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COVID-19: Considerations for Colorado Real Estate Property Managers

Typical lease and property management agreements do not address viral epidemics. These are unprecedented times and these issues could not have been anticipated when the forms were created. Nevertheless, CRES and its Colorado attorneys are analyzing the situation to anticipate legal and practical challenges for real estate property managers. Please review the following considerations:

- ✓ Executive Order D 2020 017, amended by Executive Order D 2020 024, went into effect on March 26, 2020. It expires on April 26, 2020, unless further extended by the Governor.
- ✓ The Executive Order requires all Coloradans to stay at home and all businesses to close due to the presence of COVID-19 in Colorado unless the business is designated as a "critical business."
- ✓ Real estate transactions are identified in the current order as a "critical business" function without any definition of what specific real estate activities are exempt. Conflicting views were expressed by the Colorado Governor, the Colorado Attorney General, the Colorado Department of Public Health, the Colorado Real Estate Commission, and the Colorado Division of Real Estate, not to mention the different legal opinions of private attorneys. This led to confusion among employing brokers, buyer's agents, seller's agents, consumers, home inspectors, appraisers, and title agents.
- ✓ On April 9, 2020, the Colorado Department of Regulatory Agencies, Division of Real Estate issued a statement entitled "Guidance: Practicing Real Estate During a Pandemic".
- ✓ Showing a property during the COVID-19 pandemic is prohibited and is considered a violation of the executive and public health orders.
- ✓ Any act by a broker found to be in violation of the executive order, the public health order, or the April 9, 2020, guidance could be considered a licensing violation. Such a violation could subject the broker to a complaint, investigation, administrative, and criminal legal action, and, ultimately, discipline or punishment.

- ✓ Property managers should alert landlords and tenants to expect interruptions to the routine flow of business.
- ✓ Property managers should keep the performance of repairs to an absolute minimum and advise landlords and tenants of this intent. Communicate with landlords regarding what constitutes a maintenance emergency and what kinds of maintenance requests can wait until it is safe to address the requests. For maintenance requests and emergencies, only use vetted and trusted vendors who maintain a high standard of safety and health precautions.
- ✓ Encourage landlords and tenants to postpone or cancel all in-person meetings and social events until further notice.
- ✓ Employ tools and software that allow you to safely handle rent collections and disbursement.
- ✓ Continue to keep accurate accounting records. Resist all temptations to use security deposits, pet deposits, or trust account funds to cover for even a temporary shortfall or a passing need. Comingling or a constructive conversion of client funds, even during a pandemic with the intent and ability to repay the client, will still be considered a licensing violation, subject you to civil liability, penalties and, possibly, criminal charges.
- ✓ Remind landlords and employees that the Colorado Governor has asked all landlords and banks to be lenient toward Coloradans because thousands will deal with unemployment as a result of the virus. Landlords specifically have been asked to refrain from imposing late fees on tenants until at least April 30 and to hold off on evicting people who do not or cannot pay.
- ✓ Local governments have been asked to avoid using law enforcement resources for evictions that do not impact public safety. Many county sheriff's departments, such the Sheriff for the City and County of Denver, are not and will participate in an eviction at this time. Be patient.
- ✓ Ask tenants to communicate with you before the rent payment is due if payment of rent will present a financial hardship. Work with landlords and tenants to develop a plan regarding the inability to pay rent and how late fees will be handled.
- ✓ Consult with an attorney to prepare any COVID-19 addendum to the lease or your property management agreement, including any workout agreement for the payment of past due rent.

- ✓ It is advisable to leave a recently vacated unit unoccupied for up to 7 days. Check with CDC, CDPH and local health authorities to determine if it is advisable to leave a unit vacant for a longer period of time.
- ✓ Routinely clean frequently-touched surfaces and objects, including but not limited to, bathrooms, security desk areas, elevator banks, escalators, door handles, communal kitchens or pantries, restrooms, and the like.
- ✓ Install hand sanitizer stations in high-traffic areas of the building such as entryways and the landing on each floor outside the elevator bank.
- ✓ Have a plan ready in the event you as the responsible property manager become ill, incapacitated or are unable to work even remotely. Your plan should be made part of your office policy manual and distributed to your fellow property managers and assistants. The plan should identify who will become responsible for your properties, where key information can be located, how accounts will be accessed and how money will be dispersed.
- ✓ Continue to do your part to prevent the spread of COVID-19 in Colorado. Consult your local health department and the U.S. Centers for Disease Control and Prevention (CDC) for the latest information on the virus and guidelines for controlling transmission.
- ✓ Please continue to check back on the CRES website for an update on these developments and other relevant COVID-19 news for Colorado brokers.

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DISCLAIMER: This article is a brief overview and survey of COVID-19 issues facing real estate professionals in general. The article is designed and its purpose is to serve only as a general discussion of these issues. This article does not constitute legal advice. The reader should consult with a licensed, experienced attorney on any specific or general matter in the reader's particular jurisdiction. We hope that all real estate practitioners find this article to be a useful and practical tool in identifying COVID-19 issues.