SUPREME COURT OF WISCONSIN

IN RE THE MATTER OF EMERGENCY PROCEDURES RELATED TO THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT'S TEMPORARY MORATORIUM ON EVICTION FILINGS

FILED

JUN 5, 2020

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

You are hereby notified that the Court has issued the following order.

On May 15, 2020, Legal Action of Wisconsin and Wisconsin Judicare filed an emergency request for a temporary rule requiring "landlord plaintiffs in residential eviction[] actions to affirmatively allege, and demonstrate through documentary evidence easily obtained by them, that [the] subject property is not a Covered Property" for purposes of the temporary moratorium on eviction filings against residential tenants for nonpayment of rent provided for in the federal Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). See CARES Act, Public Law No. 116-136, § 4024.

We decline to impose these requested pleading requirements. While the court is mindful of the economic challenges faced by many tenants during the current health crisis, the legislature has set forth the pleading requirements for complaints for eviction. See Wis. Stat. § 799.41. We will not add language that the legislature did not see fit to write. See, e.g., Dawson v. Town of Jackson, 2011 WI 77, ¶42, 336 Wis. 2d 318, 801 N.W.2d 316.

Therefore,

IT IS ORDERED that the emergency request by Legal Action of Wisconsin and Wisconsin Judicare is denied.

ANN WALSH BRADLEY, J. (*concurring).*

The emergency motion filed by the petitioners, Legal Action of Wisconsin and Wisconsin Judicare, seeks to address the imminent concerns of Wisconsin tenants facing eviction for non-

payment of rent in light of the financial hardships brought on by the COVID-19 pandemic. They seek an emergency rule adding a temporary pleading requirement in residential eviction actions.

I concur with the majority's denial of the request to add a temporary pleading requirement.[1] Nevertheless, I write separately to remind circuit courts of the necessary compliance with the federal moratorium that the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") places on residential eviction actions. Without awareness of the CARES Act moratorium and with the expiration of the statewide moratorium on evictions, we may see an influx of unlawful evictions in our court system.

I

The request before us arises as the statewide moratorium on residential evictions has expired.[2] Yet, the federal moratorium under the CARES Act remains in force. Awareness of the Act is important lest unlawful evictions are sought against specific tenants who in fact retain the federal protections provided by the Act.

On March 27, 2020, the federal "CARES Act" was enacted. See CARES Act, Public Law No. 116-136, § 4024. The legislation imposed a 120-day moratorium on certain residential evictions for non-payment of rent as well as a moratorium on fees and penalties for non-payment

[1] I acknowledge, however, that the regulation of pleading, practice and procedure represents shared powers between the judicial and legislative branches. "We have consistently recognized that the legislature and the judiciary share the power to regulate practice and procedure in the judicial system." E.B. v. State, 111 Wis. 2d 175, 181, 330 N.W.2d 584 (1983); see also Wis. Stat. § 751.12(1) and (4).

[2] The moratorium on evictions and foreclosures expired on May 26, 2020. Temporary Ban on Evictions and Foreclosures, Wis. Emergency Order No. 15 (Mar. 27, 2020), https://evers.wi.gov/Documents/COVID19/EO15BanonEvictionsandForeclosures.pdf.

of rent. The federal moratorium under the CARES Act remains in effect through July 25, 2020. Specifically, CARES Act § 4024(b) prohibits landlords of certain rental "covered dwellings" from initiating eviction proceedings or "charg[ing] fees, penalties or other charges" against a tenant for nonpayment of rent. The lengthy definition of "covered dwellings" is set forth in the CARES Act. See § 4024(a).

The Congressional Research Service has provided a useful summary of what the term encompasses:

> "covered dwellings" . . . are rental units in properties: (1) that participate in federal assistance programs; (2) are subject to a "federally backed mortgage loan"; or (3) are subject to a "federally backed multifamily mortgage loan."
>
> Covered federal assistance programs include most rental assistance and housing grant programs, including public housing, Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, rural housing programs, and the Low Income Housing Tax Credit (LIHTC) program.
>
> A "federally backed mortgage loan" is a single-family (1-4 units) residential mortgage owned or securitized by Fannie Mae or Freddie Mac or insured, guaranteed, or otherwise assisted by the federal government. The term includes mortgages insured by the Federal Housing Administration and the Department of Veterans Affairs, and the Department of Agriculture's direct and guaranteed loans.

See Congressional Research Service, CARES Act Eviction Moratorium (April 7, 2020), https://crsreports.congress.gov/product/pdf/IN/IN11320.

Researchers estimate that roughly 12.3 million rental units have federally backed financing, representing 28% of renters. Id. Other data show more than 2 million housing vouchers along with approximately 5 million federally assisted rental units. Id.

I fear that a lack of direction about how to handle residential evictions under the CARES Act will ostensibly shift the burden to our circuit courts to ferret out the necessary information in order to ensure compliance with the Act. There is a better way.

I suggest that we look to our sister states of Iowa, Michigan and Illinois for a workable alternative, as well as to other courts that have addressed this COVID-19 generated emergency. Rather than placing the burden of initial inquiry onto the circuit courts and risking delay of the case in order to obtain the necessary information, the use of a verification form similar to those used by other states can be employed. This would place the burden of production on the litigants—where it belongs.

Attached to this concurrence are the verification forms used in Illinois, Iowa and Michigan courts.[3] Presently, local courts are left on their own to enact their own rules to ensure compliance with the federal CARES Act moratorium on residential evictions. Hopefully, the attached forms will provide some assistance.

I am authorized to state that Justice REBECCA FRANK DALLET joins this concurrence.

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[3] The verification forms can be found as follows:

Iowa: CARES Act Landlord Verification Form, https://www.iowacourts.gov/browse/files/448a966296ab4d52b25be646c4619aba/download;

Michigan: Verification of Compliance with CARES Act, https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Comments%20library%204%20recvd%20from%20Sept%202017%20and%20beyond/dc504.pdf;

Illinois: "In re: Illinois Courts Response to COVID-19 Emergency", M.R. 30370, (2020) https://courts.illinois.gov/SupremeCourt/Announce/2020/052220.pdf.

APPENDIX A

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT
FOR _____COUNTY, ILLINOIS

_____)
Plaintiff(s))
)
v.) Case. No. _____

_____)
Defendant(s))

PLAINTIFF'S CARES ACT EVICTION CERTIFICATION

NOTICE TO PLAINTIFF: Through August 24, 2020, Section 4024 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits filing certain evictions from "covered dwellings" if those dwellings are in "covered properties." In general, a "covered property" is any property that receives a federal rental subsidy or has a federally-backed / insured mortgage (such as Fannie Mae, Freddie Mac, or the FHA). If unsure, read the actual language of the Act before completing this certification.

I, [name], hereby state as follows:

1. I am [ ] the named plaintiff (or) [ ] an Agent of the named plaintiff.

2. The filing of this eviction case does not violate the CARES Act because: (check one)

A. [ ] The property is not a "covered property;" or

B. [ ] The property is a "covered property," but the eviction is otherwise allowed under the Act.

I certify that everything in this certification is true and correct. I understand that making a false statement is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Sworn:

_____ _____
Plaintiff (or Agent) Plaintiff's attorney (if any)

CARES Act Landlord Verification

Instructions:

- This verification provides the court information related to additional temporary requirements imposed by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 U.S.C. section 9058, on certain eviction actions for nonpayment of rent.
- This verification **must be completed and filed** in any eviction action filed from March 27, 2020 until further order of the Iowa Supreme Court.

If you do not understand how to use this form, or if you are unsure whether you should use this form, talk to an attorney.

In the Iowa District Court for _____ County

County where the case is filed

_____ **Plaintiff** *Full name of Plaintiff: first, middle, last* vs. _____ **Defendant** *Full name of Defendant: first, middle, last*	Case no._____ **CARES Act** **Landlord Verification** If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

I certify the following: *Read, complete, and check each item that applies.*

1. This eviction is based on a landlord–tenant relationship: ☐ Yes ☐ No
2. The current tenancy is now or has in the past been subject to either a Section 8 or USDA Housing Choice voucher: ☐ Yes ☐ No ☐ Not applicable
3. The property involved in this matter is subject to the following federal programs: *Check each that applies if any.*
   - A. ☐ Public housing
   - B. ☐ Project Based Section 8 housing
   - C. ☐ Section 202 elderly housing
   - D. ☐ Section 811 housing for people with disabilities
   - E. ☐ Section 236 multifamily rental housing
   - F. ☐ Section 221 Below Market Rate (BMR) housing
   - G. ☐ HOME Investment Partnership Program
   - H. ☐ Housing Opportunities for Persons with AIDS (HOPWA) Program
   - I. ☐ McKinney-Vento Act housing
   - J. ☐ Section 515 United States Department of Agriculture (USDA) rural housing
   - K. ☐ Section 514/516 USDA farm labor housing
   - L. ☐ Section 533 USDA housing preservation
   - M. ☐ Section 538 USDA multifamily housing
   - N. ☐ Low-Income Housing Tax Credit (LIHTC) Program

4. The property involved in this matter was subject to a mortgage issued or guaranteed by the following federally connected entities:
Check each that applies if any.

A. ☐ Federal Housing Administration (FHA)

B. ☐ Veterans Administration (VA)

C. ☐ United States Department of Agriculture (USDA) direct loan

D. ☐ USDA guaranteed loan

E. ☐ Fannie Mae

F. ☐ Freddie Mac

5. I received a mortgage forbearance on the property involved in this matter between March 27, 2020 and December 31, 2020:
Complete this section only if you checked a box or boxes in section 4 *above.*

☐ Yes ☐ No ☐ Not applicable

6. I received a mortgage forbearance on the property involved in this matter between the following dates:
Complete this section only if you checked "Yes" in section 5 *above.*

_____

_____

7. Additional information:
Additional information may also be provided to the court at the time of the hearing.

_____

_____

_____

Attorney Help *Check one*

A. ☐ An attorney did not help me prepare or fill in this form.

B. ☐ An attorney helped me prepare or fill in this form.

If you check B*, you must fill in the following information:*

_____
Name of attorney or organization, if any

_____
Business address of attorney or organization

_____ _____ _____
City *State* *ZIP code*

(____) _____ _____
Phone number *Fax number – optional*

_____ _____
Email address *Additional email address, if applicable*

Oath and signature

I, _____, have read this Verification, and I certify under
Print your name

penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this Verification is true and correct.

_____ _____, 20____ _____
Month *Day* *Year* *Signature**

_____
Mailing address

_____ _____ _____
City *State* *ZIP code*

(____) _____
Phone number

_____ _____
Email address *Additional email address, if applicable*

**Handwrite your signature on this form. Scan the form after signing it and file it electronically.*

STATE OF MICHIGAN JUDICIAL DISTRICT	VERIFICATION OF COMPLIANCE WITH CARES ACT	CASE NO. and JUDGE

Court address **Court telephone no.**

Plaintiff's name, address, and telephone no.	v	Defendant's name, address, and telephone no.
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.

The plaintiff states:

1. I am seeking to recover possession of the following described premises: _____

_____

2. The property is not a covered dwelling as defined by Sec. 4024(a)(1) of the CARES Act.

NOTE: See page 2 for definitions.

I declare under the penalties of perjury that this verification has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

_____ _____

Date Plaintiff/Attorney signature

Distribute form to:
Court
Tenant
Landlord
Mailing