

SUPREME COURT OF PENNSYLVANIA

In re Filing an Affidavit of Compliance With the Federal CARES Act in Landlord-Tenant Cases

In re CARES Act Affidavit · Decided July 16, 2020

SUMMARY

This document is a Pennsylvania form affidavit and supplemental instructions for demonstrating compliance with the federal CARES Act in landlord-tenant possession actions. It addresses covered housing programs, federally backed mortgages, mortgage forbearance, required notices to vacate, and filing and hearing requirements.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
JURISDICTION	Pennsylvania
DECIDED	July 16, 2020
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Pennsylvania issued a procedural directive and accompanying affidavit form governing landlord-tenant actions for recovery of possession filed in magisterial district courts and the Philadelphia Municipal Court.
PRECEDENTIAL VALUE	Published per curiam procedural directive and standardized affidavit concerning CARES Act compliance in landlord-tenant possession actions.

TOPICS

landlord tenant eviction civil procedure real estate

PRACTICE AREAS

landlord-tenant law real estate litigation civil procedure

QUESTIONS PRESENTED

1. Whether landlord actions for recovery of possession filed in Pennsylvania magisterial district courts or the Philadelphia Municipal Court must be accompanied by an affidavit demonstrating compliance with the federal CARES Act.

2. What evidentiary showing is required to establish CARES Act compliance at a hearing for recovery of possession.

HOLDINGS

1. Every action by a landlord against a tenant for recovery of possession of real property filed in a Pennsylvania magisterial district court or the Philadelphia Municipal Court must be accompanied by an Affidavit of Compliance with the federal CARES Act.
2. At the hearing for recovery of possession, the landlord must demonstrate compliance with the CARES Act through testimony and evidence, including but not limited to the affidavit filed at the inception of the case; the tenant may present contrary testimony and evidence.

KEY QUOTATIONS

“In addition to filing the affidavit with the complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence including, but not limited to, the affidavit filed by the landlord at the inception of the case at the time of the hearing for the recovery of possession of real property.”
(at 3)

“A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act.” (at 3)

FACTUAL BACKGROUND

The federal CARES Act imposed temporary protections affecting eviction actions involving covered properties, including a moratorium on certain filings for nonpayment of rent and notice requirements for covered tenants. The Supreme Court of Pennsylvania adopted an affidavit requirement to allow landlords to demonstrate compliance with those federal protections when seeking recovery of possession in specified Pennsylvania courts.

PROCEDURAL HISTORY

The document does not arise from an adversarial appeal. The Supreme Court of Pennsylvania directed that covered landlord-tenant possession actions be accompanied by an affidavit demonstrating compliance with the federal CARES Act and provided supplemental instructions concerning the filing and evidentiary requirements.

DISPOSITION

other

OPINION

PER CURIAM.

[CAPTION] To the Landlord or Authorized Agent: Please see Supplemental Instructions for information about the CARES Act and definitions of terms used in this affidavit. AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT In order to support my assertion that this filing

complies with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, enacted March 27, 2020 ("CARES Act"), I affirm that: 1.

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

Public Housing (42 U.S.C. § 1437d) Persons with AIDS (HOPWA) (42 U.S.C. § 1437f) Section 8 Housing Choice Voucher (42 U.S.C. § 1437f) Continuum of Care or other Section 8 Project-based Housing McKinney-Vento Act (42 U.S.C. § 1437f) Homelessness Programs (42 U.S.C. § 11360 et seq.)

Elderly (12 U.S.C. § 1701q) Section 515 Rural Rental Housing Section 811 Housing for Persons (42 U.S.C. § 1485) with Disabilities (42 U.S.C. § 1485) Sections 514 and 516 Farm Labor (42 U.S.C. § 1485) Housing (42 U.S.C. § 1484, Section 236 Multifamily Housing 1486) (12 U.S.C. § 1715z-1) Section 533 Housing Preservation Below Market Interest Rate Grants (42 U.S.C. § 1490m) (BMIR) Housing (12 U.S.C. § 1715l(d)) Housing (42 U.S.C. § 1490p-2) HOME (42 U.S.C. §§ 12741 et Low-Income Housing Tax Credit seq.)

(LIHTC) (26 U.S.C. § 42) Rural Housing Voucher Program (42 U.S.C. § 1490r) 2. The property is not subject to a federally backed mortgage loan or a federally backed multifamily mortgage loan. Examples of a federally backed mortgage loan or federally backed multifamily mortgage loan include mortgage loans guaranteed by the Federal Housing Administration, HUD, the Department of Veterans Affairs, or the USDA, and those that were purchased or securitized by Page 1 of 4 the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. 3.

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

For Landlords with Federally Backed Multifamily Loans After August 24, 2020 4. If the property is the subject of a federally backed multifamily mortgage loan, there is no mortgage on the property that is currently in forbearance status, and there is no pending application for mortgage forbearance. See CARES Act, § 4023(d). 5. If the property is the subject of a federally backed multifamily mortgage loan that was in forbearance status under the CARES Act that has now expired, I have provided the required notice to vacate to the tenant.

See CARES Act, § 4023(d). I, _____, verify that the facts set forth in this affidavit are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 related to unsworn falsification to authorities.

_____ Date Signature of Landlord or
Authorized Agent Page 2 of 4 AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT
Supplemental Instructions The federal Coronavirus Aid, Relief, and Economic Security Act, P.L.

116-136 (“CARES Act”) was enacted on March 27, 2020. Among other things, the CARES Act provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, i.e., through July 25, 2020, a landlord may not “make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.” CARES Act, § 4024(b)(1).

The moratorium also applies to the charging of “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” CARES Act, § 4024(b)(2). On _____, 2020, the Supreme Court of Pennsylvania ordered that every action by a landlord against a tenant for the recovery of possession of real property filed in a magisterial district court or the Philadelphia Municipal Court shall be accompanied by an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L.

116-136 as available on the website of the Administrative Office of Pennsylvania Courts at <http://www.pacourts.us/forms/for-the-public> (for actions in magisterial district courts) or on the website of the Philadelphia Municipal Court at <https://www.courts.phila.gov/municipal/civil/>, respectively.

The requirement is in effect through August 24, 2020 to ensure that a landlord has given the proper notice to vacate required by section 4024(c) of the CARES Act. Landlords who are federally backed multifamily mortgage loan borrowers must continue to use the affidavit through the earlier of 60 days after the termination of the national emergency on COVID-19 as declared by the President or March 1, 2021.

This requirement ensures that the landlord is compliant with the renter protections during a forbearance period afforded by section 4023(d) of the CARES Act, as well as the notice to vacate requirement of section 4023(e) of the CARES Act.

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

Terms used in the affidavit have the following meanings: “Covered dwelling” means a dwelling that is occupied by a tenant pursuant to a residential lease or without a lease or with a lease terminable under State law, and is on or in a covered property. CARES Act, § 4024(a)(1). Page 3

of 4 “Covered property” means any property that participates in one of the covered housing programs or the rural housing voucher program listed on the affidavit or has a Federally backed mortgage loan or a Federally backed multifamily mortgage loan.

CARES Act, § 4024(a)(2). “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

CARES Act, § 4024(a)(4). “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

CARES Act, §§ 4023(f)(2)(3), 4024(a)(5). Page 4 of 4