

June 05, 2020

EXECUTIVE ORDER 142 SUMMARY FOR COMMERCIAL LANDLORDS AND TENANTS

North Carolina Governor Roy Cooper signed Executive Order 142, which went into effect on May 30, 2020, and will remain in effect until June 20, 2020 (the “Effective Period”), unless extended by another Executive Order.

For purposes of interpreting Executive Order 142, please note the following terms defined therein:

- “Commercial Lease” means a lease of any real property to an individual, business, or organization doing commerce in the State of North Carolina; provided, however, that “Commercial Lease” does not include: Residential Leases (as that term is defined in the Executive Order); operations of hotels, motels, or similar lodging subject to regulation by the Commission for Public Health; and vacation rentals entered into under Chapter 42A of the General Statutes.
- “Commercial Landlord” means the owner of, and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent over, the real property in a Commercial Lease.
- “Commercial Tenant” means the tenant in a Commercial Lease.

Under Executive Order 142, a Commercial Landlord may not, for reason of late payment or nonpayment of rent caused by the COVID-19 pandemic:

1. evict a Commercial Tenant (through self-help or initiation of legal proceedings),
2. require a Commercial Tenant to vacate its premises, or
3. terminate any Commercial Lease or terminate a Commercial Tenant’s right to possession under a Commercial Lease.

Prior to taking any of these actions, a Commercial Landlord has a duty to inquire as to whether a Commercial Tenant’s late payment or nonpayment of rent is caused by the COVID-19 pandemic, and must give the Commercial Tenant seventy-two (72) hours to respond.

Section 1(C)(3) of Executive Order 142 provides that a Commercial Landlord shall not assess interest, late fees, or other penalties for late payment or nonpayment of rent during the Effective Period, and accumulation of any pre-existing interest, late fees, or other penalties is paused during the Effective Period.

Further, Executive Order 142 requires Commercial Landlords to provide Commercial Tenants with the opportunity to make reasonable payment arrangements to pay off, over a period of at least six (6) months, any rent that comes due during the Effective Period and is not paid within the Effective Period. The Executive Order makes it clear that, although it waives interest, late fees, and other penalties for late payment or nonpayment of rent during the Effective Period, it does not in any way waive a Commercial Tenant's obligation to pay rent under a Commercial Lease, and strongly encourages any Commercial Tenant financially able to pay rent to continue doing so.

If you have any questions or wish to further discuss Executive Order 142 as it relates to your business, please do not hesitate to **call or email us**.