

Plan to Reopen the Philadelphia Municipal Court's
Civil Division to the Public in a Safe Manner during the Covid-19 Pandemic

This memorandum addresses the means and methods that the Philadelphia Municipal Court will use to reopen its Civil Division to the public in a safe manner during the Covid-19 pandemic. Key components are practicing social distancing from and requiring masks on every person who is present in the courthouse located in the Widener Building.

The Civil Division has jurisdiction over landlord-tenant cases, small claims cases and code enforcement cases. For the period of March 17 to May 29, there were the following number of cases that were scheduled, were not heard, and need to be rescheduled: landlord-tenant cases (240 PHA cases¹ and 1,620 non-PHA cases); small claims cases (3,823 consumer purchase cases and 1,484 non-consumer purchase cases); and code enforcement cases (3,492 cases).

The Civil Division has remained open for the filing and hearing of emergency petitions and for the filing of statements of claim and landlord-tenant complaints in order to toll the statute of limitation. Courtrooms 4 and 6 are now outfitted with Zoom technology. The court plans to hear a total of twelve small claims cases on May 20 and 22. The Zoom technology will remain available in Courtrooms 4 and 6 after the Civil Division reopens to the public and will be available to be used as a tool for hearing court proceedings. Additionally, the court will seek to use the Zoom technology to hear small claims cases during June.

Social distancing and safety require that practice in the Civil Division change when the court reopens to the public. The court has the use of two elevators which are able to accommodate only two persons at a time safely. When persons get off of the elevators on the sixth floor, the size of the space before security also limits the number of persons who can safely

¹ PHA has notified the court that it plans to withdraw some of those 240 cases.

be in that space. Finally, the size and configuration of the courtrooms as well as of the mediation and negotiation spaces also limit how many people are able to safely be on the sixth floor.

I. The Planned Reopening of the Civil Division on July 1, 2020

On Wednesday, July 1, 2020², the Civil Division plans to reopen and begin hearing in person those landlord-tenant and certain small claims cases. The cases that the court will hear are those that had been scheduled to be heard after March 16, 2020, but were not heard as a result of the court being generally closed to the public. Due to social distancing and safety concerns, the court will no longer schedule a large number of cases in morning and afternoon lists. Rather, the court will schedule cases in forty-five minute blocks. During each forty-five minute block, there will be five small claims cases scheduled each of Courtrooms 2 and 6 and six landlord-tenant cases scheduled in Courtroom 3. Those cases will be a mix of cases in which there is at least one lawyer who has entered an appearance and in which there are no lawyers who have entered an appearance.

The court will continue to require mediation and negotiation before a case proceeds to trial³. The court will ensure that the negotiation rooms and stations are set up so that social distancing is able to be maintained. The court will use Courtrooms 1 and 5 in addition to some of the larger mediation rooms for mediation. The waiting room on the sixth floor will be reconfigured so that social distancing is able to be maintained.

² The July 1, 2020 date assumes that there are no Orders issued by Mayor Kenney, Governor Wolf or the Supreme Court that preclude the opening and that dividers are in place on the sixth and tenth floors of the Widener Building. For example, the Governor's current Stay-at-Home Order would preclude opening on July 1 unless it is lifted before then.

³ The court is aware of the call by advocates on behalf of landlords and tenants for a Diversion Program. The court is prepared to accommodate such a program that is part of mediation and negotiation before trial and prior to any eviction based on a judgment that was entered prior to March 17, 2020. The court would only accommodate such a program if the local, state, federal government or a charity comes forth with sufficient funding for the program and agrees to have someone present in court to decide which tenants qualify to receive money, how much they will receive, and when it will be paid to the landlord.

Courtroom 4 will be used to hear overflow cases from Courtrooms 2, 3 and 6, for PHA cases on Thursday afternoons, and for petitions on Tuesday afternoons, Wednesday afternoons, and Thursday mornings. Like Courtroom 3, it will be configured to accommodate up to six cases at a time safely. Additionally, all continuances will be scheduled only on Friday afternoons in each of the four courtrooms.

There are too many small claims / consumer purchase (“SC/CP”) cases and code enforcement cases to have them heard safely in the Widener Building courtrooms. The court is currently looking for a larger space in another building that is more easily accessible to hear those cases and is able to accommodate more cases being heard safely at one time.

The new reality will require lawyers and litigants to change the way in which they approach a court proceeding in the Civil Division. When the court reopens, lawyers and litigants will need to be on time and prepared to proceed. The days of preparing for a case in court on the day of the court proceeding are over as long as the Covid-19 pandemic and safety concerns requiring social distancing exist. There will be more time between the filing of a case, service of original process, and the date on which a trial is scheduled. This additional time will provide lawyers and litigants with more time to prepare for court and to speak with the other side about a potential amicable resolution before coming to court.

The additional time will also provide unrepresented parties with time to consult with and to obtain legal representation if they desire to do so. With respect to unrepresented tenants, the Lawyer for a Day Program and other services provided by the Philadelphia Eviction Prevention Program will no longer be available in the courthouse on the day of trial. Rather, tenants will have to obtain such services and legal representation before coming to court.

In order to provide litigants and lawyers with information about the changes to the court upon its reopening, the court will send a document describing those changes with every

continuance notice and every statement of claim, code enforcement complaint and landlord-tenant complaint. A copy of that document is attached to this memorandum.

II. Filing of Statements of Claim, Landlord-Tenant Complaint and Petitions

There are currently statements of claim and landlord-tenant complaints that were electronically sent to the court for filing after the court closed to the public on March 17, 2020. On May 18, 2020, the court intends to reject those cases because the trial dates selected are not available and there would be issues with having service of original process made. The court will not yet reject the SC/CP cases because there is not yet a plan as to when and where they can be scheduled.

Small claims cases other than SC/CP cases may be filed in three ways beginning on May 19, 2020. Electronic filers will continue to be required to file those cases electronically. Non-electronic filers will be able to file in person or by mail. Those persons wishing to file in person must call the court (215-686-2910) to make an appointment. Calls for an appointment may be made beginning on May 19, 2020, but no appointments will be scheduled until after July 1, 2020. Those persons who want to file by mail must also call the court (215-686-2910) to request that a packet be mailed to them. The completed packets may be mailed back at anytime.

Landlord-tenant cases may also be filed in the same manner as small claims cases. Due to the Governor's May 7, 2020 Order, no landlord-tenant case may be filed before July 10, 2020. Moreover, if the leased property is a "covered property" under Section 4024 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the action may not be filed before July 26, 2020. Attached to this memorandum as Appendix "B" is this court's analysis of the Governor's Order and the CARES Act.

The court will provide dates for its inventory of cases before providing dates for new cases. Therefore, the earliest that any new small claims or landlord-tenant trial will be scheduled

is September 1, 2020. Additionally, in accordance with its policy of providing more time between the filing of a case and trial, the earliest that a case will be scheduled for trial will be 45 days after it has been filed.

III. Timeline

- May 18, 2020 The court will reject all cases that were submitted for filing after March 16 except for SC/CP cases.
- May 19, 2020 The court will accept for filing electronically small claims cases other than SC/CP cases.
- The court will accept for filing electronically nonemergency petitions in all cases other than SC/CP and code enforcement cases.
- Non-electronic filers may call the court to request an appointment to file small claims cases other than SC/CP cases.
- Non-electronic filers may call the court to request that a packet be mailed to them so that they can file small claims cases other than SC/CP cases.
- The court will begin to reschedule landlord-tenant and small claims cases other than SC/CP cases.
- The court will accept requests for the issuance of writs and alias writs of possession and will issue such writs.
- The court will accept requests for the issuance of writs of execution and attachments and will issue such writs.
- May 20, 2020 The court will hear six small claims cases using Zoom.
- May 22, 2020 The court will hear six small claims cases using Zoom.
- July 1, 2020 The court will begin hearing cases in person as long as the Governor’s Stay-At-Home Order does not apply to Philadelphia.
- The court will permit writs and alias writs of possession to be served and evictions to take place as long as the Governor’s Stay-At-Home Order does not apply to Philadelphia. If the Governor’s Stay-At-Home Order is lifted in Philadelphia earlier than July 1, these activities may start earlier than July 1.
- July 10, 2020 The court will accept for filing nonresidential landlord-tenant cases.

The court will accept for filing residential landlord-tenant cases in which the leased property is not a “covered property” under the CARES Act.

July 26, 2020 The court will accept for filing residential landlord-tenant cases in which the leased property is a “covered property” under the CARES Act. In compliance with the CARES Act, no trial will be scheduled before August 26, 2020.

September 1, 2020 First day on which cases filed after the court was closed to the public will be scheduled for trial.

IV. SC/CP and Code Enforcement Cases

When the court obtains a larger room outside of the Widener Building, it will release a plan with respect to SC/CP cases. The court is working with the City Solicitor’s Office to determine how to proceed with Code Enforcement cases. Like the SC/CP cases, the court will need a larger space outside of the Widener Building to hear code enforcement cases. The court will release a plan concerning Code Enforcement cases in the future.

VII. Conclusion

As with any plan, there may be changes that have to be made for a variety of reasons. The court has always worked closely with those who appear before it and listened to suggestions regarding how to best meet its mission of providing a fair and just process and result to all litigants and attorneys in each case that comes before the court. During these difficult times, it is even more important that the court listen to such suggestions. Therefore, please feel free to send any suggestions to the Honorable Bradley K. Moss, Supervising Judge of the Civil Division, at bradley.moss@courts.phila.gov.

BY THE COURT:

/s/ Patrick F. Dugan
PATRICK F. DUGAN, P.J.
President Judge of the
Philadelphia Municipal Court

/s/ Bradley K. Moss
BRADLEY K. MOSS, S.J.
Supervising Judge of the
Philadelphia Municipal
Court’s Civil Division

Appendix “A”

IMPORTANT COVID-19 NOTICE – READ THE ENTIRE NOTICE UPON RECEIPT

In order to provide a safe place to hold court proceedings, the Philadelphia Municipal Court requires you to take the following actions:

1. **ARRIVE TO COURT ON TIME** – The time that you are required to appear in court is set forth on the continuance notice, complaint or statement of claim that is in the same envelope as this notice. You will need to leave time to travel to court, use the elevators to get to the sixth floor, pass through security, and wash your hands before proceeding to the courtroom. It is estimated that you will be in court for an hour.

2. **WEAR A MASK** – The law requires that everyone wear a mask while in public. In Philadelphia, a person who does not wear a mask in public is subject to the \$500 fine. **You will not be admitted to court unless you are wearing a mask.** The mask does not need to be a surgical mask or N-95 respirator. Rather, it should be a non-surgical mask or a cloth face covering fashioned from household items. The following site provides instructions on how to make your own mask: <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Stop-the-Spread.aspx>.

3. **YOU RISK LOSING YOUR CASE BY HAVING A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU SHOULD YOU ARRIVE LATE OR WITHOUT A MASK.**

4. **BE PREPARED TO PROCEED TO TRIAL** – Bring copies with you of all documents or photographs that you want to use during trial. **The court will not look at any documents or photographs on your phone.** Rather, they must be printed with a copy available for the judge and for the opposing party.

5. **SOCIAL DISTANCING WILL BE ENFORCED** – While in court, you are expected to maintain a distance of six feet from other persons.

6. **YOU ARE ENCOURAGED TO LEAVE CHILDREN AND OTHERS NOT INVOLVED WITH YOUR CASE AT HOME.**

7. **RIGHT TO A LAWYER** – The Philadelphia Municipal Court was established to provide an expeditious procedure in which it is not necessary for the litigants to obtain a lawyer. Although not required, you may be represented by a lawyer. If you are a tenant, you may be eligible to have a lawyer represent you free of charge. See paragraph 8 below. If you are represented by a lawyer, the lawyer should be with you when you come to court. **Do not assume that the case will be continued for you to retain a lawyer.**

8. **LEGAL ASSISTANCE AND REPRESENTATION FOR TENANTS** – You may be entitled to free legal assistance and representation through the Philadelphia Eviction Prevention Program by calling 267-443-2500. You should call as soon as possible so that you are able to meet with your lawyer and prepare your case as soon as possible before trial. The following agencies may also be of assistance to you:

Community Legal Services – (215) 227-2400 SeniorLaw Center – (215) 986-1244
AIDS Law Project – (215) 587-9377 Legal Clinic for the Disabled – (215)
587-3350
Tenant Union Representative Network (TURN) – (215) 940-3900
Philadelphia Bar Association Lawyer Referral and Information Service – (215) 238-6333

9. **PHA TENANTS** – At least one week before your trial, please contact your property manager or supervisor to determine (1) if your case can be resolved without the need for you to come to court and (2) if you are eligible for a rent adjustment because you have had a change in income.

10. **If you have any questions for the court, please call (215) 686-2910.**

Appendix “B”

The CARES Act and Governor Wolf’s May 7, 2020 Order

The CARES Act and Governor’s Wolf’s May 7, 2020 Order were enacted and issued after the Civil Division stopped being generally open to the public. Both have an effect on the initiation of certain landlord-tenant cases for different periods of time. That effect is discussed below.

A. The Coronavirus Aid, Relief, and Economic Security Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was enacted. Section 4024 of the CARES Act provides a temporary moratorium on “initiat[ing] a legal action to recover possession ... for nonpayment of rent or other fees or charges.” The moratorium’s protection is limited to residential tenants who occupy certain rental properties that receive federal assistance or federally-related financing. The moratorium began on March 27, 2020 and terminates 120 days later on July 25, 2020.

Section 4024 also contains a notice requirement. It specifies that a landlord of a property covered by the CARES Act must provide a tenant with a thirty-day notice to vacate. That notice may not be issued before July 26, 2020 and, therefore, the tenant would have until August 25, 2020 to vacate. Unlike the 120-day moratorium on initiating an action to recover possession based on nonpayment of rent, fees or other charges, the notice requirement is not limited to actions based on nonpayment of rent, fees or other charges.

Therefore, when the leased property is subject to the CARES Act, landlords are precluded from filing a landlord-tenant complaint before July 26, 2020. Any landlord-tenant complaint involving a leased property that is subject to the CARES Act that is filed between July 26, 2020 and August 25, 2020, will not be scheduled for a trial any earlier than August 26, 2020.

The residential rental properties that are covered properties are those that participate in covered housing programs as defined in Section 41411(a) of the Violence Against Women Act of 1994, 34 U.S.C. 12491(a), rural housing voucher programs under Section 542 of the Housing Act of 1948, 42 U.S.C. 1490r, or are subject to a “federally backed mortgage loan” or a “federally backed multifamily mortgage loan.” Covered properties include most rental assistance and housing grant programs, including public housing, rural housing programs, the Low Income Housing Tax Credit program, and programs in which tenants are receiving rental assistance through Housing Choice Vouchers and Project-Based Rental Assistance. The following is a list of programs that are subject to the moratorium established by Section 4024 of the CARES Act:

Public Housing (42 U.S.C. § 1437d); Section 8 Housing Choice Voucher (42 U.S.C. § 1437f); Section 8 Project-based Housing (42 U.S.C. § 1437f); Section 202 Housing for the Elderly (12 U.S.C. § 1701q); Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013); Section 236 Multifamily Housing (12 U.S.C. § 1715z-1); Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 1715l(d)); HOME (42 U.S.C. §§ 12741 et seq.); Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. §§ 12901 et seq.); Continuum of Care or other McKinney-Vento Act Homelessness Programs (42 U.S.C. §§ 11360 et seq.); Section 515 Rural Rental Housing (42 U.S.C. § 1485); Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486); Section 533 Housing Preservation Grants (42 U.S.C. § 1490m); Section 538 Multifamily Rental Housing (42 U.S.C. § 1490p-2); Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42); and Rural Housing Voucher Program (42 U.S.C. § 1490r).

A “federally backed mortgage loan” is a residential mortgage on a single-family property (one to four units) that is owned or securitized by Fannie Mae or Freddie Mac, or otherwise assisted by the federal government. The term includes mortgages insured by the Federal Housing Administration and the Department of Veterans Affairs, and the Department of Agriculture’s direct and guaranteed loans. A “federally backed multifamily mortgage loan” is defined almost identically to a “federally backed mortgage loan.” The critical difference is that a “federally backed multifamily mortgage loan” applies to properties designated for five or more

families. Examples of a federally backed mortgage loan or federally backed multifamily mortgage loan include mortgage loans guaranteed by the Federal Housing Administration, HUD, the Department of Veterans Affairs, or the USDA, and those that were purchases or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Additionally, pursuant to Section 4023(d) of the CARES Act, when a landlord is granted or is seeking a mortgage deferral or forbearance after March 27, 2020, the landlord is precluded during the period of the deferral or forbearance from evicting or initiating the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges and from charging any late fees, penalties, or other charges to a tenant for late payment of rent.

B. Governor Wolf's May 7, 2020 Order

On May 7, 2020, Governor Wolf issued an Order that affected landlord-tenant cases. The Order became effective on May 11, 2020. Section 2 of the Order provides the following:

Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings. All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020. All eviction timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Landlord and Tenant Act of 1951 and Manufactured Home Community Rights Act notices will be deemed delivered and any eviction proceedings may commence. The eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act may proceed from that point forward in the normal course of action.

Although Governor Wolf's May 7, 2020 Order refers to the CARES Act, it is more difficult than the CARES Act to understand.⁴ The Order contains numerous "whereas" clauses

⁴ The court needs to interpret the Governor's Order so that it knows how and when to address landlord-tenant cases. In doing so, however, the court is not considering whether or not 35 Pa. C.S. § 7301 provides the Governor with the authority to issue his Order and whether or not the Governor has violated Article V, Section 10 of Pennsylvania's

and no definitions of the words and phrases used in the Order. One of the “whereas” clauses provides the following: “WHEREAS, the Landlord and Tenant Act of 1951, 68 P.S. §250.101 et. [sic] seq., and the Manufactured Home Community Rights Act, 68 P.S. §398.1 et. [sic] seq., require that notice be provided to tenants and/or lessees when a landlord or manufactured home community owner intends to evict the tenant and/or lessee for nonpayment of rent.” Another “whereas” clause refers to the “temporary restraints” put into effect by the CARES Act and by Orders issued by local courts staying the issuance of residential writs of possession and the execution or enforcement of residential writs of possession.

Chapter V of the Landlord and Tenant Act of 1951 (“Act”) provides the method by which a landlord may recover possession of a leased property from a tenant. There is only one section in Chapter V which requires a landlord to provide notice to a tenant whom the landlord intends to evict for nonpayment of rent. Section 501 of the Act is titled “Notice to Quit” and it provides that a landlord shall provide a tenant with notice “to remove from the same [leased property] at the expiration of the time specified in the notice under the following circumstances, namely, (1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.” Section 501 also specifies that the notice “may be served personally on the tenant, or by leaving the same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.” Section 501 also provides that the notice “may be waived by the tenant if the lease so provides.”

It appears that the Governor’s Order, like the CARES Act, was written, in part, to stop evictions by preventing landlords from filing landlord-tenant complaints for a period of time.

Constitution by exercising powers entrusted solely to the judiciary or the General Assembly. It would be best to consider those issues if a lawsuit is brought by a party who challenges the Governor’s Order on either of those grounds.

The first sentence of the Order provides that: “Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings.” The sentence is aimed at “tolling the ability to commence ... the initiation of eviction proceedings.” It accomplishes that goal by staying until July 10, 2020 “the notice requirements mandated by the Landlord and Tenant Act of 1951.” That “notice requirement” must be the one referred to in Section 501.

The second sentence of the Order provides that: “All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020.” The sentence precludes the filing of any landlord-tenant complaint until July 10, 2020. The Governor did not make any distinction between cases based on residential and nonresidential leases or exempt leases in which the notice to quit requirement is waived for the moratorium of filing a landlord-tenant complaint before July 10, 2020.

The third sentence of the Order provides that: “All eviction timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Landlord and Tenant Act of 1951 and Manufactured Home Community Rights Act notices will be deemed delivered and any eviction proceedings may commence.” Like the CARES Act’s requirement that a notice to quit may not be issued until July 26, 2020, the Governor’s Order precludes the delivery of any notice to quit until July 10, 2020. The Governor’s Order provides that any notice delivered before May 11, 2020 will be deemed to have been delivered on July 10, 2020 when the landlord has not already filed a landlord-tenant complaint.

The fourth sentence of the ORDER provides that: “The eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community

Rights Act may proceed from that point forward in the normal course of action.” This sentence provides that as of July 10, 2020, a landlord may serve a notice to quit and file a landlord-tenant action if a notice to quit has already been served or has been waived in the lease.

It is also important to understand what is not affected by the Governor’s Order. The Order does not preclude the court from hearing any pending landlord-tenant case or issuing any post-judgment writs to a landlord who is seeking to regain possession of the leased premises. Additionally, the Order does not stay any evictions in cases in which a landlord has already obtained a judgment permitting a landlord to use lawful process to regain possession of the leased property. The Order also does not affect the filing of petitions in any case presently pending in the court.