or Possession to the resident in accordance with Colorado law. The resident's motion to dismiss argued that because they lived in a "covered property" subject to the CARES Act, the housing provider was required to give a 30-day notice before requiring the resident to vacate. The resident also argued that because of the inadequate notice, the court lacked subject matter jurisdiction over the claim.

In its unpublished order denying the resident's motion to dismiss, the Court cites that Section 9058 [of the **CARES Act**] "is titled 'Temporary Moratorium of Eviction Filings,' highlighting the temporary nature of the remedies provided. Subsection (b) of 15 U.S.C. 9058 sets out an expiration date 120-days from March 27, 2020. Subsection (c)(1) requires that a 30-day notice to vacate be provided to a tenant. Subsection (c) is not independent or separate from subsection (b), they both expire 120 days from March 27, 2020."

The resident has appealed the decision to the Colorado Supreme Court."

- https://www.naahq.org/update-colorado-supreme-court-holds-cares-act-notice-vacate-still-effect

Update: Colorado Supreme Court Holds CARES Act Notice to Vacate Still in Effect

The Court ruled that the provision is still in effect for covered properties.

By Ayiesha Beverly | March 22, 2023 | Updated May 16, 2023

Update (5/16/2023)

“On May 15, 2023, the Colorado Supreme Court ruled the CARES Act 30-day notice to vacate requirement is still in effect for covered properties. The Court ruled that the "Notice Provision [of section 9058 of the CARES Act] did not include an expiration date" and that the Court could not "insert an expiration date where Congress omitted one." The Court also ruled that section 9058's title, "Temporary moratorium on eviction filings," did not "change anything," stating that a title cannot limit the plain meaning of a more specific provision within a statute. The Court stated that it was not "empowered to 'rescue Congress from its drafting errors'..." and that if Congress made a mistake and intended to include an expiration date for the entirety of section 9058, then Congress should amend the statute.”

https://www.naahq.org/update-colorado-supreme-court-holds-cares-act-notice-vacate-still-effect

Bill to End Federal CARES Act Notice to Vacate Reintroduced

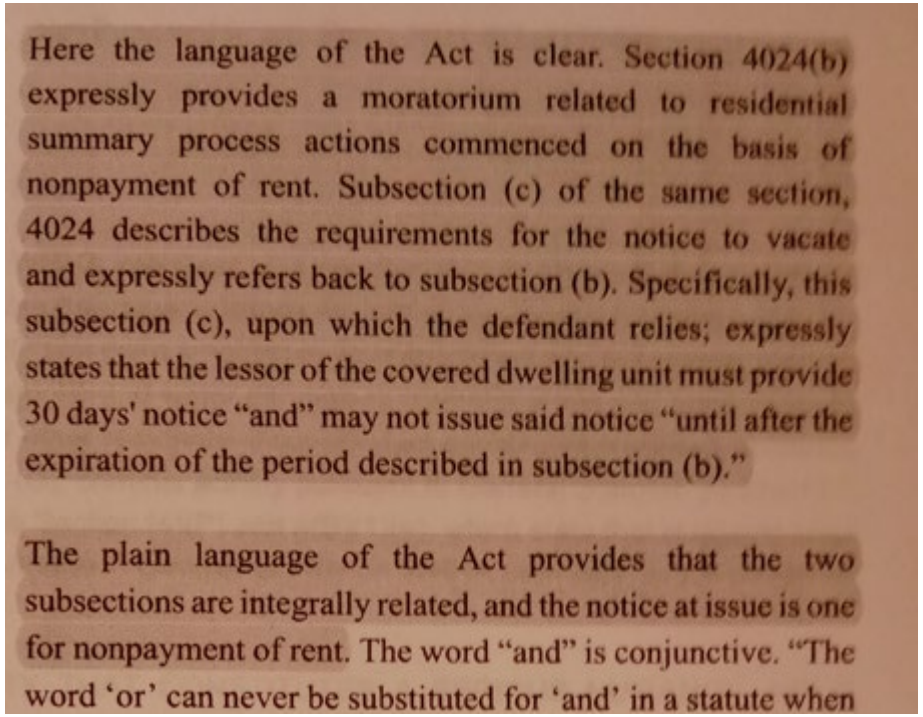
The legislation would restore normalcy and balance to rental housing operations.

By **Jodie Applewhite** | February 15, 2023 | Updated February 15, 2023

- Rep. Barry Loudermilk (R-GA-11) has reintroduced the Respect State Housing Laws Act.
- The bill, which was initially introduced last Congress, would end the federal CARES Act notice to vacate requirement.
- Passing this legislation will be an important part of NAA's 2023 federal legislative priorities.

CONNECTICUT

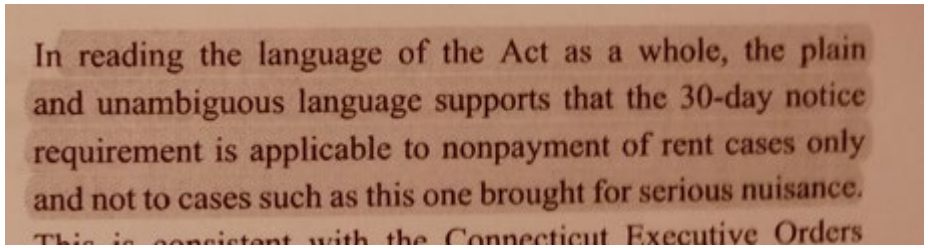
- West Haven Housing Authority v Armstrong, Not reported (2021)



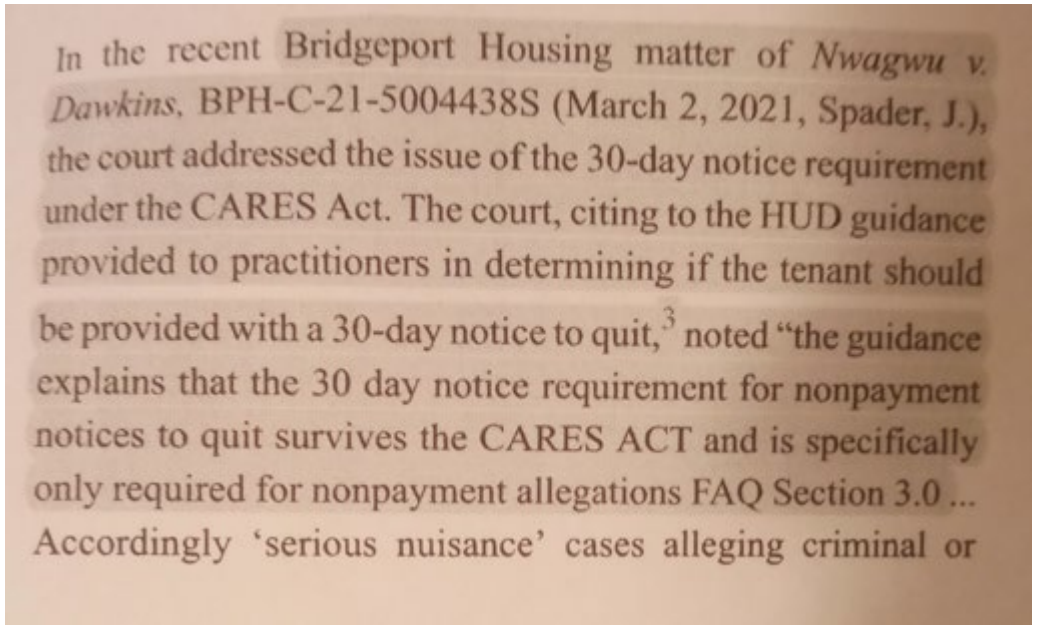
Here the language of the Act is clear. Section 4024(b) expressly provides a moratorium related to residential summary process actions commenced on the basis of nonpayment of rent. Subsection (c) of the same section, 4024 describes the requirements for the notice to vacate and expressly refers back to subsection (b). Specifically, this subsection (c), upon which the defendant relies; expressly states that the lessor of the covered dwelling unit must provide 30 days' notice "and" may not issue said notice "until after the expiration of the period described in subsection (b)."

The plain language of the Act provides that the two subsections are integrally related, and the notice at issue is one for nonpayment of rent. The word "and" is conjunctive. "The word 'or' can never be substituted for 'and' in a statute when

WEST HAVEN HOUSING AUTHORITY V ARMSTRONG, NOT REPORTED (2021)



In reading the language of the Act as a whole, the plain and unambiguous language supports 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. This is consistent with the Connecticut Executive Orders



In the recent Bridgeport Housing matter of *Nwagwu v. Dawkins*, BPH-C-21-5004438S (March 2, 2021, Spader, J.), the court addressed the issue of the 30-day notice requirement under the CARES Act. The court, citing to the HUD guidance provided to practitioners in determining if the tenant should be provided with a 30-day notice to quit,[3] noted "the guidance explains that the 30 day notice requirement for nonpayment notices to quit survives the CARES ACT and is specifically only required for nonpayment allegations FAQ Section 3.0 ... Accordingly 'serious nuisance' cases alleging criminal or

CARES ACT PROVISIONS STILL IN EFFECT

- “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. 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)…”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

SHERWOOD AUBURN V. PINZON (2022)

- “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. 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.” 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.” 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.”
- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

SHERWOOD AT THE TRIAL COURT LEVEL

- "…The Pinzón tenants neither cured the default nor vacated the premises so the landlord commenced an eviction lawsuit. The tenants moved to dismiss, arguing the eviction notices were deficient and summary proceeding prematurely filed because they landlord had not given them the full 30 days in which to vacate the premises. 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. The trial court entered judgment for the landlord and the tenants appealed."

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

THE COURT OF APPEALS DECISION

- “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[.]”
- “…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. “Sherwood Auburn[‘s] interpretation of the CARES Act notice provision,” the panel observed, “would replace the word ‘lessor’ with the words ‘superior court.’” 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.
- 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.””
- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

“CONFUSING”

- “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.”

- https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

“MISLEADING AND EQUIVOCAL”

- “Notice must be “sufficiently particular and certain so as not to deceive or mislead.” Heuft, 141 Wash. App. at 632, 174 P.3d 95. Thus, when the notice provided does not accurately convey the correct time period to cure or vacate, the notice is not sufficient. Heuft, 141 Wash. App. at 633, 174 P.3d 95 (landlord provided a three-day pay or vacate notice when lease provided for 10 days); Cmty. Invs., Ltd., 36 Wash. App. at 37-38, 671 P.2d 289 (landlord provided two conflicting notices, one providing for 10 days to pay or vacate, and the other providing for the 20 days required by the lease). Here, the conflicting notices provided by Sherwood Auburn were misleading and equivocal and failed to adequately, precisely, and correctly inform the tenants of the rights to which they were entitled.[11]
- ¶29 Because Pinzon and Mendez were not afforded clear and accurate notice, the superior court was without the authority to issue a writ of restitution or enter judgment against them.[12] Accordingly, we reverse the superior court's order and remand for dismissal of the unlawful detainer action.[13]
- Sherwood Auburn LLC v. Pinzon, 24 Wash. App. 2d 664, 681–82, 521 P.3d 212, 221 (2022), review denied, 526 P.3d 848 (Wash. 2023)

THE EFFECT OF SHERWOOD AUBURN V. PINZON

- Superior Court judges in Spokane (and the Westside) have dismissed cases where two notices were served concurrently, based on the two notices being “conflicting”
  - In mobile home cases, despite the different time requirements set forth in RCW 59.20.080
  - In a case where LL served a 30-day Notice to Cure concurrently with a 30-day Notice to Comply or Vacate
- On the Westside, cases dismissed if more than one cause of action brought

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

WINTER HEIGHTS, LLC., a Washington Limited Liability Company, Plaintiff, vs LEIT DANIEL, a single person, RUBINA LANEAB, a single person, and all other subtenants, Defendants.	CASE NO.: 23-2-03017-32 ORDER DENYING WRIT, DISMISSING CASE, AND LIMITING DISSEMINATION

I. BASIS

Plaintiff moved the court for a writ of restitution, and the Court held a hearing in open court on August 23, 2023.

II. FINDINGS

After reviewing the case record to date, including all pleadings, and listening to argument by both parties, the court finds it does not have jurisdiction to hear this case based upon two independent grounds:

(1) The two notices served on May 22, 2023, and included in the Plaintiff's Complaint are conflicting, with one giving the tenants 30 days to comply or vacate and one instead stating the tenants had 30 days to cure or the Plaintiff would cure on its own. Per *Sherwood Auburn LLC v. Pinzon*, 24 Wash. App. 2d 664, (2022), review denied, 526 P.3d 848 (Wash. 2023), these are confusing notices, not giving clear alternatives to the Tenants, thereby precluding unlawful detainer jurisdiction; and

VIOLENCE AGAINST WOMEN ACT (VAWA)

- "**The Violence Against Women Act (VAWA) creates and supports comprehensive, cost-effective responses to domestic violence, sexual assault, dating violence and stalking.** Since its enactment in 1994, VAWA programs, administered by the U.S. Departments of Justice (DOJ) and Health and Human Services (HHS), have dramatically improved federal, tribal, state, and local responses to these crimes."

- https://nnedv.org/content/violence-against-women-act/

34 U.S. Code Subchapter III - VIOLENCE AGAINST WOMEN

U.S. Code

prev | next

24 CFR § 5.2005 - VAWA protections.

§ 5.2005 VAWA protections.

(a) ***Notification of occupancy rights under VAWA, and certification form.***

(1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

(i) A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

SECTION 12472 PURPOSE

- The purpose of this subpart is to reduce domestic violence, dating violence, sexual assault, and stalking, and to prevent homelessness by—
- **(1)** protecting the safety of victims of domestic violence, dating violence, sexual assault, and stalking who reside in homeless shelters, public housing, assisted housing, tribally designated housing, or other emergency, transitional, permanent, or affordable housing, and ensuring that such victims have meaningful access to the criminal justice system without jeopardizing such housing;
- **(2)** creating long-term housing solutions that develop communities and provide sustainable living solutions for victims of domestic violence, dating violence, sexual assault, and stalking;
- **(3)** building collaborations among victim service providers, homeless service providers, housing providers, and housing agencies to provide appropriate services, interventions, and training to address the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking; and
- **(4)** enabling public and assisted housing agencies, tribally designated housing entities, private landlords, property management companies, and other housing providers and agencies to respond appropriately to domestic violence, dating violence, sexual assault, and stalking, while maintaining a safe environment for all housing residents.

- https://www.law.cornell.edu/uscode/text/34/12472

34 U.S. CODE § 12491 - HOUSING PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

- **(a) DEFINITIONS** In this subpart:
- **(1) AFFILIATED INDIVIDUAL** The term "affiliated individual" means, with respect to an individual—
- **(A)** a spouse, parent, sibling, or child of that individual, or an individual to whom that individual stands in loco parentis; or
- **(B)** any individual, tenant, or lawful occupant living in the household of that individual.
- **(2) APPROPRIATE AGENCY** The term "appropriate agency" means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5) that carries out the covered housing program.

- https://www.law.cornell.edu/uscode/text/34/12491

(3)Covered housing program

- The term "covered housing program" means—
- **(A)** the program under section 1701q of title 12, including the direct loan program under such section;
- **(B)** the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);
- **(C)** the program under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.);
- **(D)** the programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.);
- **(E)** the program under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.);
- **(F)** the program under paragraph (3) of section 1715l(d) of title 12 that bears interest at a rate determined under the proviso under paragraph (5) of such section 1715l(d);
- **(G)** the program under section 1715z–1 of title 12;
- **(H)** the programs under sections 1437d and 1437f of title 42;
- **(I)** rural housing assistance provided under sections 1484, 1485, 1486, 1490m, 1490p–2, and 1490r of title 42;
- **(J)** the low income housing tax credit program under section 42 of title 26;
- **(K)** the provision of assistance from the Housing Trust Fund established under section 4568 of title 12;
- **(L)** the provision of assistance for housing under the Comprehensive Service Programs for Homeless Veterans program under subchapter II of chapter 20 of title 38;
- **(M)** the provision of assistance for housing and facilities under the grant program for homeless veterans with special needs under section 2061 of title 38;
- **(N)** the provision of assistance for permanent housing under the program for financial assistance for supportive services for very low-income veteran families in permanent housing under section 2044 of title 38;
- **(O)** the provision of transitional housing assistance for victims of domestic violence, dating violence, sexual assault, or stalking under the grant program under subpart 4 of part B; and
- **(P)** 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.

- https://www.law.cornell.edu/uscode/text/34/12491

(B) Prohibited basis for denial or termination of assistance or eviction

- **(1) In general**
- An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

- https://www.law.cornell.edu/uscode/text/34/12491

(2) Construction of lease terms

- An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—
- **(A)** a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or
- **(B)** good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

- https://www.law.cornell.edu/uscode/text/34/12491

(3)Termination on the basis of criminal activity

- **(A) Denial of assistance, tenancy, and occupancy rights prohibited**
- No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

- https://www.law.cornell.edu/uscode/text/34/12491

(B) BIFURCATION

- **(i) In general**
- Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

- https://www.law.cornell.edu/uscode/text/34/12491

(II) EFFECT OF EVICTION ON OTHER TENANTS

- If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant or resident an opportunity to establish eligibility for the covered housing program. If a tenant or resident described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant or resident a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

- https://www.law.cornell.edu/uscode/text/34/12491

(D) Notification

- **(2) Provision**
- Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program—
- **(A)** at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;
- **(B)** at the time the individual is admitted to a dwelling unit assisted under the covered housing program;
- **(C)** with any notification of eviction or notification of termination of assistance; and
- **(D)** in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with Executive Order 13166 (42 U.S.C. 2000d–1 note; relating to access to services for persons with limited English proficiency).

- https://www.law.cornell.edu/uscode/text/34/12491

RCW 59.18.575

- **Victim protection—Notice to landlord—Termination of rental agreement—Procedures.**
  - (1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:
  - (i) The tenant or the household member has a domestic violence protection order, sexual assault protection order, stalking protection order, or antiharassment protection order under chapter **7.105** RCW, or a valid order for protection under one or more of the following: Chapter **26.26A** or **26.26B** RCW, or any of the former chapters **7.90** and **26.50** RCW, or RCW **9A.46.040**, **9A.46.050**, **10.99.040** (2) or (3), or **26.09.050**, or former RCW **10.14.080**; or
  - (ii) The tenant or the household member has reported the domestic violence, sexual assault, unlawful harassment, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(E) EMERGENCY TRANSFERS

- Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs that—**(1)**allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if—
- **(A)** the tenant expressly requests the transfer; and
- **(B)(i)** the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or
- **(ii)** in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and
- **(2)** incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.
- **(f) POLICIES AND PROCEDURES FOR EMERGENCY TRANSFER**The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under section 1437f(o) of title 42.
- **(g) IMPLEMENTATION** The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.

CATHOLIC CHARITIES/PIONEER SQUARE V SARBACHER

- LL served VAWA documents after expiration of Notice to Quit

24 CFR § 5.2005 - VAWA PROTECTIONS.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following ***December 16, 2016,*** either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

C. PLAINTIFF FAILED TO SERVE DEFENDANT WITH THE FEDERALLY REQUIRED VAWA NOTICE.

Plaintiff's complaint should be dismissed because it failed to give Defendant the notice required by the federal Violence Against Women Reauthorization Act of 2022 ("VAWA"). A party who files an action after improper notice may not maintain such action or avail itself of the

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superior court's jurisdiction." *Hous. Auth. of City of Seattle v. Bin*, 163 Wash. App. 367, 374, 260 P.3d 900, 904 (2011).

VAWA applies to "covered housing programs" including Section 202 Supportive Housing for the Elderly. 24 CFR § 5.2003; 42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX). The lease between the parties demonstrates that premises are subject to Section 202 and acknowledge the need to comply with VAWA. The lease between the parties is on a "model" lease form for Section 202 properties. *See* CMPLT. EXH A. The lease paperwork also acknowledges VAWA and the landlord's obligation to comply with the federal requirements. *See* CMPLT. EXH A, pages 17-18 of the exhibit (identified as pages 8-9 of the "House Rules"). Because Defendant is a tenant in a federally funded "covered housing program," he is entitled to the protections of the VAWA.

According to VAWA, a covered housing provider must provide to each of its tenant: (1) a "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed by HUD, and (2) a certification form, in a form approved by HUD.[2] 24 CFR § 5.2005(a)(1)(i-ii). Also, according to VAWA, this notice and this certification **must be provided to a tenant with any notification of eviction**. 24 CFR § 5.2005(a)(2)(iii).

In this case, the Proof of Service filed by Plaintiff alleges that the property manager Samantha Bowechop personally posted and mailed a "Notice to Quit and Vacate."[3] *See* CMPLT. EXH. B. She does not allege service of the mandatory VAWA Notice of Occupancy Rights or the

[2] Samples of the Notice of Occupancy Rights form and Certification Rights form are attached as Exhibit A.

[3] According to HUD regulations, a notice to quit is functionally equivalent to a "notice of eviction" under HUD regulations. *See* HUD Final Rule effective December 16, 2016, published November 16, 2016 in Federal Register Volume 81 No. 221 at Page 80724.

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required certification form. Furthermore, no VAWA form was attached with the notice exhibit to the COMPLAINT.

Plaintiff may argue that it did not have to provide these notices because there is no allegation of domestic violence in this case. The first Court that appears to have addressed this argument in a published decision is the Appellate Division of the Yolo County, California, Superior Court, in *DHI Cherry Glen Associates, LP v. Gutierrez*, 46 Cal.App.5th Supp. 1 (2020).[4] In *DHI*, the judges rejected this specific argument and held:

> The plain and commonsense meaning of the statutory language contained in 24 Code of Federal Regulations part 5.2005 (2019) requires VAWA notices to be served with any notice of termination. There is no language in the statute that would support a meaning that the VAWA notices only need to be served with notices of termination that are premised on domestic violence. (24 C.F.R. § 5.2005 (2019).) Respondent was required to serve the VAWA notices on appellant prior to filing a complaint for unlawful detainer against appellant.

DHI Cherry Glen Assocs., L.P. v. Gutierrez, 46 Cal. App. 5th Supp. 1, 11, 259 Cal. Rptr. 3d 410, 416 (Cal. App. Dep't Super. Ct. 2019).

According to the Washington Supreme Court, any noncompliance with the statutory method of process prevents the superior court from acquiring subject matter jurisdiction over the unlawful detainer proceeding. *Christensen v. Ellsworth*, 162 Wash.2d 365, 372, 173 P.3d 228 (2007). "The proper terminology is that a party who files an action after improper notice may not maintain such action or avail itself of the superior court's jurisdiction." *Hous. Auth. of City of Seattle v. Bin*, 163 Wash. App. 367, 374, 260 P.3d 900, 904 (2011).

In sum, Defendant asks this Court to adopt the commonsense reasoning of the *DHI* Court and conclude that Plaintiff failed to provide the required VAWA notices. Because Plaintiff failed

[4] An appellate level case ordered published by the California Supreme Court.

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to provide Defendant with the legally sufficient notices, this Court must dismiss Plaintiff's complaint, in its entirety.

CC/PIONEER SQUARE V SARBACHER

- Case was dismissed due to lack of VAWA notice being served with Notice to Quit
- Resulted in $17,000.00 in attorney fees being awarded to Defendant, payable to the Northwest Justice Project

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)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42). See 34 U.S.C. § 12491(a)(3).”

- “https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

- Thank you!
- Questions?