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CLIENT ALERT: NEW D.C. LEGISLATION IMPACTING LANDLORDS AND TENANTS

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District of Columbia landlords should be aware of recent temporary legislation passed by the D.C. Council relating to coronavirus and how it may impact their properties in the District. On Tuesday, May 4, 2020, the D.C. Council passed the “Coronavirus Omnibus Temporary Amendment Act of 2020” (the “Act”), which, among other things:

- requires certain commercial and residential landlords to give eligible tenants the option of entering into a payment plan for rent that becomes due during the period beginning when a public health emergency is declared by the Mayor (in this case, that date was March 11, 2020) and ending on the earlier to occur of one year thereafter and the end of the tenancy;
- requires residential landlords to refund amenity fees, if paid separately from rent, for amenities that are not being provided during a public health emergency; and
- requires landlords to clean common areas of residential facilities on a “regular basis”.

The Act would become law after approval by the Mayor (or if vetoed by the Mayor, then after the D.C. Council votes to override such veto), the 30-day Congressional review period mandated by the Home Rule Act, and publication in the D.C. Register. The Act will expire 225 days after it becomes law. A more detailed summary of the three provisions of the Act described above follows.

Rental Payment Plans.

This section of the Act broadly impacts all commercial landlords with retail tenants and all residential landlords who have five or more units rented or available for rent.

Any residential or commercial retail or residential tenant will be eligible for a rental payment plan if it has notified the landlord of its inability to pay all or a portion of the rent due as a result of the coronavirus pandemic, the tenant is not already receiving a rent reduction pursuant to Section 202 of the COVID-19 Response Emergency Amendment Act of 2020, effective March 17, 2020, and the tenant is not a franchise, unless the tenant is a franchise is owned by a D.C. resident and operated in D.C.

Affected landlords are required to establish a process for how their eligible tenants can apply for a rental payment plan, including how and what to submit as supporting documentation. Landlords must also notify all of their tenants of the availability, terms, and application process for rental payment plans, and provide the application to tenants both online and by telephone. Landlords will need to keep a copy of each rental payment plan application received on file for three years. Furthermore, if requested, residential landlords are required to provide a copies of applications to the Rent Administrator and D.C. Office of the Tenant Advocate, and



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commercial landlords are required to provide copies of applications to the D.C. Department of Consumer and Regulatory Affairs.

A landlord must approve the application for a rental payment plan from any eligible tenant that demonstrates evidence of a financial hardship directly or indirectly resulting from the coronavirus public health emergency that (1) is in addition to any delinquency or future inability to make rental payments in existence prior to the declaration of the public health emergency by the Mayor, and (2) would cause the tenant to be unable to qualify for renting the same unit using the same qualification criteria as when the tenant was originally approved to rent such unit. The eligible tenant must agree to the rental payment plan in writing. Tenants whose applications are denied may file written complaints with the Rent Administrator (for residential tenants) or Department of Consumer of Regulatory Affairs (for commercial retail tenants), as applicable, and have their complaint adjudicated by the D.C. Office of Administrative Hearings.

A rental payment plan may not require a tenant to provide a lump-sum payment that is more than the monthly amount payable under the rental payment plan, but a tenant will have the option of paying, without penalty, more than the monthly payment if the tenant so chooses. A landlord may also, if agreed to in writing by the tenant, apply any security deposit, last month's rent, or other amount held by the landlord to satisfy amounts due under a rental payment plan. The landlord is also required to waive lease fees and penalties while the tenant is under a rental payment plan, and not to report to any delinquency or negative information to any credit bureau regarding a tenant who is under a rental payment plan.

Refund of Residential Amenity Fees.

If, during a public health emergency, a residential landlord stops providing certain amenities that tenants pay fees for in addition to rent, then the landlord must refund, pro rata, such additional fees. If charges for a service or facility provided as an amenity are already lawfully included in rent charged to the tenant, then no reduction in rent is required as a result of the landlord ceasing to provide such service or facility.

Cleaning of Common Areas

The introduced legislation would require any owner of a "housing accommodation" to clean common areas of that housing accommodation on a "regular basis," and expressly includes in such common areas "surfaces that are regularly touched, such as doors, railings, seating, and the exterior of mailboxes." Affected "housing accommodations" are any structure or building that has one or more non owner-occupied residential units, including single units. The Mayor's office is authorized to promulgate rules to implement this requirement.

We here at Shapiro, Lifschitz & Schram will continue monitor the Act and we are available to assist D.C. landlords and tenants with any compliance questions or other issues they may have. We also continue to review the broader federal, state, and local legal response to the coronavirus pandemic generally, and are ready and available to assist you navigate and overcome these extraordinarily challenging times. First and foremost, we wish and hope for the health, safety and wellness of our clients and their loved ones.