

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,  
PENNSYLVANIA

2020 NOV 12 PM 2:24

IN RE: : ADMINISTRATIVE ORDER  
SIXTH JUDICIAL DISTRICT OF THE : OF RECORDS  
COURT OF COMMON PLEAS OF : PROTHONOTARY  
ERIE COUNTY - DECLARATION OF :  
JUDICIAL EMERGENCY : NO. 90014 OF 2020

**FIFTH AMENDED JUDICIAL ORDER**

AND NOW, to-wit, this 12<sup>th</sup> day of November, 2020, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that, consistent with the Agency Order issued by the Centers for Disease Control and Prevention (the CDC) and the Department of Health and Human Services, effective September 4, 2020<sup>1</sup> and the CDC's recent interpretation of said Agency Order<sup>2</sup>, this Court's Judicial Order dated May 6, 2020, Amended Judicial Order dated May 13, 2020, Second Amended Judicial Order dated June 3, 2020, Third Amended Judicial Order dated July 10, 2020, and Fourth Amended Judicial Order dated October 5, 2020 are **AMENDED** as follows:

1. In any residential landlord/tenant proceeding for an Order for Possession before a Magisterial District Justice or a Judge of the Court of Common Pleas of Erie County, where the action is based solely on non-payment of rent and where the tenant provides a Declaration of the type required by the CDC (or similar declaration under penalty of perjury)<sup>3</sup>, the landlord's ability to obtain an Order for Possession to evict a tenant, or if one has been obtained, to cause the removal of the tenant from the property pursuant to Pa.R.C.P.M.D.J. Rule 519 is **STAYED** until the expiration of the CDC Order on December 31, 2020.
  - a. Provided, every adult listed on the lease, rental agreement, or housing contract shall complete and provide a Declaration to the landlord. Any adult tenant who does not sign a Declaration and provide the same to the landlord shall not receive the protection of the CDC Order.
2. Subject to the above, a landlord retains the right to file the landlord/tenant complaint and proceed to a hearing in the normal course.
  - a. If a Declaration is provided to the landlord prior to the filing of a landlord/tenant complaint, the landlord shall file a copy of the

<sup>1</sup> See "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," 85 Fed. Reg. 55292-01 (September 1, 2020, effective September 4, 2020 through December 31, 2020).

<sup>2</sup> Available at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>

<sup>3</sup> Available at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>

Declaration and an Affidavit of Compliance, attached hereto as Exhibit A, at the time of filing a complaint.

- b. If a Declaration is not provided to the landlord until after the filing of a landlord/tenant complaint, either the landlord or the tenant shall file a copy of the Declaration as soon as possible. However, a Declaration may be filed at any stage of the proceedings prior to removal of the tenant from the property pursuant to Pa.R.C.P.M.D.J. Rule 519.
3. A landlord may challenge a tenant's Declaration at any stage of the proceedings prior to removal of the tenant from the property pursuant to Pa.R.C.P.M.D.J. Rule 519. The challenge shall be in writing on a "Challenge to Declaration" form (or substantially similar form) as attached hereto as Exhibit B. Upon filing, the challenge shall serve as a request for a hearing as to whether the Declaration is qualified under the CDC Order.
    - a. Upon filing of a Challenge to Declaration, the Magisterial District Judge shall set a hearing within fifteen (15) days, or as soon thereafter as the schedule permits, and serve a copy of the Challenge to Declaration and the hearing notice to all parties by first class mail.
      - i. If the challenge is made at the time of filing of the landlord/tenant complaint, the hearing to the challenge may be heard at the same time as the Pa.R.C.P.M.D.J. Rule 504 hearing.
      - ii. If the challenge is made after the filing of the landlord/tenant complaint, the Magisterial District Judge shall retain jurisdiction to hear the challenge.
    - b. At the hearing, a landlord challenging the qualification of a Declaration shall have the burden of proof to show that the Declaration is false or that the protections of the Declaration do not apply. The averments contained in the Declaration are presumed to be true.
  4. At the conclusion of the hearing on the Challenge to Declaration or no later than three (3) days thereafter, the Magisterial District Judge shall issue a decision as to whether the Declaration is qualified under the CDC Order. As used herein, "qualified" means the elements of the Declaration are true and correct and the Declarant is a covered person under the CDC Order.
    - a. If the Magisterial District Judge determines that a Declaration is qualified under the CDC Order, then the case may proceed in the normal course, except that the ability of the landlord to obtain an Order for Possession, or if one has been obtained to cause the removal of the tenant from the property pursuant to Pa.R.C.P.M.D.J. Rule 519, shall be stayed until after December 31, 2020.

- b. If the Magisterial District Judge determines that a Declaration is not qualified under the CDC Order, then the case, including the removal of the tenant from the property pursuant to Pa.R.C.P.M.D.J. Rule 519, may proceed in the normal course.
5. Any party aggrieved by a Magisterial District Judge's determination as to whether the Declaration qualified under the CDC Order may, within ten (10) days of the Magisterial District Judge's decision, file an appeal in the Erie County Prothonotary's Office in a Miscellaneous action. Thereafter, a *de novo* hearing will be scheduled pursuant to Erie County Local Rules.
6. If a Declaration has been deemed not qualified under the CDC Order, a tenant may refile the Declaration, along with proof demonstrating a change in circumstances such that the criteria set forth in the Declaration have been satisfied. The refiling of the Declaration reimposes a stay as provided in Paragraph 1. A landlord wishing to challenge the refiled Declaration shall follow the procedures set forth at Paragraph 3.
7. Any landlord/tenant action filed in the Magisterial District Courts that was stayed pursuant to this Court's Fourth Amended Judicial Order of October 5, 2020, shall proceed in accordance with this Fifth Amended Judicial Order.
8. Nothing in this Order shall preclude a landlord from filing a similar challenge to a Declaration in the Court of Common Pleas.

**ALL OTHER TERMS OF THIS COURT'S MAY 6, 2020, MAY 13, 2020, JUNE 3, 2020, JULY 10, 2020, and OCTOBER 5, 2020 JUDICIAL ORDERS SHALL REMAIN IN FULL FORCE AND EFFECT.**

11-12-2020  
Date

  
Hon. John J. Trucella, President Judge

cc: Geoff Moulton, Esq., Court Administrator of Pennsylvania  
Irene M. Bizzoso Esq., Prothonotary, Supreme Court of Pennsylvania  
The Honorable Stephanie Domitrovich  
The Honorable Elizabeth K. Kelly  
The Honorable Daniel Brabender, Jr.  
The Honorable John J. Mead  
The Honorable Joseph M. Walsh, III  
The Honorable Marshall J. Piccinini  
The Honorable David G. Ridge  
The Honorable Erin Connelly Marucci  
Magisterial District Judge Scott Hammer

Robert Catalde, Esq., District Court Administrator  
Julia Bagnoni, Esq., Deputy Court Administrator  
Rebecca Humphrey, Esq., Deputy Court Administrator  
John Loomis, Erie County Sheriff  
Kenneth Gamble, Esq., Clerk of Records  
Kelly Malone, Prothonotary  
Aubrea Haynes, Clerk of Courts  
Tammi Elkin, Esq., Register of Wills  
David Bradford, Esq., Recorder of Deeds  
Jack Daneri, Esq., District Attorney  
Patricia J. Kennedy, Esq., Public Defender

# EXHIBIT A



**AFFIDAVIT OF COMPLIANCE  
WITH THE CARES ACT**

Mag. Dist. No:		
MDJ Name: The Honorable		
Address:		
City:	State:	Zip:
Telephone:		

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v.

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Docket No.:  
Case Filed:

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 SECTION 4024 OF 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 the covered housing programs or rural housing voucher programs listed:

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher (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)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- 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.)
- Continuum of Care or other McKinney-Vento Act Homelessness Programs (42 U.S.C. §§ 11360 et seq.)
- 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)
- Low-Income Housing Tax Credit (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 purchases or securitized by 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](http://www.FreddieMac.com/mymortgage)) and Fannie Mae ([www.KnowYourOptions.com/loan](http://www.KnowYourOptions.com/loan) lookup).

**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

## **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 July 16, 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).

"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).



**EXHIBIT B**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF ERIE

Mag. Dist. No: \_\_\_\_\_

MDJ Name: The Honorable \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

\_\_\_\_\_  
Defendant

**CHALLENGE TO TENANT DECLARATION**

I am the Landlord, or authorized agent of the Landlord, in the above-referenced case.

I received the Tenant's CDC Declaration <sup>1</sup> on \_\_\_\_\_. A true and correct copy of the Tenant's CDC Declaration is attached.

I hereby object to the Tenant's CDC Declaration for the following reasons (check all that apply):

\_\_\_\_\_ Tenant's CDC Declaration is not true.

\_\_\_\_\_ Tenant's CDC Declaration is not applicable to this case for the following reasons:

1.

2.

3.

I, \_\_\_\_\_, verify that the facts set forth in this Challenge to Tenant Declaration 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.A. § 4904 related to unsworn falsification to authorities.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Landlord or Authorized Agent

<sup>1</sup> See Declaration for the Centers for Disease Control and Prevention (CDC) Temporary Halt in Evictions To Prevent Further Spread of COVID-19, available at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>