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ADVISORY

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NEW REQUIREMENTS FOR CONNECTICUT LANDLORDS—A SUMMARY OF THE IMPACT ON SENIOR LIVING PROVIDERS

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Effective October 1, 2023, new requirements went into effect for Connecticut landlords that also apply to certain senior living providers with rental agreements such as managed residential communities and independent living communities.

Public Act 23-207, "An Act Establishing a Tax Abatement for Certain Conservation Easements and Addressing Housing Affordability for Residents in the State," (the "Act") has, among other things, amended existing requirements under landlord tenant laws and imposed new obligations on landlords, as outlined below. Note, that these new requirements only apply to rental agreements that are subject to landlord tenant law. They do not apply to skilled nursing facility and residential care home admission agreements. In addition, these new requirements should not apply to continuing care or life care contracts when the provider is registered with the Connecticut Department of Social Services as a continuing care facility. However, life plan or continuing care retirement communities that also offer rental units on their campus for independent living or assisted living, will need to comply with the new requirements for those rental agreements.

REQUIREMENTS EFFECTIVE OCTOBER 1, 2023:

- **Limits on Application Fees.** Landlords are prohibited from requiring a prospective tenant to pay any fee, including an application fee, prior to or at the beginning of tenancy, except that the landlord may charge (i) a security deposit as permitted under current law at Conn. Gen. Stat. § 47a-21, (ii) advance payment for the first month's rent or deposit for a key or any special equipment, or (iii) a tenant screening report fee, as described below. In addition, landlords are explicitly prohibited from charging any tenant a move-in or move-out fee.

  Action Step: Many assisted living communities charge a "community fee" or other type of one-time payment upon admission. Given the broad language in the Act, providers with rental agreements may need to revise their residency agreements to remove these fees. Providers with rental agreements should review their current residency agreements to ensure any required fees are permissible and revise the agreements as needed to comply with this new law.

CONTINUED

NEW REQUIREMENTS FOR CONNECTICUT LANDLORDS – A SUMMARY OF THE IMPACT ON SENIOR LIVING PROVIDERS

- **Tenant Screening Report.** Landlords may charge a prospective tenant a fee of $50 or less (plus an adjustment reflecting any increase in the consumer price index for urban consumers, as determined by the Commissioner of Housing on an annual basis) to obtain a "tenant screening report" if used to determine the suitability of a prospective tenant. The tenant screening report can include a credit report, a criminal background report, an employment history report, and/or a rental history report. If a fee is charged for the tenant screening report, the landlord must provide the prospective tenant with (i) a copy of the screening report, or if the landlord is prohibited from furnishing a copy of the report, the landlord must provide information that would allow the prospective tenant to request a copy of the report from the company that produced the report and (ii) a copy of the receipt or invoice from the company conducting the tenant screening report.

  Action Step: Providers with rental arrangements that require residents to submit to screening reports should review their residency agreements to ensure the fees and procedures pertaining to such reports are compliant with the new requirements.

- **Restrictions on Late Charges.** The Act prohibits a rental agreement from requiring that the tenant pay a late fee for paying rent after the expiration of the 9-day (or in the case of a 1-week tenancy, the 4-day) grace period in an amount that exceeds the lesser of (i) $5 per day up to a maximum of $50 or (ii) 5% of the delinquent rent or, in the case of a rental agreement paid in whole or in part by a government or charitable entity, 5% of the rent payment for which the tenant is responsible. Landlords are prohibited from charging more than one late charge regardless of how long the rent remains unpaid.

  Action Step: Providers are advised to revise their rental agreements to comply with the late fee limitations. For residency agreements entered into before October 1, 2023, the landlord must still comply with the late fee restrictions described above. As a result, providers should ensure that going forward all late fees comply with the new requirement, even if the rental agreement has different late fee amounts or terms.

- **Abbreviated Timeframes for Returning Security Deposits.** The Act shortens the timeframe within which security deposits must be returned to tenants from 30 days to 21 days after termination of the rental agreement, or 15 days from receiving the tenant's forwarding address, whichever is later. Any landlord who violates this requirement is liable for twice the amount of any security deposit paid by the tenant. The Act also shortens the timeframe within

CONTINUED

NEW REQUIREMENTS FOR CONNECTICUT LANDLORDS – A SUMMARY OF THE IMPACT ON SENIOR LIVING PROVIDERS

which the landlord must pay the tenant accrued interest for a tenancy that has been terminated prior to the anniversary date of the tenancy or where the landlord returns all or a portion of a security deposit prior to termination of the tenancy to 21 days after the tenancy terminates or the security deposit is returned, instead of the current 30-day timeframe. Any landlord who fails only to deliver the accrued interest is liable for $10 or twice the amount of the accrued interest, whichever is greater.

Action Step: Providers should revise their rental agreement provisions addressing the return of security deposits and accrued interest. In addition, the new requirement is not limited to agreements entered into on or after the October 1st effective date of the Act. As a result, providers should ensure that all security deposits are returned and accrued interest paid in accordance with these new requirements, even for rental agreements dated prior to October 1, 2023.

REQUIREMENTS FOR RENTAL AGREEMENTS ENTERED INTO ON OR AFTER JANUARY 1, 2024:

- **Pre-Occupancy Walk-Throughs.** For all rental agreements entered into on and after January 1, 2024, landlords must offer tenants an opportunity to walk-through the unit once the rental agreement is executed but before the tenant occupies the rental unit. A "walk-through" is a joint inspection of the rental unit conducted by the landlord and tenant to document existing issues observed in the unit. Any defects or damages observed during the walk-through must be specifically noted on the walk-through checklist developed by the Department of Housing (DOH) (linked **here**), which must be signed by the landlord and tenant with duplicate copies for each to retain. When the tenant vacates the unit, the landlord may not retain any portion of the security deposit or seek payment for any condition that was noticed on the walk-through checklist. Pursuant to the Act, in an administrative or judicial proceeding, the walk-through checklist may serve as admissible evidence to establish the condition of the unit at the beginning of the tenant's occupancy.

Action Step: In anticipation of the new year, providers with rental agreements should establish a walk-through policy and begin using the DOH checklist for all rental agreements entered into starting January 1, 2024. Providers are advised to review the DOH walk-through checklist prior to conducting the inspection to determine whether any items on the checklist are not applicable. For example, hallways and other areas of the community that are not part of the rental unit are not subject to the walk-through inspection and should be identified as "N/A."

CONTINUED

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NEW REQUIREMENTS FOR CONNECTICUT LANDLORDS – A SUMMARY OF THE IMPACT ON SENIOR LIVING PROVIDERS

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- **Required Written Notices to Protected Tenants.** The Act expands the existing safeguards offered to "protected tenants."[1] The Act requires that on and after January 1, 2024, upon entering into a rental agreement, landlords must provide protected tenants with written notice (i) of the statutory reasons that landlords may bring an eviction action, and (ii) that any rent increase must be fair and equitable as well as the tenant's options to contest the rent increase by filing a complaint with the appropriate fair rent commission or, if no such body exists, then by filing an action in Superior Court. The DOH has created a form notice (linked **here**) for landlords to use to comply with the notice requirements to protected tenants.

  Action Step: Providers are advised to begin providing the DOH form notice starting January 1, 2024 to all new tenants and to existing tenants upon renewal of their residency agreement and to include the form notice as an attachment to the residency agreement to document that the notice was provided.

STANDARDIZED RENTAL AGREEMENT AND COMPLAINT FORMS:

- The Act requires DOH to create standardized rental agreement forms for use by landlords and tenants which are to be published in both English and Spanish by July 1, 2024. The forms will be designed with the purpose of being easily read and understood and will contain the essential rental agreement terms as well as plain language explanations of the terms and conditions in the agreement. Landlords are not required to use the DOH rental forms.

  Action Step: While the standardized rental agreement is not required, providers should review the DOH standardized form once it is published to ensure the key terms in the form are addressed in the provider's current residency agreement. As of the date of this advisory, the standardized rental agreement forms have not been published on the DOH website.

For assistance with revising residency agreements to ensure compliance with the new requirements or if you have any other questions regarding the new requirements, please feel free to contact **Jody Erdfarb, Madiha Malik** or **Maureen Weaver**.

1 "Protected tenants" are tenants who reside in a building or complex consisting of 5 or more separate dwelling units or who reside in a mobile manufactured home park and who are either: (i) 62 or older, or a spouse, sibling, parent or grandparent who is 62 or older and permanently residing with that tenant or (ii) have physical or mental disabilities if such disability can be expected to result in death or to last for a continuous period of at least 12 months, or a spouse, sibling, child, parent or grandparent with such a disability permanently residing with that tenant.