



April 19, 2021

UPDATE #37

**STEP BY STEP GUIDE TO RENT EVICTIONS
INVOLVING CDC DECLARATIONS OR ERAP**

Friends:

I received numerous emails from clients regarding clarification on eviction proceedings in light of the CDC Eviction Moratorium Extension and application for emergency funds through ERAP as outlined in my Update #36 sent last week. This Update is intended to provide a checklist in determining how and whether to move forward with an eviction.

1. Is the eviction for nonpayment?

IF YES – GO TO QUESTION 2.

IF NO - THE EVICTION MAY PROCEED.

2. Has the Landlord or Tenant filed an application for Emergency Rental Assistance Funds?

IF YES – LANDLORD MAY NOT EVICT FOR NONPAYMENT IF IT RECEIVES THE FUNDS. LANDLORD ALSO MAY NOT EVICT WHILE THE APPLICATION IS PENDING. LANDLORD MAY BE PERMITTED TO EVICT AFTER THE LANDLORD RECEIVES FUNDS AND TENANT DEFAULTS AGAIN. IF LANDLORD HAS ALREADY FILED FOR EVICTION WHEN IT APPLIES FOR ERAP FUNDS, LANDLORD SHOULD ALSO INCLUDE ITS LEGAL EXPENSES ON THE APPLICATION. THAT EVICTION WILL NOT GO FORWARD UNLESS (1) THE TENANT DOES NOT QUALIFY FOR THE FUNDS AND (2) THE TENANT HAS NOT SUBMITTED A DECLARATION.

IF NO – GO TO QUESTION 3.

3. Has the tenant submitted a CDC Declaration?

IF YES - GO TO QUESTION 4.

IF NO – LANDLORD MAY EVICT FOR NONPAYMENT; HOWEVER, TENANT MAY SUBMIT A CDC DECLARATION AFTER THE EVICTION HAS BEEN FILED. IF SO, NOTIFY OUR LAW FIRM IMMEDIATELY.

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4. Is there a basis for challenging the CDC Declaration (for example, tenant is misrepresenting income or has not filed for federal assistance)?

IF NO – GO TO QUESTION 5.

IF YES – THE TENANT MAY BE EVICTED, BUT CONTACT US TO DISCUSS THE STEPS ON HOW TO CHALLENGE THE DECLARATION. LANDLORD SHOULD ONLY CHALLENGE THE DECLARATION IF IT HAS PROOF THE TENANT HAS MADE A MISREPRESENTATION OR BELIEVES IT CAN OBTAIN PROOF OF THE MISREPRESENTATION.

5. Even if the Tenant has submitted a CDC Declaration and the Landlord does not have a basis for challenging the declaration, can the Landlord still file the eviction?

UNDER THE CDC GUIDANCE ISSUED LAST WEEK, IT APPEARS THE ANSWER IS YES. THE GUIDANCE STATES THAT THE MORATORIUM IS NOT INTENDED TO INTERFERE WITH THE NORMAL EVICTION PROCEDURES EXCEPT THAT THE LANDLORD MAY NOT ACTUALLY REMOVE THE TENANT FROM THE PROPERTY UNTIL SUCH TIME AS THE MORATORIUM HAS EXPIRED. IN OTHER WORDS, A LANDLORD CAN FILE AN EVICTION AND OBTAIN A JUDGMENT AGAINST A TENANT COVERED BY THE MORATORIUM SO LONG AS THE WRIT OF POSSESSION IS STAYED UNTIL AFTER THE MORATORIUM ENDS.

6. Are there other issues to consider?

YES. IN THE PAST, LANDLORDS HAD NO OBLIGATION TO TELL TENANTS ABOUT EITHER THE CDC MORATORIUM OR THE AVAILABILITY OF RENTAL ASSISTANCE. IN LIGHT OF THE NEW GUIDELINES PUBLISHED LAST WEEK, IT IS OUR RECOMMENDATION THAT YOU POST INFORMATION ABOUT BOTH THE MORATORIUM AND ERAP IN YOUR OFFICES AND INCLUDE INFORMATION ABOUT BOTH OF THESE ITEMS WITH ANY LATE NOTICE OR RENT DEFAULT LETTER YOU SEND.

We hope this Guide provides clarity on the continuing changes and challenges being presented to Landlords by the CDC Moratorium and Emergency Rental Assistance Program. If you have additional questions, please let us know.

Very Truly Yours,



Michael J. King