Holland & Hart

Christopher Gunlikson

Partner
303.473.2729
Boulder, Denver
cagunlikson@hollandhart.com

Jeremy Syz

Partner
303.473.2708
Boulder
jpsyz@hollandhart.com

Steve Clayton

Of Counsel
801.799.5746
Salt Lake City
SAClayton@hollandhart.com

COVID-19: Multifamily

Insight — May 4, 2020

How will an eviction moratorium affect me?

Many states, municipalities or courts have enacted temporary measures stalling the processing of eviction of residential tenants. You should note that an eviction moratorium does not imply debt forgiveness, only that the process of removing a renter from their dwelling by sheriff or order of law has been paused.

What loan forbearance and foreclosure protections might be available to multifamily borrowers?

Sections 4022 through 4024 of the CARES Act introduced lender forbearance and foreclosure moratoriums for small (1-4 unit) and large (5+ units) residential projects with mortgages backed by the federal government. Small residential projects, upon request, may receive a 180-day forbearance with no late fees or penalties, and the option to extend such forbearance for an additional 180 days. Large projects, upon request, will receive a 30-day forbearance, with two 30-day options to extend. Except to the extent abandoned or vacant, small project owners/borrowers are protected by a 60-day foreclosure moratorium, beginning March 18, 2020. Small and large project owners are prohibited from initiating eviction actions for non-payment of rent, or to charge fees or penalties relating to such non-payment, for a 120-day period, beginning March 27, 2020 and ending July 25, 2020. Furthermore, large project owner/borrowers who have requested forbearance from their federally backed lender shall not file a notice to vacate against a tenant during the period during which they enjoy forbearance.

What are common area best practice and compliance requirements?

Communities should focus on keeping common areas clean and disinfected, utilizing disinfectant products approved by the EPA. Special attention should be given to maintenance of fitness facilities, including: posting guidance to wash hands before and after workout sessions; providing spray bottles to clean equipment after use; reminding residents to not use the gym if they have a fever, nausea, runny nose, chest congestion or chills. In addition, communities should be prepared to limit or prohibit use of common area amenities in accordance with federal and municipal health guidelines and requirements.

What are my responsibilities in addressing a tenant infected by COVID-19?

Tenants themselves are currently responsible to self-quarantine if suffering from COVID-19. If a property manager becomes aware of a tenant with a diagnosed COVID 19 case they are responsible, based on a common law

negligence standard, to mitigate the threat posed by such a case. Mitigation may include, disclosing the confirmed case to the community (without disclosing identity or unit location), ramping up cleaning efforts and closing affected areas. Suspected violations of quarantine requirements should be handled sensitively, with advice of legal counsel and potentially local health authorities. Property management personnel should be judicious in treating and servicing affected tenants, which may include: suspending routine maintenance; following the guidance of local health agencies concerning package deliveries, including leaving packages on doorsteps; and suspending outside services to units affected by COVID-19 (without divulging rational or tenant names) See additional recommendations from the National Multifamily Housing Council.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.