

**STATE OF VERMONT
VERMONT SUPREME COURT
SEPTEMBER TERM, 2022**

Order Promulgating Addition of Rules 9.2 and 9.3 to the Vermont Rules of Civil Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 9.2 of the Vermont Rules of Civil Procedure be adopted to read as follows:

RULE 9.2. SPECIAL PLEADING REQUIREMENTS IN RESIDENTIAL EVICTION PROCEEDINGS

(a) **Applicability.** This rule applies to all actions for eviction of a tenant of residential housing based solely or in part on nonpayment of rent.

(b) **Notice of Termination of Residential Tenancy.**

(1) A complaint in an action to which this rule applies must contain or be accompanied by a declaration showing either compliance with the 30-day notice requirement of the CARES Act, 15 U.S.C. § 9058(c), or that the dwelling from which the plaintiff seeks to evict the tenant is not located on or in a “covered property” as defined in the CARES Act, 15 U.S.C. § 9058(a)(2).

(2) The declaration must be in the form approved by the State Court Administrator and published on the Judiciary website.

(3) The court may dismiss a case filed without the declaration.

(c) **Emergency Rental Assistance; Stay.** When sufficient evidence has been submitted in an action to which this rule applies that the tenant has applied for funds from the Vermont Emergency Rental Assistance Program (VERAP), the court, in its discretion, may take any action that it deems appropriate in fashioning a rent escrow order or writ of possession, including adjusting the timing of issuance of the order or writ, or adjusting the timing and amount of payment.

Reporter’s Notes

Rule 9.2 is based on Administrative Order 49, ¶ 21, which expired on September 30, 2022. Paragraph 21 established special pleading requirements for certain residential eviction actions.

Rule 9.2(a) states that the rule applies to all actions for eviction of a tenant from residential housing based solely or in part on nonpayment of rent.

Rule 9.2(b) implements a notice provision of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act applicable to evictions from dwellings financed by federally backed loans or participating in certain federal programs. The CARES Act

states that the lessor 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)(1). This Rule takes no position whether the CARES Act requires a 30-day notice to vacate in cases of eviction other than for reasons of nonpayment of rent and for which Vermont law otherwise permits shorter than 30 days actual notice. See, e.g., 9 V.S.A. § 4467(b)(2) (providing 14-day notice for termination based on criminal activity, illegal drug activity, or acts of violence).

Rule 9.2(b)(1) requires that a complaint in an action covered by this rule must contain or be accompanied by a declaration showing either compliance with the 30-day notice requirement of the CARES Act, or that the dwelling from which eviction is sought is not located on or in a “covered property” as defined in 15 U.S.C. § 9058(a)(2).

“Declaration” refers to a statement made under penalty of perjury. See V.R.C.P. 11(e). This word is used purposefully in lieu of the language in A.O. 49, ¶ 21(a), which required that the plaintiff “certify” compliance or inapplicability.

Rule 9.2(b)(3), like A.O. 49, ¶ 21(b), provides that the court may dismiss a case filed without the declaration.

Under Rule 9.2(b)(2), the declaration must be made using the form approved by the State Court Administrator and published on the Judiciary website. It is important for plaintiffs to use the court form because the CARES Act requires plaintiffs to make specific statements for property not covered by the CARES Act, after a full investigation of the circumstances of the property, that no unsatisfied mortgage on the property is subject to a federally backed mortgage, and that the property does not benefit from any federal housing program. To determine whether the property is subject to a federally backed mortgage, the form requires the plaintiff to search in two databases to see whether unsatisfied mortgages are federally backed: [KnowYourOptions.com/loanlookup](https://www.knowyouroptions.com/loanlookup) (Fannie Mae) and [FreddieMac.com/mymortgage](https://www.FreddieMac.com/mymortgage) (Freddie Mac). The plaintiff must attach a copy of the first page of any unsatisfied mortgages on the property at issue, as well as copies of the results of the searches in these two databases.

These burdens are placed on plaintiff because this information is available to property owners while tenants do not necessarily know whether the properties are financed by federally backed loans or participating in certain federal housing programs.

Administrative Order No.49, ¶ 21(d) was adopted to address delays in provision of federal funds available through the Vermont Emergency Rental Assistance Program (VERAP) to pay back rent and forestall evictions from residential housing. As of October 1, 2022, VERAP stopped accepting new applications, but the program will continue to process applications pending as of September 30, 2022.

Under Rule 9.2(c), when either party presents the court with sufficient evidence that the tenant filed a VERAP application before October 1, 2022, the court may take appropriate action in fashioning a rent escrow order or writ of possession, including adjusting the timing of issuance of the order or writ, or adjusting the timing and amount of payment.

The CARES Act notice requirement has no current expiration date. Pursuant to the promulgation order, the Advisory Committee is to review the operation of this Rule and to advise the Court when appropriate, but not later than July 1, 2023, whether the Rule should be terminated in whole or in part, extended, revised, or made permanent. In the absence of further order, the Rule will be of no effect in any civil action commenced on or after September 30, 2025.

2. That Rule 9.3. of the Vermont Rules of Civil Procedure be adopted to read as follows:

RULE 9.3. SPECIAL PROCEDURES IN CERTAIN HOME FORECLOSURES AND MOBILE HOME REPLEVIN ACTIONS

(a) **Applicability.** This rule applies in all one-to-four-unit residential property foreclosure actions pursuant to 12 V.S.A. §§ 4941 or 4945 and all residential mobile home replevin actions pursuant to 9A V.S.A. § 9-609.

(b) **Notice of Vermont Homeowner Assistance Program (VHAP).**

(1) *Notice to Homeowners Required.* The complaint in a foreclosure or replevin action to which this rule applies must be accompanied by a notice to homeowners who own and occupy the subject property as a primary residence that help may be available from the Vermont Homeowner Assistance Program (VHAP) for up to \$30,000 in past due mortgage payments, escrow charges, and other fees, if the homeowner has suffered a financial hardship related to the COVID-19 pandemic including hardship from job loss, a reduction of income, or increased cost due to illness or the need to care for a family member. The notice must:

(A) provide contact information where a homeowner may apply for VHAP funds, learn about VHAP, and get help in filling out an application;

(B) inform the homeowner that any judgment or sale in the foreclosure case will be put on hold (stayed) while their VHAP application is reviewed if the homeowner files and

serves a request for stay, representing that the homeowner has made a VHAP application and believes the requirements of the program are met;

(C) include a sample request for stay for use by the homeowner; and

(D) be in the form approved by the State Court Administrator and published on the Judiciary website.

(2) *Declaration of Compliance.* The plaintiff in a foreclosure or replevin action to which this rule applies must file, with proof of service of the complaint, a declaration that at the time the complaint was served, the plaintiff either served the homeowner with the required notice to homeowner or that plaintiff was not required to provide notice because the subject property is not owned and occupied by homeowner as a primary residence.

The declaration must be in the form approved by the State Court Administrator and published on the Judiciary website.

If the plaintiff fails to file the declaration, the court may stay the case until a proper declaration is filed.

(c) Automatic Stay.

(1) If a homeowner files a request to stay representing that the homeowner has submitted a VHAP application and believes the requirements of the program are met, any entry of judgment, notice of sale, public sale of the property, order of confirmation, or issuance of an order of replevin will be automatically stayed without further order of the court from the date the court receives the request.

(2) The request need not comply with the requirements of Vermont Rule of Civil Procedure 7.

(3) If a plaintiff has knowledge that a homeowner in the action has applied for VHAP assistance, and homeowner has not notified the court, the plaintiff must timely notify the court of the pending VHAP application, and the court may take appropriate action.

(d) Terminating the Stay.

(1) The parties must notify the court of any VHAP decision on the application.

(2) The stay automatically terminates without further order when any party files a notice under the obligation of Vermont Rule of Civil Procedure 11 that one of the following has occurred:

(A) VHAP has deemed homeowner ineligible;

(B) VHAP has closed the application due to inaction by homeowner; or

(C) VHAP has issued payment to the plaintiff or its agent on a qualifying application.

(3) The court on motion may also terminate the stay for cause including if it finds that the request to stay has been filed solely for the purpose of delay, that the arrearage exceeds the

\$30,000 VHAP maximum and the homeowner is unable to make up the difference through other sources, or that a stay is not necessary for the homeowner to access VHAP funds.

(e) **Extending the Stay.** The court on motion may extend the stay or any part of the stay on such terms and for such reasons as the court deems just.

(f) **Mediation Not Stayed.** Unless otherwise agreed by the parties or ordered by the court, a stay under this rule does not stay an order for foreclosure mediation pursuant to 12 V.S.A. § 4632 and the parties may participate in foreclosure mediation while the stay is in effect.

Reporter's Notes

Rule 9.3 is based on A.O. 49 ¶ 22(g), which expired on September 30, 2022. Paragraph 22(g) provided an automatic stay in certain one-to-four-unit residential property foreclosure and mobile home replevin actions where federal funds might be available on application to the Vermont Homeowner Assistance Program (VHAP). This program can provide up to \$30,000 in past due mortgage payments, escrow charges, and other fees, for a homeowner who has suffered a financial hardship related to the COVID-19 pandemic.

The purpose of Rule 9.3 is to forestall proceedings to allow an opportunity for a VHAP application to be processed without the unnecessary burden on courts and parties and the delay that would otherwise occur in issuing and terminating a stay on conventional motion practice.

Rule 9.3(b)(1) requires a plaintiff in a foreclosure or replevin action listed in Rule 9.3(a), to serve homeowners, who own and occupy the subject property as a primary residence, with notice of the availability and purpose of VHAP funds, and provide information about where to apply, how to receive help applying, and how to obtain a stay. The notice to homeowner must also provide a sample request for stay that may, but is not required to, be used by homeowner. The notice to homeowner must be in the form approved by the State Court Administrator and published on the Judiciary website.

Rule 9.3(b)(2) requires a plaintiff in a foreclosure or replevin action listed in Rule 9.3(a) to serve a declaration verifying that plaintiff either served the Notice to Homeowner form at time of service of the action or that the form is not required because the mortgaged property or mobile home that is the subject of the action is not a one-to-four-unit residential dwelling that is owned and occupied by homeowner as a primary residence. The declaration must be in the form approved by the State Court Administrator and published on the Judiciary website. The court may issue a stay if the

plaintiff fails so to verify that notice has been served or that notice is not required.

Rule 9.3(c) provides that in an action for foreclosure or replevin listed in subdivision (a), any entry of judgment, notice of sale, public sale, order of confirmation, or issuance of an order of replevin is automatically stayed if a homeowner who has applied for VHAP funds so requests. The homeowner's request for a stay must affirm that homeowner has applied for funds and believes the program requirements are met. Under Rule 9.3(c)(2), the request can be in letter format and need not be sworn. It does not have to be a formal motion or in the form of the sample request included with the Notice to Homeowner, which separately sets forth VHAP eligibility criteria.

Rule 9.3(c)(3) requires a plaintiff who learns that a homeowner has applied to VHAP to report that fact to the court, and the court may take appropriate action.

Rule 9.3(d)(1) also requires parties to notify the court upon learning of any VHAP action on the application.

Rule 9.3(d)(2) provides the stay automatically terminates when any party, under the obligation of Rule 11, notifies the court that VHAP has deemed the homeowner ineligible, closed the application due to inaction by the homeowner, or made payment on the application. This differs from A.O. 49 ¶ 22(g), which provided a 60-day stay. The change is based on experience that a longer period is required to process applications and coordinate payment, and for consistency with 2021, No. 182 (Adj. Sess.), § 21(d)(2) (effective June 7, 2022), which extends the redemption period in a tax sale pending VHAP final action on an application.

Under Rule 9.3(d)(3), the court may terminate the stay earlier upon motion and a showing of cause including that the request to stay has been filed solely for the purpose of delay, that the arrearage exceeds the \$30,000 VHAP maximum and the homeowner is unable to make up the difference through other sources, or that a stay is not necessary for the homeowner to access VHAP funds. Other cause for termination might include, for example, a finding that no application was filed or that the property is not the homeowner's primary residence.

Rule 9.3(e) allows the court to extend the stay upon motion on such terms and for such reasons as the court deems just.

Rule 9.3(f) provides that the automatic stay does not apply to foreclosure mediation unless agreed by the parties or ordered by the court.

Pursuant to the promulgation order, the Advisory Committee is to review the operation of this Rule and to advise the Court when appropriate, but not later than July 1, 2023, whether the Rule should be terminated in whole or in part, extended, revised, or made permanent. VHAP funds are currently scheduled to expire on September 25, 2025. 15 U.S.C. § 9058d(a). It is expected the funds may be exhausted much sooner than 2025 and that the Court will terminate all or part of Rule 9.3 earlier if applications are no longer being accepted. In the absence of further order, the Rule will be of no effect in any civil action commenced on or after September 30, 2025.

3. That these rules be prescribed and promulgated, effective on October 1, 2022. The Reporter's Notes are advisory.

4. That these rules expire on September 30, 2025, unless the Court orders otherwise.

5. That the Advisory Committee on the Rules of Civil Procedure is directed to review the operation of these rules and to advise the Court when appropriate, but in any event, not later than July 1, 2023, whether these rules should be terminated in whole or in part, extended, revised, or made permanent. In the absence of further order, these rules will be void and of no further effect in any civil action commenced after September 30, 2025.

6. That the Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 13th day of September, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice