

New Requirements for Notice to Quit for Non-payment of Rent and Changes to the Summary Process Rules and Procedures

On December 31, 2020, Governor Baker signed an emergency law, Chapter 257 of the Acts of 2020, which makes significant and immediate changes to summary process eviction rules and procedures and notice to quit requirements that will be in effect until the end of the state of emergency declared on March 10, 2020 in response to the COVID-19 pandemic. The Executive Office of Housing and Economic Development (the "EOHED") has since promulgated regulations at 400 CMR 6.00 entitled, "Notices to Quit During the COVID-19 State of Emergency." These state actions, coupled with action on the federal level, including the recent extension of the eviction moratorium issued by the Centers for Disease Control and Prevention (the "CDC"), create new procedures that public housing authorities and other landlords are required to follow in certain residential eviction proceedings.

New Mandates for Notices to Quit

Attestation Forms. Any notice to quit for nonpayment of rent given to a residential tenant must now be accompanied by a form that shall include:

- (i) an attestation as to whether the tenant provided a declaration form pursuant to the federal CDC Order entitled, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19";
- (ii) an attestation as to whether the dwelling unit is a "covered dwelling" under section 4024(a)(1) of the federal Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), and whether the notice to quit is in compliance with section 4024(c) of the CARES Act;
- (iii) documentation of any agreements between the tenant and landlord for the tenant to repay the landlord for non-payment of rent; and
- (iv) information regarding: (A) rental assistance programs including, but not limited to, the residential assistance for families in transition program and the emergency rental and mortgage assistance program; (B) applicable trial court rules, standing orders or emergency administrative orders pertaining to actions for summary process; and (C) any relevant federal or state legal restrictions on residential evictions.

The EOHED has now developed the requisite attestation form, a copy of which is available at <https://www.mass.gov/info-details/notice-to-quit-attestation-form-and-submission-information> and attached hereto for your convenience.

**** CDC Order.** The federal eviction moratorium established by an Order of the CDC has been extended and is in effect until **March 31, 2021**. Under the CDC Order, a “covered person” cannot be evicted from a residential property during this time. A “covered person” means any tenant lessee, or resident who provides their landlord, the owner of a residential property, or other person with a legal right to pursue an eviction or possessory action, a declaration under penalty of perjury indicating that:

- The individual has used best efforts to obtain all available government assistance for rent for housing;
- The individual either (a) expects to earn no more than \$99,000 in annual income for calendar year 2021 (or no more than \$198,000 if filing a joint tax return), (b) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (c) received an Economic Impact Payment (so-called “stimulus check”) pursuant to Section 2201 of the CARES Act;
- The individual is unable to pay the full rent or make full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit, taking into account other nondiscretionary expenses; and
- Eviction would likely render the individual homeless – or force the individual to move into and live in close quarters in a new congregate or shared living setting – because the individual has no other available housing options.

The CDC declaration form for covered persons can be found at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

The CDC Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligations under a tenancy, lease, or similar contract. In the same vein, neither does it preclude the charging or collecting of fees, penalties or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

**** CARES Act Compliance.** Under the CARES Act, “covered dwellings” are housing units occupied by a tenant with or without a lease in “covered properties.” Covered properties include:

- Properties with federal rental assistance from a voucher or grant program;
- Properties assisted through federally-subsidized housing programs; or
- Properties with “federally backed mortgage loans.”

Section 4024(c) of the CARES Act prohibits a landlord of a covered dwelling unit from requiring a tenant to vacate sooner than thirty (30) days after the landlord provides the tenant with a notice to vacate. Therefore, a notice to quit based on non-payment of rent is now subject to this thirty (30) day notice requirement, notwithstanding G.L. c.186, §§11-12, which only require fourteen (14) days’ notice.

**** Short-Term Emergency Rental Assistance.** “Short-term emergency rental assistance” is defined as temporary financial assistance provided to a residential tenant to prevent an eviction or homelessness under the residential assistance for families in transition program, the emergency rental and mortgage assistance program or any other

program established or modified as a result of the COVID-19 emergency and administered by the Department of Housing and Community Development, a municipality or a nonprofit entity administering such program, using public funds, on behalf of the department, a municipality or a federal agency to cure rent arrearage or provide financial assistance for moving cost assistance, including the payment of a security deposit.

Electronic Filing of Notices to Quit with EOHEd. Landlords are required to electronically send a copy of any notice to quit for nonpayment to a residential tenant to EOHEd with personal identifying information redacted. EOHEd has created a portal at <https://www.mass.gov/forms/massachusetts-notice-to-quit-form-submission> for such purposes.

Summary Process Proceedings

Initiation of Action. Courts having jurisdiction over an action for summary process shall not, in an eviction for nonpayment of rent for a residential dwelling unit, accept for filing a writ, summons or complaint without proof of delivery of the aforementioned attestation form.

Continuances and Stays. Further, during the COVID-19 state of emergency, courts are required to grant a continuance for “a period as the court may deem just and reasonable” if, either at the time the answer is timely filed or on the date the eviction trial is scheduled to commence:

- (i) the tenancy is being terminated solely for non-payment of rent for a residential dwelling unit;
- (ii) the non-payment of rent was due to a financial hardship related to or exacerbated by the COVID-19 emergency; and
- (iii) the defendant demonstrates, to the satisfaction of the court, a pending application for short-term emergency rental assistance.

Notwithstanding a continuance, courts may still consider any meritorious counterclaim brought in a summary process action. In addition, courts must issue a stay of an execution on a judgment for possession if the aforementioned requirements in sections (i) to (iii), inclusive, are met. Courts will not enter a judgment or issue an execution before any application for short-term rental assistance has been approved or denied.

Given the substantial influx of new short-term emergency rental applications due to the pandemic and the upcoming expiration of the CDC eviction moratorium, delays in processing applications are expected to continue, which may, in turn, further hinder pending evictions from proceeding where rental assistance has been sought.

We will continue to keep you updated on additional developments in the face of this continually-evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.