

CITY OF PHILADELPHIA FAIR HOUSING COMMISSION

2021 EMERGENCY REGULATION REGARDING CHAPTER 9-809 COVID-19 EMERGENCY HOUSING PROTECTIONS

The Fair Housing Commission hereby adopts the following 2021 Emergency Regulation Regarding Chapter 9-809 Emergency Housing Protections (“2021 Emergency Regulation”) to interpret and implement Section 9-809 of The Philadelphia Code, “COVID-19 Emergency Housing Protections,” as amended through January 20, 2021, to prevent the spread and address the effects of the Novel Coronavirus of 2019 (“COVID-19”) in the Philadelphia area.

1. Repeal of Prior Regulations

This 2021 Emergency Regulation is promulgated by the Fair Housing Commission pursuant to its authority under subsection (8), “Notice, Forms, and Regulations,” of Section 9-809 of The Philadelphia Code, and repeals and replaces the September 7, 2020 Fair Housing Commission Emergency Regulation Regarding 9-809 COVID-19 Emergency Housing Protections. Pursuant to the Mayor’s “Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus” dated March 11, 2020, this Supplemental Emergency Regulation will be in effect immediately upon filing with the Department of Records as a temporary regulation while the remainder of the regulatory process is carried out.

2. Definitions.

2.1. Terms not defined in this 2021 Emergency Regulation shall have the definitions provided in Chapter 9-800 of The Philadelphia Code, including Section 9-809.

2.2. Code. The term “Code” shall refer to The Philadelphia Code.

2.3. COVID-19 Inclusive Emergency Period. The period beginning March 1, 2020 and ending December 31, 2020, or any later date provided under Section 9-809(1)(b.1) of the Code.

2.4. Steps in Furtherance of Recovering Possession. Unless expressly excluded by the last sentence of this subsection 2.4, the phrase “steps in furtherance of recovering possession” of a premises shall include, but is not limited to, any action by a landlord or such landlord’s agent that is calculated to direct or legally require a tenant to leave a rental premises, including threatening to repossess a premises or begin eviction proceedings in any oral or written statement; serving a notice to quit or similar notice, whether or not required by an underlying lease agreement; taking any action that is a prerequisite to an eviction action; or taking any similar action. The phrase includes filing an eviction action, or taking any further steps in an eviction action, whether or not the case was filed before this Regulation or Section 9-809 went into effect, unless such eviction action has a lawful basis under Section 9-809 at the time the further step is taken. The following shall not be considered “steps in furtherance of recovering possession” of a premises or property:

- a. Complying with orders or direction of a court or administrative agency with competent jurisdiction.
- b. Participating in a mediation or conciliation conference.
- c. Sending or otherwise providing a notice required under Section 9-809.
- d. Seeking to obtain payment of currently due or past due rent by lawful means that do not include recovering possession of the rental premises.
- e. The filing of an eviction action or taking further step on a previously filed eviction action that has a lawful basis under both Pennsylvania and Philadelphia law, including Section 9-809, at the time such filing or other step is taken.

3. Required Notice.

3.1. Notice of Tenant Rights Under Code Section 9-809.

3.1.1. Required Notice Under Code Section 9-809. Notice is required under Section 9-809 of the Code in the following circumstances:

3.1.1.1. Safe Harbor for Landlords. A landlord seeking to file an eviction action before participating in a conciliation conference pursuant to the safe harbor provided in Code Section 9-809(5)(b)(2) and subsection 5.3 below must provide the tenant the notice of rights under this subsection 3.1 at least thirty (30) days in advance of filing an action for eviction.

3.1.1.2. Evictions for Nonpayment of Rent. A landlord seeking to evict a tenant on the basis of past due rent at any time prior to October 1, 2021 must provide the tenant the notice of rights required under this subsection 3.1 at least thirty (30) days prior to taking any Steps in Furtherance of Recovering Possession of the premises unless the tenant has previously entered into a hardship repayment agreement with the landlord and the eviction is permitted under Section 9-809(7)(d)(.2) or (.3) of the Code.

3.1.2. Form of Notice Under Code Section 9-809. The Commission adopts the form of notice attached hereto as Attachment A, which shall meet the requirements of all notice required under Section 9-809. Any notice a landlord is required to provide a tenant pursuant to Section 9-809 must be substantially in the form of Attachment A to be effective. Any notice that does not include all information contained in Attachment A does not meet the requirements of notice under Section 9-809.

3.1.3. Service of Notice Under Code Section 9-809. Required notice under

Section 9-809 shall be provided in writing, by hand delivery or certified United States Mail with proof of mailing which, for the purpose of Section 9-809 only, means any reliable means of delivering physical documents in the United States in a manner that can be tracked and delivery can be confirmed, but shall not include email and text messages.

3.1.4. Timing of Action After Required Notice Under Code Section 9-809.

The thirty-day time period required before further action is taken after notice is provided under Section 9-809(7)(d)(.1) shall run from the date such notice has been delivered to the tenant.

3.2. Other Notice Sent in Violation of Code Section 9-809(3) or 9-809(7)(e) Invalid. Any notice sent in violation of Section 9-809(3) or Section 9-809(7)(e), including a notice to quit, a lease termination, or similar notice, shall not constitute a valid or effective notice.

4. Residential Eviction Relief and Commercial Eviction Relief – Code Section 9-809(3) and (4). Prior to the end of the COVID-19 Emergency Period, August 31, 2020, it is unlawful for a landlord to take any Steps in Furtherance of Recovering Possession of a premises from (a) any residential tenant or (b) a small business that is a commercial tenant if any person has provided the landlord with a Certification of Hardship concerning such small business, unless an eviction of such tenant is being taken to cease or prevent an imminent threat of harm by the person being evicted.

5. Eviction Diversion Program – Code Section 9-809(5).

5.1. Establishment. The City of Philadelphia established an eviction diversion program effective September 1, 2020.

5.2. Mandatory Participation. Beginning September 1, 2020 and ending March 31, 2021, Landlords must complete the eviction diversion program prior to taking *any step* in furtherance of recovering possession of a residential property occupied by a tenant who has suffered a COVID-19 Financial Hardship. This requirement applies whether or not such tenant has provided the landlord a Certification of Hardship, and whether or not the landlord has reason to know of the tenant’s COVID-19 Financial Hardship. This requirement does not apply if (a) eviction is necessary to cease or prevent an imminent threat of harm by the person being evicted; or (b) the landlord has met the safe harbor requirements with respect to both such premises and such tenant as set forth in subsection 5.3, below.

5.3. Safe Harbor for Landlords. A landlord may proceed to evict a tenant without participating in the diversion program if the landlord receives a written statement from the program indicating such landlord has met the requirements of the safe harbor provided under Code Section 9-809(5)(b)(2) with respect to a specific property and tenant, namely that all of the following have been met:

(a) The landlord has provided the notice in accordance with subsection 3.1 of this Regulation.

(b) The diversion program has confirmed the landlord's submission of a completed request registering with the diversion program and;

(i) if prior to December 31, 2020, the diversion program indicates in writing that the program is unable to offer a date for a conciliation conference within thirty (30) days of the landlord's initial request to schedule; or

(ii) if after January 20, 2021, the diversion program indicates in writing either the date the landlord registered with the eviction program or that thirty days have passed since such date.

(c) The landlord has agreed to participate in a conciliation conference if it is scheduled prior to an eviction judgment being issued.

5.4. Landlord Request to Schedule. A landlord may submit an initial request to schedule a conciliation conference with the diversion program by submitting a complete application at <https://phlevictiondiversion.org/>. Providing inaccurate or incomplete information will not constitute a proper initial request to schedule a conference. Beginning, September 17, 2020, a landlord will be provided an electronic written confirmation of submission of request once a complete request has been submitted.

5.4.1. An initial request must include the following mandatory documents and information:

- a. Proof of service of the notice of tenant rights required under Code Section 9-809 if the action is based on nonpayment of rent or the landlord intends to seek the safe harbor set forth in subsection 5.3 above, Code Section 9-809(5)(b)(2).
- b. Rental License required under Code Section 9-3902.
- c. Contact information for the landlord and tenant.

5.4.2. The parties shall thereafter cooperate and submit any information requested by the program, including but not limited to, material terms of the lease at issue, statement of back rent at issue and any valid Certificate of Rental Suitability.

5.5. Scheduling.

5.5.1. Continuances. Continuances will be granted in the program's discretion upon reasonable request or upon agreement of the parties.

6. Temporary Waiver of Certain Fees – Code Section 9-809(6).

6.1. General Requirements. Philadelphia law prohibits landlords from charging or accepting the payment of late fees, interest on back rent, or similar charges as the result of late payments made by residential tenants that have experienced a COVID-19 Financial Hardship. This prohibition applies to any late fees, interest, or similar charges on past due rent that would otherwise be charged or accrue beginning March 1, 2020 and ending nine (9) months after the last day of the COVID-19 Inclusive Emergency Period. That nine-month period currently ends September 30, 2021. Any lease provisions that would otherwise apply such fees, interest, or similar charges to rent that is past due during this specific period shall not be enforceable. Code Section 9-809(6) does not otherwise affect the validity or enforceability of any underlying lease agreement.

6.3. Presumption of Hardship. The protection from late fees, interest, or similar charges referred to in this Section 6 applies to any tenant who has experienced a COVID-19 Financial Hardship, regardless of whether such tenant has submitted a Certification of Hardship. However, for the purpose of this Section 6, tenants may establish a presumption that such tenant has suffered a COVID-19 Financial Hardship by submitting a Certification of Hardship to such tenant’s landlord as provide for in Section 8 of this regulation. In such cases, the tenant’s landlord must submit affirmative proof that the tenant has not suffered a COVID-19 Financial Hardship to rebut that presumption.

6.4. Credit for Wrongfully Charged Fees and Interest. A landlord shall provide a tenant a credit against future rent or any other financial obligations owed by such tenant to the landlord for any fees, interest, or similar charges prohibited under this Section 6 that the tenant has paid to landlord.

7. Mandatory Hardship Repayment Agreements for Residential Tenants with a Certified Financial Hardship – Code Section 9-809(7).

7.1. Right to a Hardship Repayment Agreement. Any residential tenant who (1) is behind on rent during the COVID-19 Inclusive Emergency Period (currently March 1, 2020 through December 31, 2020), and (2) who has requested to enter into a hardship repayment agreement and then provides such tenant’s landlord or such landlord’s authorized agent a Certification of Hardship shall have the right to enter into a hardship repayment agreement pursuant to the terms of Section 9-809(7)(b). If the tenant does not provide a signed CDC Eviction Declaration, the Certification of Hardship must be accompanied by documentation showing the tenant’s loss of income or increase in expenses the tenant has incurred during the COVID-19 Inclusive Emergency Period as the result of a COVID-19 Financial Hardship, or a written explanation of why such documentation is not available. This right applies regardless of whether the tenant was current on rent as of March 1, 2020 and whether or not an eviction action has previously been filed against the tenant.

A tenant who has requested to enter into a hardship repayment agreement or has entered into a hardship repayment agreement, and who is thereafter paying as agreed, shall be considered

to be in full compliance with any payment obligations under such tenant's lease and any associated payment agreements.

A tenant has 30 days from the delivery of the Notice of Rights required under subsection 3.1 of this Regulation to request to enter into a hardship repayment agreement and provide the landlord the required Certification of Hardship with documentation, or an explanation of why such documentation is not available to remain in compliance.

7.1.1. Examples of Documentation. Examples of sufficient documentation may include, paystubs reflecting lower wages, receipts reflecting increased childcare expenses, bank statements showing additional expenses after March 1, 2020, a signed statement from a tenant's employer or client indicating the decrease in wages or work, doctor's notes, any similar documentation or any combination of the foregoing and other information that establish a reasonable basis for the tenant to claim the loss of wages or increase in expenses related to the COVID-19 pandemic.

7.1.2. Unavailable Documentation. If documentation showing the loss of wages or increase in expenses is not available, the tenant can explain in the Certification of Hardship why such documentation is not available. Examples may include an explanation that the tenant is paid in cash and does not maintain a bank account, a statement related to the unemployment of an individual, reasons why the documentation may be available in the future but is not currently accessible, or similar explanations. All information submitted is subject to the provisions of Section 1-108 of the Code (Certification).

7.2 Minimum Terms of Hardship Repayment Agreements Entered Into Prior to December 1, 2020. For tenants who have entered into a payment plan prior to December 1, 2020, the following terms shall apply to a mandatory hardship repayment agreement.

7.2.1 Beginning the last day of the COVID-19 Emergency Period or the first day of the month after the hardship repayment agreement has been entered into, whichever is later, the tenant shall pay as follows for nine months:

7.2.1.1. On a monthly basis:

(a) Any rent currently due for the month.

plus

(b) At a minimum - the lower of:

1. Thirty percent (30%) of the average monthly rate of rent due between March 1, 2020 and the last day of the COVID-19 Emergency Period; or
2. any back due rent that is subject to the agreement

divided by nine.

7.2.1.2. Final Payment. All past due rent must be paid back to the landlord by nine months after the last day of the COVID-19 Emergency Period, on or before May 31, 2021. If the amount of past due rent paid pursuant to subparagraph 7.2.1.1 of this regulation does not completely repay all past due rent due, a lump sum payment of any outstanding past due rent shall be due by the last day of the ninth month following the COVID-19 Emergency Period.

7.2.1.3. No Interest or Late Penalties Permitted. No late fees, interest, or other charges related to past due rent may be charged on late rent between March 1, 2020 and nine months following the last day of the COVID-19 Emergency Period.

7.3 Minimum Terms of Hardship Repayment Agreements Entered Into On or After December 1, 2020. For tenants who have entered into a payment plan on or after December 1, 2020 the following terms shall apply to a mandatory hardship repayment agreement:

7.3.1 Beginning the first day of the First Extended COVID-19 Emergency Period or the first day of the month after the hardship repayment agreement has been entered into, whichever is later, the tenant shall pay as follows for nine months:

7.3.1.1 On a monthly basis:

(c) Any rent currently due for the month.

plus

(d) At a minimum - the lower of:

3. Thirty percent (30%) of the average monthly rate of rent due between March 1, 2020 and the last day of the First Extended COVID-19 Emergency Period; or

4. any back due rent that is subject to the agreement
divided by nine.

7.3.1.2. Final Payment. All past due rent must be paid back to the landlord by September 30, 2021. If the amount of past due rent paid pursuant to subparagraph 7.3.1.1 of this regulation does not completely repay all past due rent due, a lump sum payment of any outstanding past due rent shall be due by September 30, 2021: which is nine months following the last day of the First Extended COVID-19 Emergency Period.

7.3.1.3. No Interest or Late Penalties Permitted. No late fees, interest, or other charges related to past due rent may be charged on late rent between March 1, 2020 and September 30, 2021: which is nine months following the last day of the First Extended COVID-19 Emergency Period.

7.3.1.4 Examples. Note: All the following examples assume that the tenant has a COVID-19 financial hardship and has submitted a Certification of Hardship with appropriate documentation:

Example A. Tenant A had a monthly rent obligation of \$900.00 at all times before the end of the COVID-19 Inclusive Emergency Period (currently December 31, 2020) to the present, but was unable to pay rent between September 1, 2020 and November 1, 2020 due to a COVID-19 Financial Hardship. Tenant A began paying rent as normally due in December 2020 but still owes Tenant A's landlord back rent of \$2,700. Tenant and landlord entered into a hardship repayment agreement in August.

Beginning January 1, 2021, Tenant A must pay the monthly rent **\$900.00 plus** a portion of back due rent (\$2,700).

To calculate the back due rent due monthly the parties will need to determine what is less: (1) thirty percent (30%) of the \$900 monthly rent (**\$270**); or (2) \$2,700 in back due rent divided by nine (9) (**\$300**). In this scenario \$270 is less, so the final monthly payment is:

$$\mathbf{\$900 \text{ plus } \$270 = \underline{\$1,170}} \text{ for 9 months.}$$

After nine (9) months of payments, Tenant A will have paid back **\$2,430** and a lump sum of **\$270** will be due on or before September 30, 2021.

Example B. Tenant B had a monthly rent of \$1,200 at all times before December 31, 2020 to the present, and was behind in rent since January 2020, and has not been able to get current on rent due to an ongoing COVID-19 Financial Hardship. Tenant B's landlord filed an action for eviction in early December 2020 but it has not been scheduled. Tenant B has been able to pay current rent beginning in December 2020 but remains twelve (12) months behind for a total of \$14,400. Tenant and landlord entered into a hardship repayment agreement at the end of December.

Beginning January 1, 2021 (currently the first day of the month following the COVID-19 Inclusive Emergency Period *after* the agreement has been entered into) Tenant B must pay Tenant B's monthly rent **\$1,200 plus** a portion of back due rent (\$14,400).

To calculate the back rent that is due on a monthly basis the parties will need to determine what is less: (1) thirty percent (30%) of the \$1,200 monthly rent (**\$360**); or (2) \$14,400 in back due rent divided by nine (9) (**\$1,600**). In this scenario the **\$360** is less, so the final monthly payment is: 1

$$\mathbf{\$1,200 \text{ plus } \$360 = \underline{\$1,560}} \text{ for 9 months.}$$

After 8 months of payments, as of August 1, 2021 Tenant B will have paid back **\$2,880** towards the **\$14,400.00** in back rent. The remaining back rent of **\$11,520** will be due on or before September 30, 2021.

7.4 Form of Hardship Repayment Agreement. The Commission adopts the form of repayment agreement attached hereto as Attachment B to meet the requirements of Section 9-809(7). The parties may enter into another form of agreement if agreed to by both parties, provided it meets the following requirements of subsection 7.2 of this regulation and the terms of the agreement are in plain language such that they can be understood by all parties to the agreement.

7.5. Failure to Enter Into Hardship Repayment Agreement. A landlord who fails to enter into a hardship repayment agreement with a tenant who has a right to enter such agreement and has requested to enter into such agreement shall be acting in violation of the Code. The terms set forth in subsection 7.2 shall apply automatically to modify any contractual relationship between the parties as if the parties had executed the form of agreement adopted by the Commission pursuant to subsection 7.3 of these regulations.

7.5. Eviction for Nonpayment of Rent.

7.5.1. Until October 1, 2021, unless a landlord and tenant have entered into a repayment agreement, a landlord must properly serve the notice required as provided in subsection 3.1 of this Regulation at least 30 days in advance of taking any step in furtherance of recovering possession based on nonpayment of rent.

7.5.2 Until October 1, 2021, if a landlord and tenant have entered into a repayment agreement, a landlord may only seek to repossess a property subject to such agreement if (1) the tenant is failing to pay the ongoing monthly rate of rent as normally due at any time following the last day of the COVID-19 Inclusive Emergency Period, currently December 31, 2020, or (2) the tenant is in arrears as follows:

- a. on a repayment agreement entered into prior to December 1, 2020, in an amount equal to or more than four months of required payments.
- b. on a repayment agreement entered into December 1, 2020 or later, in an amount equal to or more than three months of required payments.

7. Certification of Hardship.

8.1. Certification of Hardship. For a residential tenant, the “Certification of Hardship” form, attached hereto as Attachment C, or a similar statement, shall be sufficient to constitute a Certification of Hardship for the purpose of any provision of Section 9-809. The CDC Eviction Declaration available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/EvictionDeclare_d508.pdf may also be used for this purpose.

The Certification of Hardship must be a signed written statement, which may be signed electronically, and subject to the provisions of Section 1-108 of the Code (Certification). The statement must be submitted by an individual with personal knowledge of the facts set forth in such statement.

If the certification is being submitted by or for a residential tenant it must explain why tenant has lost income or had an increase in expenses as a result of the COVID-19 pandemic and provide facts that provide an explanation of the COVID-19 Financial Hardship suffered, as that phrase is defined in Code Section 9-809(1)(c). Submission of the CDC Eviction Declaration meets these requirements.

If the certification is being submitted by or for a small business tenant, the individual submitting the certification on behalf of the small business must provide facts supporting a Small Business Financial Hardship, as that phrase is defined in Code Section 9-809(1)(g).

8.2. When Required and Effect of Certification.

8.2.1. A Certification of Hardship Is Required to Qualify For A Mandatory Hardship Repayment Agreement.

A Certification of Hardship is required if a tenant wishes to exercise a right to enter into a hardship repayment agreement pursuant to Section 7. A tenant has thirty (30) days after delivery of notice required under subsection 3.1 of this regulation to request to enter into a hardship repayment agreement in accordance with Section 7 and, unless the CDC Eviction Declaration is used as the Certification of Hardship, to provide the landlord the required Certification of Hardship with documentation or, if applicable, a written explanation of why such documentation is not available.

8.2.2. A Certification of Hardship Puts a Landlord on Notice That Eviction Diversion Is Required And that Fees and Interest Cannot be Charged.

While a Certification of Hardship is not required for the provisions of Section 5 (Eviction Diversion Program) and Section 6 (Temporary Waiver of Certain Fees) to apply, providing a landlord a Certification of Hardship by a tenant puts a landlord on notice that those provisions are applicable.

8.2.3. A Certification of Hardship Presumption for Temporary Waiver of Certain Fees.

When a tenant submits a Certification of Hardship to the tenant's landlord it creates a presumption that such tenant has suffered a COVID-19 Financial Hardship. In such cases, the tenant's landlord must submit affirmative proof that the tenant has not suffered a COVID-19 Financial Hardship to rebut that presumption.

8.3. Challenging Veracity of Certification.

A landlord who has a credible reason to doubt the truthfulness of a Certification of Hardship can challenge the accuracy of the statements contained therein by filing a complaint with the Fair Housing Commission.

8. Fair Housing Commission Process.

9.1. Complaints. The Fair Housing Commission shall receive and review any complaints of alleged or reasonably anticipated violations under Section 9-809 of the Philadelphia Code, including complaints challenging the veracity or sufficiency of a Certification of Hardship, and may respond, initially, by providing education regarding the requirements of Section 9-809 with or without scheduling a hearing on a complaint.

9.2. Jurisdiction. The Fair Housing Commission shall retain jurisdiction over any such complaint submitted until notice is provided to the parties that its review and response to any such complaint is complete.