



New HUD guidance focuses on eviction concerns

By Harry J. Kelly

Apparently anticipating a wave of tenant displacement as the 120-day eviction moratorium imposed by the CARES Act expires on July 24, 2020, HUD has issued two new documents—[Notice H 2020-7](#) (the Notice) and a brochure titled “[Promoting Housing Stability During the COVID-19 National Emergency](#)” (the Brochure)—directed to owners and managers of multifamily properties. As the Notice explains (at page 1), “HUD is particularly concerned about the impact of the expiration of the tenant protections provided by the CARES Act, and encourages owners, agents, and contract administrators to work with those residents who have been impacted by the COVID-19 emergency to the extent practicable.”

The Brochure provides information for both housing providers and tenants about the 120-day eviction moratorium on federally assisted/insured properties, and on properties whose mortgages are held or securitized by Fannie Mae and Freddie Mac, as well as the separate eviction moratorium for properties participating in the CARES Act mortgage forbearance programs. It reminds owners about the limits on their right to initiate eviction proceedings and to collect fees and penalties for late payment of rent during the moratoriums. It encourages housing providers to remind families receiving rental assistance that they can request interim recertification, which may result in rent reductions, and to enter into rent repayment agreements with tenants who have fallen behind in rent and cannot repay overdue rent in a lump sum. It also reminds housing providers that there are other measures—tapping residual receipt and reserve for replacement accounts, suspending reserve for replacement account deposits, owner advances and loans and grants from outside sources—that they may turn to during financial difficulties. Finally, the Brochure provides a list of other programs and services—including expanded unemployment assistance, SNAP benefits, and other assistance—that struggling renters may seek to provide relief during the current downturn.

The Notice is directed to HUD officials, contract administrators, and housing providers. While it covers a lot of the same territory as the Brochure, it is more detailed and technical in nature. A large part of the Notice focuses on the eviction moratorium that applies to properties participating in mortgage forbearance, and notifies housing providers that they must include new provisions in any forbearance agreement submitted to HUD, including provisions:

- Requiring that the owner/borrower must allow a tenant to make up missed rental payments “over a reasonable time as determined in the sole discretion of the borrower” and

that the “owner/borrower may not require missed rent payments be repaid in one lump sum at the end of the forbearance period.” Notice at page 4.

- Extending some tenant protections beyond the end of the forbearance period. For example, the owner/borrower may not charge late fees due to late or missed payments “during the borrower’s repayment period following the forbearance and until the borrower has repaid all forborne amounts. *Id.*
- Likewise, requiring that “during the borrower’s repayment period following the forbearance, and until the borrower is current on its loan obligations, the borrower must provide at least 30-days’ notice to vacate to any tenant that is being evicted due solely to non-payment of rent.” *Id.*

Over the coming weeks, as the 120-day eviction moratorium and extended unemployment assistance expire, many tenant families will face the real threat of eviction and homelessness. Unfortunately, while the Notice and Brochure demonstrate HUD’s concern for these families’ future, there is little assistance available to previously unassisted families. Housing providers will need to consider whether, in light of the extreme financial difficulties faced by many renters, trying to evict and replace distressed families now is a wise policy. HUD is imploring housing providers to think twice before resorting to eviction and to consider other options—such as rent repayment agreements—to keep tenants who have temporarily fallen on hard times in their homes.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Harry J. Kelly, 202-585-8712, hkelly@nixonpeabody.com