



April 28, 2021

UPDATE #39

**NOTIFYING TENANTS OF THEIR RIGHTS UNDER THE
CDC EVICTION MORATORIUM**

Friends:

In Update #36, our office provided landlords information regarding the CDC Eviction Moratorium Updated FAQs. Specifically, we noted the CDC now believed landlords have an obligation to provide information to tenants regarding the moratorium under federal law. The Consumer Financial Protection Bureau (a federal agency that regulates debt collectors) issued a new rule under the Fair Debt Collection Practices Act (“FDCPA”) requiring “debt collectors” to provide written notice to tenants of their rights under the CDC eviction moratorium. The rule goes into effect May 3rd. Under the rule, a “debt collector” must provide notice of the tenant’s rights under the moratorium at the earliest of (1) the date the “debt collector” first issues an eviction notice or (2) the date the detainer warrant is filed.

By statute, the owner of the property is not a “debt collector.” The question as to whether property management companies (who do not own the property) are “debt collectors” has not been fully resolved. Courts in the Sixth Circuit (the courts that handle federal cases for Tennessee) have indicated that management companies are not debt collectors. “[C]ourts have held that managers of condominium or apartment complexes fall within exceptions to the debt-collector definition when acting as agents for the condo or apartment owners.” *Bates v. Green Garms Condominium Association*, 958 F.3d 470, 481 (6th Cir. 2020).

Nevertheless, we recommend that all landlords (including owners and property management companies) provide a notice of CDC rights to their tenants when they issue a notice of default for nonpayment. Even in situations where the lease waives notice for nonpayment, if the Landlord issues a letter to the tenant about being behind on rent, we recommend issuing the CDC notice. There are several reasons.

First, if the Consumer Financial Protection Bureau wants to make a property management company the “test case” as to whether it is actually a “debt collector,” I expect the litigation will be expensive and protracted. Second, our firm is required to send the tenant notice of their CDC rights when the detainer is filed. Providing the notice when you serve the default notice (or other letter) may cause the tenant to seek rental assistance – and save the management company attorney fees and court costs. Third, I think all landlords are best served by demonstrating they have gone above and beyond in assisting tenants during the pandemic.

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Below is a sample of the notice language you should use:

Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal law. Learn the steps you should take now:

Visit www.cfpb.gov/eviction

Or call a housing counselor at 800-569-4287

We will be placing this sample notice language in a Word document on our website. Feel free to download the language and add it to your default letters.

The rule goes into effect May 3rd and will last until the end of the moratorium (currently June 30th). Please note, this notice must be given if you send the tenant any type of letter or notice regarding an eviction based on the failure to pay rent. For example, if the eviction is for both housekeeping and nonpayment, the notice must be provided. If the eviction is based on conduct only, the notice is not required.

If you have additional questions, please let us know.

Very Truly Yours,

A handwritten signature in cursive script that reads "Mike".

Michael J. King