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Regulations and Forms Issued to Ensure Compliance with the ongoing Temporary Eviction Moratorium

By: Rich May

In response to the ongoing coronavirus pandemic, the Massachusetts legislature and Governor Baker enacted the law H.4647 (the "Act") placing a temporary moratorium on most evictions and foreclosures. For an analysis of the Act, see our previous blog post. Since that time, the Executive Office of Housing and Economic Development ("EOHED") released regulations, mandatory notices, and standard forms to ensure compliance with certain provisions of the Act. These regulations and forms provide guidance specifically to the temporary moratorium on evictions and to landlords' ability to utilize any last month's rent that was received in advance.

The Regulations

For the duration of this temporary moratorium, landlords may not send a notice to quit to residential tenants for any non-essential eviction including for non-payment of rent. The regulations provide an alternative notice to send instead. The new 'Notice of Rent Arrearage' should be sent by landlords when a tenant of a residential dwelling unit misses a rent payment. The EOHED did not provide a standard form for this notice, but section 5.03 of the regulations does have mandatory language that any landlord must include in such a notice.

The regulations also make clear that landlords may not impose late fees for non-payment of rent for a residential dwelling unit or a small business premises unit. Landlords also may not furnish rental payment data to a consumer reporting agency for non-payment of rent if the tenant provides notice and documentation to the landlord that the non-payment was due to a financial impact from COVID-19.

Finally, the regulations spell out how and when landlords may utilize any last month's rent that was received in advance from a tenant. Such funds may only be used for certain specific purposes – such as mortgage payments and utility costs – and the tenant is entitled to the amount of interest that would have accrued on the last month's rent had the landlord not utilized such funds before the last month of the tenancy.

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Standard Forms

In order to ensure compliance with the Act and the above regulations, the EOHED released four standard forms for landlord and tenants to use:

- Form of Notice and Documentation -COVID-19 Hardship – Residential Tenant
- Form of Notice -COVID-19 Hardship – Small Business Tenant
- Documentation of Financial Hardship – Small Business Tenant
- Notice to Tenant – Use of Advance Rent Payment

Residential and small business tenants facing financial hardships due to the coronavirus pandemic should use one or more of the first three forms to document their hardship and provide notice to their landlords. Landlords who need to use advance payments of rent to cover permitted costs should use the fourth form to provide notice to their tenants.

If you need assistance with any such matters please reach out to a Rich May attorney for assistance.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Nathaniel Donoghue.

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