

Guidance on Residential Evictions and Foreclosures in Phase Two of Montana's Reopening

On May 19, 2020, Governor Bullock issued a Directive implementing new conditions applicable in Phase Two of Montana's phased reopening due to the COVID-19 virus (the "May 19 Directive"). Phase Two begins on June 1, 2020, and, as such, MAR members should be aware of the changes associated with Phase Two, especially with respect to residential leases and those bound by them. This white paper aims to address the conditions in the May 19 Directive that relate to residential leases and evictions alone. However, MAR members are encouraged to remain up to date as the COVID-19 situation continues to progress in Montana.

Modification to Limitations on Residential Evictions

MAR members may recall that the Governor's March 30, 2020 and April 13, 2020 Directives implemented strict limitations on the ability of a residential landlord to evict tenants for nonpayment of rent or "related financial obligations." Additionally, these Directives prevented landlords from evicting tenants who were subjected to specific COVID-19-related circumstances. These Directives were the subject of two previously released MAR White Papers entitled "Governor's Directive Regarding Limitations on Foreclosures, Evictions, and Disconnections from Service" and "Additional Guidance Regarding Governor's Limitations on Evictions." MAR members are encouraged to reference these prior White Papers for more information on the March 30 and April 13 Directives and to better understand the changes set forth in the May 19 Directive.

The prior limitations on residential evictions were eliminated on May 24, 2020 pursuant to the May 19 Directive, with one exception. Specifically, a residential tenant will continue to enjoy the protections laid out in the March 30 and April 13 directives if they prove to their landlord that:

- They are sheltering in place under the May 19 Directive;
- They are a member of a vulnerable population (elderly, immunocompromised, etc.); and
- They have been financially impacted as a result of the COVID-19 outbreak.

If a tenant establishes these requirements, the protections of the March 30 and April 13 Directives will continue to apply to them until 30 days after the tenant no longer shelters in place or at the end of the COVID-19 emergency, whichever is sooner. The May 19 Directive also makes clear that a landlord (or any other entity initiating a residential eviction) must notify the tenant of their opportunity to avoid eviction if they can establish the three requirements listed above. Landlords should be mindful of this requirement if they choose to initiate an eviction, regardless of whether their tenant would or would satisfy the requirements.

Essentially, the May 19 Directive suggests that residential landlords and tenants can once again rely primarily on their lease agreement to govern the rights and obligations of the parties. Landlords can once again take action (including eviction) as permitted by the lease agreement unless their tenant(s) can establish the three requirements laid out in the May 19 Directive. MAR members should be aware of these corresponding obligations for landlords and tenants alike and ensure that they and/or their clients are acting in compliance with them as Phase Two begins.

As Montana continues with its phased reopening due to COVID-19, MAR members should strive to stay up to date and monitor guidance from the Governor's office and other state entities. This will allow MAR members to stay informed and better advise their landlord and tenant clients as Montana's response to the pandemic continues to develop.

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