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MEMORANDUM

RE: Evictions During Covid-19 Pandemic

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FROM: Kent E. Krause, Attorney at Law

The purpose of this Memorandum is to provide general guidance to property managers concerning the eviction process, focusing mainly on issues related to Covid 19. Property managers should consult all local codes and or ordinances and to determine any impact they may have on evictions and consult with local counsel concerning questions they may have. Any citations to agency rules or statutes in the Tennessee Code Annotated contained in the links provided herein are deemed reliable. However, before taking action based on any such citation, property managers should consult with local counsel to determine the latest version of any rule or statute.

Tennessee does not have a state-wide order or guidance in light of the Covid-19 pandemic. However, the Tennessee Supreme Court recently issued a ban on in person Court proceedings until January 29, 2021. Certain exceptions are allowed. See <https://www.tncourts.gov/press/2020/12/22/tennessee-supreme-court-reinstates-limits-person-court-proceedings>. In addition, the CDC has issued an Order that recently extended restraints on eviction of tenants who meet certain conditions until January 31,2021. After January 31, 2021, if the CDC's regulations are not further extended, and no state or local orders are issued, landlords should be able to proceed with evictions in accordance with Tennessee law as they did pre-epidemic. Until then, the CDC Restrictions apply and halt residential evictions of "covered persons" for nonpayment of rent. There are also certain grounds for eviction that are exempt from the Order. The CDC published a [FAQ](#) which provides a synopsis of the Order and its applicability.

Tennessee has adopted the [Residential Landlord Tenant Act](#) ("URLTA") which provides laws for counties that have over 75,000 residents. See [Tenn. Code Ann. § 66-28-102](#). All other counties are regulated by the regular Tennessee Code.

Tennessee Code Annotated Title 66 Chapter 28 contains the URLTA. It states that the landlord shall:

- (1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

- (2) Encourage landlord and tenant to maintain and improve the quality of housing;
- (3) Promote equal protection to all parties; and
- (4) Make uniform the law in Tennessee.

[Tenn. Code Ann. § 66-28-103](#). Again, the URLTA only applies in counties that have a population greater than 75,000 according to the 2010 federal census or any subsequent census. Until the 2020 federal census is released these counties are: *Anderson, Blount, Bradley, Davidson, Greene, Hamilton, Knox, Madison, Maury, Montgomery, Putnam, Rutherford, Sevier, Shelby, Sullivan, Sumner, Washington, Williamson, and Wilson*. See [Tennessee Department of Health](#). Tenants in these counties can file a complaint with the Tennessee Consumer Affairs Division. *Id.* Consumer Affairs will then contact the landlord to help mediate the situation. *Id.* If the landlord agrees to mediation, then mediation can occur. If a landlord does not agree to mediation, then legal action is the standard response. *Id.*

Before a landlord may evict a tenant, proper notice must be given to the tenant regarding the deficiency. Under the URLTA, the landlord must provide the tenant with a 14-day notice that details the reason for the proposed eviction. [Tenn. Code Ann. § 66-28-505](#). If the tenant does not correct the deficiency within the 14-day period, the landlord can then proceed with the eviction lawsuit.

If you are located in a county with a population less than 75,000 according to the 2010 federal census, then the regular Tennessee Code applies. Under [Tenn. Code Ann. § 66-7-109](#), a 14-day notice is deemed sufficient notice for the purpose of eviction if the termination of a tenant is for one of the following reasons:

- (A) Tenant neglect or refusal to pay rent that is due and is in arrears, upon demand;
- (B) Damage beyond normal wear and tear to the premises by the tenant, members of the household, or guests; or
- (C) The tenant or any other person on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants, the landlord, the landlord's representatives or other persons on the premises.

However, if the tenant has committed any other lease violation not listed above, the landlord must provide the tenant with a 30-day notice. It is also important to know that a tenant cannot waive right to notice under § 66-7-109.

1. Habitability Claims Against Landlord

The Tennessee Department of Health is responsible for promulgating rules for minimum health standards for rental housing under the regular Tennessee Code. The rules cover basic equipment and facilities, light and ventilation, temperature, and sanitation. See, [Chapter 1200-1-2](#). In addition, [Tenn. Code Ann. § 68-111-102](#) requires a landlord to maintain a rental

unit in a habitable condition, according to each county's health codes. If a landlord violates minimum health standard, tenants whose rent is \$200 or less per week may file a complaint with their local building inspector or county public health department. [Tenn. Code Ann. § 68-111-103](#). The building inspector will inspect the property and give the landlord 30 days to make any required corrections to the building. If the landlord fails to make the required corrections, the tenant can start paying rent into an escrow account held by the court. [Tenn. Code Ann. § 68-111-104](#).

The URLTA provides more specific duties of a landlord. Under [§ 66-28-304](#), the landlord must:

- (1) Comply with requirements of applicable building and housing codes materially affecting health and safety;
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (3) Keep all common areas of the premises in a clean and safe condition; and
- (4) In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

If the landlord fails to supply an essential service to the tenant, the tenant must give the landlord notice specifying the breach and may do one of the following:

- (A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;
- (B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or
- (C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

[Tenn. Code Ann. § 66-28-502](#). "Essential services" is defined as "utility services, including gas, heat, electricity, and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant. *Id.* Thus, a tenant will have an habitability claim and may withhold rent if the heat and/ water does not properly work on the property and the landlord fails to fix it.

2. Additional Resources

The Legal Aid Society has created an information sheet on the impact Covid-19 has on evictions. It should be noted that this sheet has not been update since April 28, 2020. However, the information sheet explains what duties tenants still have and ways landlords can still evict tenants for reasons other than failure to pay rent. See <https://las.org/wp-content/uploads/2020/04/Tenants-Rights-print-layout-4.28.pdf>

The Tennessee Department of Health has created fact sheets on tools for landlords with tenants impacted by Covid-19. The sheets provide: (1) suggestions on how to engage with tenants to avoid evictions, including targeting engagement to at-risk tenants, what questions you should ask, and the documents you should require; and (2) key elements of a repayment plan, including numerous sample repayment plans. See <https://www.tn.gov/content/dam/tn/health/documents/healthy-places/healthy-homes/HUD-COVID-19-Tools-for-Landlords-Tenants-Impacted-by-COVID-19.pdf>.

In addition, Tennessee State Courts website has eviction resources available for individuals in response to the 2020 Evictions Summit held on October 1, 2020. <https://www.tncourts.gov/Eviction%20Resources> These resources include links to legal resources, rental and utility assistance, and numerous others.

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.