

COVID-19 pandemic changes rental contracts

Seminar: Consider impacts for landlords, renters for coming season

By JACK FICHTER
Star and Wave

CAPE MAY COURT HOUSE – Renting your home or condo as a short-term rental or being a renter of a summer property has changed due to the COVID-19 epidemic. A rental could be cancelled if stay-at-home restrictions return and the possibility of a tenant becoming sick from renting your property exists.

The Cape May County Chamber of Commerce held a webinar May 5 on navigating state restrictions on short terms rentals during COVID-19. Attorney Bridget Sykes, of Fox Rothschild LLP, said county restrictions make it illegal to give possession of premises to transient guests or seasonal tenants at this time. The substance of existing contracts have been made illegal, she said.

Covering contract defenses to performance, Sykes said if a contract is unenforceable on grounds of public policy, then both parties to the contract are excused from performance.

“If the act of giving possession to a potential renter is prohibited by a rental restriction, then neither party is really legally allowed to perform the substance and both parties should be restored to their original positions,” she said.

For existing contracts that did not address this issue specifically within the terms, the coronavirus

pandemic would be considered a supervening event that neither party contemplated at the time that they entered into the contract, Sykes said.

Another out is “frustration of purpose” meaning performance is technically possible but there is a supervening event that has fundamentally changed the overall bargaining of the parties, she said.

“This is really going to come into play with a lot of the questions that we’ve gotten about maybe the rental restriction gets lifted but I’m really not comfortable any more going to the shore,” Sykes said. “I am somebody with a pre-existing medical condition or I’m somebody who has family that has a medical condition and likewise on the other side, we have a lot of property owners who have been calling and saying do I have to allow people stay in my house, I’m not comfortable with this, I also stay there in off weeks...”

She said some property owners are worried about someone suing them.

With new leases, property owners can have an addendum prepared that addresses each issue in advance. Sykes said what needs to be addressed is who gets to cancel, whether just the owner of the property or the tenant, when can they cancel, do they wait until the day the tenancy is supposed to start and any other issues that

allow a cancellation.

For prepaid rentals and fees for short-term rentals with the money paid well in advance of the beginning of the rental term, the rental fees are being held in escrow until the day the rental term is supposed to begin, she said. If a rental restriction is in place at that time, the tenant would be refunded all their rent subject to potential deductions for some fees or commissions, depending on the commission contract.

“If we do lift the rental restrictions, the biggest concern going forward is if there is a spike in infections, there’s a strong chance that the restriction gets put back in place sometime in the summer,” she said.

If something were to happen during the term of a rental or right before it, terms need to be put in place in contracts as to what happens, if they are permitted to cancel within a reasonable amount of time before the rental and, if it happens in the middle of the rental, is it automatically deemed a cancelled contract.

“Does the tenant have to leave, do they have to give notice and how is the money they have already prepaid going to be refunded to them?” Sykes asked.

She said she has received questions about what kind of waivers, releases and disclosures related to exposure and diagnosis can be included in a contract.

“If I own the property, what happens if someone says they got sick and they are trying to blame it on me?” Sykes said.

She said short-term rentals are governed by landlord/tenant law even if it says in the contract it’s not considered to be a landlord/tenant relationship. Sykes said the law states the landlord is liable if they conceal a condition involving unreasonable risk of harm, if the tenant doesn’t know or have reason to know of the condition of risk and the landlord knows or has reason to know the condition and realizes or should realize the risk involved and has reason to expect the tenant will not discover the condition or realize the risk.

“Renters are going to be tasked with ultimately proving that the rental property was the source of any contracted illness but owners need knowledge of the risk of contraction as well and in that context, it’s really going to be about making sure that anybody that comes through the property has some type of reporting requirement to the property owner if they or anyone in their rental property was previously infected or if after they leave the property, somebody does test positive that they should report back because of the incubation period,” she said.

Another question Sykes said she has been asked is what if somebody gets sick during the rental term, do I have to allow them to stay in my property. She said there is no law that states quarantine must take place at the infected person’s location at the time they are diagnosed.

“The only issue that may arise is if the person whose primary home is a distance from where the rental property is, from out of the country or states away where they are not able to easily go back to another location,” Sykes said. “It is really going to be the duty of the property owner to then advise the future renters of the potential exposure at the property if somebody got sick while they were at the property or after.”

Provisions that can be included in leases: a mutual acknowledgment of the existence of COVID-19 and risk of exposure. She said it would be pretty difficult at this time for anyone to say they had no idea that coronavirus was happening.

Sykes said a mutual waiver and release from liability by the property owner and renter can be placed in a lease.

“It’s important to include some type of affirmative obligation on the renter to give notice if anyone in their rental party has been diagnosed with COVID-19 prior to the rental and/or after the rental term, so that the property owner can put anybody else on notice that comes into the property that there may be a risk of exposure,” she said.

If the tenant becomes ill during the rental term, they need to immediately vacate the property, if they stay because of a quarantine order, they have to pay rent outside of the rental terms, Sykes said.

Chris Bezaire, a broker at Coldwell Banker Sol Needles Real Estate and president of the Cape May County Board of Realtors, said the board has provided to its members proper cleaning procedures for rental properties from the Centers for Disease Control and county Health Department.

He said realtors in Cape May have agreed check-ins for rental properties would be handled at curbside or codes for remote or programmable locks given over the phone. For check-out, keys can be left in a bin or mail slot.

Bezaire said extra sets of keys would be made, so the same keys would not be used by subsequent tenants. Brokers have written a general letter to be sent to all tenants and property owners recommending tenants bring Clorox wipes, hand sanitizer, masks and gloves with them, he said.

Some offices have talked about pushing times back two hours temporarily for

check-in to allow more cleaning of properties, he said.

“There was some concern that adding two hours for cleaning may just encourage cleaners to add more properties as opposed to spending more time at each property,” Bezaire said.

Another suggestion for property owners is that soft materials not be included in a rental including pillows, blanket and comforters, he said, noting it is

easy to clean hard surfaces but not fabrics.

Bezaire suggested the use of protective mattress covers.

Sykes said cleaning companies hired for rental properties should be insured and should provide a written guideline on how they are cleaning properties which will provide another avenue for protection for property owners if they were to be sued.

Lower MUA dropping termination of service, interest fees until Oct.

VILLAS – The Lower Township Municipal Utilities Authority (MUA) Board of Commissioners passed a resolution May 7 suspending interest on delinquent accounts and terminating shut-offs until Oct. 31.

As a result of the COVID-19 pandemic, numerous businesses in the Township of Lower have had to temporarily close or have otherwise experienced extraordinary interruptions in their normal business operations.

The Board of Commissioners granted the authority executive director, authority secretary and the authority financial advisor to implement the following:

- Suspend the accrual of interest on water and sewer accounts that are delinquent as of May 1, (or become delinquent thereafter) shall be suspended until Oct. 31.

- Termination of water and sewer services for non-

payment of service charges shall be suspended until Oct. 31

- No water or sewer service restoration fees shall be charged between May 1, 2020 and Oct. 31.

The MUA encourages customers that are delinquent or may become delinquent as a result of the COVID-19 pandemic to maintain regular communication with the billing office. The MUA will assist in developing payment plans.

The MUA building and operations facilities remain closed to the public. To protect the safety of staff, employees are working alternating schedules, so the MUA can ensure the continued delivery of essential water and sewer service to customers.

“Our phones may ring a little longer, it may take a little more time to respond to a service request but we are here to serve you,” stated the MUA in a release.

Sewell Tract

Continued from page A1

control of aspects of the litigation. Of course, in the future, Concerned Citizens will strive to cooperate and coordinate the preparation and conduct of the case with the city administration, but that will have to be on an ad hoc basis without advance agreement as we offered.”

According to a release from Concerned Citizens, after a mistrial in the long-standing case had been declared by a new judge in late 2019 and a retrial scheduled for June 2020, Concerned Citizens made a variety of funding requests and cooperation proposals to the city, including variants by which the city could cooperate and control various aspects of the suit or even attempt to join as a joint or independent intervenor.

Resolutions seeking to accept the proposals, all of which were supported by a majority of council members, were each blocked by 2-2 votes when Deputy Mayor Patricia Hendricks (whose husband Charles F. Hendricks who had been president of Concerned Citizens before resigning for reasons of health in February) recused herself from voting on advice of City Solicitor Frank Corrado. In addition to Hendricks, the proposals were supported by Mayor Chuck Lear and Councilman Shaine Meier.

The Concerned Citizens’ letter continued, “This sustained stalemate has occurred despite the fact our requests are meritorious and have been favored enthusiastically by a majority of council members, as well as the vast preponderance of local commissions, advisory bodies, civic organizations and the public at large. That result is deplorable and unworthy of what the citizens of Cape May deserve from responsible local government.”

It went on to add, “We have yet to understand why council members (Shane) Mullock and (Stacey) Sheehan, who proclaim the same preservation goals, have only sought to bring about our failure. Those members have done more than just frustrate our efforts. Recently, by voting against a separate Resolution 128-04-2020, they sought to keep the city from acting on its own to save the tract from the state’s pernicious development scheme. With no explanation, they have also refused our requests to meet and discuss matters

to find a solution and have persisted in circulating falsehoods and half truths about us. And, for reasons only known to themselves, it appears they even have been avoiding subpoenas in the case from owners of the tract seeking to shed light on their actions and real motivations.”

Concerned Citizens’ President James A. Testa stated, “It was time to end the distraction that our proposals were being used for – to magnify the political dysfunction on council rather than accomplish important goals like preserving the vital natural resource of Sewell Tract. Once again, as they have since 2014, our base of generous private donors came through with contributions that made city financial aid unnecessary. Certainly, some additional assistance would have been helpful to build a stronger case, and those who have opposed helping us will bear the responsibility for that. However, we now have at least the resources to move forward. In that respect, those who have sought to frustrate us failed.”

Mullock said council heard from Concerned Citizens for the past 12 meetings.

“I think it’s unfortunate that preserving the Sewell Tract has boiled down to whether we fund them or not,” he said. “I said many times and I’ll say it again, I think it is extremely important to preserve that property, I think it’s extremely important that the city do that through its own legal representation and not through a third party.”

Mullock claimed Concerned Citizens was working with the attorney for East Cape May Associates, a developer in the suit.

Corrado said East Cape May Associates served subpoenas on a number of city officials and taken a number of depositions. He said there were outstanding subpoenas for at least three present and former Cape May officials.

“Those depositions have not been taken for whatever reason,” Corrado said.

He said East Cape May Associates filed a motion to compel those depositions. The motion is public record, Corrado said.



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	A.M.	P.M.	A.M.	P.M.
13	1:18	2:04	7:43	7:46
14	2:17	3:07	8:41	8:50
15	3:18	4:07	9:37	9:52
16	4:15	4:59	10:27	10:49
17	5:08	5:45	11:12	11:40
18	5:55	6:26	11:53	
19	6:39	7:05	12:27	12:30
20	7:20	7:41	1:09	1:05

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