

ARTICLES

OP-ED: Considerations for landlords as light appears at the tunnel's end

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As of the writing of this article, May 1, 2020, Oregon is still on lockdown under several Executive Orders issued by Governor Kate Brown in order to combat the spread of COVID-19. At the state level for Oregon, all of the Executive Orders that are tied to COVID-19 stem from Governor Brown's issuance of Executive Order 20-03, which declares a state of emergency. From that order stems other related orders; such as Order 20-07 (prohibits on-premises consumption of food and drink and gatherings of more than 25 people), Order 20-12 (stay-at-home order), and Order 20-13 (prohibition on all evictions for nonpayment).

Governor Brown has recently indicated that the easing of restrictions could be coming soon. In light of this, what should landlords do to prepare for the economy to slowly reopen?

The first thing that landlords should be doing is to continue to follow the orders that are in place with regard to workplaces. Executive Order 20-12 outlines several restrictions on workplaces that I expect will be in place to some extent for several months. This includes maintaining distance between workers and teleworking where possible. Landlords should also continue to follow federal and state health authority guidelines to maintain a safe working environment.

Landlords also need to consider that tenant revenue recovery will vary by tenant. Office tenants may be more able to work from home and thus remain closer to full operations while restrictions are in place.

Restaurants, salons, bars, and event spaces may be slower to open or open fully. Residential tenant income is also likely to vary depending on a tenant's income source; however, the provision of enhanced unemployment benefits for the next several weeks should reduce some of that risk for landlords.

Landlords should be proactive and remain in contact with their tenants to stay aware of each tenant's specific situation and revenue limitations. This will allow landlords to better plan for cash flow reductions. However, landlord contact should be made with the intent to gather information, plan, and extend assistance to tenants where possible. Landlords should take care to refrain from harassing tenants regarding payment issues.

While Executive Order 20-13 ("EO 20-13") is still in effect, landlords for residential tenants, and commercial tenants where the tenant has provided sufficient notice and documentation of COVID-19 related income loss, cannot terminate a rental agreement for reasons of nonpayment. The EO 20-13 goes further than just terminating the act of eviction, as it prohibits "tak[ing] any action" related to eviction. This means, until EO 20-13 lifts, landlords must refrain from sending notices of nonpayment or any other document that begins the process to evict a tenant for nonpayment. Landlords should not expect any actions taken while EO 20-13 is in effect to shorten the eviction process once EO 20-13 is lifted.

In Multnomah County specifically, residential tenants are protected further by Ordinance No. 1284 ("Or. 1284"). Or. 1284 provides that all residential tenants in Multnomah County with outstanding rent or fees that accrued during the effective dates of EO 20-13 or any Multnomah County mandated residential eviction moratorium will be allowed 6 months from the termination of both moratoriums to pay any overdue rent, utility charges, services charges, or other fees from the emergency period without incurring additional fees or being evicted. Multnomah County landlords will need to prepare to deal with the financial impact of Or. 1284 now that rental income from tenants may be significantly delayed.

In addition to state and local rules, landlords should keep an eye out for new federal bills. There are bills in Congress that could impact landlords if they are passed or if their components are included in later legislation. One such bill is the Rent and Mortgage Cancellation Act of 2020 ("RMCA"). This bill, sponsored by Ilhan Omar (D-MN), provides that all people who are renting their primary residence would be eligible for the cancellation of rent payments made for April 2020 through one month past the end of the emergency declaration (declared by FEMA on March 13, 2020). The Department of Housing and Urban Development ("HUD")

would be responsible for reimbursing renters for their payments made prior to the bill's enactment. HUD would also establish and administer a fund to cover the full cost of suspended rental payments to landlords. This money to landlords would not be without strings, however. In order for landlords to access to the funds, for five years following receipt of the money, they would need to agree to several "fair rental restrictions" including: i) a rent freeze; ii) only just-cause evictions; iii) mandatory documentation with any just-cause eviction; iv) refrain from source of income discrimination; v) coordination with local housing authorities to make new vacancies eligible to voucher holders; and vi) no admissions restrictions on the basis of sexual identity or orientation, gender identity or expression, conviction or arrest record, credit history, or immigration status. Additionally, landlords would not be able to attempt to collect any back-rent when the moratorium is lifted, nor would they be able to retaliate in any way against tenants or report tenants to debt collectors or debt services to harm their credit. Lastly, HUD would have a right of first purchase for the property if the landlord wants to sell within the five-year period.

While the RMCA likely won't pass given Congress' current makeup, landlords will need to keep an eye on congressional relief legislation as it may include tenant-friendly provisions. Democrats, especially those representing districts with high rent costs, will probably be looking for opportunities to provide their constituents with relief and additional protections that are not currently afforded under federal law.

While Governor Brown's recent statements seem to be providing indications that restrictions may be easing soon, landlords should be prepared to deal with lingering and changing restrictions for several months to come.

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