



MEMORANDUM

DATE: June 10, 2019

TO: Members

FROM: Courtney LeVinus, President & CEO

RE: New Arizona law in effect: Housing Assistance Payments/ Partial Payments

Purpose

To inform AMA members of a new law that will go into effect on August 27, 2019. This document is for informational purposes only and is not intended to be legal advice. The AMA advises all of its members to seek guidance from their individual legal counsel.

HB2358: landlord tenant; partial payment; assistance

Background

In the 2019 Legislative Session, the Arizona Legislature passed HB2358 to address a Superior Court decision that informed Arizona landlords that if they received a Housing Choice Voucher, commonly referred to as a Section 8 Voucher, on behalf of a tenant then, absent of a written contemporaneous agreement, the landlord waived their right to terminate a rental agreement for any breach by the tenant. While this decision was non-binding, it quickly became a defense for residents and several courts implemented policies consistent with the Superior Court ruling.

Provisions

- Specifies that acceptance of a *housing assistance payment* by a landlord does not constitute an acceptance of partial payment of rent or waive the landlord's right to terminate a rental agreement for any breach by the tenant.
- Defines *housing assistance payment* to include any payment made to a landlord pursuant to a separate written rental assistance or subsidy contract by a:
 - government agency;
 - public housing authority;
 - third party on behalf of a government agency, public housing authority; or
 - for-profit entity.
 - Examples include (but are not limited to): A city or county public housing authority providing "Housing Choice Vouchers" or "Section 8" vouchers or a for-profit entity such as Hom, Inc providing Rapid Rehousing or Permanent Supportive Housing vouchers.

HB2358: landlord tenant; partial payment; assistance (continued)

- A housing assistance payment does not include any payment made by a:
 - faith-based organization;
 - community action agency program; or
 - non-profit entity.
 - Acceptance of a partial payment of rent or any housing subsidy from a faith-based organization, community action agency or non-profit entity (absent of a contemporaneous written agreement) will waive the landlord's right to terminate a rental agreement for any previous breach of the rental agreement by the tenant.
 - If a landlord wishes to accept a partial payment of rent or any housing subsidy from a faith-based organization, community action agency or non-profit entity and not waive their right to terminate the rental agreement, then the landlord and tenant must enter into a contemporaneous written agreement at the time that the partial payment of rent or housing subsidy is made.

Additional Information

- Landlords should be aware that their rights under the Arizona Landlord Tenant Act may be limited for certain types of third-party payments made by certain entities including, faith-based organizations, community action agency programs and non-profit entities. AMA members are encouraged to seek guidance from their individual legal counsel.

Questions

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