

COVID-19 Emergency Regulations Related to Massachusetts Evictions Act

Hinckley Allen Real Estate

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On April 20, 2020, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency* (the “Act”) was enacted in Massachusetts, which puts in place a temporary moratorium on non-essential evictions of residential and small business tenants, as well as a temporary foreclosure moratorium and forbearance relief for residential mortgagors during the COVID-19 state of emergency.

As required under the Act, the Executive Office of Housing and Economic Development (EOHED) has also released follow up regulations (the “Regulations”) related to non-essential evictions and a landlord’s rights and responsibilities with respect to advance payment of rent for the last month of tenancy. The Regulations are meant to ensure consistent implementation of the Act statewide. The Regulations shall expire 120 days after the effective date of the Act, or 45 days after the state of emergency has been lifted, whichever is sooner, unless further extended by the secretary of EOHED.

Defined Terms Under the Act

The Regulations provide additional definitions for a number of terms used in the Act, including, but not limited to, the following:

- “Financial impact from COVID-19” means a loss of income or additional expense that (1) is caused directly or indirectly by the COVID-19 pandemic or by the local, state, or federal response to the pandemic; and (2) is of a magnitude that renders it impossible or impractical for a tenant to make a payment of rent on the date such payment is due.
- “Landlord” or “Lessor” means the lessor under a lease, sublease, or tenancy at will for a residential dwelling unit or small business premises unit, and for the purposes of any provision in these regulations related to the delivery of a notice to a tenant, or receipt of a notice from a tenant, shall include any management agent or other third party acting as agent for the landlord.
- “Residential dwelling unit” as used in the eviction provisions of the Act means a house or building, or portion thereof, occupied as a home or residence of one or more persons.
 - Please note, the term “residential dwelling unit” is separate from the term “residential property.” Residential property, as it is used specifically in the foreclosure moratorium and loan forbearance provisions of the Act, is limited to real property located in Massachusetts, on which there is a dwelling house with accommodations for four or fewer separate households that is occupied in whole or in part by the borrower. Residential property is limited to the principal residence of the borrower and does not include an investment property or residence other than a primary residence. Residential property does not include residential property taken in whole or in part as collateral for a commercial loan or property subject to condemnation or receivership.

Late Fees and Credit Reporting—Notice of Financial Hardship

Under section 3(e) of the Act, a landlord cannot impose a late fee for nonpayment of rent for a residential dwelling unit or a small business premises unit—or furnish rental payment data to a consumer reporting agency related to the

nonpayment of rent—if, not later than 30 days after the missed rent payment, the tenant provides notice and documentation to the landlord that the nonpayment of rent was due to a financial impact from COVID-19.

The EOHED has published on its site^[1] the required forms that a tenant of a residential dwelling unit or small business premises unit has to provide to its landlord in the event they are unable to pay rent due to COVID-19. The Regulations also clarify that a tenant who misses multiple rent payments due to a financial impact from COVID-19 is required to provide a separate notice to the landlord for each missed payment and the notice must be sent within 30 days of the due date of the missed rent payment. The use of an alternative form by a residential tenant is acceptable so long as the notice includes a statement that the tenant has experienced a financial impact from COVID-19 and provides reasonable detail on the cause of such impact. In the event a court determines that any notice provided by a tenant is fraudulent or contains a material misrepresentation by the tenant, then the landlord may impose late fees pursuant to the lease and may furnish rental payment data to a consumer reporting agency.

Landlord Utilization of Advance Payment of Rent

A landlord who received rent in advance for the last month of tenancy, pursuant to section 15B of chapter 186 of the Massachusetts General Laws, may use the advanced rent to pay for expenses incurred by the landlord that are related to the residential dwelling unit or small business premises unit leased to the tenant who made the advance rent payment. Such expenses include, but are not limited to, mortgage payments, utility costs, maintenance costs, and other operating expenses incurred by a landlord for the leased premises or for the property in which the leased premises are located.

A landlord cannot use the advance-rent payment to pay expenses that are not related to the tenant's premises, and a landlord cannot deduct from said last month's rent that is paid in advance any amount to account for the tenant's nonpayment of rent, unless the landlord and tenant shall agree in writing that some or all of the advance-rent payment may be applied to the missed rent payment. Within five business days of the landlord using the advance-rent payment, a landlord is required to give notice to the tenant using the form posted on the EOHED website entitled "notice to tenant – use of advance rent payment." The interest due to the tenant on the advance-rent payment, pursuant to said section 15B of said chapter 186 of the General Laws, is to be calculated as though the landlord had not utilized such funds before the last month of the tenancy.

Overall, the EOHED Regulations provide additional clarity on specific provisions of the Act, and set forth the required documentation required under the Act for landlords and tenants of residential and small business premises in Massachusetts.

We are here to help answer specific questions and offer advice on your options. Feel free to contact any member of our Real Estate Group.

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[1] EOHED forms can be found at the bottom of the following website: <https://www.mass.gov/regulations/400-CMR-50-covid-19-emergency-regulations>

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