

Several city attorneys are facing questions over local shelters that have been forced to utilize local motels and hotels as temporary lodging for their clients. The main concern stems from Governor Beshear's executive order that temporarily halted evictions in Kentucky (EO 2020-257). The question raised is whether the eviction freeze applies to a situation where a motel or hotel has been paid for a number of nights, but the shelter is now unable to cover additional nights and the motel or hotel is seeking to have the guests leave the premises. Based on the language of Executive Order 2020-257, the exclusions explicit in the Uniform Residential Landlord and Tenant Act and longstanding common law distinctions as to innkeeper/guest versus landlord/tenant and mortgagee/mortgagor, the eviction freeze does not apply to a guest in a motel or hotel.

The key portion of Governor Beshear's executive order (EO 2020-257) is in Part 5:

No provision contained within this Order shall be construed as relieving any individual of the obligation to PAY RENT, to MAKE MORTGAGE PAYMENTS, or to comply with any other obligation that an individual may have under TENANCY or MORTGAGE. (Emphasis Added).

The order expressly limits itself to a rental tenancy relationship between a tenant and a landlord or a mortgage relationship between a mortgagor and mortgagee in real estate. There is a long common law tradition recognizing the difference between an innkeeper/guest and a landlord/tenant or mortgagor/mortgagee. See, *Williston on Contracts §53.82 Obligation of Innkeeper as to Guest's Property – Who Are Guests.*) The executive order as crafted does not extend to the innkeeper/guest relationship.

Additional support for this conclusion can be found in the Uniform Residential Landlord and Tenant Act express exclusion for transient occupancy in a hotel or motel found at KRS 383.535(4):

383.535 Exclusions from application

The following arrangements are not governed by KRS 383.505 to 383.715:

- (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational counseling, religious, or similar service.
- (2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.
- (3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.
- (4) Transient occupancy in a hotel, or motel, or lodgings subject to state transient lodgings or room occupancy excise tax act. (Emphasis Added).**
- (5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.
- (6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

- (7) Occupancy of a dwelling unit located on land devoted to the production of livestock, livestock products, poultry, poultry products or the growing of tobacco or other crops including timber.

Cities should be cognizant of the impact that the COVID-19 pandemic has had on groups and charities that assist the most at-risk in our communities. A possible solution for your community that has been mentioned in discussions with other municipal lawyers from around the country is to make the local group aware or work with that local group in contacting the Federal Emergency Management Agency (FEMA). FEMA has a track record of arranging for temporary accommodations for the type of at-risk populations these organizations serve. The additional benefit to our cities is that this arrangement would be a FEMA or General Services Administration (GSA) Direct Project and the contract would be between FEMA/GSA and the third party providing the accommodations. The city would have no role in the contract. Brett Kriger (bkriger@lma.org) has been a great resource on this type of arrangement. He is the Deputy Director of Disaster with the Louisiana Municipal Association and can provide more information should your city wish to explore this option further.

The KLC Municipal Law Department will continue to monitor the situation and provide more options to our cities in this area as soon as we learn of them. Should you have any questions, contact the KLC Department of Municipal Law.