

Richard W. Luchs
RWL@gdllaw.com
Vincent Mark J. Policy
VMP@gdllaw.com
Joshua M Greenberg
JMG@gdllaw.com

MEMORANDUM

TO: Clients and Friends of the Firm

FROM: Richard W. Luchs, Esq.
Vincent M. Policy, Esq.
Joshua M. Greenberg, Esq.

DATE: June 1, 2020

SUBJECT: Summary of District of Columbia Coronavirus Support Emergency Amendment Act of 2020, D.C. Bill 23-0757, as it Applies to Residential and Commercial Property in the District of Columbia

On Tuesday, May 19, 2020, the District of Columbia City Council unanimously approved the Coronavirus Support Emergency Amendment Act of 2020, D.C. Bill 23-0757 (the “Act”). The Act is the fifth (5th) piece of emergency legislation enacted by the City Council in response to the Mayor’s declaration of a public health emergency on March 11, 2020 due to the COVID-19 pandemic and consolidates and amends the prior emergency legislation. Please note that the Mayor must sign the Act before it will become effective and has ten (10) business days from May 26, 2020 (the date the Bill was transmitted to the Mayor) to do so. It is anticipated that the Mayor will sign the Act prior to the June 9, 2020 deadline.

This Memorandum summarizes the provisions of the Act that apply to residential and commercial real property in the District of Columbia, some of which are unchanged from the four prior emergency acts. Please keep in mind that each situation differs and owners or property managers should obtain independent legal advice in each instance as to what may be required.

The Act contains numerous other provisions on subjects beyond the scope of this Memorandum. As always, the attorneys of Greenstein DeLorme & Luchs, P.C., are available to discuss your specific legal issues. We wish you all the best for a prompt recovery from these extraordinary times.

1. RENTAL TENANT PAYMENT PLANS

Section 402 of the Act requires a “Provider” (owner or property manager of residential property or commercial retail property) to develop and offer to “Eligible Tenants” a payment plan program for rent accruing during the “program period” and prior to the cessation of tenancy. The program period is the period of time from the Mayor’s declaration of a public health emergency (in this case, commencing as of March 11, 2020) and for one (1) year after the expiration or rescission of the public health emergency (please note that, given the continuing declaration of public health emergency, it is impossible to ascertain the program period).

The payment plan is only available to Eligible Tenants – that is a tenant of residential or commercial retail property that: (i) has notified its landlord of an inability to pay all or a portion of the rent due as a result of the public health emergency; and (ii) for a commercial retail tenant, is not a franchisee unless the franchise is owned by a District resident (this will require specific legal analysis in context). *Please note that the Act removes the restriction from a prior emergency act that the definition of Eligible Tenant is a tenant not currently receiving a rent reduction pursuant to the COVID-19 Response Supplemental Emergency Amendment Act of 2020.*

The payment plan must:

- (1) Permit an Eligible Tenant to enter into a payment plan for gross rent that comes due during the program period and prior to cessation of the tenancy with a minimum term length of one (1) year unless a shorter length is requested by the tenant;
- (2) Make payments in equal monthly installments for the duration of the payment plan unless the Eligible Tenant requests a different schedule;
- (3) Waive any fee, interest or penalty arising out of entering into the payment plan;
- (4) Not report to a credit bureau as delinquent the rent subject to the payment plan;
- (5) Notify all tenants of the availability, terms and application process for the payment plan;
- (6) Permit an Eligible Tenant to prepay any amounts stated in the payment plan;
- (7) Not require an Eligible Tenant to provide a lump sum payment; and
- (8) State the agreement to the terms of the payment plan in a writing signed by both Provider and Eligible Tenant.

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Please note that the Act removes the language included in a prior emergency act permitting use of any security deposit, last month's prepaid rent, or other amount held by the Provider to satisfy amounts owed under a payment plan with tenant's written agreement. Notwithstanding removal of this language, if a lease permits application of the security deposit to unpaid rent (as is the case with many commercial leases), the statute does not preclude application of the security deposit in such manner.

A Provider must establish an application process for the payment plan, including requiring submission of supporting documentation, and applications must be accepted both online and by telephone. Applications from Eligible Tenants shall be approved where:

- (1) The Eligible Tenant demonstrates financial hardship resulting directly or indirectly from the public health emergency, regardless of an existing delinquency or future inability to make rental payments established prior to the start of the public health emergency; and
- (2) The Eligible Tenant agrees in writing to make payments in accordance with the terms of the payment plan.

The Act requires that a Provider retain the application (and any supporting documentation) for a period of at least three (3) years. If requested by the foregoing, a provider must provide a copies of an application for residential payment plans to the Rent Administrator and the Office of Tenant Advocate and copies of an application for commercial retail payment plans to the Department of Consumer and Regulatory Affairs.

If an application is denied by a Provider, a residential tenant may file a complaint with the Rent Administrator (to be adjudicated by the Office of Administrative Hearings) and a commercial retail tenant with DCRA.

The Act is silent as to what remedies are available if an Eligible Tenant fails to comply with the terms of the payment plan. Accordingly, any payment plan should specifically state the desired remedies in the event of a default as to payments under the payment plan.

2. CLEANING REQUIREMENTS

Section 403 of the Act mandates that during a public health emergency, the owner or representative of the owner of a housing accommodation is required to clean common areas on a regular basis, including surfaces that are regularly touched, such as doors, railings, seating, and the exterior of mailboxes.

3. EVICTION PROHIBITION

Section 404 of the Act prohibits the filing of any action for possession (whether for monetary or non-monetary breach) during a public health emergency and for 60 days thereafter. Additionally, no evictions may be carried out during any declared public health emergency.

4. RESIDENTIAL TENANT PROTECTIONS

Section 405 of the Act contains a series of protections applicable only to residential tenants.

- (1) All time periods for tenants and tenant organizations to exercise rights under the Rental Housing Conversion and Sale Act are tolled during the public health emergency and for 30 days after.
- (2) Any rent increase under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts is null and void if (i) the effective date for the rent increase occurs during a public health emergency or 30 days after; (ii) the notice of rent increase was issued during the public health emergency; or (iii) the notice of rent increase was issued prior to, but takes effect after, the public health emergency.
- (3) If a housing provider temporarily stops providing an amenity for which a tenant pays a amenity fee in addition to the monthly rent charged, then the housing provider must refund to the tenant a *pro rata* portion of such amenity fee paid during the public health emergency. If a temporarily interrupted service or facility is included in the monthly rent charged, then no rent reduction or refund is required.
- (4) No late fees may be assessed for any rent due during any month in which a public health emergency has been declared.
- (5) At the tenant's election, a tenant's notice to vacate (either at the expiration of an initial lease term or any subsequent renewal term, extension or month to month tenancy) delivered prior to the public health emergency, is tolled such that the tenant is provided the same number of days to vacate at the end of the public health emergency that existed as of the declaration of the public health emergency.

5. RENT INCREASE PROHIBITION

Section 406 of the Act expands the prohibition on rent increases for residential properties to include any increases to which no notice of rent increase is issued (e.g., vacancy adjustments) for the duration of the public health emergency plus 30 days thereafter.

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Additionally, rent increase for commercial retail properties or commercial properties less than 6,500 square feet in size are prohibited for the duration of the public health emergency plus 30 days thereafter.

6. FORECLOSURE MORATORIUM

Section 408 of the Act provides that, for the duration of the public health emergency plus 60 days thereafter: (i) residential foreclosures may not be initiated or conducted; and (ii) no sale to enforce a lien for an unpaid assessment against a condominium unit may occur. There is an exception for situations where the record owner of subject property, or a person with an interest in the subject property as an heir or beneficiary has not resided therein for the state period of time (application of this exception will require specific legal analysis in context).