

Massachusetts Act Regarding a Moratorium on Commercial and Residential Evictions During COVID-19

Hinckley Allen Real Estate

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The Massachusetts House and Senate have reconciled differences between two separate bills proposed regarding a moratorium on evictions and foreclosures during the state of emergency concerning COVID-19, and on Wednesday April 15th, the House passed House Bill #4615 (the “Act”). The Senate is expected to pass the same before the end of the week, at which point the Act will be sent to Governor Baker for signature.

The Act applies to residential tenants and small business tenants only. Small business tenants are commercial tenants (for profit and not-for profit), but do not include a tenant if the tenant or a party that controls, is controlled by or is in common control with the tenant: (i) operates multi-state; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has not less than 150 full-time equivalent employees.

The following provisions apply to non-essential evictions^[4] for both residential and small business premises:

- Courts shall not (i) accept for filing a writ, summons or complaint; (ii) enter a default judgment for a plaintiff for possession; or (iii) schedule a court event, including a summary process trial;
- Time periods and deadlines for eviction actions, whether such was established before or after the effective date of the Act, shall be tolled.
- Authorized personnel shall not enforce an execution for possession;
- Provided a tenant gives notice and documentation to their landlord within 30 days after a missed rent payment that the non-payment of rent was due to a financial impact from COVID-19, landlords may not:
 - Impose a late fee for non-payment of rent, or
 - Furnish rental payment data to a consumer reporting agency related to the non-payment of rent.

The above provisions are effective for a period that is the shorter of the following: (A) 120 days after the effective date of the Act, or (B) 45 days after the state of emergency has been lifted. The Governor may extend the above time period in increments of not more than 90 days, but such extension shall not extend any later than 45 days following the expiration of the state of emergency.

The Act is explicit that a tenant shall not be relieved from the obligation to pay rent and a landlord shall not be restricted in its ability to recover rent.

The Act also includes a number of provisions that apply only to non-essential evictions of residential properties, including a prohibition on terminating a tenancy or sending any notice to quit or vacancy demand. The Act also delays foreclosures of residential properties during the applicable period.

The Act also permits landlords to access and utilize amounts received as advanced payments of final month's rent to pay

for expenses such as mortgage payments, utilities, repairs and required upkeep, but not to account for non-payment of rent.

Finally, the Act includes language that permits video conferencing during the state of emergency for reverse mortgage loans (the current regulations require in-person consultations for such loans).

Again, the Act is expected to be passed by the Massachusetts Senate and signed by the Governor, possibly as early as this week. Hinckley Allen continues to closely monitor this legislation and will provide an update once this bill has been made into law.

[1] “Non-essential eviction” means an eviction: (i) for non-payment of rent; (ii) resulting from a foreclosure; (iii) for no fault or no cause; or (iv) for cause that does not involve or include allegations of: (a) criminal activity that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property or the general public; or (b) lease violations that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property or the general public; provided, however, that a non-essential eviction shall not include an eviction for a small business premises unit on account of the expiration of the term of a lease or tenancy or a default by the tenant of a small business premises unit under the terms of its lease or tenancy that occurred before the declaration of the COVID-19 emergency.

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