

MEMORANDUM

DATE: April 6, 2020

RE: Update for Residential and Commercial Landlords Regarding Coronavirus (COVID-19)

In response to the COVID-19 National Health Emergency both the state and federal governments have acted to address issues raised by the financial impact of the emergency. The effect of those state-and-federal actions as they relate to residential and non-residential tenancies in Oregon is summarized below.

Statewide Limitations on Residential Evictions

On March 22, 2020, Governor Kate Brown issued Executive Order 20-11 which imposed a temporary moratorium on residential evictions for nonpayment. Executive Order 20-11 has now been supplemented, expanded, and extended by Executive Order 20-13, dated April 2, 2020. The key points of the Governor's orders as they related to residential landlord-tenant relationships are listed below.

- Executive Order 20-13 specifies that the 90-day moratorium on evictions now runs from April 2, 2020, unless extended or terminated earlier by the Governor.
- Executive Order 20-13 prohibits landlords from taking any action relating to residential evictions for non-payment including: filing an eviction action in court, serving a summons, delivering or acting on any notice, and taking any action on an order or writ of termination or the equivalent that relate to eviction for nonpayment.
- Executive Order 20-13 also prohibits landlords from interfering in any way with a tenant's right to possession of the tenant's residence.
- This 90-day moratorium prohibits residential landlords from terminating a tenant's rental agreement for "nonpayment."
- However, the executive orders expand the meaning of nonpayment beyond just failure to pay. "Nonpayment" is defined in Executive Order 20-13 as: nonpayment of rent, late charges, utility charges, any other service charge or fee, and any termination without cause.
- Executive Order 20-13 reaffirms the Governor's prior prohibition on law-enforcement officers in Oregon from serving, delivering or acting on any notice, order or writ of

termination of tenancy or the equivalent that relates to residential evictions for nonpayment.

- Residential tenants do not have to provide documentation that their nonpayment has been caused by the COVID-19 pandemic.
- Executive Order 20-13 expressly states that tenants are not relieved of the responsibility of paying rent; only that there will be no late fees, penalties, or evictions for nonpayment during the moratorium.
- Residential tenants must notify the landlord as soon as reasonably possible of the inability to pay rent, and must make partial rent payments to the extent the tenant is financially able to do so.
- Violation of Executive Order 20-13 is a Class C misdemeanor.

Statewide Limitations on Non-Residential Evictions

Governor Brown's April 2, 2020, Executive Order 20-13 extends the 90-day moratorium on evictions to non-residential evictions. Effective April 2, 2020, non-residential landlords are not allowed to terminate a tenant's lease for nonpayment so long as the qualifications listed below are met.

- During the 90-day moratorium mandated by Executive Order 20-13 landlords of non-residential properties in Oregon are prohibited from taking any action in court or otherwise relating to the eviction of a non-residential tenant including serving a summons, delivering or acting on any notice, and taking any action on an order or writ of termination or the equivalent that relate to eviction for nonpayment.
- The Order also prohibits landlords from interfering in any way with a tenant's right to possession of the leased premises because of nonpayment.
- For purposes of non-residential tenancies Executive Order 20-13 defines "nonpayment" as nonpayment of rent, late charges, utility charges, or any other service charge or fee described in the lease or in Oregon statutes.
- However, Executive Order 20-13 only applies to non-residential tenancies if, within 30 calendar days of unpaid rent being due, the tenant provides the landlord with documentation or other evidence that nonpayment is caused at least in part by the COVID-19 pandemic.
- Acceptable documentation includes but is not limited to proof of loss of income due to any governmental restrictions imposed to combat the spread of COVID-19.

- Executive Order 20-13 does not relieve the tenant of the responsibility of paying rent, only that there will be no late fees, penalties, or evictions for nonpayment.
- Non-residential tenants must notify the landlord as soon as reasonably possible of the inability to pay rent, and must make partial rent payments to the extent the tenant is financially able to do so.
- Violation of Executive Order 20-13 is a Class C misdemeanor.

Impact of CARES Act

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, into law. This is a \$2 trillion package aimed at combating the economic damage from the coronavirus crisis.

The CARES Act provides a limited moratorium on evictions for 120 days from the enactment of the Act (March 27, 2020). The CARES Act eviction moratorium is limited to landlords leasing properties backed by federal mortgage loans. Those landlords can neither evict tenants nor charge fees or penalties for the nonpayment of rent for the 120-day period beginning March 27.

Unfortunately, Governor Brown's Executive Orders do little for landlord relief. The governor has said she will call a special legislative session in the near future, and we anticipate that the legislature will look at relief for landlords corresponding to the moratorium on evictions. However, at present that has not been addressed.

The Federal CARES Act does provide relief for certain landlords as set forth below:

- Landlords of single-family units with federally backed mortgage loans can request six months of mortgage forbearance.
- Tenants of homes that receive this forbearance can neither be evicted nor charged fees or penalties for the nonpayment of rent.
- The forbearance options available to single family residences extend to borrowers on multifamily properties such as apartment buildings.
- The multi-family property forbearance, however, has additional requirements listed below.
- Borrowers of loans on multi-family properties must be current on their payments.
- Borrowers of loans on multi-family properties may not evict a tenant or charge late fees or other penalties to tenants during the period of forbearance.
- Multifamily forbearance will cease upon either: (1) the end of the national emergency; or (2) December 31, 2020, whichever comes sooner.

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There remains no assistance for property owners who either own properties debt free, or have mortgage loans that are not federally backed. Those landlords (and their tenants) can avail themselves of the enhanced small business loan provisions of the CARES Act. Funds from those SBA loans can be used to pay rent or to make mortgage payments. We can provide contact information to Hershner Hunter, LLP, attorneys that can assist landlords and tenants in obtaining CARES Act small-business loans.

For more information, please contact our Landlord-Tenant attorneys, Nancy Cary and Patrick Lynd.

This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.