

MA Establishes Moratorium on Evictions, Foreclosures During COVID-19 Emergency

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Real Estate Alert

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With economic and other hardships mounting as a result of the COVID-19 pandemic, Governor Charlie Baker signed into law on April 21, 2020, a bill providing for a moratorium on certain evictions and foreclosures during the COVID-19 state of emergency (H.4647). The law covers the period from the outset of the COVID-19 state of emergency in the Commonwealth (March 10, 2020) to 120 days from the new law's effective date or 45 days after the COVID-19 state of emergency declaration is lifted, whichever is sooner. The governor may postpone the expiration in increments of up to 90 days.

Eviction Moratorium

The law prohibits “non-essential evictions” of residential and “small business premises unit” tenants. Nonessential evictions include those (i) for nonpayment of rent, (ii) resulting from foreclosure, (iii) for no fault or no cause, and (iv) for cause that does not involve or include allegations of criminal activity or other lease violations that may impact the health or safety of other residents, health care workers, emergency personnel, or the general public. Small-business premises units are defined as premises leased by a tenant for commercial purposes (for-profit or not-for-profit), but do not include premises leased by a tenant if the tenant or a party that controls, is controlled by, or is in common control with the tenant (i) operates multistate or multi-nationally, (ii) is publicly traded, or (iii) has 150 or more full-time employees. The law also prohibits landlords from imposing late fees for nonpayment of rent and from providing rental payment data to consumer reporting agencies—provided the tenant gives the landlord notice and documentation that the failure to pay was due to financial impact from COVID-19 within 30 days of the missed payment.

Tenants are not relieved from rental payment obligations, and landlords retain their ability to recover rent. Massachusetts courts cannot accept complaints, issue judgments, or schedule court events (including summary process trials) in connection with nonessential evictions; related deadlines and time periods for action are also tolled. For residential properties, the law provides that in some circumstances, landlords may use funds received in advance to cover the last month of rent to pay expenses (including mortgage payments, utilities, and repairs), provided that the landlord cannot deduct any amount from these advance funds to account for a tenant's nonpayment of rent.

The Executive Office of Housing and Economic Development has been instructed to issue emergency regulations and guidance as necessary regarding these provisions.

Foreclosure Moratorium

The law also prohibits creditors and mortgagees from pursuing or initiating foreclosures of residential properties with four or fewer units that are not vacant or abandoned. Creditors and mortgagees are mandated to grant forbearance to those residential mortgages if the mortgagor submits its request to the mortgagor's servicer affirming that the mortgagor has experienced a financial impact from COVID-19. Forbearance shall be for a period of up to 180 days; fees, penalties, and interest beyond those scheduled and calculated had repayment timely occurred shall not accrue during the forbearance period. Payments subject to forbearance are to be added to the end of the term of the loan unless another agreement is reached by the mortgagee and mortgagor. Similar to the landlord-tenant provisions, mortgagees are also prohibited from providing negative mortgage payment information to consumer reporting agencies regarding mortgage payments subject to forbearance; mortgagors also retain all payment obligations.