

Hanover Miscellaneous Professional Advantage

Impact of COVID-19 on Property Managers

Federal and state moratoriums on evictions due to COVID-19 are inconsistent in form, application and duration. Stay at home orders have increased the need for housing during an epidemic, as public health concerns are priority. Property managers should be aware of the challenges this situation creates; both with existing and potential tenants. Managers would be well-served to review state and local government resources with regularity to seek guidance on permissible actions consistent with government management of this crisis.

Government response

The nation continues to grapple with its response to Coronavirus (“COVID-19”). A key component of government action has been to ensure citizens have someplace to call home. Thus, some locales have declared a temporary suspension of eviction proceedings. For public safety reasons (as well as humanitarian ones), the ability to have a place to stay has effectively been deemed “critical” to stopping the spread. The need for reliable housing became more acute as many states followed up with “stay at home” orders for most of its residents.

Although states do not want their citizens being made homeless during a worldwide health crisis, the identification of non-essential services and social distancing has created significant hurdles to many individuals’ ability to pay bills (including rent). This combination (impacts of stay at home decrees and distancing, and eviction moratoriums) means that property managers must be sensitive to acts which could place them at odds with local law. In light of this current dynamic, we encourage property managers to consider the following items.

Know your property’s local rule

Eviction moratoriums are not consistent in application nor easy to identify when, where and for how long they apply. The federal response via the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) only covers certain properties that have links to federal legislation (such as the Violence Against Women Act, or federally-backed mortgage loans). The state response is more challenging and can be state- or county-specific. Some states have initiated the moratorium through emergency executive order by the governor without condition. Others have

initiated requiring some link to COVID-19-related exposure (health or financial). Still others have not suspended evictions at all.

At the local level, some counties and cities have suspended evictions through executive action (mayor’s office or agency-level); while others have suspended evictions through judicial action (courts). Each format has different triggers, start dates and procedural requirements. Further complicating matters is that these actions may overlap (depending on the type of property or state prioritization), and the duration of each separate moratorium is not uniform. There could be situations where one action expires, yet an eviction may still be temporarily prohibited due to the existence of a separate controlling action.

Confirm before you act

The upshot is that it is *imperative* that a property manager be clear on what rules (if any) are in place that would limit the ability to either: a) initiate an eviction proceeding under any circumstance; or b) initiate an eviction proceeding under a limited circumstance. State, county, and city government websites are an ideal place to start, as most governments have created COVID-19-dedicated pages describing the official response. These rules change frequently, so a good practice is to check in routinely as the national and local situations evolve. It is not out of the realm of possibility that a moratorium set to expire may in fact be extended due to the severity and unpredictability of COVID-19 cases.

Watch out for discrimination

Existing tenants are not the only ones impacted; potential ones may be as well. Can you ask a potential tenant if they have contracted COVID-19? Can you ask a potential tenant

if they have lost employment or income as a result of COVID-19? What if a potential tenant requests an application while wearing a medical mask – can you refuse to provide an application or decline them (assuming all other rental criteria are met satisfactorily)? How best to weigh the need to limit the spread versus the public need for housing?

None of these questions have simple answers. Property managers should consider that asking certain questions may pose risk if those inquiries rise to the level of a discriminatory housing practice. Individuals with an infectious disease are not a protected class under the Federal Housing Act. However, at the state level, things become cloudy. Depending on the state (and sometimes the county), inclusion in a protected class can be more expansive than under federal rules. In an emergency, states may desire to expand protections to its citizens reflecting the urgency of the situation.

The decision to decline an application currently may have deeper repercussions than during normal times – especially given the states desire to ensure that the spread of COVID-19 can be limited by prudent action. A declination in conjunction with questions that limit accessibility may be problematic. Again, you are encouraged to reach out to local authority (Housing Authority, Landlord/Tenant Agency, Civil Rights Commission) and inquire as to what is permissible given the current environment.

Take the extra step

Property managers should work closely with property owners to understand and comply with all mandatory guidelines for controlling transmission of the virus. You should also consider implementing non-mandatory guidelines promulgated by the local, state, and federal governments, including, where possible and practicable:

- Install hand sanitizer (at least 60% alcohol per CDC) stations in high-traffic areas (entrances, elevators, stairwells, bathrooms) and clean hard surfaces with a suitable virucidal disinfectant and increase standard janitorial services provided to tenants and common areas;
- Regularly and publicly communicate with tenants and guests regarding the property's policies and measures taken to comply with federal, state, and local rules;

- Abide by all CDC recommendations and reinforce proper hygiene with residential and commercial tenants and their employees and visitors;
- Review all orders and rules affecting a property (including “social distancing” and “shelter-in-place”) and assist in implementation;
- For commercial tenants, find out who is considered “essential” and understand their specific needs;
- Help commercial tenants that remain open to comply with rules and laws regarding “social distancing” and maximum occupancy (e.g., storing customer seating for restaurants, displaying signage on properties, and placing tape 6 feet apart in checkout lines).

Conclusion

Reliable housing versus stopping the spread is a significant challenge. In areas with limited housing supply the challenge is greater. Adding the economic impact of “stay at home” orders only complicates things further. Be aware of the potential pitfalls and make sure you are reaching out to local governments for guidance on what can and cannot be done during this time. Because the situation has not stabilized, make sure you are reaching out frequently to make sure your actions continue to be consistent with changing requirements.



Contact information

If you have any questions about the content of this article, please contact J Michael Reese, Director of Risk Management (MPL).

Phone: 630-760-3026

Email: mreese@hanover.com



The Hanover Insurance Company
440 Lincoln Street, Worcester, MA 01653

hanover.com

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