

Massachusetts Moratorium on Evictions and Foreclosures During COVID-19

Hinckley Allen Real Estate

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On April 20th, Massachusetts Governor Baker signed into law [House Bill #4647](#) (the “Act”), imposing a moratorium on evictions and foreclosures during the state of emergency concerning COVID-19.

Who Is Affected

The Act applies only to residential tenants and small business commercial property tenants. Although the Act applies to both for profit and not for profit commercial tenants, it does not apply to a commercial tenant if that 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.

Limitations on Nonessential Evictions

Limitations are imposed on nonessential evictions. A “nonessential eviction” is an eviction: (i) for nonpayment 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.

However, a nonessential eviction shall not include an eviction for a small business premises unit on account of the expiration of a lease term 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.

The following provisions apply to nonessential evictions 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 established before or after the effective date of the Act, shall be tolled;
- Authorized personnel shall not enforce an execution for possession; and
- 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 nonpayment of rent, or
 - furnish rental payment data to a consumer reporting agency related to the non-payment of rent.

The provisions above are effective until the earlier of the following: (i) August 18, 2020, or (ii) 45 days after the state of

emergency has been lifted. Governor Baker may extend the time period in increments of not more than 90 days, but may not extend the period beyond 45 days following the expiration of the state of emergency.

The Act also contains a number of provisions that apply only to nonessential evictions of residential properties including a prohibition on terminating a tenancy or sending any notice, including a notice to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises.

Additional Protections for Residential Properties

The Act also provides relief for borrowers who own and occupy a residential property with four or fewer units which is not vacant or abandoned. Mortgagees are prevented from taking the following foreclosure actions on residential properties with four or fewer units which are not vacant or abandoned: (i) publishing cause notices of foreclosure sales; (ii) exercising a power of sale; (iii) exercising a right of entry; (iv) initiating a judicial or non-judicial foreclosure process; or (v) filing a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act. Similar to the eviction moratorium provisions, these provisions are effective until the earlier of the following: (i) August 18, 2020, or (ii) 45 days after the state of emergency has been lifted. Governor Baker may extend the time period in increments of not more than 90 days, but may not extend the period beyond 45 days following the expiration of the state of emergency.

Additionally, a creditor or mortgagee is required to grant a forbearance to residential borrowers of one-to-four family residential properties if the mortgagor submits a request stating that the mortgagor has experienced a financial impact from COVID-19. The forbearance shall not be longer than 180 days, and additional fees, penalties and interest beyond the amounts otherwise payable as though the mortgagor made all payments shall not accrue during the period of forbearance. Payments subject to the forbearance are to be added to the end of the term of the loan unless otherwise agreed to by the mortgagor and mortgagee.

Rent and Mortgage Payment Obligations, Uses and Recovery

House Bill #4647 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. It is also clear that a mortgagor is not relieved from its obligation to pay its mortgage and does not restrict a creditor from recovering mortgage payments.

Landlords are permitted to access and utilize amounts received as advanced payments of the final month's rent to cover expenses such as mortgage payments, utilities, repairs and required upkeep, but not to account for nonpayment of rent.

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

Beyond Massachusetts

Similar moratoriums have been enacted in New York and New Hampshire through executive order, and Rhode Island and Connecticut courts have delayed non-essential proceedings, including eviction actions.

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