



FLORIDA PROPERTY MANAGEMENT - WHEN THE EVICTION MORATORIUM ENDS

On September 4, 2020, the Center for Disease Control and Prevention (CDC) issued a moratorium on evictions nationwide. The CDC moratorium on actions by a landlord to remove a tenant is currently set to expire on January 31, 2021. In preparation for an anticipated return to normalized landlord-tenant lease relationships, it is helpful for Property Managers to review a few important claims prevention tips:

- Review and be familiar with your Property Management Agreement (“PMA”). If not on current agreements, all new and renewal PMAs should contain a comprehensive hold harmless/indemnification language to protect the property manager. The protections will include indemnification for attorney’s fees expended by the Property Manager in defending a claim.
- Require the landlord to provide a certificate of liability insurance for a sufficient amount (typically no less than \$250,000) and have the Property Manager added as an additional named insured on the policy.
- Maintain a “habitable property” as determined by statute and any regional or local regulations, and also under the doctrine of “implied warranty of habitability.” A landlord, through the Property Manager, must keep the structural elements of the building, including stairs and roofs, safe and intact; keep the electrical, plumbing, heating, ventilating, and air-conditioning systems operating safely; must supply cold and hot water; and must exterminate rodents and other vermin such as bed bugs. Also, the landlord, at commencement of the tenancy, “must ensure that screens are installed in a reasonable condition.” If the property manager is put on notice by the tenant of a condition making the property uninhabitable, the manager must take prompt action to cure the problem and make the premises habitable again. If an eviction action is filed for failure to pay rent, a tenant may be able to raise a defense to that action on the grounds of the Landlord’s “material noncompliance” with the Florida statute governing maintenance obligations.
- Carefully and precisely follow the eviction procedures set forth in Chapter 83, Florida Statutes. Under the terms of the PMA, overseeing the eviction process is delegated to the Property Manager. However, the property manager may only file an uncontested residential eviction for non-payment of rent, using forms approved by the Supreme Court of Florida. The manager must have written authorization from the landlord, and cannot file suit in its own name or seek a money judgment. If the eviction is contested, (for example if a defense based on the Landlord’s “material noncompliance” with maintenance obligations) a hearing will be required. In that event, the manager cannot take any further action. Only an attorney is authorized to handle contested evictions on behalf of a landlord. Therefore, if the landlord and property manager wish to pursue a judgment for damages, including unpaid rent, as opposed to simply seeking to legally



regain possession of a non-paying tenant who remains in the premises, it is likely that the problematic file will need to be handled by an attorney. If the manager is just seeking a judgment of eviction and the issuance of a “writ of possession” to be executed upon by the Sheriff’s office, an attorney is not necessarily needed.

- Similarly, there is a strict statutory procedure that must be followed if a claim is to be made on a security deposit; and, also regarding the disposition of the tenant’s personal property. Using a checklist both when a tenant moves in and moves out of a rental, and providing a detailed and complete written security deposit itemization when the tenant leaves will help lessen disputes.
- Be familiar with, and be sure to comply with anti-discrimination laws. It is important for Property Managers to know what they can say and do when selecting tenants. This includes how a rental is advertised, interviewing an applicant, and the questions contained on a rental application. Carefully following the law can avoid costly discrimination complaints and lawsuits. An applicant can be rejected based upon factors such as bad credit history, or a negative references from a previous landlord. However, landlords cannot discriminate against prospective tenants based on their race, religion, national origin, sex, or physical or mental disability, as those are “protected categories” under the federal Fair Housing Act.
- Covid regulations, including those concerning landlord-tenant lease relations, can change at any time. It is important to stay connected to local realtor associations, and continually check the news on Covid developments. Two helpful websites that provide regular Covid updates are the Florida Realtors Association’s at <https://www.floridarealtors.org/>, and the Florida Department of Health’s site at: <https://floridahealthcovid19.gov/>.

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NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.