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## CDC DECLARATION CHALLENGE ADVISEMENT

On September 1, 2020, the Centers for Disease Control (“CDC”) published the Order entitled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19” (the “Order”). The Order temporarily halts residential evictions for non-payment of rent. This Order has been extended three times and is currently in effect through June 30, 2021.

In order to be protected under the Order, all tenants occupying a rental unit must provide a written Declaration. The tenant must declare in writing all of the following:

- 1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- 2) The individual either:
  - (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),
  - (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or,
  - (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- 3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- 4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other non-discretionary expenses; and
- 5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting— because the individual has no other available housing options.

Although challenges to a tenant’s signed Declaration are permitted under the Order, in order to have the possibility of succeeding on a Declaration challenge we must have concrete and extremely compelling evidence that the tenant was not truthful on the declaration. Mere speculation or arguments are insufficient to successfully challenge. In order to have a better chance at success, you must have compelling evidence. The fact that the tenant is not responding to your repeated calls about partial payments, payment arrangements, getting assistance, etc. is not compelling grounds in and of itself to challenge a Declaration.

First consider, what actual evidence do you have to present in Court to support the position that the tenant was not truthful in signing and submitting the Declaration.



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Has the tenant applied for rental assistance? Has the tenant received rental assistance in the past? Has the tenant made, or offered to make partial payments? If the answer is yes to any of those questions, those are factors that would be in the tenant's favor and decrease the likelihood of success in a challenge hearing.

Nearly every judge is placing the burden of proof on the landlord regarding the rental assistance issue. Meaning even if the tenant admitted in court that the tenant made zero efforts to obtain rental assistance. Almost all Judges expect the Property to have sought out rental assistance funds on the tenant's behalf such as applying for the POP Program, ERAP, or other rental assistance and/or provided resources to the tenant. Have you applied for rental assistance on the tenant's behalf? Have you provided rental assistance resources to the tenant? If the answer is no, the chance of succeeding would be low.

Next, the Court will expect that you have been willing to accept any amount of a partial payment at any time from the tenant and that the tenant was aware. If not, the chance of succeeding is low. Have you been willing to accept partial payments? Have you ever told the tenant that a partial payment in any amount would not be accepted? If you have refused a partial payment, the chance of succeeding would be low.

Lastly, do you have any other concrete evidence regarding whether or not the tenant is currently employed? Do you have any evidence of the tenant making large purchases rather than paying rent such as purchasing a new car that we can prove is theirs? Do you have any information or evidence concerning the remaining CDC factors?

If you wish to try and challenge in the absence of actual evidence, we would be willing to advance all arguments in your favor and the determination would likely come down to the tenant's credibility at the hearing.

Based upon this information, please let us know if you still wish to pursue a challenge and we can discuss this further.