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IN BRIEF

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HOUSING AUTHORITY UPDATE

To Post, or Not to Post?

For public housing authorities, evictions are a necessary (and unfortunate) part of business. The process can often be stressful and frustrating. Unfortunately, two recent Illinois court decisions have created more stress and frustration for housing authorities by limiting the use of "posting" as an acceptable method of serving tenants with a termination notice or demand for rent.

Under Illinois law, a termination notice or demand for rent may be served upon a tenant by the following methods: (1) personal service; (2) service upon a person age 13 or older residing at the unit; (3) sending a copy of the notice to the tenant by certified or registered mail, with a return receipt from the addressee; and (4) by posting the notice on the premises, if no one is in actual possession.

735 ILCS 5/9-211.

In the past, some courts took a less stringent view of this law. Minor technical errors were permitted, so long as the landlord made a good faith effort to serve the tenant. For example, if a landlord served a tenant by a method consistent with the terms of the lease, or if a tenant acknowledged receipt of the notice by some other means, these were generally acceptable methods of service. Such relaxed scrutiny was helpful to housing authorities when a tenant refused to answer the door or pick up mail from the post office. In those instances, it was not unreasonable to

post the notice on the tenant's door. How else was the housing authority expected to serve the notice?

However, in the recent case of Figueroa v. Deacon, No. 1-09-184 (1st Dist. Aug. 25, 2010), a landlord posted a copy of the eviction notice on the tenant's door and slid another copy under the door. The tenant resided in the apartment, but the landlord never personally served him with the notice. The court found that the landlord did not comply with Illinois law regarding service of the notice. Sliding a copy of the notice under the door was not an approved method of service under the law. Posting of the notice is a valid method of service, but only if no one is residing in the unit. Because the tenant resided in the apartment, the court held that the landlord's posting of the notice was invalid. The court went on to state that strict compliance with the service requirements in eviction cases is necessary, even if the tenant received notice by some other means.

A similar case was decided in American Management Consultants, LLC v. Carter, 392 Ill.App.3d 39 (3d Dist. 2009). There, the landlord posted a notice on the tenant's door demanding unpaid rent. However, the tenant was still residing in the apartment. As a result, the court found that the landlord's posting of the notice did not comply with the service requirements under Illinois law. Accordingly, the landlord was not entitled to relief in its attempt to evict the tenant and recover possession of the apartment.

While the law is not new, the recent strict interpretation of the law is a surprise. More troubling, the court decisions may have far-reaching and unintended consequences. If tenants are rewarded for avoiding service and landlords are punished for their good faith efforts, housing authorities will face even more challenges in their mission to provide safe and affordable housing. Evictions may take longer and will become more costly, accounts receivable figures will grow larger and PHAS scores will likely suffer. Staff must be vigilant in their efforts to serve tenants with notices.

The bottom line: If a tenant still resides in the unit,

DO NOT POST THE NOTICE!

If you have any questions, or would like to discuss this further, please contact Eric P. Hanson.

The Law Firm of Mahoney, Silverman and Cross, LLC strives to provide superior legal representation with the objective of exceeding our clients' expectations. Each member of our firm is committed to utilizing critical analysis and innovative approaches to achieve timely resolutions with the best possible

results for our clients.

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