

Client Alert: Governor Baker Signs Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency

By Michael Rosen on April 21, 2020



On April 20, 2020, Massachusetts Governor Charlie Baker signed into law an act which adopts protections relating to evictions and foreclosures. The Act addresses three main topics: Commercial Evictions, Residential Evictions, and Foreclosures.

Key provisions of the Act provide for the following:

Definitions

– “Non-essential eviction”, an eviction: (i) for non-payment 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; provided, however, that a non-essential eviction shall not include an eviction for a small business premises unit on account of the expiration of the term of a lease 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. Note – the Act contains a distinction that excludes protection from small business premises unit evictions that relate to pre-COVID expiration or defaults.

– “Small business premises unit”, a premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit; provided, however, that a small business premises unit shall not include a premises occupied by a tenant if the 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. Note – the Act does not provide tenant protection to certain larger commercial entities.

Special Protections for Residential Tenants

– Landlords cannot terminate a tenancy or send ANY notice, including but not limited to Notices to Quit, which requests a tenant vacate a premise.

– Landlords may use last month rent after notice to tenants, provided that the funds are used for certain expenses such as mortgage payments, utilities, repairs

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and required upkeep (but cannot apply such amount to non-payments of rent). Despite using such funds, Landlords must still pay the statutory interest on such amounts as if unused.

Protection for Residential and Small Business Premises Tenants

– Courts may not: (i) accept for filing a writ, summons or complaint; (ii) enter a judgment or default judgment for a plaintiff for possession of a residential dwelling unit or small business premises unit; (iii) issue an execution for possession of a residential dwelling unit or small business premises unit; (iv) deny, upon the request of a defendant, a stay of execution, or upon the request by a party, a continuance of a summary process case; or (v) schedule a court event, including a summary process trial.

– All deadlines in such cases are tolled.

– No Landlord may charge a late fee in such cases 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 non-payment of rent was due to a financial impact from COVID-19. Note – the Act is silent as to whether deficiencies will accrue interest (if provided for in a lease).

Foreclosure Protection for Residential Property

– Mortgagees are prohibited from taking the following action with respect to the foreclosure of a residential property (one to four family owner occupied residences) which are not vacant or abandoned: (i) cause notice of a foreclosure sale to be published pursuant to said section 14 of said chapter 244; (ii) exercise a power of sale; (iii) exercise a right of entry; (iv) initiate a judicial or non-judicial foreclosure process; or (v) file a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act, 50 USC sections 3901 to 4043, inclusive.

Payment Protection for Residential Property

– Lenders shall grant a forbearance to a borrower of a mortgage loan for a residential property where the borrower submits a request affirming that the borrower has experienced a financial impact from COVID-19. The forbearance shall be for not more than 180 days. Note – there is no minimum time frame established.

– No penalties or interest shall be charged or accrue.

– A payment subject to the forbearance shall be added to the end of the term of the loan unless otherwise agreed to by the parties, who are free to enter into an alternative payment agreement for the payments subject to the forbearance. Note – there is no distinction as to whether this shall be a lump sum payment or repaid over a similar number of months (as to the number of months of the forbearance term).

– The lender shall not furnish negative mortgage payment information to a consumer reporting agency related to mortgage payments subject to forbearance under this Act.

No Forgiveness

– Nothing in the Act forgives the payment of rent or mortgage obligations. All amounts remain due and payable, subject only to the tolling/forbearance provisions of the Act or separate agreement of the parties.

Duration of the Act

– This Act shall continue to a date which is the sooner of 120 days from the date of the Act or 45 days after the end of the state or emergency (or such later date as is prescribed by law or agreed upon in writing). The Governor may grant further 90-day extensions so long as those extensions do not extend beyond 45 days after the end of the state or emergency.

The full bill can be found [here](#).

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