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MEMORANDUM

Date: May 21, 2021

From: Tschetter Sulzer

To: Firm Clients

Re: Service of Rent Demands Based on Executive Order 105

On Wednesday, May 19, 2021, Governor Polis signed [EO105](#), which extends the previous EO88 for another 14 days. This means that between now and June 2, landlords must keep serving 30-day rent demands instead of 10-day rent demands.

Summary of Executive Order D2021-105 (EO105)

- Signed May 19
- Is effective for 14 days
- Expires June 2, 2021
- Extends EO88 for 14 days
- EO88 required landlords to serve 30-day rent demands rather than 10-day rent demands
- Between May 19 and June 2 landlords must serve 30-day rent demands when serving tenants for rent defaults

Our Recommendations and Analysis

FIRST AND FOREMOST - regardless of the rent demand you serve between now and June 30, 2021 (the current scheduled expiration of the CDC Order), all rent demands are required to have the Consumer Financial Protection Bureau disclosure language. This language should be prominently displayed at the top of the rent demand. See our [30-Day Rent Demands](#). To avoid issues, we strongly recommend using the TS Rent Demand Form.

Scenario #1: Tenant Defaulted on May Rent – 30-Day Rent Demand Already Served

Landlords should have already served [30-Day Rent Demands](#) for May rent defaults either after May 3 or May 5. EO105 does not impact these rent demands. These 30-Days are still valid and

can be used to commence an eviction for all tenants who have not cured by the time they expire in early June. Accordingly, if you served a May 30-Day, do not re-serve a June rent demand if your tenant does not cure but file on the May 30-Day rent demand.

Scenario #2: Tenant Defaulted on May Rent – No Rent Demand Served Yet

To a certain degree, this scenario involves making a difficult decision based on what you anticipate the Governor will do in the future. Specifically, similar to EO88, the key to any analysis is determining whether you think that the Governor will extend the 30-Day requirement further before EO105 expires on June 2. This is a pure guessing game. Some of the attorneys in our office thought EO88 would be extended; some did not. Because EO105 decreased the effective period of this Executive Order from 30 days to 14 days, this indicates to us we are getting to the end of the road and it will not be extended. But again, obviously, whether the 30-Day rent demand will be extended is anyone's guess.

For Tenants In Default Right Now Who Have Not Previously Been Served a Demand: Our advice would be to immediately serve them with a 30-Day rent demand. These demands will expire on June 19. Similar to Scenario #1, if you served a rent demand before the end of May, do not serve or re-serve a June rent demand if your tenant does not cure.

If you delay: If your tenant is in default and you delay in serving a rent demand, the closer you get to June 1st the more you may want to consider waiting to see if EO105 is extended. Assuming EO105 is not extended, waiting until June rent is due and then serving a rent demand at that time could make a big difference in the number of days you have to wait before you could get into court. If EO105 is not extended, 10-Day rent demands served on June 6 would expire on June 16th. A rent demand served on May 28 (30-day) wouldn't expire until June 27. Obviously, this is a difference of 11 days.

Scenario #3: Tenant Is not in Default but Defaults on June 2021 Rent

This is an easy one. Wait to see if EO105 is extended. If it is, serve a 30-Day rent demand. If EO105 is not extended, serve the normal statutory 10-Day rent demand.

****IMPORTANT CAVEAT**** – Covered Properties in Denver and Weld Counties should continue to serve 30-Day rent demands. As discussed before Tschetter Sulzer will legally challenge this erroneous requirement being imposed in Denver and Weld counties. However, this legal challenge cannot commence until all Executive Orders expire so that the 10-day rent demand is standard for all properties including Covered Properties except in Denver and Weld Counties.

Additional resources below:

- Again for current complying rent demands see: [30-Day Rent Demand with CFPB Disclosure](#)
- [Governor Polis' Executive Order EO105](#)