

C. EVICTION DIVERSION PROGRAM (EDP) & EMERGENCY HOUSING PROTECTION ACT (EHPA) DEFENSES

Eviction Diversion Program

- **Notice of Diversion Rights**

- As of January 2022, landlords are required by the newly amended Eviction Diversion Bill to apply for and participate in good faith the City of Philadelphia's Eviction Diversion Program *before* filing for eviction. Note, the amended Bill does differentiate between evictions for nonpayment of rent or possession. This requirement is currently set to expire on December 31, 2022.
 - The landlord must deliver a "Notice of Diversion Rights" to the tenant by hand or by mail with proof of delivery.
 - The landlord must apply for the Eviction Diversion Program online at eviction-diversion.phila.gov.
 - Upon approval of the application, the tenant will be contacted by Philadelphia Legal Assistance's "Save Your Home Philly Hotline" ("Hotline").
 - Upon the Hotline's successful contact with the tenant, a pre-mediation appointment will be scheduled between the landlord, tenant, and a housing counselor.
 - If the pre-mediation session does not yield an agreement, a mediation date will be scheduled with all parties.
 - Outcomes of the mediation will be sent to both the landlord and the tenant.
 - The program begins and ends within 30 days of the application approval.

Emergency Housing Protections Act ("EHPA") - while the EHPA has expired, it is still effective in waiving any late fees incurred due to late payments of rent for the months of March 2020 through September 2021. If client has experienced a loss of income (whole or part) due to the COVID-19 pandemic and otherwise qualifies under the EHPA, the client should complete the EHPA form and provide it to the landlord. Client should keep a copy for their own records and provide a copy to you or VIP.

- **Late Fees**

- The EHPA makes it unlawful for any landlord to charge or accept the payment of late fees, interest on back rent, or similar charges as a result of delinquent payment of rent with respect to a residential premises *during the retroactive emergency period through nine months after the last day of the COVID-19 emergency period (September 30, 2021), if a residential tenant occupying such premises has experienced a COVID-19 financial hardship*. Any residential lease purporting to impose such fees, interest, or charges for delinquent payment of rent shall be void and non-enforceable.
 - Any late fees paid during the retroactive period or emergency period will be applied to future rent.
 - A residential tenant may establish a presumption that such tenant has suffered a COVID-19 financial hardship by submitting a certificate of hardship to such tenant's landlord.

§ 9-811. Eviction Diversion Program.

(1) Authorization and Program Structure. The Department of Planning and Development, or such other City department or office as the Mayor may designate, is authorized to continue operating a pre-filing residential eviction diversion program to facilitate dispute resolution between landlords and tenants or acquisition of rental assistance, if available. Landlords shall enroll in the eviction diversion program by completing an application for rental assistance or similar financial assistance, or in such other manner as directed by the Department. It is not Council's expectation that the diversion program will continue unless sufficient funding is available.

(2) So long as the City is running a pre-filing eviction diversion program consistent with subsection (1), above, that includes rental assistance funds, no landlord shall have a lawful basis to evict a tenant unless the landlord has complied with the following requirements:

(a) The landlord has enrolled with the eviction diversion program consistent with subsection (1), and provided a notice of diversion rights to the tenant consistent with subsection (6); and

(b) The landlord has participated in the eviction diversion program in reasonable good faith, as defined by the City, for no less than forty-five (45) days; provided that such landlord shall thereafter continue to participate in the eviction diversion program in reasonable good faith.

(3) If at any time the financial rental assistance portion of the eviction diversion program is in a hiatus status due to lack of available funds, no landlord shall have a lawful basis to evict a tenant unless the landlord has complied with the following requirements:

(a) The landlord has enrolled with the eviction diversion program in the manner directed by the Department of Planning and Development and provided a notice of diversion rights to the tenant consistent with subsection (6), below, both concurrently with serving any notice to vacate on the tenant; and

(b) The landlord has participated in the eviction diversion program in reasonable good faith, as defined by the City, for no less than thirty (30) days; provided that the landlord shall thereafter continue to participate in the diversion program in reasonable good faith.

(4) Exceptions. Subsections (2) and (3) shall not apply if eviction is necessary to cease or prevent an imminent threat of harm by the person being evicted, including physical harm or harassment.

(5) Lawful Basis to Evict Required. Except as specifically authorized in this Section 9-811, no landlord shall take any step to evict a tenant or otherwise in furtherance of recovering possession of a residential property occupied by a tenant unless such landlord has a lawful basis to evict the tenant at the time such step is taken.

(6) Notice, Forms, and Regulation.

(a) Required Notice. The notice a landlord is required to provide a tenant under this Section 9-811 shall be provided in writing, by hand delivery or mail with proof of mailing, and must provide notice of the tenant's right to engage in diversion under this Section 9-811, as well as clear information on how the tenant may exercise such rights, including such specific text or such other language that may be included in a form created by the City pursuant to subsection (6)(b), "Forms and Regulations," (below).

(b) Forms and Regulations. The Department of Planning and Development, or such other City department or office as the Mayor may designate, is authorized to issue regulations implementing and interpreting this Section 9-811 and to create forms to be used by landlords and tenants under this Section 9-811, including, but not limited to, a form of required notice. The Department shall work with appropriate stakeholders to develop and further enhance the diversion program, including ensuring periodic independent evaluation of the program.

(7) Defenses. The failure of a landlord to comply with any obligation under this Section 9-811 may be asserted as a defense by a tenant in an action before any adjudicatory body; may, in the court's discretion, be a basis for sua sponte dismissal of an action; and may not be waived.

(8) Effective Dates. This Section 9-811 shall be effective January 1, 2022 and shall expire December 31, 2022.

§ 9-809. COVID-19 Emergency Housing Protections. 1001.1

(1) *Definitions.* The following definitions apply to this Section 9-809 only:

(a) *Certification of Hardship.* 1001.2 Either a signed copy of the Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19, OMB Control No. 0920-1303, ("CDC eviction declaration"), or a signed written statement, which may be signed by use of a typed electronic signature and provided electronically or may be provided in hard copy, that is subject to the provisions of Section 1-108 of the Code (Certification), and is submitted by an individual with personal knowledge of the facts set forth therein stating, at minimum, as follows, provided that any initial statements may be further supplemented with additional explanation, facts, or support at any time:

(.1) In the case of a residential tenant, that a residential tenant has lost income due to the pandemic and setting forth facts that provide an explanation of the COVID-19 financial hardship suffered.

(.2) In the case of a commercial tenant, that a small business has suffered a small business financial hardship and setting forth facts supporting such financial hardship.

(b) *COVID-19 emergency period.* The period beginning on the date the ordinance adding Section 9-809 to the Code becomes law and ending August 31, 2020.

(b.1) *COVID-19 first extended emergency period.* The period beginning September 1, 2020 and ending December 31, 2020. 1001.3

(b.2) *COVID-19 inclusive emergency period.* The period beginning March 1, 2020 and ending December 31, 2020. 1001.4

(c) *COVID-19 financial hardship.* A tenant's or tenant's household member's loss of income due to any one or more of the following during the COVID-19 inclusive emergency period: 1001.5

(.1) A diagnosis of the disease caused by the 2019 novel Coronavirus, known as COVID-19.

(.2) The need to quarantine or self-quarantine due to the advice of a health care provider; due to symptoms of COVID-19, such as fever, dry cough, or shortness of breath; after the return of an individual to the United States after travel to a Tier 2 or Tier 3 country as defined by the United States Center for Disease Control ("CDC") with respect to COVID-19; or as the result of having come into contact with an individual who has been diagnosed with COVID-19.

(.3) The need to care for a family member or a member of the tenant's household as the result of such family or household member's diagnosis of COVID-19 or self-quarantine for purposes described in subsection 9-809(1)(c)(.2).

(.4) The need to care for a family member of a member of the tenant's household as the result of the closure of a school, daycare, adult care facility, or other care facility where care would otherwise be provided for such family or household member.

(.5) The inability to work as the result of a requirement by the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner that businesses, or a particular type of business, must remain closed.

(.6) The inability to work as the result of such tenant or such tenant's household member being at a greater risk of harm than the general population if such person or such person's household member contracts COVID-19, such as those with compromised immune

systems, the elderly, or those who have self-quarantined as the result of the recommendation of a health care professional, the CDC, the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner.

(.7) The inability to work as a result of a requirement by the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner that residents of certain areas of the Commonwealth must not travel, and such travel would be necessary to report to work.

(.8) The loss of a job, the reduction of work hours offered to such tenant or such tenant's household member, or a reduction in the salary or hourly wage paid to such tenant or such tenant's household member, whether permanent or temporary.

(.9) The inability to commence or obtain employment.

(.10) The need to financially support a family member due to the family member or a household member of such family member's loss of income for any one or more of the reasons set forth in this subsection 9-809(1)(c).

(d) *Landlord*. An owner of a rental premises and any agent, or other person, operating or managing a rental premise on behalf of an owner.

(e) *Retroactive emergency period*. The period beginning March 1, 2020 and continuing through the effective date of the ordinance adding this Section 9-809 to the Code.

(f) *Small business*. A person that employs fewer than 100 total employees, wherever located, whether within the City of Philadelphia or elsewhere.

(g) *Small business financial hardship*. A small business's documented loss of income due to one or more of the following during the COVID-19 emergency period or the retroactive emergency period:

(.1) A requirement or recommendation by the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner that businesses in a particular area, or a particular type of business, remain fully or partially closed.

(.2) The owner or operator, a key employee, or a significant number of employees of the small business being unable to work as a result of the circumstances set forth in subsections 9-809(1)(c)(.1), (.2), (.3), (.4), (.6), or (.7).

(.3) The loss of customers or reduction of business from customers as a result of the COVID-19 pandemic, or related recommendations or requirements of the Governor, the Secretary of Health of the Commonwealth of Pennsylvania, the Mayor, or the Health Commissioner.

(2) *Purpose.* This Section 9-809 shall apply in addition to any other provisions in this Chapter 9-800, or any provisions of a lease entered into between a tenant and landlord. If the provisions of this Section 9-809 conflict with any other provisions of Chapter 9-800 or the provisions of any lease that otherwise governs a landlord tenant relationship, the provisions of this Section 9-809 shall control.

(3) *Residential Eviction Relief.* 1001.6 During the COVID-19 emergency period the only legal basis for evicting a residential tenant in Philadelphia shall be to cease or prevent an imminent threat of harm by the person being evicted, including physical harm or harassment, and it shall be unlawful for a landlord to take any steps in furtherance of recovering possession of a residential premises rented by a tenant on any other basis.

(4) *Commercial Eviction Relief.* 1001.7 If any person has provided the landlord with a certification of hardship, during the COVID-19 emergency period the only legal basis for evicting a small business that is a commercial tenant in Philadelphia shall be to cease or prevent an imminent threat of harm by the person being evicted, including physical harm or harassment, and it shall be unlawful for a landlord to take any steps in furtherance of recovering possession of a commercial premises rented by such small business on any other basis.

(5) *Eviction Diversion Program.* 1001.8

(a) The Commission, or such other City department or office as the Mayor may designate, is authorized to establish a residential eviction diversion program to facilitate dispute resolution between landlords and tenants, which may include one or more of the following:

(.1) A conciliation conference between a landlord and tenant that has experienced a COVID-19 financial hardship to mediate an agreement for asserted residential lease violations.

(.2) A designated mediator and housing counselor that participates in the conciliation conference.

(.3) A designated housing counselor that engages with the tenant prior to the conciliation conference to educate and discuss available resources.

(.4) Any other dispute resolution methods established by the residential eviction diversion program.

(b) Beginning September 1, 2020, so long as the City is running a eviction diversion program consistent with this subsection 9-809(5), no landlord shall take steps in furtherance of recovering possession of a residential property occupied by a tenant who has suffered a COVID-19 financial hardship other than providing a notice required under this

Section 9-809 without first completing the eviction diversion program, unless one of the following requirements are met:

(1) Eviction is necessary to cease or prevent an imminent threat of harm by the person being evicted, including physical harm or harassment; or

(2) The landlord has provided the affected tenants notice of such tenants' rights under this Section 9-809, the landlord has registered with the eviction diversion program; and thirty (30) days has passed both from the date the landlord provided the required notice of tenants' rights and the landlord properly registered with the eviction diversion program; provided that such landlord shall thereafter continue to participate in the eviction diversion program.

(3) This subsection (5)(b) expires on March 31, 2021.

(6) *Temporary Waiver of Certain Fees.* 1001,9

(a) It shall be unlawful for any landlord to charge or accept the payment of late fees, interest on back rent, or similar charges as the result of delinquent payment of rent with respect to a residential premises during the retroactive emergency period through nine months after the last day of the COVID-19 first extended emergency period, if a residential tenant occupying such premises has experienced a COVID-19 financial hardship. Any residential lease provision purporting to impose such fees, interest, or charges for delinquent payment of rent shall be void and non-enforceable.

(b) A residential tenant 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.

(c) Any fees, interest, or similar charges, submitted by a tenant during the COVID-19 inclusive emergency period that are prohibited under subsection (6)(a), "Temporary Waiver of Certain Fees", shall be credited first against any future rent, and if there is no such other rent, against any other financial obligations owed by such residential tenant to such tenant's landlord.

(7) *Mandatory Hardship Repayment Agreement for Residential Tenants with a Certified Financial Hardship as the Result of the COVID-19 Pandemic.* 1001,10

(a) *Financial Hardship.* Except as provided in subsection (7)(g) below, any residential tenant that has suffered a COVID-19 financial hardship during the COVID-19 inclusive emergency period and has failed to pay rent as normally due at any point prior to the end of the COVID-19 inclusive emergency period shall have the right to enter into a mandatory hardship repayment agreement as specified in subsections (7)(b.1) or (b.2) below, as applicable, without incurring any penalty. Such tenant shall be considered in full compliance

with any payment obligations under such tenant's lease, and any associated payment agreements, provided such tenant provides such tenant's landlord the following and thereafter enters into a hardship repayment agreement:

(.1) A certification of hardship; and

(.2) Documentary evidence of the loss of income or increases in expenses the tenant has incurred during the COVID-19 inclusive emergency period as a result of such tenant's COVID-19 financial hardship, or if such documentation cannot be reasonably provided, a further certification explaining why such documentation is not available which may be signed by use of a typed electronic signature and provided electronically or may be provided in hard copy, that is subject to the provisions of Section 1-108 of the Code (Certification), provided the requirement in this subsection (7)(a)(.2) does not apply if the tenant has provided the landlord a signed CDC eviction declaration.

(d) *Notice Required and Limitation on Eviction for Nonpayment of Past Due Rent.* In addition to any other limitations set forth under this Section 9-809, until October 1, 2021, the nonpayment of rent shall not be a legal basis to evict a tenant unless the following conditions are met:

(.1) With respect to a tenant that has not entered into a hardship repayment agreement or requested to enter into a hardship repayment agreement, the landlord has provided the tenant written notice regarding the tenant's rights under this subsection (7), "Mandatory Hardship Repayment Agreement for Tenants with a Certified Financial Hardship as the Result of the COVID-19 Pandemic", as provided under subsection (8), "Notice, Forms, and Regulations" of this Section 9-809 at least thirty (30) days prior to the date a landlord takes any such action.

(.2) With respect to a tenant who has the right to enter into a hardship repayment agreement and has requested to enter into such an agreement at any point prior to the end of the thirty (30) day notice period in subsection (7)(d)(.1), above, but has not yet entered such an agreement, the eviction action is based on a failure to pay the ongoing monthly rate of rent as it is normally due after the end of the COVID-19 inclusive emergency period.

(.3) With respect to a tenant who has entered into a hardship repayment agreement, the eviction action is either (.a) based on a failure to pay the ongoing monthly rate of rent as it is normally due after the end of the COVID-19 inclusive emergency period; (.b) the tenant is in arrears in an amount equal to four or more monthly payments required under subsection (7)(b.1); or (.c) the tenant is in arrears in an amount equal to three or more monthly payments required under subsection (7)(b.2).

(e) In addition to any other limitations set forth under this Section 9-809, the Code, or any other applicable law, until October 1, 2021, it shall be unlawful for a landlord to take any steps in furtherance of recovering possession of a residential premises occupied by a tenant

or a guest of a tenant, on any basis other than a legal basis for eviction. For the purposes of this subsection (7)(e), sending a notice required under this Section 9-809 or participating in an eviction diversion or mediation program established by the City shall not be considered taking steps in furtherance of recovering possession of a residential premises.

(f) *Forms.* The Commission, or such other City department or office as the Mayor may designate, is authorized to create a form to be used by landlords and tenants entering into a hardship repayment agreement as provided for under subsection (7)(a) and a form for notice under subsection (7)(c).

(g) This subsection (7), shall not apply if one or more of the following conditions are applicable to the residential tenant, or the residential premises occupied:

(.1) The tenant receives a federal housing subsidy pursuant to 42 U.S.C. § 1437f that is not a tenant-based subsidy; or

(.2) The tenant receives a federal housing subsidy administered by the U.S. Department of Housing and Urban Development; or

(.3) A loan financing the residential premises is insured or assisted under 12 U.S.C. § 1701q, § 1715l(d)(3), or § 1715z-1; or 42 U.S.C. § 1485.

(8) *Notice, Forms, and Regulations.* 1001,11

(a) *Required Notice.* Any notice that a landlord is required to provide a tenant under this Section 9-809 shall be provided in writing, by hand delivery or certified United States mail with proof of mailing, and must provide notice of the tenant's rights under this Section 9-809 as well as clear information on how the tenant may exercise such rights, including the following specific text or such other language that may be included in a form created by the City pursuant to subsection (8)(b), "Forms and Regulations", (below):

YOU MAY BE ELIGIBLE FOR CERTAIN HOUSING PROTECTIONS. IF YOU HAVE EXPERIENCED A FINANCIAL HARDSHIP DUE TO COVID-19, THIS MAY INCLUDE, BUT IS NOT LIMITED TO, A NINE (9) MONTH REPAYMENT PLAN TO PAY PAST DUE RENT. YOU MUST PROVIDE YOUR LANDLORD A CERTIFICATION OF HARDSHIP TO QUALIFY FOR SOME OF THESE PROTECTIONS.

(b) *Forms and Regulations.* The Commission, or such other City department or office as the Mayor may designate, is authorized to issue regulations implementing this Section 9-809, and to create forms to be used by landlords and tenants under this Section 9-809 including but not limited to, a certification of hardship form, a hardship repayment agreement form, and a form of required notice.

(9) *Defenses.* The failure of the landlord to comply with any obligation under this Section 9-809 may be asserted as a defense by a tenant in an action before any adjudicatory body and may not be waived.

(10) *Severability.* If any provision of this Section 9-809 or application thereof to any persons or circumstances is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalidated provision or application and to this end the provisions of the ordinance are declared severable.

Notes

- 1001,1 Added, Bill No. 200294 (approved July 1, 2020); Bill No. 200295 (approved July 1, 2020); Bill No. 200302 (approved July 1, 2020); and Bill No. 200305 (approved July 1, 2020).
- 1001,2 Amended, Bill No. 200421 (approved December 1, 2020).
- 1001,3 Added, Bill No. 200420 (approved December 1, 2020); Bill No. 200421 (approved December 1, 2020).
- 1001,2 Added, Bill No. 200420 (approved December 1, 2020).
- 1001,4 Added, Bill No. 200420 (approved December 1, 2020); Bill No. 200421 (approved December 1, 2020); Bill No. 200616 (approved January 20, 2021).
- 1001,2 Added, Bill No. 200420 (approved December 1, 2020).
- 1001,5 Amended, Bill No. 200616 (approved January 20, 2021).
- 1001,6 Added, Bill No. 200295 (approved July 1, 2020).
- 1001,7 Added, Bill No. 200295 (approved July 1, 2020).
- 1001,8 Added, Bill No. 200294 (approved July 1, 2020); amended, Bill No. 200616 (approved January 20, 2021).

1001,9 Added, Bill No. 200302 (approved July 1, 2020); amended, Bill No. 200420 (approved December 1, 2020).

1001,10 Added, Bill No. 200305 (approved July 1, 2020); amended, Bill No. 200421 (approved December 1, 2020).

1001,11 Added, Bill No. 200305 (approved July 1, 2020).



CITY OF PHILADELPHIA FAIR HOUSING COMMISSION

EMERGENCY HOUSING PROTECTION ACT COVID-19 FINANCIAL HARDSHIP CERTIFICATION

Dear Landlord/Property Manager,

PART I

I, or a member of my household, have experienced a loss of income or increase in expenses between March 1, 2020 and December 31, 2020 due to the COVID-19 pandemic because I, or a member of my household (check all that apply):

- Was diagnosed with COVID-19 or had to self-quarantine due to potential exposure to COVID-19.
- Cannot work or have had to self-quarantine because I/we have a greater risk of harm if COVID-19 is contracted due to a compromised immune system, age, or due to the specific recommendation of a health care professional, the CDC, the Governor of Pennsylvania, the Secretary of Health of Pennsylvania, the Mayor of Philadelphia, or the Health Commissioner of Philadelphia.
- Had to care for a family member due to a diagnosis of COVID-19 or a need to self-quarantine.
- Had to care for a family member due to school, childcare or elder care closure during the pandemic.
- Lost a job or my worksite was temporarily closed.
- Had reduced hours or wages at work.
- Was not employed before March 1, 2020 and was not able to find new employment during this time.
- Had to financially support a family member due to one of the above reasons.

I am notifying you of this COVID-related financial loss to exercise my rights under Section 9-809 of The Philadelphia Code "COVID-19 Emergency Housing Protections" and ask that you (check all that are applicable):

- Waive late fees and interest for March 1, 2020 through September 30, 2021.**
- Engage in mediation prior to beginning eviction proceedings.**
- Enter into a repayment agreement for any back rent owed from March 1, 2020 through December 31, 2020. *[NOTE: Tenant Must Fill Out Part II of This Form if Checked]***

I hereby certify that the statements above, and below – if applicable, are true and correct to the best of my knowledge and belief.

I understand that if I knowingly make any false statement herein, I am subject to such penalties as may be prescribed by statute or ordinance.

I look forward to working with you to stabilize my housing.

Sincerely,

Tenant Signature: _____

Tenant Name: _____

Date: _____

Address: _____

Phone #: _____

Email: _____

PART II – ADDITIONAL FACTS AND DOCUMENTATION

***REQUIRED FOR TENANTS SEEKING A REPAYMENT AGREEMENT
OPTIONAL FOR ALL OTHER TENANTS***

Evidence of the loss of income or increase in expenses that I, or a member of my household experienced between March 1, 2020 and December 31, 2020 due to the COVID-19 pandemic is (provide proof of the loss of income or increase in expenses you indicated in Part I):

- See attached documents.
- Unavailable for the following reason(s):

Rental Assistance is now available through the City of Philadelphia for tenants and landlords to apply together. For more information go to: <https://phlrentassist.org/>