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MEMORANDUM

TO: Clients and Friends of the Firm

FROM: Joshua M. Greenberg, Esq.
Greenstein DeLorme & Luchs, P.C.

DATE: July 18, 2018

SUBJECT: Significant Changes to Evictions in the District of Columbia
Eviction Procedure Reform Emergency Amendment Act of 2018

BACKGROUND

For the first time in decades, the District of Columbia has established new procedures for both residential and commercial evictions. These changes represent a dramatic shift which will impact both landlords and tenants alike.

In October 2017, the eviction of a tax preparation business left boxes containing thousands of pages of documents containing personal identifying information (e.g., social security numbers, birthdays, and tax information) on the street. The ensuing public outcry, and scrutiny of the eviction process, was enough to cause the United States Marshals Service (“USMS”) to reconsider its eviction practices here in the District of Columbia. The result, announced in March 2018, was the USMS decision to no longer remove property to the street and, instead, institute a “lock change” eviction. In other words, the USMS would simply allow a landlord to change the locks at the eviction site.

Over the past several months, I had the opportunity to be part of the landlord and tenant working group who, together with City Council staff, crafted the *Eviction Procedure Reform Emergency Amendment Act of 2018 (No. B22-0895)* (the “Eviction Law”).

On July 10th, the City Council overwhelmingly enacted the *Eviction Law*. We expect the legislation to be signed by Mayor Bowser by July 25th, to avoid any gaps created by the USMS’s new

Memorandum

Re: Eviction Procedure Reform Emergency Amendment Act of 2018

Page 2

eviction process.¹ Of critical importance, the ***Eviction Law*** expressly repealed the previously enacted June 26th Eviction Reform Emergency Amendment Act of 2018 (No. B22-864), which required a landlord, at its sole cost and expense, to pack, transport and store an evicted tenant's personal property for a period of 30 days at a storage facility within a 10-mile radius of the rental unit.

The ***Eviction Law*** addresses eviction procedures for: (i) residential properties subject to the Rental Housing Act of 1985 (D.C. Code §42-3501.01 *et seq.*, as amended); and (ii) "other evictions," which includes commercial properties and residential properties with a landlord and tenant relationship which are not subject to the Rental Housing Act of 1985. These procedures include notice to a tenant about the eviction, sources of technical information available to the tenant, what happens to the tenant's personal property after the eviction, and the impact of weather on the eviction schedule.

Under the USMS' new operating procedures, applicable to all Writs of Restitution filed on or after July 9, 2018, evictions will be scheduled for a specific date (except Saturdays, Sundays, legal holidays or judicial training days) and made known to the landlord and the tenant. The USMS will first contact the landlord to schedule the eviction date, after which the USMS will send to the tenant, by first class mail, an eviction notice stating the scheduled date of eviction and other relevant information.

On the day of the eviction, the USMS will no longer require a landlord to remove the tenant's personal property from the rental unit. Instead, the USMS will supervise the changing of the locks by the landlord (after conducting the same visual security sweep of the rental unit). None of the evicted tenant's personal property will be removed from the rental unit. Once the locks are changed, the eviction will be complete (the landlord will receive a document from the USMS verifying this fact), any right of redemption is terminated, and legal possession of the rental unit is legally returned to the landlord.

These significant changes to the USMS's eviction practices raised critical questions for both landlords and tenants - what is the status of the evicted tenant's personal property after the locks are changed; is the evicted tenant's personal property abandoned and to be removed from the rental unit by the landlord; does the evicted tenant have a right to return to the rental unit to remove his or her personal property? These, and a myriad of other questions created by the sudden and seismic shift in how evictions would be carried out in the District, required an immediate legislative solution.

The balance of this memorandum summarizes the procedures applicable to the two categories of evictions.

¹ A companion piece of legislation, the ***Eviction Reform Temporary Amendment Act of 2018*** (B22-896), is currently pending a second vote and final vote which will not occur until after the summer recess.

Memorandum

Re: Eviction Procedure Reform Emergency Amendment Act of 2018

Page 3

RESIDENTIAL EVICTIONS SUBJECT TO THE RENTAL HOUSING ACT

The overwhelming majority of evictions in the District involve residential units subject to the Rental Housing Act. Note that the *Eviction Law* does not apply to evictions carried out by the D.C. Housing Authority, and there is an open question as to how the D.C. Housing Authority will handle the new procedures rolled out by the USMS.

Under the *Eviction Law*, the climate and precipitation controls are slightly modified to reflect the fact that a tenant's personal property will no longer be placed outside the rental unit. Evictions will occur on the scheduled date unless: (i) the National Weather Service predicts at 8:00 a.m. that the temperature at the Reagan National Airport weather station will fall below 32 degrees Fahrenheit (0 degrees Centigrade/Celsius); or (ii) when precipitation is falling at the rental unit at the time the USMS arrives to start the eviction.

As indicated above, the USMS will contact the landlord to schedule the eviction date. It is critical that a landlord not agree to an eviction date that is less than 15 days from that communication as the *Eviction Law* requires landlords to provide tenants with notice "not fewer than 14 days before the date of eviction."

This pre-eviction notice must contain all of the following information:

1. the name of tenant and address of the rental unit;
2. the USMS scheduled date of eviction;
3. a statement that the eviction will occur on the scheduled date unless the tenant vacates the rental unit and returns control to the landlord prior to the eviction date;
4. a prominent statement that any personal property left in the rental unit as of the time of eviction will be deemed abandoned seven (7) days after the eviction occurs (excluding Sundays and Federal holidays);
5. the phone numbers for the USMS, the Office of Chief Tenant Advocate and the Landlord & Tenant Court; and
6. a statement that the notice is the final notice from the landlord before the eviction occurs, even if the eviction date is postponed by the USMS or the Court.

This notice is given three (3) ways: (i) by telephone, email or text message; (ii) by first-class mail addressed to the tenant at the rental unit; and (iii) by "conspicuous posting" at the rental unit.

Memorandum

Re: Eviction Procedure Reform Emergency Amendment Act of 2018

Page 4

At the time of eviction, any tenant right of redemption is extinguished and the landlord, in the presence of the USMS, is to change the locks and may otherwise secure the rental unit. The USMS will provide the landlord with a written document evidencing conclusion of the eviction and return of legal possession of the rental unit to the landlord. This document is critical, as a landlord may use the same in the event the evicted tenant attempts to regain possession of the rental unit or otherwise contests the landlord's right to possession.

In addition, at the time of eviction, the landlord also must issue a post-eviction notice to the tenant by first-class mail to the address of an emergency contact of the tenant, to the extent provided, and "conspicuously post[ed]" at the rental unit, containing all of the following information:

- (i) the name and telephone number of at least one landlord representative who may give the evicted tenant access to the rental unit to remove personal property;
- (ii) the phone number of the Office of Chief Tenant Advocate;
- (iii) the phone number of the USMS;
- (iv) the phone number of the Landlord & Tenant Court; and
- (v) as an attachment or as part of the post-eviction notice, the text of the new Section 501a. of the Rental Housing Act.

Any personal property left in the rental unit at the time of eviction is not to be removed by the landlord and is to remain in the rental unit for seven (7) days thereafter (excluding from this count intervening Sundays and Federal holidays). During this 7-day period, the evicted tenant has the right to access the rental unit for no fewer than eight (8) continuous hours, at times agreed to by the landlord and tenant. The landlord is not permitted to condition access to the rental unit on the payment of back rent or any "service" or "access" fees. Landlords should be aware that denial of access to the evicted tenant during the 7-day "safe harbor" period empowers the evicted tenant to seek injunctive relief ordering access to the rental unit at Court-determined dates and times and/or an extension of the period of time the evicted tenant has to remove personal property from the rental unit.

The landlord is required to "maintain and exercise reasonable care in the storage" of the evicted tenant's personal property while it remains in the rental unit, so we recommend the landlord to ensure that all entrance doors to the rental unit are securely locked, all windows in the rental unit are closed and locked, all appliances and plumbing fixtures in the rental unit are turned off, and there are no obvious conditions which may result in loss or damage to the evicted tenant's personal property. We further recommend that photographs of the post-eviction condition of the rental unit be taken, retained in landlord's records, with copies sent to the evicted tenant.

Memorandum

Re: Eviction Procedure Reform Emergency Amendment Act of 2018

Page 5

After the 7-day safe harbor period, any personal property remaining in the rental unit is statutorily deemed abandoned and the landlord is free to remove and dispose of it by any commercially reasonable manner and not otherwise prohibited by law,² including transportation to a licensed solid waste facility, donation to charity and/or UCC sale. In the event the landlord elects to sell any of the abandoned property, the proceeds are to be paid to the account of the evicted tenant and applied against any amounts due to the landlord, including the costs of the sale.³

Finally, and critical to landlords, a landlord and its agents are absolutely immune from civil liability for loss or damage to the evicted tenant's abandoned property and/or disposal of the abandoned property. Therefore, while a landlord has a duty to maintain and exercise reasonable care to store the evicted tenant's property in the rental unit during the safe harbor period, after it expires (at which point the evicted tenant's personal property is deemed abandoned), a landlord may dispose of the same without liability to the evicted tenant or someone claiming any rights by or through the evicted tenant.

“OTHER EVICTIONS” – COMMERCIAL EVICTIONS AND RESIDENTIAL EVICTIONS NOT SUBJECT TO THE RENTAL HOUSING ACT OF 1985

The *Eviction Law* describes the second category as “other evictions” and makes clear that this category covers properties with a landlord and tenant relationship which are not subject to the Rental Housing Act, and this, by definition, includes commercial evictions. The “other eviction” process is procedurally much simpler.

First, while the tenant will still receive at least 14 days' written notice from the USMS of the eviction date, a landlord is not required to provide an independent notice of the eviction date to the tenant.

Second, at the time of eviction, the USMS will conduct its visual security sweep, the landlord will change the locks and retake legal possession of the rental unit (at which time the right of redemption is extinguished) and receive a document from the USMS verifying the conclusion of the eviction.

Third, as of the changing of the locks, there is no safe harbor period, and any personal property remaining “in or about” the rental unit is “abandoned property,” and the landlord may dispose of it in any lawful manner, including transportation to a licensed solid waste facility, donation to charity,

² A landlord is expressly prohibited from placing any of the abandoned property in any public space, except for purposes of transporting the same for disposal.

³ We anticipate that this issue will be revisited in the discussions surrounding the permanent legislation, and this concept may change or be eliminated altogether.

Memorandum

Re: Eviction Procedure Reform Emergency Amendment Act of 2018

Page 6

sale,⁴ and/or retention of the same as the landlord's personal property. A landlord is expressly prohibited from placing any of the abandoned property in any public space, except for purposes of transporting the same for disposal.

Finally, a landlord and its agents are absolutely immune from civil liability for loss or damage to the evicted tenant's personal property and/or disposal of the abandoned property.

CONCLUSION

You can download a copy of the new legislation here: [*Eviction Procedure Reform Emergency Amendment Act of 2018*](#). While the *Eviction Law* awaits Mayoral approval (and, in the case of the companion temporary legislation, Congressional review), landlords should familiarize themselves with the requirements, create compliant notices, and implement policies and procedures to successfully navigate this new world.

Should you have any questions regarding the *Eviction Law* and/or require assistance in preparing the various notices and otherwise assuring your compliance with the complex new procedures, please do not hesitate to contact Joshua M. Greenberg, Esq., directly either by telephone at (202) 452-1400 x5417 or via email at JMG@GDLLAW.COM.

Attachment: Eviction Procedure Reform Emergency Amendment Act of 2018

JMG:jmg

⁴ The *Eviction Law* provides that any proceeds from the sale of such abandoned property are to be first applied against the costs of sale, then paid to the account of the evicted tenant and, should there be excess proceeds, the same are to be treated as a security deposit and returned to the tenant.