



LITCHFIELD
CAVO LLP
ATTORNEYS AT LAW

MEMORANDUM

To: CRES Insurance
From: Laurie L. Christensen & Luana DiSarra Scavone
Date: January 5, 2021
Re: Post-Moratorium Evictions

**CLAIMS PREVENTION TIPS IN DEALING WITH EVICTIONS AND HABITABILITY CLAIMS
POST-EVICTION MORATORIUM – RHODE ISLAND**

January 5, 2021

I. The Property Management Agreement

All Property Management Agreements should contain an indemnity provision. Indemnity clauses **protect the managing agent**. In most cases, the landlord must indemnify and hold the agent 'harmless' against any legal proceedings that relate to the property management services. This type of clause transfers 100% of liability for the performance of the managing agent's duties back to the landlord. If the Property Management Agreement does not contain this provision, it should be added.

II. Additional Insured Status

It is critical to note that indemnity agreements are not insurance agreements. Indemnity agreements operate merely as risk transfer devices transferring liability from one party to another. With that said, indemnity and insurance agreements often go hand-in-hand. Because an indemnity agreement is only as good as the indemnitor's financial ability to pay for a loss, a financially defunct indemnitor provides no meaningful protection to the indemnitee. For this reason, the property manager

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must be listed as an additional insured on the liability policy held by the landlord/owner. If this is not the case, the property management company should insist on being added as an additional insured.

III. The Legal Eviction

Attorney General Peter Neronha issued a warning to landlords earlier this month after his office began seeing an increasing number of reports of so-called "self-help evictions," which are illegal and might involve a landlord changing the locks, turning off the heat and electricity or entering the home without a court order and removing furniture. Self-help evictions are illegal.

a. Pending Evictions

Those evictions which were pending or filed as of or after September 4, 2020 and which were reassigned in accordance with the Court's Administrative Order 2020 – 06, shall be heard on the date presently assigned. Those cases will not be reassigned. If a landlord receives a Declaration, the landlord shall immediately advise the Court that a Declaration has been received and must submit a copy of the Declaration through the Court's Electronic Filing System. Upon court receipt, the case will be removed from the calendar and will be placed in a separate queue awaiting reassignment, which will occur upon the expiration of the moratorium. The pending cases will not be dismissed.

b. New Eviction Filings

Effective November 3, 2020, new eviction filings for non-payment of rent in which a Declaration is submitted may be filed and may be heard in the normal course on a date to be provided by the Clerk's Office. Judgments may enter at or after hearing, but no judgment will be enforceable until the expiration of the CDC Order, set to expire on January 31, 2021. No Executions shall issue until such time.

c. Eviction Hearings

Upon landlord's receipt of a Declaration, it is the responsibility of the Landlord or Plaintiff to notify the court to cancel the hearing, if one is scheduled. Once the Declaration has been provided to the landlord or agent, all further legal process to evict will cease immediately. The Clerk's Office will mail "Need Not Appear" notifications to all parties whose hearing is scheduled pursuant to the Order.

Be advised that the Declaration may be provided at any time during the eviction process, including at the initial hearing, any Post – Judgment hearing related to issuance of Execution, or at any time prior to the completion of service of an Execution. Both parties are subject to potential significant penalties, civil and criminal, for wrongful acts and or false declarations.

d. Tenant Declaration

When filing a new Nine Day Eviction for Non-Payment of Rent, the landlord/plaintiff attorney must fill out all required forms including the Complaint for Eviction, Five Day Demand and submit to the Court through the Electronic Filing System along with the following REVISED forms:

i. Cover Sheet

District Court Cover Sheet (DC – 95 Revised September 2020) requires an indication that no Declaration has been received.

ii. Affidavit

Landlord Affidavit (DC – 94 Revised September 2020) in accordance with the CDC Order of September Fourth, 2020 certifying that Declaration has been received.

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iii. Answer Form

Defendant/Tenant Answer (DC – 53 Revised September 2020) is to be included in the eviction package being served upon and mailed to the Defendant/Tenant. The form is hereby amended to add two boxes to possible affirmative defense; a defense indicating:

- 1) that the Defendant/Tenant has provided the Plaintiff/Landlord with the Declaration under the CDC Order and moratorium or
- 2) the Defendant believes he/she will qualify and intends to file a Declaration.

IV. Dealing With Tenants With Positive COVID-19 Testing

The CDC Guidelines recommend that someone who has been exposed to, shown symptoms of, or has tested positive for COVID-19 should self-isolate in their homes. Therefore, in most situations, property managers should allow individuals to self-isolate in their units and respect their privacy.

However, if an individual with a medical diagnosis of COVID-19 is not following the CDC Guidelines about home isolation, a property manager can consider taking steps to protect other residents and the property. These steps should **not** be taken lightly and should only be undertaken after consulting with your legal teams. Specifically, the federal Fair Housing Act does not protect an individual whose tenancy constitutes a “direct threat” to the health or safety of other individuals.

Although the Fair Housing Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals, the determination of what constitutes a “direct threat” cannot be based upon generalized fear, speculation, or stereotypes.

Instead, a determination that an individual poses a “direct threat” must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts). Specifically, the assessment is to consider:

- 1) the nature, duration, and severity of the risk of injury;
- 2) the probability that injury will actually occur; and
- 3) whether there are any reasonable accommodations that will eliminate the direct threat.

V. Avoiding Breach of Implied Warranty of Habitability Claims

A defect that renders premises unsafe or unsanitary, and thus unfit for living therein, constitutes a breach of the implied warranty of habitability. Examples of defects in premises included unsafe electrical wiring, which often rendered useless the premises' heat, hot water, and appliances, and the lack of an operable lock on bathroom window, defects violating city housing codes.

a. Maintenance Emergencies Defined

- 1) Fire. Call 911 first.
- 2) Electrical or gas failure of any nature.
- 3) Any water leak or sewage backup.
- 4) No heat or air conditioning.
- 5) Refrigerator not working.
- 6) Range/Oven not working properly.
- 7) No hot or cold water.

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- 8) Toilet stopped up – if apartment just has one.
- 9) Overflowing Commode where there may be property damage.
- 10) Unsecured entry, malfunctioning exterior door hardware or window if on first floor.
- 11) Malfunctioning controlled access gate.
- 12) Any threatening situation that may result in the loss of life or personal property:
 - i. Fire
 - ii. Flood
 - iii. Severe weather that causes damage to doors, locks or windows, etc.
 - iv. Police action
 - v. Protecting a crime scene (repairing broken window, locks stores, etc.

VI. Avoiding Discrimination Claims in Rent Payment Plans

To avoid Fair Housing Act claims, property managers should apply objective criteria to any payment plans for rent, including who is eligible for payment plans and what the terms of the payment plans are.

If payment plans are not offered to all residents and are instead negotiated on a case-by-case basis, there should be uniformity in how plans are offered and the terms that are offered to ensure that individuals are not treated differently on the basis of any protected class.

VII. Squatters may be a looming problem

A squatter is someone who chooses to occupy an abandoned, foreclosed, or unoccupied building or area of land without the lawful permission of the owner. This means that the person does not own or rent the property. Squatting is not necessarily trespassing. Trespassing is a criminal offense, while squatting is usually civil in nature. However, once a landowner has established that the squatter isn't welcome on the property, squatting can be treated like a criminal offense.

Tips to consider to avoid squatters:

- 1) Conduct inspections frequently.
- 2) Secure the property. Block all entrances, close all windows, and lock every door.
- 3) Post "No Trespassing" signs on the property, especially if it's currently unoccupied.
- 4) Serve written notice as soon as you notice that squatters are present.
- 5) Offer to rent the property to the squatters.
- 6) Call law enforcement to remove squatters from the premises if they do not leave.

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Below are the permissible steps when evicting squatters:

1) Call the Police

The more quickly you contact your local law enforcement, the better. They will be able to file an official police report, which you can use in the future if you end up having to pursue an eviction via the court system. The more evidence and documentation you have to demonstrate your efforts to remove the individual(s) from your premises, the stronger your case will be.

You cannot legally try to intimidate the squatter or forcibly remove them from your property. If you must engage with the individuals who are illegally inhabiting your property, it's best to have a police officer present.

2) Provide a Formal Eviction Notice

After you have notified the authorities that there is an illegal tenant on your property, you'll need to file an eviction action and obtain a Judgment and Execution.

3) Remove Any Possessions Left Behind

Handle the discarded property as any other tenancy.

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.