



Landlords' Business Association

We're landlords... helping landlords!

P.O. Box 812 Greenfield MA 01302

413-773-7522 • lbainc@outlook.com • lbamass.org

Newsletter

February 2021

President's Message

Hi All,

This is my first message as the new president of the LBA. I hope that it finds you well. I don't think we will be having a meeting any time soon due to the Corona virus situation.

In looking over my duties as president it appears that ***our website is in need of an update and we are also looking for someone to help get our newsletter together. If anyone knows someone local with these skills please reach out.***

I am printing our code of ethics in this issue to remind everyone what we are all about.

Chris Singley, long time member and colleague of the LBA passed away recently. He was a strong advocate of property rights, a wonderful colleague and friend to many. He will be missed by all.

For those of you that don't know me, I was born and raised in Turners Falls. I've wanted to invest in real estate since I was 19 years old. It took me until I was 27 before I bought my first two family. It was late 2007. I was watching the housing market crash as I went through the closing process. The day I closed my tenants' rent was covering my mortgage. I was in a 3 bedroom apartment for almost nothing out of my pocket. About a month later I went down to the basement for something and found water pouring down from the apartment above. I ran into the apartment to find a washing machine that was supposed to be draining into the kitchen sink pouring all over the floor. When I looked around to find someone to yell at I found him under the bathroom sink trying to fix a broken drain pipe. It was at that moment that I knew this was for me. (You just can't find this kind of entertainment anywhere else.) Today I have 49 units, a beautiful wife, 2 kids, 1 new puppy, and not a lot of free time. But I will do my best to fulfill the duties of president.

Jim Martineau
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The Legal Corner

Stanley D. Komack, Esquire
Komack Law Offices P.C.
734 Bliss Road, Suite 4
Longmeadow MA 01106

New State Law Imposing Requirements on Notices to Quit for Nonpayment of Rent

There is yet another new law that landlords are required to follow during the eviction process. Specifically, on December 31, 2020, Governor Baker signed into law Chapter 257 of the Acts of 2020, entitled “An Act Providing for Eviction Protections During the COVID-19 Pandemic Emergency” (the “Law”) which imposes new requirements when notices to quit for nonpayment of rent are served.

Given all of the new rules, exceptions and requirements that you already have to consider, I want to boil down the Law to make it as simple as possible for you. Here is what you need to know and do in order to comply with the Law:

- Notices to Quit for Nonpayment of Rent that you serve on residents must be accompanied by a completed form indicating: (i) whether the resident has provided a declaration under the CDC moratorium; (ii) whether your property is “covered” under the CARES Act; and (iii) whether you have any agreements (written or oral) under which the resident is to repay past due rent and such written agreements, if any, must be attached to the form. The standard form is available here: <https://www.mass.gov/doc/landlord-attestation-and-tenant-notice-form-and-translations/download>. Note that the form has several sections that you must complete and you must also sign and date the form.
- You must send copies of all Notices to Quit for Nonpayment of Rent to the Executive Office of Housing and Economic Development by uploading them through their online portal. The online portal is available here: <https://www.mass.gov/forms/massachusetts-notice-to-quit-form-submission>.
- Unlike some of the local ordinances that have recently passed which only apply to a specific city or town, you are required to comply with the Law irrespective of which city or town your property is located in.
- The Law will remain in effect until Governor Baker lifts the state of emergency that he declared on March 10, 2020.
- The Law only applies to Notices to Quit for Nonpayment of Rent and does **not** apply to Notices to Terminate Tenancies at Will, Notices of Non-Renewal, Notices to Quit for Cause/Behavior or any other notice that involves anything other than nonpayment of rent.
- The Law entitles a resident to a continuance of a trial date if: (i) the eviction case was brought for nonpayment of rent; (ii) the nonpayment was related to COVID-19; and (iii) the resident has an outstanding application for financial assistance.

The above is intended to provide general guidance for legal issues (courtesy of Krems, Jackowitz & Carman, LLP).

No attorney-client relationship is established. For answers relating to your specific facts, circumstances and questions, please feel free to call me.

STANLEY D. KOMACK, ESQ.
(413) 785-1851

IS RAFT COVID \$10K OPTIONAL for Landlords?

By Eric Weld reprinted from Mass Landlords, Inc.

Though the RAFT COVID \$10,000 rental assistance limit is presented as optional, could landlords who turn it down be vulnerable to discrimination charges?

Landlords should beware of a potentially problematic legal gray area built into the language of the RAFT (Residential Assistance for Families in Transition) COVID \$10,000 option.

Despite statements from the Baker-Polito administration and our best efforts at clarification, we are unable to verify that the expanded limit of RAFT COVID will be declared legally optional by a court. The administration announced the RAFT COVID program in October as part of its \$171 million Eviction Diversion Initiative. The program allows renters whose income has been affected by COVID-19 and the economic response to receive up to \$10,000 in public assistance to cover rent payments, past, present and/or future. The RAFT COVID program is an enhancement to the regular 15 year-old RAFT program, which provides up to \$4,000 for eligible households to pay for rent, mortgage, utilities or moving expenses. Both the RAFT and RAFT COVID programs are using a new application launched on October 19 (the first day of business after the state's eviction moratorium expiration), which features:

- Consolidated consent language;
- The requirement of only one set of signatures;
- Reduced documentation requirements for household identification – new income verification processes will allow for automatic data matching with DTA, MassHealth, or DOR (UIOnline and WageMatch).

As part of the RAFT COVID application – and in order to receive RAFT funding in excess of the traditional \$4,000, up to \$10,000 – a landlord must agree not to evict, for nonpayment, a tenant who has received program funding for six months, or, in the case of a family with school-aged children, through June 2021, whichever date is later. Landlords of tenants who receive RAFT COVID funds do not lose the right to evict due to lease violations, or in the event that agreements including use of RAFT funds are not complied with. Also, in order to qualify for RAFT COVID funds, tenants' household income must be at or below 50% of Area Median Income.

RENTAL LOSSES BEYOND \$10,000 The RAFT COVID program is presented as an option to landlords, who may, according to its language, decide whether or not to accept the funding in excess of \$4,000. If the landlord accepts, they forfeit the right to evict for six months or until June 2021.

There are many cases in Massachusetts in which landlords are owed rent of well over \$10,000, such that RAFT alone would not cure arrearages or cover foreseeable future shortfall. Imagine, for example, a Boston tenant who stopped paying rent in March. Average rent for a one-bedroom apartment in Boston is approximately \$1,927 (taken from a combination of averages calculated by listing rental agencies Zumper and apartmentlist.com). Even if that tenant began paying full rent again in September, they would have

tallied \$11,562 in rent arrearages. If they have no future income, a landlord would have expectation of additional losses. In actuality, renters have racked up back rent owed of well over \$20,000.

(MassLandlords data, compiled through a rent survey as part of the Individual Claims Council initiative, shows that average arrears are \$4,169 among 59 respondents, representing 765 rental units. Maximum arrears are \$44,615.)

In these cases, a landlord accepting the terms of the increased RAFT COVID limit would be extending a tenancy deep in arrears while forfeiting the ability to recoup any losses for at least six more months. Therefore, landlords in these situations might opt not to accept the RAFT COVID extension beyond \$4,000 for their tenants, in order to retain the right to evict and find new tenants.

MOVING AHEAD WITH EVICTION SEEMS THE OBVIOUS CHOICE

The RAFT COVID program is very new and RAFT administrators are flooded with applications as households struggle with job and income losses. As a result, response times are delayed, rental assistance payments can take months, and it may be a difficult time to obtain information from administrators.

Sue McMahon, a property manager for Winton Corp, a large rental complex in West Springfield, has been waiting months – since summer in one case – for word on RAFT applications for three of her tenants. “I have one tenant who applied [to RAFT] and didn’t receive a call back at all,” she said. “The wait time in some cases has been months.”

Other landlords, especially mom and pops who rely on rental income for their livelihood, are simply not in the position of Winton Corp to wait several months to find out if assistance from RAFT will cover back rent owed. In those cases, landlords may seek to evict before the RAFT process has begun.

BUT IS IT LEGAL TO OPT OUT OF RAFT COVID? Mass. General Law 151B, the state’s discrimination law, bars discriminating against anyone receiving public assistance, including rental assistance. G.L. c. 151B s. 4 states that it is an unlawful practice: “For any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.”



This language leaves open the possibility that it may be interpreted as discriminatory to evict a renter who has received public rental assistance. The consequences for noncompliance are potentially severe, up to \$50,000.

Say a tenant has applied for RAFT, but the landlord, unable to wait, starts eviction before receiving RAFT response. Then, during the case, RAFT responds, offering an amount of rental assistance funds, eventually, that will cure nonpayment. If the landlord decides to go ahead with eviction, are they on shaky legal ground? Does it matter whether RAFT COVID would cure or not?

LACKING LEGAL DEFINITION MassLandlords has sought clarification on the likelihood of litigation of the RAFT COVID provision's optionality, in correspondence with the Department of Housing and Community Development (DHCD), Massachusetts Commission Against Discrimination (MCAD), and the state Attorney General's office. We pointed out that RAFT has expanded to a point where it has become a primary safety net, and with that status it receives a high level of scrutiny similar to that of Section 8, the state's Housing Choice Voucher Program, administered by DHCD's Division of Rental Assistance. Renter advocates, who (like all attorneys) must zealously defend their clients, would likely raise the discrimination issue. Therefore, stronger definition is needed around the \$10,000 optionality, either to protect landlords from harmful litigation based on discrimination charges, or to protect renters from a weakening of our important discrimination protections. Consider Section 8. If an asking rent price for a particular unit is above fair market rent or payment standard, discrimination law does not require a landlord to take less than the full rent to accommodate Section 8 recipients. Why would a landlord be required to accept less than full rent for a tenant who receives RAFT? This would seem to suggest that RAFT can be refused when it does not fully cover arrears. On the other hand, in certain conditions, Section 8 might cause the landlord to lose money. Section 8 requires an inspection, to certify a rental unit's health and safety suitability. Suppose an inspection finds that a handrail is needed on a staircase. The administering agency could require a handrail to be installed, even though this would cause the landlord to lose money on the Section 8 rental compared to a market rental, which would not necessarily trigger enforcement of that part of the code (ignoring, for the sake of argument, that the handrail should be provided regardless of an inspection). This would seem to suggest that RAFT cannot be refused even when it would not fully cover arrears. The RAFT COVID program's stated optionality may leave landlords who opt out exposed to litigation. However, if COVID RAFT is mandatory and must be accepted for eligible renters, it presents a serious financial hardship for some owners who are not in position to forgive arrears or forswear termination. No definition of the legality of opting out of RAFT COVID assistance emerged from these correspondences. It's possible that this legally linguistic contradiction may not be addressed until litigation is brought forth. In that case, a landlord who has exercised the option to turn down RAFT COVID funding for a tenant, who then began or continued an eviction process for that tenant, may be vulnerable to a discrimination claim. The same might apply to a landlord who initiated or continued eviction while a RAFT application is pending. Our assessment is that claims are less likely where RAFT would not fully cover arrears and future shortfall, but more likely where RAFT would.

PROCEED WITH ATTORNEY GUIDANCE

Proceed with caution if you are a landlord considering declining RAFT COVID funding, especially in cases in which the funds would fully cover rent arrears, could cure nonpayment, and/or stabilize the tenancy. It is highly recommended that you take that step only with the guidance of legal counsel. In case you cannot afford counsel, a provision of the governor's Eviction Diversion Initiative set aside funds to help provide legal counsel to people who could not afford representation (a sizable percentage of mom-and-pop landlords). Contact the Volunteer Lawyers Project for more information. The RAFT COVID program appears to be presented as an option for landlords to accept or decline. But considering the language in discrimination law 151B, there's too much risk and vulnerability for discrimination liability to take that step hastily.



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In service to the members of the
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Stanley D. Komack, Esq.
Komack Law Offices, P.C.

734 Bliss Road, Suite 4
Longmeadow MA 01106
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Code of Ethics

The Members of the Landlords' Business Association do hereby consent to the following Articles as regards the conduct of their business of providing rental housing:

Article 1: We will abide all state and local housing codes.

Article 2: We will conduct ourselves in a professional manner and share a spirit of friendly cooperation with our fellow landlords and avoid the use of unfair competitive practices.

Article 3: We will charge rents that are in accordance with the fair market values of our geographic area.

Furthermore, the members of the Landlords' Business Association encourage and promote the following aspirations to be part of their normal and usual policies and actions:

1. Give a prompt response to any and all tenant requests
2. Absentee landlords should have local representation
3. If away for extended period of time, local landlords will provide for alternate representation for their tenants in case of emergencies
4. Cooperation with enforcement agencies concerning health code issues
5. Maintain exterior of building and grounds in a manner that is a credit to the neighborhood
6. Recognize the authority of the Association and its Executive Board in all matters relating to the interpretation of the "*Code of Ethics*"

