

**UPDATE:
MASSACHUSETTS COVID-19 EVICTION MORATORIUM
RESIDENTIAL NOTICE REQUIREMENTS
APRIL 30, 2020**

On April 20, 2020, Governor Charlie Baker signed into law a so-called “moratorium” on all “non-essential evictions”. In response, the Executive Office of Housing and Economic Development (EOHED) has promulgated new regulations including specific language required for any notice sent to a tenant in response to missed/late rent payments. The following memorandum is intended to provide guidance regarding the significant requirements of these new regulations.

As an initial matter, the regulations do not require landlords to provide tenants with written notice of each missed rent payment. However, in the event a landlord elects to send a notice of unpaid rent, each such notice must include the following language, **prominently displayed on the first page of the notice**:

1. “THIS IS NOT A NOTICE TO QUIT. YOU ARE NOT BEING EVICTED, AND YOU DO NOT HAVE TO LEAVE YOUR HOME. An emergency law temporarily protects tenants from eviction during the COVID-19 emergency. The purpose of this notice is to make sure you understand the amount of rent you owe to your landlord.”
2. “For information about resources that may help you pay your rent, you can contact your regional Housing Consumer Education Center. For a list of agencies, see <https://www.masshousinginfo.org/regional-agencies>. Additional information about resources for tenants is available at <https://www.mhp.net/news/2020/resources-for-tenants-during-covid-19-pandemic>.”
3. “You will not be subject to late fees or a negative report to a credit bureau if you certify to your landlord in writing within 30 days from the missed payment that your non-payment of rent is due to a financial impact from COVID-19. If possible, you should use the approved form at: <https://www.mass.gov/lists/moratorium-on-evictions-and-foreclosures-forms-and-other-resources>. If you cannot access the form on this website, you can ask your landlord to provide the form to you. You may also send a letter or email so long as it contains a detailed explanation of your household loss in income or increase in expenses due to COVID-19.”

The notice may also include additional information, such as the balance due, how to contact the landlord to work out an agreement to resolve the rent arrears, and/or a reminder that after the state of emergency ends the tenant may face eviction if rent remains unpaid. However, the required language must be prominently displayed AND appear on the first page of the

document. EOHED also “recommends”, but does not require, including a statement that the notice is important and should be translated, or if the landlord is aware that the tenant speaks a language other than English, that the notice be translated into the tenant’s native language if possible. If you would like assistance in preparing a form late rent notice in compliance with these regulations, please feel free to contact us. Also, if you have established a rent collection policy, you should carefully review and update same based on these new regulations.

As you know from our prior memorandum, the Massachusetts eviction moratorium also prohibits a landlord from charging late fees and/or reporting a rent balance to credit agencies if, within thirty (30) days of the missed payment, the tenant submits notice and documentation to the landlord that the non-payment of rent was due to a financial impact from COVID-19. As required by this Statute, EOHED has now created a form tenants may use to satisfy this notice requirement in order to waive late fees and credit reporting. Additionally, landlords are required to provide this notice to tenants upon request and no later than five (5) days from the request. A copy of the EOHED notice for residential tenants is enclosed herewith for your convenience. The submission of such a request is required for each missed rent payment in order to be eligible for the waiver of that month’s late fees and credit reporting. The use of an alternative written form of notice by a residential tenant may be used if such alternative written notice includes a statement that the tenant has experienced a financial impact from COVID-19, and states in reasonable detail the cause of such financial impact. It is important to note that while the Statute requires a form AND documentation be provided, EOHED appears to imply that the use of their form, without supporting documentation, would be sufficient to satisfy the statutory requirements for waiver of late fees and credit reporting. Likewise, these regulations provide that in order to contest the truth of the information on the form, a landlord would need to seek a court determination of same and, in the event a court renders such a finding, the penalty would only be the imposition of the late fee. As such, the economics of such a challenge are questionable.

Obviously, these new regulations create a significant burden for landlords and raise serious questions as to the advisability of sending rent reminders. Prior to these regulations, the Eviction Moratorium Statute already contained a prohibition on any demand threatening to displace a tenant based on non-payment of rent. As such, most landlords were sending simple reminder letters requesting the tenant contact the office to discuss a payment plan in hopes that the parties could come to a mutually beneficial resolution and maintain the tenancy. Now, based on the requirement that such a notice contain these lengthy advisories “prominently” on the first page, a simple rent reminder will actually be subsumed by these “warnings”. Rather than a notice which simply reminds tenants of their balance, the notice will now start with regulatory language which, at best, will likely cause the message to be lost. Likewise, a rent notice which begins with a warning, in capital letters, informing the tenant that there are no consequences to their failure to pay rent, is unlikely to lead to actual rent payment. In effect, while the regulations suggest that they are intended to encourage the payment of rent, they appear to have been drafted in a manner which may in fact have the opposite effect. In addition, while the Statute requires the tenant to request the waiver of late fees, these regulations require the landlord to now proactively notify the tenant of this option and to then provide these forms. Finally, the regulations “recommend” that this simple notice now be translated for residents, which may also lead to additional burdens and potential claims. Simply stated, based on these new regulations

landlords should carefully consider whether the use of rent reminder letters will now serve the desired purpose or will actually lead to additional arrears, burdens, claims, and confusion for tenants. Please feel free to contact our office to discuss your rent collection strategy in light of these new regulations.

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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