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## **IT'S BACK!! THE REVIVAL OF THE "COVID" EVICTION PROTECTIONS**

Did you think the new "normal" had arrived and the last vestiges of the Covid pandemic were gone? Think again. Just when the Courts were finally advancing long-delayed non-payment of rent cases and addressing the serious backlog of cases, the Massachusetts legislature has re-enacted the mandatory stays for pending RAFT applications which had expired as of April, 2023. While the new iteration is somewhat different from the prior protections contained in the previously expired MGL Chapter 257, the new law once again mandates a court to stop a non-payment of rent eviction action where there is a pending rental assistance application. Specifically, the new law provides that, in any eviction case for non-payment of rent, the court "shall" grant a continuance for such period as the court deems "just and reasonable" if the court finds:

- (1) the case is for non-payment of rent;
- (2) the non-payment of rent was due to a financial hardship; and
- (3) the tenant has a pending RAFT application.

This mandatory stay is required at any time during the pendency of the eviction action and prevents a case from proceeding or a judgment from entering if the foregoing conditions are met. The stay also applies to situations in which the execution has been issued.

Thus, if a tenant appears in court either for their mandatory mediation, for trial, or apparently any time prior to being moved from the apartment, and asserts that they have a pending RAFT application, the court will be required to continue the case until the application is processed. The Court will be required to conduct some form of review to confirm that the cause of the non-payment was a "financial hardship" and it remains unclear whether that will be in the form of a hearing before a judge (which again will cause a delay and require judges to spend their time conducting such hearings rather than hearing actual cases) or if the review/determination will be performed administratively by the court. However, upon such a finding the case will be delayed until the application is processed. The mandatory stay applies even in cases where the tenant has previously been denied RAFT and/or if the tenant owes more than RAFT will pay (currently \$7,000 each year).

In opposing this law, and in our role as legal counsel to the Greater Boston Real Estate Board, we recognized that in the vast majority of cases our clients are pleased to accept RAFT

and to delay a case in order to allow the application to be processed. The concern, of course, are cases in which the law is abused to simply delay the case and undermine the judge's discretion to determine if a continuance is appropriate, such as where the tenant has already repeatedly been denied RAFT or clearly owes more than RAFT will pay. Our experience with C. 257 was also that it caused a significant backlog in the courts as cases were delayed months while awaiting RAFT determinations, especially where tenants filed repetitive meritless applications. Again, this law requires the court to stay the case even where the judge knows RAFT will not be approved or will not pay the balance due. Likewise, C. 257 caused many tenants to mistakenly rely entirely on RAFT, allowing their arrears to increase to a level which exceeded the amount RAFT will pay, and for which they could not enter into reasonable payment plans. As such, it often led to tenants losing their apartments rather than preserving housing. Despite those arguments, this law has now been adopted and will be permanent.

While this law will clearly cause ongoing delays in the resolution of non-payment of rent cases, we would continue to advise clients to proactively contact their residents to encourage them to apply for RAFT in order to avoid (or at least reduce) last minute applications once the eviction case is filed. In addition, as one of the factors the court must address is the cause of the non-payment of rent, managers should document any discussions they have with residents as to the cause of the non-payment (although we would presume that most tenants that cannot pay the rent have had some financial hardship). Finally, we would again note that in most cases RAFT is able to process applications within 30 days and, as such, we would hope that the delays associated with this new law may be limited.

Further updates will be provided as the Court system determines their process to comply with this new law. Stay tuned...

*The foregoing is for informational purposes only and should not be considered legal advice. Please feel free to contact our office if you have any questions or need assistance. We are available to assist you with your legal needs as the housing industry navigates these complex and ever-changing circumstances.*

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