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L A W Q U A R T E R L Y



The last few months have been remarkably challenging as life and business as we know them have been impacted by the spread of COVID-19. We at Perkins & Anctil, P.C. have been working diligently to keep abreast of not only the legal-related changes and issues that have come up as a result of the pandemic, but the practical issues that our clients now face – whether they are community association managers, board members, businesses, developers or individuals.

This newsletter includes some of our recent blog posts and Constant Contact entries regarding particular challenges related to the spread of the virus and government directives aimed at mitigating that spread. Please note, however, that governmental response to the virus has often led to weekly (if not daily) changes in how we operate our business and communities. We will keep close watch on developments as they arise, however we encourage

all clients who need assistance during this difficult time to contact us.

We remain committed to your success, and look forward to navigating these difficult times together.

Massachusetts Attorney General's Moratorium On Collections Is Deemed Unconstitutional

The emergency regulation adopted earlier this spring by MA Attorney General Maura Healy, putting a 90-day moratorium on certain debt collections, has been overturned, in part by USDC Federal Judge, D.J. Stearns who stated in his Opinion that the measure violates the First Amendment rights of collection agencies without adding meaningful protections for consumers.

As a result of this decision, community associations and their property managers can now resume their pre COVID-19 business practices of sending out letters to their community members who are in default, reminding them to pay their monthly condominium fees/costs and indicating that if delinquencies are not resolved, the account will be turned over to legal for lien enforcement action. As we

all know, the payment of monthly condominium payments is the life blood that allows all associations the ability to continue to provide critical maintenance and services to all of their members. This is welcome news that will allow associations the ability to continue to enforce their rights for payments from all of it's community members. We will continue to monitor developments in this area in light of the COVID-19 pandemic and report to our clients on important changes.

Virtual Notarization Authorized During the Covid-19 Pandemic

On Monday, April 27th, Massachusetts Governor Charlie Baker signed into law a measure allowing for virtual notarization of documents to address challenges related to COVID-19. The Act allows for a notary appointed pursuant to M.G.L. c. 222 who is an attorney or under the direct supervision of an attorney to be able to conduct business virtually, ensuring their safety during the state of emergency from the COVID-19 pandemic. Under this legislation a notary public may perform an acknowledgement, affirmation, or other notarial act utilizing electronic video conferencing in real time. These acknowledgments, affirmations and notarial acts will be

deemed valid and effective so long as the following conditions are met:

- The notary public observes each principal's execution of a document;
- Both the notary public and each principal are physically located within Massachusetts;
- The principal provides the notary with satisfactory evidence of identity (provided that the principal visually displays the identification over the video conference and that the principal transmits a copy of the front and back of said identification with the executed document or separately through electronic means and the notary must retain a copy of the identification credential for a period of ten (10) years);
- The principal makes the acknowledgment and affirmation to the notary;
- The principal causes the executed document to be delivered by delivery service, courier or other means in accordance with the instructions of the notary;
- With respect to any document requiring notarization executed in the course of closing a transaction involving a mortgage or conveyance of title of real estate, that upon receipt of the executed document the principal and notary engage in a second video conference where the principal verifies to the notary that the document received by the notary is the same as the one executed in the first video conference; and
- During the video conferences as described above each principal shall swear and affirm under the pains and penalties of perjury that the principal is physically located in Massachusetts and disclose any person present in the room with the principal and make that person viewable to the notary. Once this process is completed the notary may then affix the notary stamp and signature to the executed document. The notary block shall indicate that "the document was notarized remotely pursuant to this act." Additionally, the notary shall execute an affidavit under the pains and penalties of perjury that includes the following information:

- That the notary received a copy of the principal's current identification credential and visually inspected it during the initial video conference;
- That the notary received verbal assent to the recording of the electronic video conference;
- That the notary took each principal's affirmations as to physical presence of the principal within Massachusetts;
- That the notary was informed and notes on the affidavit any person present in the room including the relationship of that person to the principal. This affidavit must be kept by the notary for a period of ten (10) years. Further the notary must keep the audio and video recordings for all conferences for a period of ten (10) years as well. While this legislation gives notaries the ability to safely conduct business during the pandemic, it will not be permanent as this legislation will be automatically repealed three (3) business days after the termination of Governor Baker's state of emergency.

Perkins & Anctil has implemented virtual notarization in order to protect both our clients and our co-workers.

Massachusetts Eviction and Foreclosure Moratorium

On Monday, April 22, 2020, Governor Baker signed into law a bill to implement a moratorium on evictions and foreclosures throughout Massachusetts during the COVID-19 emergency. The moratorium halts all "non-essential" residential evictions for a period of 120 days or 45 days after the State of Emergency has been lifted, whichever occurs first. This action will drastically impact many of our clients' rights to send notices to quit or to advance summary process (eviction) proceedings.

The law broadly defines "non-essential" evictions as any eviction

initiated for any of the following reasons: (1) eviction for non-payment of rent; (2) eviction resulting from a foreclosure; and (3) eviction for a cause that does not include or involve: (a) criminal activity that impacts health and safety; or (b) lease violations that impact health and safety. The moratorium prevents a landlord from terminating a tenancy, sending a notice to quit, and/or requesting or demanding that a tenant vacate the premises for any non-essential evictions. The moratorium further prevents the courts from accepting the filing of an eviction complaint, entering a default judgment for a landlord, issuing an execution for possession or even scheduling a court event or hearing. While the law does not relieve tenants from the obligation to pay rent, no judicial action can be taken by the landlord to recover said payments until the moratorium has been lifted. Also, the law prohibits landlords from charging any late fees associated with late/unpaid rent during the moratorium period, and landlords may not report defaults to a credit reporting agency.

The new law does permit landlords to access any amounts held for "last month's rent" to do the following: (1) make a mortgage payment; (2) pay for utilities; or (3) perform repairs/property maintenance. However, before accessing any such amounts, the landlord must notify the tenant in writing and must indicate that the landlord used the funds before the last month of the tenancy, that the landlord is obligated to apply the funds used to the last month's rent and the tenant is still entitled to interest on the last month's rent. In addition to residential tenancies, the moratorium also applies to certain small business commercial leases. The law protects certain "small business premises units," which are defined as premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit; provided, however, that a small business premises unit shall not

include a premises occupied by a tenant if the tenant or a party that controls, is controlled by or is in common control with the tenant: (i) operates multi-state; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has not less than 150 full-time equivalent employees.

Finally, the moratorium also restricts residential foreclosures throughout the Commonwealth. Mortgagees are prohibited from taking the following actions with respect to the foreclosure of a residential property which is not vacant or abandoned: (i) cause notice of a foreclosure sale to be published; (ii) exercise a power of sale; (iii) exercise a right of entry; (iv) initiate a judicial or nonjudicial foreclosure process; or (v) file a complaint to determine the military status of a mortgagor under the federal Servicemember's Civil Relief Act. If you have any questions or concerns about this moratorium, please do not hesitate to contact our office.

“Emergency Coronavirus Response Act:” What Employers Need to Know About New Paid Leave Obligations Before April 2, 2020

On Wednesday, March 18, 2020, President Trump signed the Families First Coronavirus Response Act, H.R. 6201 (the "Act"). This is an emergency response economic stimulus plan to address the impact of COVID-19. The new law goes into effect on April 2, 2020. Among other provisions, it provides two new paid leave obligations for employers: emergency paid sick leave and an extension of the Family Medical Leave Act ("FMLA"). The new law is temporary and expires on December 31, 2020. The Act requires employers with 500 or fewer employees to provide up to 80 hours of paid sick leave for coronavirus related absences and extends FMLA provisions to provide protected COVID-19

childcare leave for up to 12 weeks. The emergency leave provisions of the Act are in addition to any other paid leave provided by an employer. This update provides a general summary of the two new paid leave provisions. The Department of Labor will be drafting regulations and guidelines for the implementation of the Act.

The “Emergency Paid Sick Leave Act” (Division E of the Act):

- **Employees Covered:** All employees of covered employers may be eligible for paid leave under the Act. Employers may elect to exclude employees who are health care providers or emergency responders. Employees who work for companies with fewer than 50 employees may not be entitled to the leave if the employer establishes a hardship exemption is applicable.

- **Allowed Leave Purposes:** An employee who is unable to work or telework may take leave if the employee is:
 - o Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - o Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - o Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - o Caring for an individual subject to an order or advisement as described above;
 - o Caring for their child if the child's school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions; or
 - o Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

- **Duration of Leave Available:** Full-time employees may take up to 80 hours of paid leave. Part-time employees may take an amount of paid leave equivalent to the number of hours they ordinarily would have worked in a typical two-week

period. Leave for employees with varying hours is calculated by reference to a six-month average or, if an average is not available, the employee's reasonable expectation of hours to be worked at the time of hire. The statute provides that employers may not require employees to utilize leave under existing leave programs before taking paid sick leave under the Act. The paid leave does not carry over to the next year.

- **Amount of Paid Leave:** An employee is entitled to (a) the employee's regular rate of pay up to a maximum of \$511/day and \$5,110 total if the leave is for the employee's COVID-19 selfcare; or (b) two-thirds of the employee's regular rate of pay up to a maximum of \$200/day and \$2,000 total if leave is taken to care for another individual or pursuant to the "substantially similar condition" provisions of the Act.

- **Employer's Reimbursement:** Employers will be reimbursed for leave paid under the Act through a payroll tax credit. (Tax credits are governed by Division G of the Act.)

- **Hardship Exemption for Employers:** The U.S. Department of Labor is authorized to adopt regulations exempting small businesses with fewer than 50 employees from the childcare leave requirements of the Act if adhering to those requirements would jeopardize the viability of the business as a going concern. As of this date, those regulations have not been established.

The "Emergency Family and Medical Leave Expansion Act" (Division C of the Act):

The Act also amends the Family and Medical Leave Act of 1993 (FMLA) to extend FMLA job protections to employees absent from work in order to care for their own child(ren) due to coronavirus-related childcare unavailability. •

Employees Covered: Employees who have worked for their employer for at least 30 days are entitled to the leave. Employers may elect to exclude employees who are health care providers or emergency responders. Employees who work for companies with fewer than 25 employees may not be entitled to the leave if the employer establishes the hardship exemption is applicable.

- **Allowed Leave Purposes:** Employees may take leave if they are unable to work (or telework) due to a need for leave to care for their child under 18 years of age if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency.

- **Duration of Leave Available:** Employees may take up to 12 weeks of job-protected leave.

- **Amount of Paid Leave:** The first 10 days of leave are unpaid. The employee may elect to use other paid leave available from the employer during this initial period. The remainder of the leave (up to ten additional weeks) is paid by the employer at a rate equal to two-thirds of the employee's usual rate of pay up to a maximum of \$200 per day, and \$10,000 total per employee.

- **Employer's Reimbursement:** Employers will be reimbursed for leave paid under the Act through a payroll tax credit. (Tax credits are governed by Division G of the Act.)

- **Hardship Exemption for Employers:** Employers with fewer than 25 employees who are unable, despite reasonable

efforts, to restore an employee to his/her former or a substantially similar position due to COVID-19-related economic conditions or other changes in operating conditions are exempt. The U.S. Department of Labor is authorized to adopt regulations exempting small businesses with fewer than 50 employees from the requirements of the leave provisions if adhering to those provisions would jeopardize the viability of the business as a going concern. These regulations have not been drafted as of this time. Employers will be required to post a notice for employees of the Act's provisions. The Department of Labor is expected to issue the proposed notice in the immediate future. The law becomes effective on April 2, and will be effective through December 31, 2020. Employers who violate the Act will be considered to have violated the minimum wage laws and may be subject to the penalties provided in the Fair Labor Standards Act for each violation. Please feel free to contact Perkins & Ancil Partner Kimberly Alley if you have questions or need assistance in implementing the new emergency response paid leave provisions in your business. Attorney Alley can be reached at 978-496-2000 or by email at kim@perkinslawpc.com.

About Our Law Firm

Perkins & Ancil, P.C. is a leading firm in all facets of real estate law. Our diverse experience includes all aspects of condominium and community association law, real estate conveyancing (including the representation of numerous local and national lenders), developer representation (from the municipal approval process through the sale of property), landlord-tenant matters and real estate litigation. In addition we offer years of industry experience in general litigation and bankruptcy cases, as well as the full spectrum of employment related matters. Our attorneys have been acknowledged for their expertise in Massachusetts and New Hampshire. We encourage you to set up an initial complimentary meeting with us.

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The Perkins & Ancil Team

