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**RE: NEW HUD GUIDANCE ON CARES ACT 30 DAY NOTICES TO VACATE FOR NONPAYMENT OF RENT**

Dear Valued Client:

On May 5, 2021, the National Apartments Association circulated updated guidance from The U.S. Department of Housing and Urban Development (“HUD”) on the applicability of the previous 30-day notice requirement for CARES Act covered properties, despite the expiration of the CARES Act eviction moratorium last summer. Specifically, HUD stated, **“Notwithstanding the expiration of the CARES Act eviction moratorium, the CARES Act 30-day notice to vacate requirement for nonpayment of rent, in Section 4024(c)(1), is still in effect for all CARES Act covered properties.”**

Based on this recently provided guidance, we are recommending that all CARES Act covered properties revert back to or maintain the policies applicable during the CARES Act eviction moratorium and only issue 30-day notices of termination with regard to nonpayment of rent, until further notice or clarification is provided by Congress or the courts. Included below is a recap of which properties are covered by the CARES Act and guidance for properties who are not covered.

**I. Is my property a “Covered Property”?**

In short, the act includes those who participate in a “Covered Housing Program” as defined by the Violence Against Women’s Act; participate in the Rural Voucher Housing Program under section 542 The Housing Act of 1949; have a federally backed mortgage loan; or have a federally backed multifamily mortgage loan. Most commonly, and as a non-exhaustive list (a detailed list is included below), this would include properties that participate in the Section 8 Housing Choice Voucher Program, HOME properties, Low-Income Housing Tax Credit properties, and any property that is insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae or Freddie Mac. The CARES Act lists and defines the following 4 categories of “covered properties”:

**A. VAWA Covered Housing Programs**

The Violence Against Women Act of 1994 (VAWA) lists most federally assisted rental housing programs, including the following:

- HUD Programs
  - 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)3
  - 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. § 1715l(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.)
- Department of Agriculture Programs
    - 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)
  - Department of Treasury Programs
    - Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

## **B. Rural Housing Voucher Program**

Properties participating in the Rural Housing Voucher Program under Section 542 of the Housing Act of 1949 are covered properties.

## **C. Federally Backed Mortgage Loans (1-4 Units)**

This includes a property with 1-4 units that is secured by loans that are “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.”

## **D. Federally Backed Multifamily Mortgage Loans (5+ Units)**

The CARES Act defines a federally backed multi-family mortgage loan in the same manner as a “federally-backed mortgage loan,” but is one that is secured by a property with five or more dwelling units.

## **II. What does it mean if I am a “Covered Property”?**

If you are unsure of whether or not your community falls into one of the above defined categories, please forward this to your executive management, asset management, or ownership for review and confirmation. If you are a covered property, you may not require a renter to vacate until 30 days after a notice to vacate has been issued.

If you are a covered property and we filed an eviction on your behalf prior to the receipt of this updated guidance, we will continue to process and monitor the case as allowed by the relevant jurisdiction and court.

## **III. Am I impacted if I am not a “Covered Property”?**

If you have determined that you are not a covered property under the CARES Act, you may still submit evictions for non-payment of rent to our office for processing, subject to the restrictions currently being imposed by the CDC, your specific county and local court. However, for your protection, before we process any new evictions, we will require a new written and signed confirmation from executive management and/or an ownership representative confirming that the subject property is not a “covered property” under the CARES Act.

### **IMPORTANT NOTICE TO FIRM CLIENTS WHEN FILING AN EVICTION:**

**As you may recall at the inception of the CARES Act, our Firm requested confirmation if an asset is subject to the CARES Act and considered “a covered asset”. Our records were then updated and cases were processed accordingly. In light of HUD’s recently updated guidance, in the event there has been a change in your status, and in an abundance of caution, we will request renewed confirmation of your status under the CARES Act. Attached hereto is a form that will need to be completed for each property by ownership or a member of executive management. Please be advised, the processing of any new eviction filings received by our office subsequent to the date of this communication may be delayed pending receipt of the executed acknowledgement and confirmation.**

In closing, our goal is to keep you informed and up-to-date on all current information impacting the multi-family housing industry. In light of the fact that this new guidance appears somewhat inconsistent with a plain reading of the CARES Act we will continue to apprise you of any changes or new guidance issued by HUD. Furthermore, as more information is obtained, further review, clarification, and interpretation, may be required.

We hope that you find this communication helpful and welcome any questions you may have. Our highest priority remains to support you. Best wishes to you and yours for continued health and prosperity.

Warm Regards,

Your Friends at Barfield, McCain PA



**CARES Act Acknowledgement – May 2021 Update**

This shall confirm that the property specified below has been advised of the Coronavirus Aid, Relief, and Economic Security Act, commonly referred to as the “CARES Act” (located at: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748eas.pdf>) and the undersigned certifies the following (PLEASE SELECT WHICH OPTION APPLIES TO THE PROPERTY):

THE PROPERTY IS NOT SUBJECT TO THE CARES ACT. The property referenced below is not a “covered property” as defined by §4024(a)(2) of the CARES Act; and the property referenced below has not received, applied, nor intends to apply for a forbearance of its mortgage obligations under §4023 of the CARES Act.

**OR**

THE PROPERTY IS SUBJECT TO THE CARES ACT. The property referenced below is a “covered property” as defined by §4024(a)(2) of the CARES Act and/or the property referenced below has received, applied, or intends to apply for a forbearance of its mortgage obligations under §4023 of the CARES Act.

The undersigned requests and authorizes Barfield, McCain, P.A. to continue with existing cases and/or process new eviction cases for the below-stated property. The undersigned further acknowledges that it has a duty to notify Barfield, McCain, P.A. should the property’s status change with respect to the CARES Act. The undersigned represents that he/she has full authority to lawfully act on behalf of the owner of the above referenced property. This acknowledgement supersedes any prior acknowledgement for the property.

**Property Name:** \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Agent for Landlords (*Signature*)

\_\_\_\_\_  
(*Print Name*)

\_\_\_\_\_  
Title

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