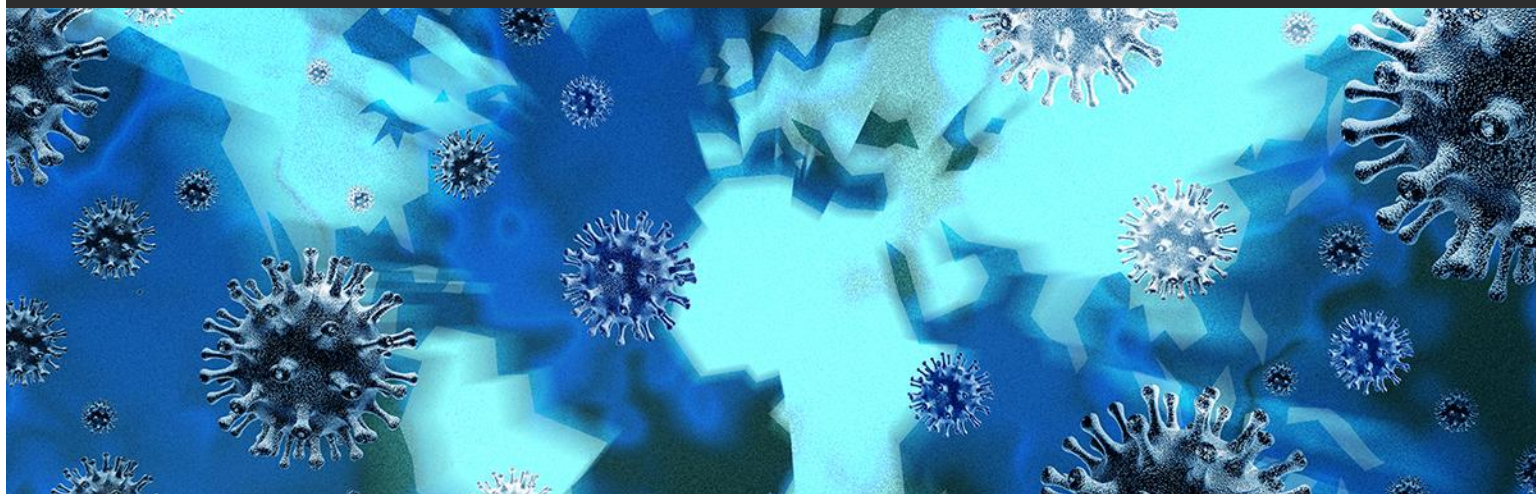


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 2020

Moratorium on Evictions and Foreclosures in Massachusetts During the COVID-19 Emergency

On April 20, 2020, Massachusetts Governor Charlie Baker signed legislation suspending evictions of many residential and commercial tenants as well as halting the foreclosure of most residential properties. The new law, Chapter 65 of the Acts of 2020, “An Act providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency,” takes effect immediately and will remain in place until the earlier of August 18, 2020 or 45 days after Governor Baker lifts the Coronavirus Disease 2019 (COVID-19) emergency declaration. While the act limits evictions, foreclosures, and certain other actions a landlord or mortgagee might otherwise take, it does not relieve a tenant from the obligation to pay rent or relieve a mortgagor from making mortgage payments.

The main aspects of the new act are set forth below.

1. Moratorium on Evictions:

The law halts any “non-essential eviction” of a residential tenant or a for profit or not-for-profit “small business premises” tenant. “Non-essential evictions” include all evictions other than those which involve allegations of criminal activity or lease violations which would affect health and safety. “Small business premises” are defined by the law as any commercial tenant that together with its affiliates, operates only in one state, is not publicly traded and has less than 150 full-time equivalent employees.

Accordingly, the law will stop most residential evictions and evictions of small business tenants (including those based only on non-payment of rent). There is an additional exemption to the moratorium on evictions which permits evictions of small business tenants due to a lease termination or lease default that occurred before the March 10, 2020, declaration of the COVID-19 emergency.

2. Limit on Terminating Residential Tenancies and Sending Notices to Residential Tenants.

In addition to halting most residential evictions, the law also limits notices that can be sent to residential tenant. A landlord or owner of a property cannot, for the purposes of a non-essential eviction: (i) terminate a residential tenancy; or (ii) send any notice, including a notice to quit, requesting or demanding that a residential tenant vacate the premises. Landlords should exercise care in sending any notices to residential tenants to avoid statements that the lease has been terminated or that the tenant should vacate. The limitation on notices does not apply to small business tenants.

3. Limit on Court Actions and Tolling of Time Periods.

The statute also limits courts from taking actions on residential and small business evictions. In a non-essential eviction of a residential tenant or a small business, the courts cannot (i) accept complaints or other filings; (ii) enter a judgment or default judgment for possession; (iii) issue an execution for possession; (iv) deny a tenant's request for a stay of execution, or a landlord's or tenant's request for a continuance of a summary process case; or (v) schedule a court event, including a summary process trial. Deadlines and time periods for action by a landlord or tenant are tolled. Sheriffs are not allowed to enforce any non-essential residential and small business evictions.

4. Limit on Late Fees and Credit Reporting.

The moratorium also prohibits landlords from imposing a late fee for non-payment of rent on a residential tenant or a small business tenant. In addition, a landlord cannot furnish rental payment data to a consumer reporting agency, if, not later than 30 days after the missed rent payment, the tenant provides notice and documentation to the landlord that the non-payment of rent was due to a financial impact from COVID-19. The Commonwealth's Executive office of Housing and Economic Development is tasked with developing forms and recommendations for the notice and documentation that tenants will need to provide in showing that the non-payment of rent was due to a financial impact from COVID-19.

5. Rent is Still Owed.

The act does not relieve a tenant from the obligation to pay rent or restrict a landlord's ability to recover rent.

6. Landlord's Use of Last Month's Rents.

Landlords can use last month's rents which tenants deposited with the landlord to pay for expenses such as mortgage payments, utilities, repairs and required upkeep. However, landlords cannot use a last month's rent deposit to pay for a tenant's missed rent payment and using last month's rents can only happen if the landlord has provided proper prior notifications to a tenant. Additionally, the use of the last month's rents does not otherwise change the obligations a landlord has under existing law, including the calculation and payment of interest on last month's rents. The Commonwealth's Executive office of Housing and Economic Development will issue regulations and guidance to enable landlords to use last month's rents as well as issuing a standard form to be used to notify tenants. It would be prudent for

landlords to await the issuance of the regulations and the form before accessing last month's rents given the penalties that can be imposed on landlords due to the misuse of last month's rents.

7. Moratorium on Residential Foreclosures

Under the law, lenders and their representatives cannot publish foreclosure notices, exercise a power of sale in a mortgage, make entry, initiate a judicial or non-judicial foreclosure or file a complaint to determine a property owner's military status in connection with any residential property (i.e., a one to four family property which is the primary residence of the mortgagor and is not security for a commercial loan), unless the property is vacant or abandoned.

8. Required Forbearances.

Lenders also are required to grant a forbearance for up to 180 days to a mortgagor of a mortgage loan for a residential property if the mortgagor submits a request to the mortgagor's servicer affirming that the mortgagor has experienced a financial impact from COVID-19. The lender cannot furnish negative mortgage payment information to a consumer reporting agency regarding any mortgage payments subject to the forbearance. Any fees, interest, and penalties beyond those that would have been incurred had all mortgage payments been made cannot accrue during the forbearance period. Payments subject to the forbearance are to be added to the end of the loan term unless the parties agree otherwise.

9. Mortgage Payments are Still Owed; Alternative Payment Agreements Allowed.

The act does not relieve a mortgagor from making mortgage payments or restrict a mortgagee's ability to recover payments. In addition, the act does not prohibit lenders and borrowers from entering into alternative payment agreements with respect to the payments that would be subject to a forbearance.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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