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## **MEMORANDUM**

**Date: March 30, 2020**

**To: All Residential Landlord Clients**

**Re: 2020 CARES Act – Scope of 120-Day Moratorium**

### **Introduction**

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Section 4024(b) of the CARES Act contains a 120-day moratorium, effective immediately, that forbids: (1) **filing eviction actions** against residential tenants for nonpayment of rent or other charges; and (2) **assessing late fees** or penalties to residential tenants for nonpayment of rent. As discussed below, it is our opinion that **the 120-day moratorium applies to all Cook County residential landlords**, even those without federally backed mortgages.

### **Legal Analysis**

The moratorium described in Section 4024(b) of the CARES Act states that it only applies to a lessor of a “covered dwelling.” The term “covered dwelling” is defined in Section 4024(a)(1) of the Act and means a dwelling that “is occupied by a tenant, pursuant to a residential lease, or without a lease or with a lease terminable under State law” and is “on or in a ‘covered property.’” Section 4024(a)(2) defines a “covered property” as any property that “participates in” a covered housing program as defined by the Violence Against Women Act of 1994 (VAWA), or any property with a federally backed mortgage loan. One of the “covered housing programs” described in VAWA is the Section 8 Housing Choice Voucher Program.

Not all landlords in the United States are required to participate in the Section 8 Housing Choice Voucher Program. All Cook County landlords, however, are required to participate in the Section 8 Housing Choice Voucher Program, because of local ordinances that protect against housing discrimination based upon an individual’s “source of income.” In our opinion, because no landlord in Cook County may lawfully decline participation in the federal Housing Choice Voucher Program, all properties offered for residential lease in Cook County are “covered properties” for purposes of the CARES Act. This applies even if there are no current tenants at the property with a housing choice voucher. Therefore, it is our opinion that the 120-day moratorium applies to all residential tenancies in Cook County, whether or not the property has a federally backed mortgage.

## Conclusion / Summary of Our Recommendations

**Effective immediately**, through July 25, 2020, our recommendations to all Cook County residential landlords (and all other residential landlords subject to the CARES Act) are as follows:

1. **No residential landlord may file an eviction lawsuit against a tenant for nonpayment of rent during the 120-day moratorium.** Residential landlords may still file eviction suits against tenants for lease violations other than nonpayment of rent, such as criminal activity, excessive noise, smoking, etc.
2. **No residential landlord may charge fees, penalties, or other charges to a tenant for nonpayment of rent during the 120-day moratorium.** This applies only to late fees after the effective date (generally April, May, June, July late fees, if rent is due on the 1<sup>st</sup> of each month).
3. **No residential landlord may issue a notice to vacate to a tenant during the 120-day moratorium.**

Please let us know if you have any questions regarding the CARES Act or would like to discuss these matters further.

Sincerely,

*Cary G. Schiff*

Cary G. Schiff & Associates