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HAND DOMESTIC VIOLENCE COURTESY MEMORANDUM

From: Magruder, Cook & Koutsouftikis; Andrew Palanzi, Esq.

Date: November 6, 2015

Re: When a Tenant/Resident is the Victim of Domestic Violence

This memorandum is to provide you with relevant information pertaining to the rights and responsibilities of both landlords and tenants when a tenant or legal occupant is the victim of domestic violence or family abuse. The materials provided herein are for informational purposes only and not for the purpose of providing legal advice to the participant or any other individual. Use of any of the information contained herein does not create an attorney-client relationship between Magruder & Associates, P.C. d/b/a Magruder Cook & Koutsouftikis and the participant or any other individual. Any questions regarding this memorandum should be directed to Andrew Palanzi, Esq. at apalanzi@magruderpc.com.

Domestic violence and family abuse is a crime, may often constitute material noncompliance of the lease when committed by a tenant, co-tenant, or guest in a dwelling unit or on the premises, and may justify the landlord in having the tenant evicted from the premises through the judicial process. The District of Columbia, Maryland, and Virginia have all adopted statutes giving a tenant who is the victim of domestic violence and family abuse certain rights and defenses from being evicted for noncompliance due to a domestic violence or family abuse incident.

This memorandum will provide you with the nuanced differences in the domestic violence laws of the District of Columbia, Maryland, and Virginia as they pertain to landlords, and will inform you of any requirements a landlord may have when these unfortunate situations arise. If you have any questions after reading this memorandum or if any incident of domestic violence or family abuse occurs on your property, please contact our office for further assistance.

DISTRICT OF COLUMBIA

The District of Columbia provides that if the court determines that an intrafamily offense,¹ or actions relating to an intrafamily offense, is the basis for a notice to vacate

¹ Intrafamily Offense means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person: 1) with whom the offender shares or has shared a mutual

sent by a landlord to a tenant to initiate the tenant's eviction from a dwelling unit, then the tenant may raise as a defense that the tenant is a victim, or is the parent or guardian of a minor victim of the intrafamily offense at question. If, as a result of the intrafamily offense or the actions relating to the intrafamily offense that is the basis for the notice to vacate, the tenant has received a temporary or civil protection order ordering the perpetrator to vacate the home, the court shall not enter a judgment for possession. Additionally, if, as a result of the intrafamily offense or the actions relating to the intrafamily offense that is the basis for the notice to vacate, the tenant provides to the court a copy of a police report written within the preceding sixty (60) days or has filed for but has not received a temporary or civil protection order ordering the perpetrator to vacate the home, the court shall have the discretion not to enter a judgment for possession pursuant to the notice to vacate.²

When a tenant is the victim of an intrafamily offense or the parent or guardian of a minor child who is a victim of intrafamily abuse, the tenant has the right to terminate the lease at anytime within ninety (90) days of the reported act, event, or circumstance of intrafamily abuse. To exercise this right of termination, the tenant who is a victim of intrafamily abuse must provide the landlord with a written notice of lease termination along with either a copy of a protective order issued by the court in response to a petition filed by or on behalf of the tenant or documentation signed by a qualified third party showing that the tenant has reported the intrafamily offense to the third party acting in his or her official capacity. The tenant will then be released from and will only remain liable under the lease for the earlier of fourteen (14) days after the tenant gives the landlord notice and proper documentation or upon the commencement of a new tenancy for the dwelling unit, whichever comes first.³

A tenant who is a victim of an intrafamily offense may make a written request that the landlord change all the exterior door locks of the dwelling unit. If the perpetrator is a tenant or legal occupant in the same dwelling unit then the tenant making the request must provide the landlord with a copy of a protective order ordering the perpetrator to stay away from, or avoid, the tenant, any household member, or the dwelling unit. If the perpetrator is not a current resident in the same dwelling unit as the tenant, the tenant does not need to provide any documentation or protective order to the landlord when requesting the landlord change the locks. Once the written request is made, the landlord has five (5) business days to change all the locks to the exterior doors of the dwelling unit.⁴

residence; 2) to whom the offender is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with; and 3) any person who the offender is related by blood, adoption, legal custody, or with whom the offender has a child in common. D.C. Code § 16-1001 (2012).

² D.C. Code § 42-3505.01 (c-1) (2012).

³ D.C. Code § 42-3505.07 (2012).

⁴ D.C. Code § 42-3505.08 (a) (2012).

Additionally, the landlord is responsible for the upfront costs of changing the locks, but the tenant who makes the request must reimburse the landlord for the costs of changing the locks within forty-five (45) days after the landlord provides the tenant with an invoice for the costs. The costs of changing the locks must not exceed the normal fee imposed on any other tenant for changing the locks under any other circumstances. Absent a court order stating otherwise, once the locks are changed the landlord shall not provide the perpetrator with keys to the unit or permit them to access the dwelling unit or the premises for any reason.⁵ Furthermore, the law does not relieve any perpetrators of any obligations or liabilities they may have under a lease agreement despite being effectively barred from possessing the dwelling unit or accessing the premises.⁶

MARYLAND

In Maryland, if the landlord initiates an eviction proceeding against a victim of domestic violence⁷ or sexual assault⁸ in which the basis for the alleged breach of the lease is an act or acts of domestic violence or sexual assault, then a tenant who is a victim may raise this as a defense. Under Maryland law, a tenant is deemed to have raised a rebuttable presumption that the alleged breach of the lease does not warrant an eviction if the tenant provides to the court either a copy of a peace order issued for the benefit of the tenant or a copy of a protective order issued for the benefit of the tenant. If the tenant does not provide this evidence, then it is in the court's discretion to enter a judgment in favor of a tenant who raises domestic violence or sexual assault as a defense in a breach of lease complaint.⁹

In Maryland, when a tenant is the victim of either domestic violence or sexual assault, the tenant also has the right to terminate the lease. In order for a tenant to exercise this right a tenant must provide the landlord written notice of tenant's intent to vacate the dwelling unit within thirty (30) days and include a copy of the protective order or peace order issued by the court. Once the notice is served on the landlord, the tenant shall have thirty (30) days to vacate the leased premises. The tenant will remain responsible for rent due under the lease only for thirty (30) days from the date the notice is served. If the tenant remains on the premises after the thirty (30) days has expired,

⁵ D.C. Code § 42-3505.08 (b)-(c) (2012).

⁶ D.C. Code § 42-3505.08 (e) (2012).

⁷ Domestic violence is defined as any act that causes serious bodily harm, places a person in fear of imminent serious bodily harm, assault, false imprisonment, or stalking that is committed against a perpetrator's current or former spouse, cohabitant, relative by blood, marriage, or adoption, a vulnerable adult, or an individual who has a child in common with the perpetrator. Md. Family Law Code Ann. § 4-501 (2012).

⁸ Sexual assault is defined as any rape or sexual offense or attempted rape or sexual offense in any degree committed against a perpetrator's current or former spouse, cohabitant, relative by blood, marriage, or adoption, a vulnerable adult, or an individual who has a child in common with the perpetrator. Md. Criminal Law Code Ann. § 3-303-08 (2012).

⁹ Md. Real Property Code Ann. § 8-5A-05 (2012).

then the landlord is entitled to all legal remedies against the tenant that he would otherwise have against a holdover tenant or the landlord may deem the tenant's notice of intent to vacate to be rescinded and the terms of the original lease to be in full force and effect.¹⁰

The termination of the future liability under a residential lease for a tenant who is a victim of domestic violence or sexual abuse does not terminate or in any other way impact the future liability of a tenant who is the perpetrator of an act that results in either a protective order or a peace order issued against them by a court.¹¹

Additionally, a tenant who is a victim of domestic violence or sexual assault may provide a landlord with a written request to change the locks of the leased premises if the protective order or peace order issued for the benefit of the tenant or legal occupant requires the perpetrator of the offense to refrain from entering or to vacate the residence of the tenant or legal occupant. The written request must include a copy of the protective order or peace order that is entered for the benefit of the tenant or legal occupant. The landlord shall have until the close of the next business day after receiving the notice to change the locks on the premises. If the landlord fails to change the locks by the next business day after receiving the notice, the tenant may have the locks changed by a certified locksmith without permission from the landlord and then must give the landlord a copy of the key to the new lock. If the landlord changes the lock, the landlord must provide the tenant with new keys at a mutual time not to exceed forty-eight (48) hours after the new lock is installed and the landlord can charge the tenant the reasonable cost of changing the lock, which must be paid by tenant within forty-five (45) days.¹²

VIRGINIA

A tenant who is a victim of family abuse¹³ may be insulated from eviction (1) if the tenant notifies the landlord of the abuse and the landlord then bars the perpetrator from the dwelling unit,¹⁴ or (2) if the tenant obtains a protective order against the perpetrator. **In Virginia, the lease shall not terminate due solely to an act of family abuse against the tenant.** To qualify for the aforementioned protection a tenant who is a victim of domestic violence must:

¹⁰ Md. Real Property Code Ann. § 8-5A-02 (2012).

¹¹ *Id.*

¹² Md. Real Property Code Ann. § 8-5A-06 (2012).

¹³ Family abuse is defined in Virginia as any "act of violence, force, or threat that results in bodily injury or places on in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member." Va. Code Ann. § 16.1-228 (2012).

¹⁴ A landlord may bar a guest or invitee of a tenant from accessing the dwelling unit or premises in Virginia by providing written notice served personally upon the guest or invitee for conduct on the landlord's property which violate the terms of the rental agreement or the law. The landlord must also serve a copy of the notice to the tenant. The notice should describe the conduct for which the guest or invitee has been barred. Va. Code Ann. § 55-248.31:01 (2012).

1. within twenty-one (21) days of the alleged offense, provide written documentation to the landlord that corroborates her status as a victim of family abuse and shows that the perpetrator has been excluded from the dwelling unit; AND
2. notify the landlord within twenty-four (24) hours if the perpetrator, in violation of a bar notice, returns to the dwelling unit or premises. If the tenant can prove that the tenant did not know that the perpetrator violated the bar notice, or that it was not possible for her to notify the landlord within twenty-four (24) hours, then the tenant must notify the landlord within seven (7) days of the perpetrator's return.

If these conditions are not met, a tenant who is a victim of domestic violence may remain responsible for the acts of other co-tenants, occupants, guests or invitees, including the perpetrator, and may be subject to termination of the rental agreement pursuant to the lease.

Additionally, in the event that a tenant has obtained an order from a court granting the tenant possession of the dwelling unit/premises to the exclusion of one or more co-tenants or authorized occupants, the tenant may provide the landlord with a copy of the court order and request that the landlord either install a new lock or other security device on the exterior doors of the dwelling unit at the landlord's actual cost or permit the tenant to change the locks on their own.¹⁵ Once the landlord has received a copy of the court order the landlord cannot provide copies of any keys to the dwelling unit to any person excluded from the premises by such order. While the law is silent on whether a co-tenant who is prevented from accessing the premises and dwelling unit would remain responsible for the rent due under the lease, there is nothing to indicate that a co-tenant who is the perpetrator of family abuse would be released from liability in Virginia.

Finally, when a tenant is the victim of family abuse, sexual abuse,¹⁶ or criminal sexual assault¹⁷ and the tenant obtains a protective order or a court has entered an order convicting a perpetrator of one of those crimes against the tenant; the tenant has the right to terminate their lease. In order for a tenant to exercise this right, the tenant

¹⁵ Va. Code Ann. § 55-248.18:1 (2012). If tenant installs new locks or security devices the tenant cannot do any permanent damage to any part of the dwelling unit/premises, the tenant must also provide the landlord with a copy of all keys and instructions on how to operate all devices. Additionally, upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

¹⁶ Sexual abuse is defined in Virginia as any act committed with the intent to sexually molest, arouse, or gratify any person, where the accused intentionally touches the complaining witness's intimate parts, forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts, or causes or assists a complaining witness who is under 13 to touch the accused's, the witness's own, or another person's intimate parts, or forces another person to touch the complaining witness's intimate parts. Va. Code Ann. § 18.2-67.10 (2012).

¹⁷ Criminal sexual assault is any crime defined under Article 7 of Chapter 4 of Title 18.2 and includes the crimes of rape, incest, molestation, forcible sodomy, and carnal knowledge. Va. Code Ann. § 18.2-61 et seq. (2012).

must provide the landlord a copy of the protective order or conviction order and a written notice of termination that shall be effective on a date stated therein, provided that that date is not less than thirty (30) days after the first date on which the next rental payment is due and payable after the date on which the notice is given.¹⁸ The rent shall continue to be payable at such time as would otherwise have been required by the terms of the lease through the effective date of the termination provided by tenant's written notice of termination to landlord. The landlord cannot charge any liquidated damages to the tenant, however, any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the lease. If the perpetrator is the remaining sole tenant obligated on the lease, the landlord may terminate the lease and collect actual damages for such termination against the perpetrator.¹⁹

¹⁸ Va. Code Ann. § 55-248.21:2 (2013).

¹⁹ *Id.*