

CARES Act 30-Day Notice to Vacate when Demanding Rent

The CARES Act is a federal law passed in 2020 creating a temporary eviction moratorium nationwide. Even though many of its protections expired in 2020, one provision in particular survived the expiration and now continues indefinitely in every state. Namely, for all properties that are secured by a federally backed mortgage loan or participate in various federal subsidy programs such as the Section 8 Housing Choice Voucher Program, a 30-day notice to vacate must be provided to the tenant prior to a landlord filing an eviction lawsuit based on nonpayment of rent.

Is a 30-day notice to vacate required before filing an eviction lawsuit based upon nonpayment of rent even today? Yes, this is required when the property is secured by a federally backed mortgage loan under the CARES Act or participates in various federal housing subsidy programs. This federal law has no expiration date and continues in force indefinitely.

What if the landlord is not demanding rent, but is only demanding performance of a covenant, such as not subletting? Is a 30-day notice to vacate still required?

No. The 30-day notice to vacate is only required when demanding rent or other fees.

Does that mean a 30-day notice to pay rent or quit is required which would allow a tenant 30 days to pay?

Probably not. Most courts in California will only require a 3-day notice to pay rent combined with a 30-day notice to vacate. That's what the plain language of the CARES Act states, and no California court has decided otherwise. Nonetheless, a court in the state of Washington has interpreted the CARES Act as giving the tenant the right to cure for a full 30-day period. Although this decision isn't binding on courts in California, California judges could view the Washington state decision as persuasive evidence of the law and decide that the tenant is permitted a full 30 days to cure.

What properties are subject to the CARES Act notice protection?

1. Properties subject to a "federally backed mortgage loan:" This type of loan will include a loan owned, insured or guaranteed by any officer or agency of the Federal Government, by the Department of Housing and Urban Development (HUD), by the Department of Veterans Affairs or by the Department of Agriculture; or a loan that is purchased or securitized by Fannie Mae or Freddie Mac (also known as the "GSEs"). This category is not limited to multi-family units but includes residential 1 to 4 properties, too.

2. Properties that participate in various federal subsidy programs. The full list is described in 34 USC 1212491(a) and 42 USC 1490r. But it is essentially describing a property that receives a federal rental subsidy.

How do I verify if my property is a covered property under the CARES Act?

You should contact your lender or servicer and specifically ask them if the property is covered under the CARES Act.

Does C.A.R. have a notice for demanding rent in compliance with the CARES Act?

No. But the issue of whether to adopt such a form has been considered by the Standard Forms Advisory Committee, and because of such a form's inherent confusion, the Committee has decided against it.