

COVID -19

CDC AGENCY ORDER SEPTEMBER 2, 2020

On August 8, 2020, President Trump issued an “Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners”. While this Executive Order did not contain any specific provisions relating to evictions, it directed certain governmental agencies to initiate efforts to both consider and address the potential issues arising from evictions. Based on this authority, the Center for Disease Control and Prevention (CDC) has now issued an Agency Order entitled the “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” (hereinafter, the “Order”). In summary, this Order prohibits all evictions for non-payment of rent until December 31, 2020 for tenants who verify certain information relating to an inability to pay rent.

THE ORDER

Pursuant to this Order, a landlord may not “evict” a “covered person” from residential housing based on non-payment of rent. While the tenant is not relieved of their obligation to pay rent and other late fees, etc., a landlord may not take any action to remove or cause the removal of a “covered person” from a residential property. In order to be deemed a “covered person”, and invoke the rights provided in this Order, the tenant must provide an executed copy of a “Declaration form” or a similar declaration, to the landlord. The Declaration form, a copy of which is attached, requires the tenant to affirm that s/he: (1) has used best efforts to obtain all available governmental assistance for rent; and (2) either expects to earn less than \$99,000 in 2020 (\$198,000 for joint tax return filers), OR was not required to report any income to the IRS in 2019; OR received a stimulus check under the CARES act; and (3) is unable to pay full rent due to a substantial loss of income, hours of work, layoff, or extraordinary out-of-pocket medical expenses; and (4) has used best efforts to make timely partial payments; and (5) eviction would likely render the individual homeless as the person has no other available housing options. If the tenant executes and returns the affidavit confirming that they are a “covered person”, they cannot be “evicted”. The Order does not apply to cause or no-fault evictions. Rather, it only applies to non-payment of rent for these covered tenants. In addition, it does not apply to commercial tenants. The Order does not impose any specific penalty on a tenant that submits a false affidavit, other than the usual consequences for perjury (fines, penalties, damages, and/or imprisonment). The Order does impose significant penalties for landlords that fail to comply with these terms as follows: (a) individual landlords who violate the Order may be subject to penalties up to and including a fine of \$250,000 and/or 1 year in jail if the violation results in death or \$100,000 and/or 1 year in jail if the violation does not result in death; (b) an organization which violates the Order may be subject to penalties up to and including a fine of no more than \$200,00 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death. The Order expires on December 31, 2020, but may be extended indefinitely by the CDC.

ANALYSIS

As noted, the Order is limited to non-payment of rent cases and only applies to those persons who submit the required affidavit. As such, it will be extremely important for landlords to document which tenants provide these affidavits. Once a tenant provides such an affidavit, it would appear that this Order would prohibit the service of a notice to quit, as well as the filing of an eviction action or proceeding on a pending eviction case. While the Order is not absolutely clear on what constitutes an “eviction”, the definition of “eviction” is likely sufficiently broad to include not only the commencement of an eviction action, but also the service of a notice to quit. In all other cases, including lease violations, criminal conduct, or no-fault cases (expiration of lease terms, terminations of tenancies at will), landlords should be able to proceed with legal action upon expiration of any applicable state moratoria.

Clearly, one of the most significant challenges will be to ensure that tenants do not abuse these protections by filing false affidavits. While the Order does not appear to provide any means to contest a false affidavit, such that a landlord may proceed with timely legal action, landlords may desire to address the requirements enumerated in the affidavit by proactively offering the assistance and resources required by the Order. While many landlords have already done so, it would appear prudent and appropriate to notify tenants of such resources, including: (1) Providing tenants with RAFT applications, (2) Requiring affordable housing residents to meet with management, in order to recertify income to lower rent shares, if appropriate, (3) Requesting tenants provide evidence of lost income and enter into repayment agreements, based on their income and expenses, and (4) Providing documentation of other available housing options.

By confirming in advance that specific tenants are NOT “covered”, landlords may be able to prevent the filing of false affidavits, or at least have the information required to support a challenge of the same. However, based on the significant penalties associated with any violation, landlords should clearly err on the side of caution when deciding to issue any notice to quit for non-payment or to proceed with any non-payment of rent action.

It is also important to note that while Rhode Island and New Hampshire currently have no state eviction moratoria, Massachusetts¹ and Connecticut currently maintain restrictions on the commencement of eviction cases, which affords both commercial and residential tenants additional protections.

The foregoing is for informational purposes only and should not be considered legal advice. If you have any questions or need legal assistance with any matters, please feel free to contact our office. We are available to assist you with your legal needs as the housing industry navigates these complex and ever-changing circumstances. We hope you are remaining safe and vigilant as we work through these challenges together.

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¹ The Massachusetts Eviction Moratorium is currently being challenged in federal court with a ruling expected in the next several weeks.