

Goodwin Alerts

April 20, 2020

Massachusetts Gov. Baker Signs Law Providing for Moratorium on Evictions and Foreclosures

by Katherine L. Murphy, Stephanie M. Toribio

On Monday, April 20, 2020, Massachusetts Governor Charlie Baker signed House Bill No. 4647, An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency, enacted by the Massachusetts Legislature, providing for a moratorium on non-essential evictions and foreclosures during the COVID-19 Emergency declared by the governor (as it may be extended as contemplated by the Act) for residents and small businesses. This Act, having been declared an emergency law, took effect immediately upon Governor Baker's signature.

SUMMARY

This Act provides for a moratorium on most residential and small business evictions, as well as a moratorium on residential foreclosures and a requirement of forbearance on residential mortgage defaults related to COVID-19 up to 180 days.

EVICITION

The Act provides that courts having jurisdiction over a summary process (eviction) action in a residential or small business eviction shall, provided that the eviction being sought in a non-essential eviction, not (i) accept for filing a writ, summons or complaint; (ii) enter a judgment or default judgment for a plaintiff for possession of a small business premises unit; (iii) issue an execution for possession; (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 for the purposes of eviction. Furthermore, a landlord is not permitted to impose a late fee for non-payment of rent or provide rental payment data to a consumer reporting agency related to the non-payment of rent if the tenant provides notice and documentation that the non-payment of rent was due to a financial impact of COVID-19 within 30 days of such non-payment.

Evictions that are sought on the basis of lease violations, or alleged criminal activity, that may impact the health or safety of others are outside the scope of the moratorium. Further, in the case of small business tenants, eviction sought on the basis of default that occurred prior to the COVID -19 Emergency, or for landlord's recovery of possession upon lease expiration, are also outside the scope of the moratorium.

It should be further noted that in the Act's definition of a small business, such tenants that operate multi-state or multi-nationally, are publicly traded, or have 150 or more full-time equivalent employees (in each case, including others that it controls, are controlled by or are under common control with such tenant) are expressly excluded. The moratorium on eviction does not relieve a tenant from the obligation to pay rent, nor is a landlord restricted from its ability to recover rent.

With respect to residential dwellings, a landlord or an owner of a property may not during the moratorium (i) terminate a tenancy; or (ii) send any notice, including a notice to quit, requesting or demanding the tenant to vacate the premises.

In what appears to be a compromise for residential landlords, notwithstanding otherwise applicable strict requirements related to holding their tenants last month's rent, the Act permits the use by landlords of such sums for applicable property expenses, such as mortgage payments, utilities repairs and required upkeep,

subject to various requirements including notice to the affected tenants and requirement that such tenants be entitled to interest on their deposit of last month's rent as if such application of funds had not occurred.

Any deadline or time period for an action relating to a non-essential eviction of either a residential occupant or small business eviction shall be tolled, nor shall a sheriff or constable enforce an execution for possession for such non-essential eviction.

FORECLOSURE

The moratorium also sets requirements for the purposes of a foreclosure of a residential property. A creditor, mortgagee or person having estate in the land mortgaged shall not (i) cause notice of foreclosure sale to be published; (ii) exercise power of sale; (iii) exercise 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. The creditor or mortgagee shall instead grant a forbearance for up to 180 days if the mortgagor submits a request to the mortgagor's servicer affirming that they have experienced a financial impact as a result of COVID-19. Additionally, no fees, penalties or default interest shall accrue during the forbearance period and the mortgagee shall not provide negative mortgage payment information to a consumer reporting agency. However, if the mortgagor requests a forbearance due to a financial impact from COVID-19 after the expiration date of the moratorium, the creditor or mortgagee will not be required to grant such forbearance. The moratorium does not relieve a mortgagor from the obligation of paying its mortgage (including base interest) or restrict the creditor's or mortgagee's ability to recover payment.

The moratorium expires on the earlier of 120 days after the effective date of the Act, or 45 days after the COVID-19 Emergency has been lifted. Governor Baker may extend the moratorium increments of not more than 90 days so long as the expiration is no later than 45 days after the COVID-19 Emergency is lifted.

Please visit Goodwin's [Coronavirus Knowledge Center](#), where firm lawyers from across the globe are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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