

No. 84119-0

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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SHERWOOD AUBURN LLC,  
*Respondent,*

v.

JOEL PINZON and ROSA MENDEZ,  
*Appellants,*

---

ON APPEAL FROM KING COUNTY SUPERIOR COURT

Honorable Judge Ketu Shah

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**BRIEF OF APPELLANTS**

---

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## I. Introduction

After work dried up during the COVID-19 pandemic, the tenants, Joel Pinzon and Rosa Mendez (“Tenants”), fell behind on rent for their apartment that they share with their children. Both tenants primarily speak Spanish and have limited English proficiency. When Governor Inslee’s eviction moratorium ended, the Respondent, their landlord (“Landlord”), started an eviction against them by providing two different notices: a 14-day pay or vacate notice asking them to pay rent or vacate the unit; and a second notice that vaguely informed them that they could be evicted in no less than thirty days, referencing the CARES Act as passed by Congress in March 2020. The latter notice purportedly referred to 15 U.S.C. § 9058(c), which provides, *inter alia*, that landlords of covered properties may not evict tenants without providing at least thirty days’ notice to vacate.

Tenants seek review of the trial court's decision to permit a writ of restitution on the ground that the service of two separate and contradictory pre-eviction notices on the same day complied with the CARES Act. One notice indicated that Tenants had fourteen days to vacate, and another suggested they could not be required to leave until thirty days after service of the notice; however, 15 U.S.C. § 9058(c) requires the landlord to provide unequivocal notice that Tenants had thirty days to vacate the premises before initiation of the lawsuit.

Pre-eviction notices are conditions precedent to unlawful detainer actions, and landlords must strictly comply with the time and manner requirements under both federal and state law. While RCW 59.18.650(2)(a) requires a landlord to serve a 14-day pre-eviction notice in nonpayment of rent cases, the CARES Act states the landlord of a covered dwelling unit "may not require the tenant to vacate the covered dwelling unit before the date

that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.” 15 U.S.C. § 9058(c). Additionally, while the CARES Act only refers to the time period the landlord must afford the tenant to vacate, state law automatically extends the time to cure to coincide with the maximum time period to vacate in a nonpayment of rent action. As a result, a landlord of a covered property such as the one in this case must issue a 30-day pay or vacate notice in order to comply with both federal and state law.

In this case, there is no dispute that the premises at issue is a property covered by the CARES Act; however, the lower court erred in ruling that the Landlord complied with the federal statute. While the Landlord provided a 14-day notice to vacate under state law, the controlling statute is federal law, and the Landlord needed to provide the Tenants with thirty days to vacate, not fourteen. The dual notices provided by the Landlord only suggest Tenants had fourteen days to vacate but did not provide the full thirty

days required by federal law. Since strict compliance is required in an unlawful detainer action, the action should have been dismissed.

## **II. Assignment of Error**

### **Assignments of Error:**

No. 1: Whether the lower court erred when it found the Landlord complied with the CARES Act (15 U.S.C. § 9058(c)) by serving two separate, contradictory notices on the same day: one that indicated the Tenants had fourteen days to vacate and another that suggested they could not be required to vacate until thirty days after service of the notice?

### **Issues pertaining to Assignments of Error:**

No. 1: Whether the CARES Act requires landlords to modify the 14-Day Pay or Vacate Notice in RCW 59.18.057 to clearly inform Tenants that they have

thirty days to vacate prior to commencing an unlawful detainer action? (A/E1) (Yes)

No. 2: Whether the CARES Act and state law require the notice to pay be extended to thirty days due to the CARES Act? (A/E2) (Yes)

No. 3: Whether the Landlord's failure to unequivocally inform the Tenants that they have thirty days to vacate before commencement of an unlawful detainer requires dismissal of the unlawful detainer action? (A/E3) (Yes)

### **III. Statement of the Case**

Appellants, Mr. Pinzon and Ms. Mendez, are tenants residing in a unit owned by the Respondent, Sherwood Auburn LLC, an entity which has a federally backed mortgage loan. See CP 30, 33-38. Mr. Pinzon has been a construction worker all his life. RP 23. Because of COVID,

his workplace was closed, and Tenants started to fall behind on rent. RP 23.

On December 21, 2021, Landlord issued a 14-Day Notice to Pay or Vacate, alleging that Tenants failed to pay rent during the COVID-19 pandemic. See CP 20-21. On the same day, the Landlord served a separate notice entitled “30-Day Notice (CARES Act),” informing the Tenants that “if a court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice.” CP 26.

On April 7, 2022, a show cause hearing was held. At the hearing, Commissioner Hillman issued the writ of restitution and found that the Landlord complied with both the CARES Act and state law when issuing two separate pre-eviction notices with different vacate dates merely because Tenants “[haven’t] vacated the premises” at the time of the hearing, even though he acknowledged that

“the requirements of the federal law and the state law being different [ ] certainly could be confusing. . . .” RP 13.

Tenants then filed a post-judgment relief motion before the Ex Parte Department seeking to stay the writ of restitution pursuant to RCW 59.18.410(3)(e) in order to pay the full judgment through an emergency rental assistance program. See CP 42-44. Separately, Tenants sought revision of the commissioner’s ruling before Superior Court Judge Shah and reiterated the inadequacy of the pre-eviction notice under the CARES Act. Judge Shah denied Tenants’ motion to revise finding the Landlord complied with the CARES Act when serving two separate, contradictory notices on the same day: one that indicated Tenants had fourteen days to vacate and another that suggested they could not be required to vacate until thirty days after service of the notice. See CP 45.

Mr. Pinzon and Ms. Mendez now seek review by this Court of both Commissioner Hillman's and Judge Shah's rulings.

#### **IV. Summary of Argument**

The lower court erred when it held that 15 U.S.C. § 9058(c) does not require a landlord to serve an unequivocal 30-Day Notice to Pay or Vacate that informs tenants that they have thirty days to vacate before an unlawful detainer may be commenced, even though it acknowledged that “the requirements of the federal law and the state law being different [ ] certainly could be confusing. . . .” RP 13. As explained below, when confronted with stronger federal protections for tenants in the unlawful detainer context, Washington courts have enforced the more protective provision in federal law. The federal CARES Act requires that the landlord of a covered dwelling unit “may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after

the date on which the lessor provides the tenant with a notice to vacate.” 15 U.S.C. § 9058(c). The 30-day period prescribed by federal law is considerably longer than what is provided by state law for tenants facing eviction for nonpayment of rent, which is fourteen days to vacate. See RCW 59.18.650(2)(a); RCW 59.18.057. As a result, the federal provision requiring thirty days’ notice to vacate before commencing an unlawful detainer action controls and must be integrated into the notice issued by a landlord seeking to maintain an unlawful detainer action involving covered properties.

In this case, there is no dispute that the premises at issue are covered by the CARES Act. Landlord provided two separate notices to Tenants at the same time. One notice mirrored the 14-Day Pay or Vacate Notice prescribed by state law in RCW 59.18.057, indicating that Tenants have fourteen days to pay or vacate before commencement of an unlawful detainer proceeding. See

CP 20. The other notice, labeled “30-Day Notice (CARES Act),” informed Tenants, *inter alia*, that “if the court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice.” CP 26.

The purported CARES Act notice does not comply with both federal and state law as it does not unequivocally inform Tenants that they have thirty days to vacate before an unlawful detainer action may be commenced. Washington courts have repeatedly held that notice periods longer than what is required by state law are jurisdictional conditions precedent and require the landlord to wait to commence the unlawful detainer action until *after* expiration of the longer notice period. The conflicting notices in this case inform tenants that the action can be commenced before expiration of the 30-day notice period. And, when coupled with a 14-day notice to pay or vacate, a 30-day CARES Act notice does not make clear that

Tenants have thirty days to vacate. Additionally, while the CARES Act only refers to the time period a landlord must afford tenants to vacate, state law automatically extends the time to cure to coincide with the maximum time period to vacate in a nonpayment of rent action.

The lower court's ruling effectively nullifies the federal requirement and permits landlords to serve ambiguous notices to tenants that do not afford them proper notice of their rights under federal law. Pursuant to the lower court's holding, a landlord can deceive tenants into believing they have only fourteen days to vacate despite federal law providing for a longer period. As a result, landlords would be encouraged to notify tenants of the shorter period in hopes the tenants will vacate sooner than required by law. Since these notices failed to strictly comply with the time and manner requirements under both federal and state law, the action should have been dismissed.

## **V. Argument**

### **A. Standard of Review**

Whether the presentation of two separate and contradictory notices on the same day effectively nullifies federal requirements is a question of law and is subject to *de novo* review. Columbia Riverkeeper v. Port of Vancouver USA, 188 Wn.2d 421, 432, 392 P.3d 1031 (2017) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (“The construction and meaning of a statute is a question of law that we . . . review *de novo*.”)).

### **B. Background of CARES Act and Unlawful Detainers**

#### **1. Background of 15 U.S.C. 9058(c)**

In March of 2020, faced with the COVID-19 pandemic, Congress passed the CARES Act in order to mitigate the economic fallout of various government efforts to stem the spread of the virus. Within the CARES Act,

Congress included a provision preventing the eviction of households within properties subject to federal subsidies or federal mortgage insurance. See 15 U.S.C. § 9058. According to the Congressional Research Service, more than a quarter of all renters in the United States may be residing in a “covered dwelling” subject to the CARES Act provisions discussed herein.<sup>1</sup>

The relevant statute in this case reads in full:

**(a) Definitions**

In this section:

**(1) Covered dwelling**

The term "covered dwelling" means a dwelling that-

- (A) is occupied by a tenant-
  - (i) pursuant to a residential lease; or
  - (ii) without a lease or with a lease terminable under State law; and
- (B) is on or in a covered property.

**(2) Covered property**

The term "covered property" means any property that-

- (A) participates in-

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<sup>1</sup> Congressional Research Service, *CARES Act Eviction Moratorium* (April 7, 2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

- (i) a covered housing program (as defined in section 12491(a) of title 34); or
- (ii) the rural housing voucher program under section 1490r of title 42; or

(B) has a-

- (i) Federally backed mortgage loan; or
- (ii) Federally backed multifamily mortgage loan.

### **(3) Dwelling**

The term "dwelling"-

- (A) has the meaning given the term in section 3602 of title 42; and
- (B) includes houses and dwellings described in section 3603(b) of title 42.

### **(4) Federally backed mortgage loan**

The term "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.

**(5) Federally backed multifamily mortgage loan**

The term "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.

**(b) Moratorium**

During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not-

- (1) 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; or
- (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

**(c) Notice**

The lessor of a covered dwelling unit-

- (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
- (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

15 U.S.C. § 9058 (2020).

The CARES Act’s eviction prevention measures consist of three main subsections. Subsection (a) provides the definitions of a “covered dwelling” and a “covered

property.” Subsection (b) contains a temporary eviction moratorium for covered properties barring actions based on nonpayment of rent, which expired 120 days after the law went into effect in March 2020.

At issue in this case is subsection (c), which provides a directive for issuing notices in eviction cases after the expiration of the temporary eviction moratorium described in subsection (b). Subsection (c) applies to evictions after the moratorium described in subsection (b) and mandates that after the moratorium expires, a covered property may not demand a tenant vacate from a covered dwelling unless the covered property owner provides at least thirty days’ notice to vacate to the tenant.

Unlike other parts of the CARES Act, subsection (c) did not have a sunset provision and remains in full force. For example, the U.S. Department of Housing and Urban Development (“HUD”) has consistently held that the provisions within subsection (c) still apply to covered

properties. In a FAQ to multifamily buildings, HUD informed landlords of covered properties:

**Q25: Although the eviction moratorium in the CARES Act expired, is the 30-day notice to vacate requirement still in effect for CARES Act covered properties?**

A: 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.

(Added on 4/26/21)

U.S. Department of Housing and Urban Development, *Questions and Answers for Office of Multifamily Housing Stakeholders* (Aug. 9, 2021), *available at* [https://www.hud.gov/sites/dfiles/Housing/documents/MF\\_COVID-19%20QA\\_8\\_4\\_21.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19%20QA_8_4_21.pdf) (emphasis in original). Likewise, in its general eviction guidance, HUD also noted that landlords covered by the CARES Act needed to provide thirty days' notice to vacate:

For the duration of the presidentially declared national emergency related to the COVID-19

pandemic, HUD will extend the time its programmatic regulations require before a tenant must vacate a unit once a notice of lease termination for non-payment has been issued from 14 days to 30 days, consistent with CARES Act protections and the protections already in place for FHA-insured Multifamily mortgages where the borrower is under a forbearance agreement.

*HUD Evictions Guidance*, U.S. Department of Housing and Urban Development, [https://www.hud.gov/rent\\_relief/eviction\\_guidance](https://www.hud.gov/rent_relief/eviction_guidance) (last visited June 6, 2022).<sup>2</sup>

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<sup>2</sup> For example, the federal Consumer Financial Protection Bureau includes the following information on their website:

You may have the right to a 30-day notice

How you're protected:

You have the right to a CARES Act 30-day notice before your landlord can ask you to leave or file an eviction. This can mean more time for you to find rental assistance or legal advice before your landlord starts an eviction.

This applies if:

1. You or your landlord receive a federal subsidy or
2. You live in a building with 5 or more units and your building has a federally insured mortgage

[Find out if your housing is covered](#)

*Protections for renters in multi-family housing or federally subsidized housing*, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/federally-subsidized/> (last visited June 6, 2022).

## **2. Background on Unlawful Detainer Actions and Nonpayment Notices Under Washington State Law**

Under state law, an action for unlawful detainer is a special statutory proceeding to recover rental premises that must be “strictly construed in favor of the tenant.” Housing Authority v. Terry, 114 Wn.2d 558, 563, 789 P.2d 745 (1990) (citing Wilson v. Daniels, 31 Wn.2d 633, 643, 198 P.2d 5 496 (1948)). As a statutory procedure in lieu of common law, the party commencing the suit must strictly comply with the requirements of the statute. In an action for unlawful detainer by a landlord, the elements the landlord must demonstrate are typically: (i) that the landlord has superior title to the property; (ii) that there is a landlord-tenant relationship between the parties; (iii) that there is a default in the agreement within the definition of RCW 59.12.030 and RCW 59.18.650 for residential tenancies; (iv) that the landlord has complied with statutory

prerequisites for jurisdiction, including proper service of a notice to terminate tenancy; and (v) that the tenant has failed to cure or present a defense to the default. See *generally* RCW 59.12.030; RCW 59.12.040; RCW 59.18.650; Sowers v. Lewis, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957) (citing Little v. Catania, 48 Wn.2d 890, 297 P.2d 255 (1956)) (“Where a special statute provides a method of process, compliance therewith is jurisdictional.”).

Almost all unlawful detainer actions commence with the service of a notice pursuant to RCW 59.12.030 or RCW 59.18.650, which is a condition precedent to maintaining the action. Sullivan v. Purvis, 90 Wn. App. 456, 459, 966 P.2d 912 (1998) (“A 10-day alternative to cure lease violations is a jurisdictional condition precedent to an unlawful detainer action for breach”); Sowers, 49 Wn.2d at 894 (“Where a special statute provides a method of process, compliance therewith is jurisdictional.”); Cnty.

Invs., Ltd. v. Safeway Stores, Inc., 36 Wn. App. 34, 37-38, 671 P.2d 289 (1983) (“The provisions governing the time and manner of bringing an unlawful detainer action are to be strictly construed.”). If the tenant fails to vacate or otherwise comply as provided in the statute, the landlord may commence an unlawful detainer action by serving a summons and complaint on the tenant.

Where the landlord alleges a residential tenant is behind on rent, the landlord may serve a 14-Day Notice to Pay Rent or Vacate pursuant to RCW 59.18.650(2)(a) in order to start the process. The form and content of the 14-Day Notice to Pay Rent or Vacate the Premises is statutorily provided in RCW 59.18.057. The pay or vacate notice essentially informs tenants that they have fourteen days to cure the default in rent by paying or vacating within that time period. RCW 59.18.057.

Washington courts have consistently held that a landlord cannot serve a summons and complaint until after

the notice period has expired. See Cmty. Invs., Ltd., 36 Wn. App. at 37 (“CIL did not give Safeway 20 days in which to cure its alleged default before bringing suit.”).

RCW 59.12.030(3) provides that a tenant is liable for unlawful detainer only after the expiration of the 14-day notice period and after having failed to either pay or vacate within that timeframe. Even after expiration of the 14-day period in the pre-eviction notice, a tenant may still reinstate the tenancy by paying the rent owed plus additional fees as laid out in RCW 59.18.410(2).

**C. Landlords Must Comply with Federal Requirements within an Unlawful Detainer Action**

In addition to any state requirements for maintaining an unlawful detainer action, a landlord who accepts the “financial benefits” of a federal program must abide by the federal requirements of that program within the unlawful detainer action. Indigo Real Est. Servs., Inc. v. Wadsworth, 169 Wn. App. 412, 422, 280 P.3d 506 (2012) (“[W]here a

landlord has accepted the substantial financial benefits of the federal section 8 program, the landlord must abide by the rules of that program in any unlawful detainer action.”); Terry, 114 Wn.2d at 569 (“Federal law does not preempt the notice requirements of RCW 59.12.030 because . . . it is possible to reconcile the two acts by providing a notice which satisfies the requirements of both.”). If there is a conflict between the requirements of federal and state law, federal law will prevail. State v. Williams, 94 Wn.2d 531, 538, 617 P.2d 1012 (1980) (“When both a federal and state statute regulate the same subject matter in conflicting ways, the federal enactment will preempt the state statute if: (1) the federal statute clearly evinces a congressional intent to preempt state law; or (2) ‘The . . . conflict (between the two acts) is so ‘direct and positive’ that the two acts cannot ‘be reconciled or consistently stand together.’”).

**D. When a Landlord is Evicting a Tenant from a CARES Act Property, the Landlord Must Provide Thirty Days' Notice to Pay or Vacate**

In this case, in order to comply with both federal and state provisions for giving proper notice to a tenant, the Landlord needed to have issued one notice that indicates the tenant has thirty days to pay or vacate. RCW 59.18.057 specifically states it does not abrogate any other federal notice requirements. RCW 59.18.057(3) (“The form required in this section does not abrogate any additional notice requirements to tenants as required by federal, state, or local law.”). In order to comply with both state law and the CARES Act, the Landlord needed to provide a notice that indicated the tenant had thirty days to pay or vacate. To the extent that the landlord offers any other timeframe under state law, i.e., that the tenant has only fourteen days to vacate, then the landlord is not in

compliance with federal requirements under the CARES Act, and the action must be dismissed.

Congress intended to preempt shorter state pre-eviction notice requirements when it passed the CARES Act requiring a 30-day notice to vacate. Every state requires a pre-eviction notice in some form as a part of their eviction process.<sup>3</sup> The notice prescribed in 15 U.S.C. §

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<sup>3</sup> Forty-six states require a landlord to provide a notice of nonpayment before commencing an unlawful detainer or eviction action. Even among the four states that do not provide a specific notice for nonpayment prior to commencing an action (West Virginia, New Jersey, Georgia, and Missouri), those states still require a pre-eviction notice for other bases for eviction. See ALA. CODE § 35-9A-421; ALASKA STAT. ANN. § 34.03.220(B); ARIZ. REV. STAT. ANN. § 33-1368(A); ARK. CODE ANN. § 18-16-101; CAL. CIV. PROC. CODE § 1161(2); COLO. REV. STAT. ANN. § 13-40-104(D.5); CONN. GEN. STAT. ANN. § 47A-23; DEL. CODE ANN. tit. 25 § 5502; FLA. STAT. § 83. 20; GA. CODE ANN. § 44-7-50; HAW. REV. STAT. § 521-68; IDAHO CODE § 6-303(2); 735 ILL. COMP. STAT. § 5/9-209; IND. CODE § 32-32-1-6; IOWA CODE § 648.3; KAN. STAT. ANN. § 58-2564; KY. REV. STAT. ANN. § 383.660(2); LA. CODE CIV. PROC. ANN. ART. 4701; ME. STAT. tit. 14, § 6002; MD. CODE ANN., REAL PROP. § 8-401; MASS. GEN. LAWS ANN. ch. 186, § 11; MICH. COMP. LAWS ANN. § 600.5714; MINN. STAT. ANN. § 504B.135; MISS. CODE ANN. § 89-7-27; MO. REV. STAT. § 535.020; MONT. CODE

9058(c) expressly refers to such a pre-eviction notice as a condition precedent before an unlawful detainer action may be filed or commenced. In fact, in subsection 9058(b) of the provision, Congress specifically referred to “filings” and initiating court actions to evict as opposed to issuing “notices” per subsection 9058(c). 15 U.S.C. § 9058(b) (“During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not — (1) make, or cause to be made, *any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered*

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ANN. § 70-24-422; NEB. REV. STAT. ANN. § 76-1431; NEV. REV. STAT. §40.253; N.H. REV. STAT. ANN. §540:3; N.J. STAT. ANN. §2A:18-61.2; N.M. STAT. ANN. §47-8-33(D); N.Y. REAL PROP. LAW §711(2); N.C. GEN. STAT. §42-3; N.D. CENT. CODE §47-32-02; OHIO REV. CODE ANN. §1923-04(A); OKLA. STAT. tit. 41, §131(B); OR. REV. STAT. §90.394(2); PA. CONS. STAT. §250.501; 34 R.I. GEN. LAWS §34-18-35; S.C. CODE ANN. §27-40-10(B), S.C. CODE ANN. §27-37-10(B); S.D. CODIFIED LAWS §21-16-2, S.D. CODIFIED LAWS §21-16-2; TENN. CODE ANN. §66-7-109; TEX. CODE. ANN. §2.005(A); UTAH CODE ANN. §78B-6-802; VT. STAT. ANN. tit. 9, §4467; VA. CODE ANN. §55.1-1245; W. VA. CODE §55-3B-3; WIS. STAT. §704,17(1P)(A); WYO. STAT. ANN. §1-21-1002.

dwelling from the tenant for nonpayment of rent or other fees or charges.”) (emphasis added). If Congress wanted to permit landlords to file evictions *before* the notice period expired, then it would have used different language; instead, Congress differentiated between preventing any filings during the 120-day moratorium period with regard to *already-issued* notices to vacate in subsection 9058(b) and the prospective issuance of any *new* notices to vacate, which were prohibited until after the moratorium expired. Congress was clearly aware of the general terminology used by state eviction laws and the distinction between a pre-eviction notice and the subsequent eviction filing by a summons and complaint. See City of Seattle v. Long, 198 Wn. 2d 136, 150, 493 P.3d 94 (2021) (“When the legislature uses two different terms in the same statute, we presume the legislature intends the terms to have different meanings.”).

Courts have interpreted more protective federal notice requirements to preempt local state notices. See Price v. Kitsap Transit, 125 Wn. 2d 456, 463, 886 P.2d 556 (1994) (“[T]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating . . .”). For example, in Mik v. Fed. Home Loan Mortg. Corp., 743 F.3d 149, 164 (6th Cir. 2014), the Sixth Circuit Court held that the federal Protecting Tenants at Foreclosure Act, which requires successors in interest to foreclosed properties to provide tenants with ninety days' notice to vacate, preempts Kentucky law permitting a successor in interest to take possession of property without notice.

Likewise, beyond extending the required notice to vacate provided to tenants in foreclosed properties, Congress has provided other, longer notice requirements with respect to subsidized housing. For example, Congress has expanded the notice period for subsidized tenancies such as for HOME and public housing subsidies. 42

U.S.C.A. § 12755(b) (requiring thirty days' notice for HOME properties, a subsidy to private landlords to provide income-restricted units); 24 C.F.R. § 92.253(c); 42 U.S.C.A. § 1437a(a)(5)(B)(ii) (for public housing tenants, requiring thirty days' notice for households who no longer income qualify). Likewise, other federal agencies have added other protections, which Congress was doubtless aware of. By regulation, HUD also mandates that public housing providers and private landlords working with tenants receiving Project-Based Rental Assistance must provide thirty days' notice to vacate and "information to affected tenants as necessary to support tenants in securing such available funding." U.S. Department of Housing and Urban Development, *Public and Indian Housing Notice*, 2021-29 at 5, available at <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2021-29.pdf>. The same would hold true for the CARES Act provisions. As a federal law aimed at landlords who receive

federal subsidies and mortgage insurance, the CARES Act must be complied with before a landlord of a covered property may commence an unlawful detainer action. 15 U.S.C. § 9058(a).

Just as with other federal efforts to extend the notice period, the federal requirement controls over the state one. Since Washington law provides that a tenant is liable for unlawful detainer only after holding over following the 14-day notice to pay or vacate for nonpayment of rent and allows a landlord to only provide a tenant fourteen days to vacate, it conflicts with the CARES Act's provision requiring the landlord to give thirty days for the tenant to vacate. Accordingly, the Landlord in this case needed to provide thirty days' notice to vacate.

**E. In Reconciling the Federal and State Laws to Provide for a Longer Vacate Period of Thirty Days, the Washington Legislature Sought to Extend the Pay Period Provided to the Tenant to Avoid Unlawful Detainer When Federal Law Provides a Longer Notice Period to Vacate**

While the CARES Act only refers to the time period the landlord must afford the tenant to vacate, in a nonpayment of rent action, state law extends the time to cure to coincide with the maximum time period to vacate. The reason for this is found in RCW 59.18.410(2), which provides a schedule by which a tenant may redeem a tenancy before the expiration of the nonpayment notice through five court days after judgment. Under RCW 59.18.410(2), *after* a tenant is liable for unlawful detainer (in other words, after the notice to pay or vacate has expired), the tenant must pay the full amount of rent due plus late fees up to \$75 in order to reinstate their tenancy

(and, if the landlord has already filed suit, court costs and any attorneys' fees awarded too). See *id.* ("When the tenant is liable for unlawful detainer after a default in the payment of rent, execution upon the judgment shall not occur until the expiration of five court days after the entry of the judgment. Before entry of a judgment or until five court days have expired after entry of the judgment, the tenant . . . may pay into court or to the landlord the amount of the rent due, any court costs incurred at the time of payment, late fees if such fees are due under the lease and do not exceed seventy-five dollars in total, and attorneys' fees if awarded"). But *before* the expiration of the pay or vacate notice period, tenants have the opportunity to cure their default by paying the amount of rent owing. Where a property is covered by the CARES Act, such that thirty days' notice to vacate is required, the pay or vacate notice period does not expire for thirty days and tenants may cure during that time.

The language used in RCW 59.18.410(2) indicates that the Legislature anticipated the notice to pay or vacate may be extended by other laws and wanted tenants to be able to cure a default by paying the amount of rent owing through the expiration of the pay or vacate notice, including if that notice were extended by federal law. In relevant part, the statute reads: “The landlord shall accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity *before the expiration of any pay or vacate notice for nonpayment of rent for the full amount of the rent owing under the rental agreement.*” RCW 59.18.410(2) (emphasis added). While specifically addressing the use of third-party rental assistance, the provision demonstrates the Legislature’s understanding and intent that tenants have the ability to cure during the full period of the *pay or vacate notice* as it would be an absurd result if the Legislature permitted users of third-party rental assistance to be able to cure for a

longer period of time than tenants who would pay with their own money. Importantly, the provision does not specify that the pay or vacate notice would be limited to *fourteen days* per RCW 59.12.030(3) or RCW 59.18.057 and suggests that the Legislature was aware that other laws provided for greater notice. In fact, the Legislature passed this provision of RCW 59.18.410(2) at the same time it was amending the 14-day notice in RCW 59.18.057, which explicitly contemplates that federal laws may affect its format. See LAWS OF 2020, ch. 315, §§ 2, 5; RCW 59.18.057(3). Since state law provides for the right to cure through the end of the pay or vacate period, a federal law that increases the time of one of those items would necessarily extend the period for the other. Accordingly, the CARES Act and state law require a 30-day notice to pay or vacate.

Additionally, it would be confusing to inform tenants that they have fourteen days to pay, but thirty days to

vacate. Over recent years, the Legislature has made a number of amendments to the unlawful detainer statutes to ensure tenants are fully informed of their obligations under the law, including amending the notice to pay or vacate in RCW 59.18.057 several times since the standard notice was prescribed by the Legislature in 2019. See LAWS OF 2019, ch. 356, § 3; LAWS OF 2020, ch. 315, § 2; LAWS OF 2021, ch. 115, § 10.

The Legislature additionally made changes to the Summons in RCW 59.18.365 in the same acts to ensure greater transparency and clarity for the average tenant while simultaneously enacting the provisions in RCW 59.18.410(2) that ensured a tenant could reinstate the tenancy both before and after the pay or vacate notice. See LAWS OF 2019, ch. 356, § 9; LAWS OF 2020, ch. 315, § 4; LAWS OF 2021, ch. 115, § 11. The Legislature sought to ensure that tenants are adequately informed of their rights and obligations in clear and unmistakable terms. As noted

above, the Legislature enacted the standard notice in RCW 59.18.057, noting that federal and local laws may have additional notice requirements and sought to ensure those changes would be incorporated as well when relevant. The most consistent way to incorporate those additional protections from federal law like the CARES Act is to ensure they are also clear to tenants and consistent with rights provided by both laws. Accordingly, as the right to cure a default in rent extends through the unspecified pay or vacate period referred to in RCW 59.18.410(2) and the Legislature has continuously revised notices to provide greater clarity, including when federal laws impact the unlawful detainer procedure, a landlord must provide clear notice to a CARES Act tenant that the tenant has thirty days to pay or vacate before the tenant is liable for unlawful detainer.

**F. The Landlord in this Case Failed to Comply with the Federal CARES Act Requirement**

Providing two separate notices that do not clearly set forth the thirty days to pay or vacate does not comply with federal requirements. This is what the Landlord failed to do in this case.<sup>4</sup> The Landlord provided two different notices at the same time to Tenants. One of the notices was based on the state-prescribed notice for nonpayment of rent under RCW 59.18.057 and informed the Tenants they had fourteen days to pay or vacate and failure to comply could result in an unlawful detainer action. The notice filed by the Landlord for nonpayment of rent was as follows, in pertinent part:

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<sup>4</sup> The Landlord receives a federally backed multifamily mortgage.



**14-DAY NOTICE TO PAY RENT OR VACATE THE PREMISES**

TO: Joel Pinzon, Ross M Mendez, ,  
AND TO: and all other occupants  
ADDRESS: 2901 Auburn Way South #B07  
Auburn, WA 98092

You are receiving this notice because the landlord alleges you are not in compliance with the terms of the lease agreement by failing to pay rent and/or utilities and/or recurring or periodic charges that are past due.

(1) Monthly rent due for July 2020 -- December 2021: \$ 22567.61

AND/OR

(2) Utilities due for July 2020 -- December 2021: \$ 306.19

**TOTAL AMOUNT DUE: \$ 22873.8**

Note - payment must be made pursuant to the terms of the rental agreement or by electronic means including but not limited to, cashier's check, money order, or other certified funds.

You must pay the total amount due to your landlord within fourteen (14) days after service of this notice or you must vacate the premises. Any payment you make to the landlord must first be applied to the total amount due as shown on this notice. Any failure to comply with this notice within fourteen (14) days after service of this notice may result in a judicial proceeding that leads to your eviction from the premises.

At the same time as serving the above notice, the Landlord served another notice purporting to inform Tenants of their rights under the CARES Act and suggesting that if a court so ordered in an unlawful detainer action, they would have thirty days to vacate. The notice filed by the Landlord was as follows:

30-DAY NOTICE  
(CARES Act)

TO: Joel Pinzon, Rosa M Mendez, ,  
AND ALL OTHERS OCCUPYING THE PROPERTY LOCATED AT:  
2901 Auburn Way South #E07  
Auburn, WA 98052

**YOU ARE HEREBY NOTIFIED**, pursuant to the obligations of the CARES Act as passed by the United States Congress, that the Landlord has served a notice to vacate, or a notice to comply or vacate on you pursuant to the laws of the State of Washington, and in accordance with the requirements of emergency orders promulgated by Governor Jay Inslee, and that if a court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice.

DATED: 11/21/2021

Sherwood Gardens / Brian Williams  
(Name of Landlord)



Signature

The notices provided by the Landlord do not comply with the CARES Act because they do not clearly indicate that Tenants had thirty days to vacate. Instead, one notice states they must vacate in fourteen days while the other suggests they “may be required to vacate the residential unit in not less than thirty days from the date of this notice.” CP 26. Neither notice states clearly whether the Landlord

was providing thirty days to pay or vacate prior to filing the action and the only real timeline provided to vacate before the commencement of the action is contained within the 14-day notice to pay or vacate. As a result, the notice does not comply with federal law and fails to properly inform the tenant of the time provided to vacate by such laws. *Cf. Metcalfe v. Heslop*, 161 Wash. 106, 107, 296 P. 151 (1931) (“The notice itself is insufficient in form, as it does not describe the property, fails to state the amount of rent due, and fixes no time for the surrender of the premises in case of continued failure to pay the rent.”)

### **1. The Presentation of Two Different Notices**

#### **Deceives with Regard to and Obfuscates the Tenant’s Rights Under the CARES Act**

Likewise, the presentation of the two notices (14- vs. 30-) is, on its face, a contradictory timeline that does not sufficiently and unequivocally notify the tenant of when they are expected to vacate the premises before

commencement of the unlawful detainer. Towards the bottom of the 14-day notice there is a definitive statement asserting that one “must pay the total amount due . . . within fourteen (14) days . . . or you must vacate the premises.” CP 20. In contrast, the 30-day notice has a litany of caveats pursuant to irrelevant state laws and finishes with “you *may* be required to vacate the residential unit . . .” leaving Tenants with a significantly less clear timeline attached to the proceedings. CP 26 (emphasis added). With these two notices, a tenant would not understand that they have a right to the longer notice period under the CARES Act in order to comply. In order to be effectuated, the CARES Act must be incorporated locally by ensuring the tenant is clearly and unequivocally informed that the tenant has thirty days to pay or vacate. The notices in these cases do not do that and provide an unclear timeline outside of what is provided by the state law’s 14-day timeline.

## **2. Contrary to Washington Case Law, the Purported CARES Act Notice Suggests the Tenant Could be in Unlawful Detainer Before the 30-Day Period Expires**

Moreover, the second notice conflicts with Washington case law with respect to when a landlord may commence an unlawful detainer action. When integrating longer notice periods from other laws or contracts into the unlawful detainer process, Washington courts have held that the notice period *must expire before commencement of a lawsuit*. See, e.g., IBF, LLC v. Heuft, 141 Wn. App. 624, 632, 174 P.3d 95 (2007) (“ Lastly and importantly, ‘[w]hen a tenant contracts with his landlord for a notice period longer than the statutory period, he is entitled to the full time stated just as he is under the statute.’”); Cmty. Invs., Ltd., 36 Wn. App. at 37-38 (“The provisions governing the time and manner of bringing an unlawful detainer action are to be strictly construed. When a tenant

contracts with his landlord for a notice period longer than the statutory period, he is entitled to the full time stated just as he is under the statute. Because CIL commenced its action on the 19th day, its suit was premature; the superior court never obtained jurisdiction over Safeway or the cause.”) (citations omitted). Notices such as the one prescribed by the CARES Act are jurisdictional conditions precedent to an unlawful detainer action, and the action may not be commenced until after the period expires. See *id.* (“CIL did not give Safeway 20 days in which to cure its alleged default before bringing suit.”). As mentioned above, Congress specifically used two different terms to refer to a prohibition on filing legal actions such as an unlawful detainer in a separate subsection of the statute (15 U.S.C. § 9058(b)) and the pre-eviction notice issued as a condition precedent to the action (15 U.S.C. § 9058(c)). The use of different terminology by Congress implies that Congress sought to provide protected tenants with thirty days’ notice

to vacate *before* initiation of the unlawful detainer action just as Washington law provides. RCW 59.12.030(3); see Wadsworth, 169 Wn. App. at 423 (“One should think of ‘unlawful detainer’ as being a status in which a tenant is wrongfully occupying, i.e., unlawfully detaining, the premises.”) (quoting 17 Stoebuck & Weaver, *supra*, § 6.80, at 440). Accordingly, since Congress sought to preempt any shorter notice period provided under state law, a tenant cannot be liable for unlawful detainer until thirty days have expired from issuance of the notice.

Despite the Congressional intent and the manner in which Washington courts have reconciled longer notices provided by other laws or contracts, the purported CARES Act notice in this case did not clearly indicate in any sense that the tenant had thirty days to pay or vacate before commencement of the unlawful detainer; rather, the 30-day notice suggests that an unlawful detainer action could be commenced *before* the thirty days expire from the notice:

“[I]f a court so orders in any unlawful detainer action, you may be required to vacate the residential unit in not less than 30 days from the date of this notice.” CP 26. By suggesting that Tenants need to vacate before thirty days to avoid an unlawful detainer, the Landlord is suggesting Tenants could be in wrongful occupation even before federal law would have that occur.

Beyond the statutory reasons outlined above, when a landlord may commence an unlawful detainer is critically important to the tenant as an unlawful detainer action will appear on the tenant’s credit history and tenant screening report, which can adversely impact the tenant’s financial and housing stability in the future. It is due to the widespread use of tenant screening reports recording eviction filings that one study noted, “[T]he increasingly popular use of tenant-screening reports has resulted in a new class of people who are unable to access rental housing because of past credit problems, evictions, poor

rental histories, or criminal backgrounds.” Housing Link, *Tenant Screening Agencies in the Twin Cities: An Overview of Tenant Screening Practices and their Impact on Renters*, Summer 2004, at 40, available at [http://www.housinglink.org/Files/Tenant\\_Screening.pdf](http://www.housinglink.org/Files/Tenant_Screening.pdf). Rather than be afforded the thirty days provided by the CARES Act to vacate before filing, the interpretation suggested by the Landlord’s notice in this case would have tenants suffer a filing before they are even in unlawful detainer status.

**3. By Not Requiring Strict Compliance, the Lower Court’s Holding Encourages Landlords to Deceive Tenants by Not Providing Clear Notice of the Full Thirty Days to Pay or Vacate Required by Federal and State Law**

By upholding the Landlord’s actions in this case, the lower court effectively permits landlords to inform tenants of less than the required notice period to vacate mandated by Congress. Through plain language, Congress

mandated that landlords “not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.” However, the lower court permitted the Landlord to issue a notice that demanded Tenants leave in fourteen days. As a result, the lower court’s holding would permit landlords to require the tenant to vacate within fourteen days under state law without fully informing the tenant of their rights to thirty days’ notice to vacate under federal law. Likewise, as stated *supra*, the Landlord’s interpretation within the purported CARES Act notice suggests an unlawful detainer action could be commenced even before the tenant has wrongfully occupied the property by failing to vacate within thirty days per 15 U.S.C. § 9058(c).

As mentioned *supra*, other federal programs require longer notice periods such as HOME, public housing, or Project-Based Rental Assistance, but the lower court’s

holding effectively allows landlords working with those programs to ignore the federal requirements. This court has long held that landlords who accept the “financial benefits” of federal programs must abide by the rules of those programs in any unlawful detainer action. Wadsworth, 169 Wn. App. at 422. There is no distinction in this case as the CARES Act applies to landlords who have benefited from federal subsidies and federal mortgage insurance. The heightened requirements for evicting a tenant must be strictly complied with and cannot be equivocated in deceptive and misleading notices as occurred here, especially when the notices suggest a tenant may be in unlawful detainer before controlling law would have it. As a result, the failure to abide by the federal requirements requires dismissal of the unlawful detainer action.

## **VI. Conclusion**

For the reasons stated above, the Court should reverse the Order on Defendant's Motion for Revision entered by the King County Superior Court on May 6, 2022, adopting the Findings of Fact and Conclusions of Law and the Judgment entered by the King County Superior Court Commissioner on April 7, 2022. The presentation of two separate and contradictory notices served on the same day effectively nullifies the protection under the CARES Act which requires a 30-day notice to terminate a tenancy in any covered property. Therefore, the judgement should be vacated, and the matter dismissed.

I certify that this document contains 7,627 words, which complies with RAP 18.17(2)(c)(2).

DATED this 15th day of July 2022,

Respectfully submitted,

/s/ Kaitlin Heinen

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