



Landlord Letter

December 2021

Are the COVID Eviction Restrictions Over?

Since the U.S. Supreme Court ruled the CDC Eviction Moratorium was unconstitutional in August 2020, landlords have often assumed that there are no other COVID eviction restrictions in place. Landlords should still be cautious and be aware of one possible lingering restriction.

The CARES Act was the first major piece of legislation that was passed as the COVID-19 Pandemic struck the country in March 2020. One focus of the CARES Act was to implement a four month moratorium on certain evictions. But there is one

section of the CARES Act that courts are still considering today.

The CARES Act states that landlords of covered properties “may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the day on which the lessor provides the tenant with a notice to vacate.” Under the CARES Act, a “Covered Property” is defined as a rental property that participates in certain housing programs or has a federally backed mortgaged. Utah courts are requiring each eviction case to submit a “COVID

(Continued on page 2)



What people are saying about US!!!

Great, Quick, and very professional people!

~T. S. —Google Review



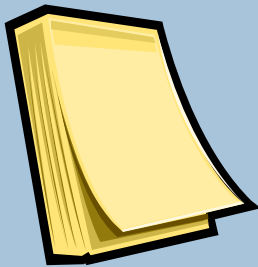
Know Your Notice

• Abandoned Personal Property •

Purpose: Addresses personal property left behind by a tenant .



This is a recent change under Utah law when handling abandoned personal property.



Instead of storing items for 30 days, the law requires the landlord to store the items for fifteen days.

If the landlord is going to sell, donate or dispose of any items, they must give a notice of sale to the tenant at least five days prior to the sale.

A landlord does not have to store hazardous materials, animals, garbage, perishable items, etc.



(Continued from page 1)

Eviction Declaration” that addresses whether the property is a “Covered Property” under the CARES Act ([Click Here](#) for the court declaration with additional details).

This federal legislation is stepping into legal issues that have always been handled on the state level without giving much guidance. Where state law does not have a similar notice to vacate, does the CARES Act create a new notice? Does the CARES Act apply to all evictions? Does the CARES Act, which is nearly two years old now, continue in perpetuity? Despite this section of the CARES Act being entitled “Temporary Moratorium on Eviction Filings”, since there is no specific sunset provision on this section it is unclear how this provision will be treated in the future despite the obvious intention that this restriction be temporary.

To address some of these ambiguities created by the CARES Act, the Utah legislature passed a bill that states a notice to vacate under the CARES Act does not apply to all evictions and that if the CARES Act does apply the thirty day notice to vacate period applies via an order of restitution signed by the court. More details can be found in [Utah Code Ann. §78B-6-802\(5\)](#) . However, in non-payment cases some courts are choosing to follow the vague CARES Act language over the more specific state statute by still requiring a thirty day notice to vacate prior to filing the case with the court.

Bottom line, if your rental is a “Covered Property” you may want to proceed cautiously and also serve a thirty day notice to vacate in addition to any other notices that may apply to your case. It is best to consult an attorney to help navigate the pitfalls that may arise.

Dear Attorney,

**Q:**

I've heard there is COVID rent assistance available, should I apply for rent assistance or file an eviction?

A:

If the primary problem you're having with your tenants is delinquent rent, it's probably best to apply for rent assistance and avoid an eviction. The COVID rent assistance is called Emergency Rental Assistance Program (ERAP). It does take some time for the program to process and approve your application (anywhere from 2-5 weeks), but in addition to usually covering all of the amounts owed under your lease (rent, late fees, utilities, misc. fees, etc.), they will also cover a fee of \$150 to have us submit and help with the application. You

will need to be patient, but we have seen very few applications denied as long as all of the paperwork is submitted and the tenants qualify.

However, if the tenants are violating the lease in other ways or causing other problems, it may be best to forego ERAP and proceed with an eviction. You should consult an attorney based on your specific situation, but you would normally serve a pay or quit notice (to address the rent), but also consider serving other eviction notices to help build a stronger eviction case.

Quick Tips ... Record Keeping & Evidence

Quick Tips if you suspect potential legal problems:



Memories fade, so document EVERYTHING when it's fresh.



A picture is worth a thousand words (1,000 pictures = 1M words).



Don't want to track paper files? Use a scanner.



Get witness statements and contact information in case they move.





Landlord Laughs

One of the interesting parts of being an eviction attorney is the interaction with the tenants. Some tenants are adamant that they are right and that the landlord will lose. Our job is to make sure that doesn't happen.

In one of our cases, the lease had gone month to month so we advised the client to serve a 30 day termination notice. When the tenant did not vacate we filed the case with the court. The tenant then called our office and began to argue about the case claiming everything was handled incorrectly, that our case was full of holes, and that she would be winning in court.

Toward the end of the conversation she got real serious and informed us that what we were doing was about as "legal as a fart in a windstorm." I still haven't figured out what she meant, but I do know that the judge agreed with us and we won. Maybe a fart in a windstorm isn't a bad thing after all!!!



Seasons Greetings

