



TIPS FOR PROPERTY MANAGERS AS THE EVICTION MORATORIUM ENDS

The Eviction Moratorium, now in effect, ends January 31, 2021. With that in mind, we offer the following tips for property managers in Mississippi.

- **INDEMNITY AGREEMENTS.** Property managers should check their Property Management Agreements to confirm that there is an indemnity agreement in their favor between them and the property owner or landlord with which the property manager has contracted whereby the owner or landlord has agreed to indemnify and hold harmless the property manager against any claims against the property manager resulting from the property manager performing its duties under the contract and any losses that may be incurred as a result of such claims. This should include attorneys' fees incurred by the property manager as a result of any such claims as well as expenses of defending such claims.
- **CONFIRMING ADDITIONAL INSURED STATUS UNDER OWNER OR LANDLORD'S LIABILITY INSURANCE POLICY.** The property manager should confirm with the owner or landlord with which the property manager contracts that the property manager is an additional insured under the landlord or owner's liability insurance policy(s). A Certificate of Insurance provided by the agent for the landlord or owner does not automatically confirm that the property manager to whom it is provided is an additional insured. In order to confirm through a Certificate of Insurance the additional insured status, that certificate must explicitly state that the property manager is an additional insured under the policy or policies identified on that certificate. The best practice for a property manager would be to request and obtain from the owner or landlord or its insurance agent a copy of the landlord's policy(s) on which the property manager is an additional insured including an endorsement that specifically names the property manager as an additional named insured.
- **EVICTIONS OF TENANTS.** The eviction of tenants in Mississippi is governed by the lease if there is a written lease, or if none, it is governed by the provisions of §89-7-1, et seq., Miss. Code Ann. (1972), as amended, and some provisions contained in the Mississippi Residential Landlord and Tenant Act §89-8-1, et seq., Miss. Code Ann. (1972), as amended. Under the law proceedings for an eviction may be had before a County Court in counties which have County Courts, in Justice Court which are in each county or before a Mayor of Police Justice of the City. For non-payment of rent, three days notice is required before instituting proceedings. If a written agreement exists that has other bases for eviction, that agreement shall govern, including the notice which may be, if agreed to, by email or text message. The landlord or agent for the landlord, the property manager, having given the required notice, must then file a sworn affidavit of the tenant's default with the appropriate Court, have a Summons issued and served

upon the tenant, obtain a hearing and obtain a judgment by the Court declaring the tenant to be in breach of the lease or rental agreement and that eviction is proper. A warrant will issue if judgment exists in favor of the landlord to be served by law enforcement to complete the eviction. The Court, at its discretion may issue a three day stay of eviction. If the default is non-payment of rental, and the tenant pays the back rent together with any penalties that may be provided in the lease agreement, then the eviction proceedings are terminated. If the tenant wins the hearing in the Court, then there is no eviction. The tenant does have a right to appeal and there are procedures for a stay of the evictions in the event of an appeal. The key is to make sure that the warrant is properly served after a judgment upon the tenant before attempting to dispossess the tenant. If any questions arise about a breach of lease or the eviction of a tenant, the attorney for the owner or landlord should become involved.

- **REPAIRS AND AVOIDANCE OF HABITABILITY CLAIMS.** The Mississippi Residential Landlord and Tenant Act, §§89-8-1, et seq., Miss. Code Ann. (1972), as amended, sets certain standards for the maintenance of property. Essentially, it requires that the owner or landlord and by implication its agents, such as property managers, comply with applicable building and housing codes affecting health and safety. The property manager should become familiar with what building and housing codes are in effect in any community where the property manager does work. Upon notice from the tenant of any issues, the property manager should promptly make an inspection and if it is determined that there are habitability issues that may affect the tenant's health or safety, have the owner or landlord immediately take steps to remedy these issues. Documentation of such issues and the steps made to remedy them should be made as the process proceeds. This documentation should include photographs of any health of safety issues and written communications with the entity retained to repair or otherwise remedy the situation. Ideally, it would be a good idea, upon the completion of the remedy of the issue for the property manager to obtain a written acknowledgement from the tenant that the issue has been resolved satisfactory. §89-8-15, Miss. Code Ann. (1972), as amended, allows a tenant to repair defects after having given thirty days notice to the landlord of the defect with no action taken by the landlord, and under certain conditions to offset the cost of that subject to limitations in the statute, against the rent. §89-8-25, Miss. Code Ann. (1972), as amended, does require the tenant to exercise reasonable efforts to keep property clean and safe to the extent the condition of the premise permits.

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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.