

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2023

Order Promulgating Amendments to Rules 9.2 and 9.3 of 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 amended as follows (deleted matter struck through):

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—2023 Amendment

Rule 9.2(c) provided that the court could take appropriate action when there was sufficient evidence that a tenant had applied for funds from the Vermont Emergency Rental Assistance Program (VERAP). By [DATE] the funds were exhausted and all pending applications were processed. Because the program is over and all funds have been disbursed, Rule 9.2(c) is deleted as obsolete.

2. That Rule 9.3 of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined; deleted matter struck through):

**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.~~

~~(e b) **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 c) 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 d) 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 e) 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—2023 Amendment

Rule 9.3(b) required the plaintiff in certain foreclosure and replevin actions to provide notice to homeowners of the availability and purpose of funds from the Vermont Homeowner Assistance Program (VHAP) and to verify service, or declare that notice was not required. The VHAP program closed to new applications as of [DATE]. Because applications are closed, Rule 9.3(b) is no longer needed and is deleted. Remaining subdivisions (c) through (f) are relabeled as (b) through (e).

3. That these amendments be prescribed and promulgated, effective on _____.
The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2023

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

PROPOSED