



The CFPB just issued a new rule requiring a new notice to tenants of their rights under the CDC's eviction moratorium - what do property managers need to know?

On April 19, 2021, the Consumer Financial Protection Bureau ("CFPB") issued an interim final rule in support of the eviction moratorium issued by the Centers for Disease Control and Prevention ("CDC"). This new rule, which goes into effect on May 3, 2021, states that anyone who meets the definition of a "debt collector," and who files an eviction action based on non-payment of rent, must provide written notice to the tenant of their rights under the eviction moratorium. Debt collectors who evict tenants who may have rights under the moratorium without providing the required notice, or who misrepresent those rights, can be prosecuted for violations of the Fair Debt Collection Practices Act ("FDCPA") and are also subject to private lawsuits by tenants.

Here are some questions that you may have regarding the CFPB's new rule.

QUESTION: Why did the CFPB issue the new rule?

ANSWER: According to the CFPB's April 19 press release, tens of thousands of renters are still being evicted every week, often without being told of their rights under the CDC moratorium. The purpose of the new rule is to prevent tenants from being evicted without understanding those rights. As a reminder, the CDC first issued its eviction moratorium in September of 2020. That moratorium has since been extended twice. The current expiration date is June 30, 2021. Under the CDC Order, a residential tenant who provides a written declaration stating, among other things, that they are unable to pay their full rent due to a loss of income or certain other factors, and that they are using their best efforts to obtain all available government assistance, may not be evicted for non-payment of rent.

QUESTION: Aren't landlords already required to give tenants notice of their rights under the CDC Order?

ANSWER: In North Carolina, the answer is yes. On October 30, 2020, Governor Roy Cooper issued Executive Order no. 171. It mandated that in any eviction action commenced on or after that date pursuant to North Carolina's summary ejectment statute, the landlord must execute an affidavit and present it to the court certifying that the landlord has provided the tenant with a blank copy of the sample Declaration form that was attached to the CDC Order. Until now, landlords in many other states have had no similar obligation.

QUESTION: Who is required to provide the CFPB’s newly-required notice to tenants?

ANSWER: The CFPB rule is solely directed at “debt collectors” as that term is defined in the FDCPA.

QUESTION: Are property managers considered “debt collectors” under the FDCPA? Are property managers required to provide tenants with the CFPB-mandated notice?

ANSWER: The July 31, 2020 issue of Property Management Quarterly included an article addressing this question. It can be accessed [here](#). The conclusion we reached is that property managers are not considered debt collectors under the federal debt collection statute, the FDCPA.

Why? For one thing, the term “debt collector” is defined in Section 803 of the Act to mean “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” In November 1995, a letter ruling was issued by Thomas Kane, an attorney with the Federal Trade Commission’s Bureau of Consumer Protection. In that letter, Kane wrote that if the property manager is an agent of the property owner, the property manager would be considered a “creditor” and not a “debt collector” because the debt (the rental payments) would not be owed to “another.”

Also, the FDCPA contains exemptions for persons who collect debts “incidental to a bona fide fiduciary obligation,” and for persons who acquired the authority to collect the debt before it became delinquent. Property managers generally fall under both exemptions since the collection of past due rents is one of many duties they perform as a fiduciary for their clients, and also because their authority to collect rents is established under their management agreements before the rents that are owed become delinquent.

Finally, support for this position can be found in a footnote to the just-issued Interim Final Rule. Footnote 113 reads: “If the landlord or property manager rather than the debt collector provides the eviction notice, §1006.9(c)(1) requires the debt collector to provide the disclosure on the date the debt collector files the eviction action – even if the landlord or the property manager separately disclosed the existence of the CDC Order.” The language of this footnote certainly suggests that the landlord/property manager and the debt collector are two distinct persons or entities.

Since the mandate set forth in the CFPB’s rule is only directed to debt collectors as that term is defined in the FDCPA, property managers are not required to provide the newly-required written notice.

QUESTION: Are attorneys hired by landlords or property managers to pursue residential evictions subject to the new rule?

ANSWER: Yes. The CFPB’s press release announcing the new rule states: “Under the FDCPA interim final rule, debt collectors, including attorneys, seeking to evict tenants for non-

payment of rent must provide tenants who may have rights under the CDC order with clear and conspicuous notice of those rights.”

QUESTION: Can attorneys ask property managers to provide the required notice on their behalf?

ANSWER: While such requests are certainly possible, the obligation to provide the notice rests solely with “debt collectors” not with property managers. The liability for failing to provide the required notice also rests solely with debt collectors.

QUESTION: Has the CFPB provided suggested language for the required notice?

ANSWER: Yes. The CFPB has provided some surprisingly brief sample disclosure language for debt collectors. [Here](#) is a link to that language. The CFPB’s “Official Interpretations” of their new rule notes while a debt collector may use the suggested language, they are not required to do so.

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