



MASSACHUSETTS ENACTS TEMPORARY MORATORIUM ON FORECLOSURES AND SOME EVICTIONS

Massachusetts has enacted a temporary moratorium on “non-essential” evictions or foreclosures that impacts the rights of residential and small business tenants and landlords, as well as mortgagees and mortgagors. The Act went into effect on April 20, 2020 and continues for 120 days or for 45 days after the end of the state of emergency in Massachusetts, whichever is sooner. The Governor can extend the moratorium for 90-day increments, but not more than 45 days after the end of the state of emergency.

What is a small business?

The Act includes a specific definition of “small business premises unit.” A commercial tenant (whether for-profit or not-for-profit) is considered a small business unless it: (i) operates multi-state; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has not less than 150 full-time equivalent employees.

What types of evictions fall under the Act?

The Act applies to “non-essential” evictions, meaning the following:

- (i) Evictions for non-payment of rent;
- (ii) Evictions resulting from a foreclosure; or
- (iii) Evictions for no fault or no cause.

The Act does not apply to evictions initiated because of allegations of criminal activity or lease violations that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the property, or the general public. An eviction of a small business because the tenancy terminated before the declaration of the COVID-19 emergency is also not within the definition of “non-essential eviction.”

What do residential and small business tenants need to know?

The Act temporarily prohibits non-essential evictions of residential tenants and small businesses. The Act also prohibits courts from accepting filings or entering judgments and tolls deadlines relating to such evictions. The Act also allows tenants to avoid late fees or negative impacts on their credit reports for nonpayment of rent.

Residential and small business tenants who are unable to make their rent payments should:

1. Prepare documentation showing that non-payment of rent was due to a financial impact from COVID-19.
2. Submit the documentation, along with notice, to the landlord within 30 days of nonpayment of rent.

The Massachusetts Executive Office of Housing and Economic Development will develop notice forms and recommendations regarding the documentation that tenants should provide to landlords.

Before forgoing payments, tenants should consider that the Act **does not relieve their obligations to pay rent** – it merely postpones the rent. The Act does not provide any information regarding when unpaid rent must be paid to landlords, but presumably this would need to be paid promptly after the state of emergency is lifted.

Considerations for Landlords

As discussed in the section above, landlords should be aware that they are not permitted to initiate non-essential evictions of residential tenancies, and that both residential and small business tenants are permitted to forego rental payments according to the procedure in the statute. If landlords receive notices and documentation of nonpayment of rent due to COVID-19, they are not permitted to impose late fees or furnish nonpayment information to consumer reporting agencies.

The Act also includes a piece of relief for landlords, permitting them to access funds that have been paid in advance for the last month's rent. Landlords seeking to access this funding must take the following steps:

1. Notify the tenant in writing that the funds have been used. The notice must also inform the tenant that the landlord remains obligated to credit the tenant for payment of last month's rent and that the tenant remains entitled to the same amount of interest that would otherwise have accrued.
2. Landlords are only permitted to apply the funds to mortgage payments, utilities, repairs and required upkeep.
3. Landlords are not permitted to use the last month's rent to cover current nonpayment of rent.

The Massachusetts Office of Housing and Economic Development will issue regulations and guidance regarding this process, including a standard form for notifying tenants.

Things to Note for Residential Mortgagees and Mortgagees

The Act prohibits residential mortgagees and creditors from initiating foreclosure proceedings. In addition, the Act provides a procedure whereby mortgagees can obtain a 180-day forbearance on mortgage payments. The following steps apply to the mortgage payment forbearance program:

1. Mortgagees must submit a request to their loan servicer affirming that they have experienced a financial impact due to COVID-19.
2. During the forbearance period, fees, penalties and interest will not accrue.
3. Payments subject to forbearance are added to the end of the terms of the loan.
4. Parties are permitted to agree to alternative terms of repaying the payments subject to forbearance. If mortgagees comply with the steps outlined in the statute, mortgagees and creditors are prohibited from reporting payment information to consumer reporting agencies relating to mortgage payments under forbearance.

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