

## COVID 19 - RENT COLLECTION ISSUES

As we continue to be confronted by the health and economic impact of the current COVID-19 pandemic, many owners have raised questions regarding the continued enforceability of residential leases, including the obligation to pay rent. Likewise, many owners have begun to consider rent deferment policies in an attempt to balance the economic hardship some residents may face as a result of this crisis with the duty to maintain sufficient funding to operate and maintain their properties.

As a general rule, neither a tenant's loss of income nor a declared state of emergency releases a residential tenant from their obligations as provided in the lease. The lease remains a binding contract and the tenant remains responsible for continuing to pay rent as same becomes due. This is true regardless of whether the lease term has actually commenced. While such a provision would be rare, owners should review their lease to confirm it does not excuse performance based on such an event. In addition, various states and municipalities have passed, or are considering, various forms of mandated rent deferrals, which could alter the foregoing proposition. However, barring such a lease provision or law/order, tenants are required to pay the rent and otherwise comply with their lease obligations.

In the event that individual owners desire to offer rent deferrals for residents experiencing an economic impact from the current pandemic, we would strongly advise clients to create a written rent deferral policy to ensure that any such agreements are offered uniformly in order to avoid potential fair housing claims. Rather than leave such decisions to the discretion of individual staff members, a written policy will ensure that agreements are consistent, meet respective owner requirements, and limit potential exposure to fair housing claims.

When adopting such policies, we would recommend that owners consider the following factors in order to balance the financial challenges of tenants with the duty to ensure the financial integrity of the property:

1. **Communication:** Owners should decide the manner in which to communicate the option of rent deferral. In most cases, and in order to avoid a significant increase in rental delinquencies, owners should consider sending a reminder letter to residents that do not pay their rent effective April, 2020, confirming that the rent is required to be paid and requesting that the tenant contact them to discuss if they are experiencing an economic hardship. We have prepared such a letter to be sent to tenants which we are pleased to provide. This letter is intended to ensure that tenants who are able to pay rent do so, while allowing staff to address those who

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actually have a financial hardship. While owners may elect to notify all residents in advance of any rent deferral program, such a proactive announcement may increase the number of persons seeking such assistance.

2. **Affordable Housing Residents:** If the tenant's rent is subsidized, either through project-based assistance, mobile voucher or another affordable program, the tenant's rent share should be recalculated if permitted by the program. As rents for such tenants are already adjusted based on changes to household income, rent deferral should not be required as the tenant's rental share will already be adjusted proportionally based on the household's reduced income (and may actually be zero if they have no income). HUD, as well as other state and local program administrators, have already provided for expedited rent recalculations, remote recertification appointments, and a reduction in required verification paperwork.

3. **Market Residents:** Initially, we would suggest that rent deferral only be offered to those suffering an actual economic hardship which renders them unable to pay rent. The policy should define which events would trigger a "COVID-19 economic hardship". While any objective means may be used to evaluate what constitutes a "COVID-19 economic hardship", we would suggest that total household income and the rental amount at issue should be two threshold considerations in any evaluation procedure. The fact that someone's income is reduced should not be determinative. Rather, the fact that the household income has been reduced to the point rent cannot be paid should be the issue. We would suggest that owners consider whether the rent is now more than 30% of the gross household income. This is the rent level set for most affordable housing programs and would appear to be reasonable. Thus, the resident would be required to demonstrate that the rent now exceeds 30% of the adjusted gross income of all household members in order to qualify for any deferral. The resident should also then be required to provide reasonable evidence of such income reduction, in the form of paystubs, letters from employers, or other verifiable documentation acceptable by management.

In the event a tenant qualifies for a rent deferral based on the aforementioned considerations, ownership should provide specific payment terms both for rent and arrears. As for ongoing rent, we would suggest, in line with the above, that the rent be set at a specific percent of income for a set period. For example, the rent for April and May would be set at 30% of the gross household income. Effective at the end of this period, payment of the full monthly rent would be required in order to qualify for the rent deferral. Late fees should also be waived upon compliance. Finally, the policy should set specific payment terms by dividing the arrears into equal payments over a set time period. For example, the arrears must be paid in three (3) equal payments on the 20th day of each month effective June, 2020. Finally, owners may wish to consider a requirement that any resident eligible for a rent deferral seek third party financial assistance (i.e., RAFT) as a condition of such relief, which may obviate the need for such a deferral.

The terms of any such agreement should be reduced to writing and signed by all parties. The agreement should confirm all of the terms, as well as the right of the owner to proceed with formal legal proceedings in the event payments are not tendered as required.

While payment plans and rent deferrals may not be the desired outcome, proactively addressing arrearages based on need may be the best means by which to ensure ongoing income streams. Likewise, establishing written payment policies will ensure that these agreements achieve their desired goals and avoid potential claims from residents that do not qualify for such relief.

If you would like to discuss adopting such a policy, or if you have other COVID-19 or general questions, please feel free to contact us. Our office remains open and available to meet any of your legal needs.