

State Legislature Imposes Temporary Moratorium on Certain Foreclosures and Evictions

April 22, 2020

The outbreak of the novel COVID-19 virus has raised many issues for both tenants and landlords alike, including public Housing Authorities. As you may know, the Massachusetts Supreme Judicial Court (SJC) has already issued emergency standing orders staying all non-emergency eviction cases until after May 4, 2020. On April 20, 2020, the Governor signed Chapter 65 of the Acts of 2020, “An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency” (the Act), which essentially codifies what had been the practical result of SJC (and Housing Court) directives limiting the processing of evictions during this State of Emergency.

The Act **prohibits all non-essential evictions** and foreclosures for at least one hundred twenty (120) days or forty-five (45) days after the current State of Emergency has been rescinded, whichever is sooner, with an opportunity for the Governor to extend this time frame. The Executive Office of Housing and Economic Development is directed to issue emergency regulations implementing the Act. Furthermore, given the Act’s impact upon Housing Authorities, we expect that the Department of Housing and Community Development will issue further guidance in the future, either in conjunction with or independent of, these emergency regulations. As a result, you are encouraged to consult with Counsel regularly to ensure that you have the most up-to-date information.¹

In particular, for non-essential residential evictions, the Act prohibits landlords and property owners from terminating a tenancy and sending any notice, including a notice to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises. In addition, while tenants are not relieved of their obligation to pay rent during the moratorium, landlords and property owners cannot charge late fees for non-payment or report the non-payment to any consumer reporting agency if, within thirty (30) days of the non-payment, the tenant provides notice and documentation to show that the non-payment was due to a financial impact suffered from COVID-19.

What are non-essential evictions? “Non-essential evictions” include evictions:

- for the non-payment of rent;
- for no fault or no cause;
- resulting from a foreclosure;

¹ The Act also temporarily prohibits foreclosures on residential properties that are not vacant or abandoned, and affords residential property owners the ability to seek forbearance from creditors and mortgage holders from fees, penalties and interest that might otherwise be assessed due to nonpayment of a mortgage, upon a showing that the mortgagor has experienced a COVID-19 financial impact. Because these provisions are not likely to apply to most municipal entities, they are not summarized in depth here. Note, however, that the United States Department of Housing and Urban Development has also issued a similar temporary moratorium, due to the COVID-19 emergency, for single-family homeowners with FHA-insured mortgages.

- that do not involve or include allegations of 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; and
- that do not concern allegations of 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.

This prohibition on non-essential evictions will not apply to an eviction for a small business premises unit pursuant to the expiration of a lease term or tenancy or a default by the tenant of a small business premises unit that occurred *before* the declaration of the COVID-19 emergency.

Under the Act, landlords and property owners who have collected last month's rent in advance may utilize these funds to pay for expenses including mortgage payments, utilities, repairs and required upkeep. However, these funds *cannot* be used to cover rent owed, and tenants *must* be given written notice that: 1) the funds have been utilized before the last month of the tenancy; 2) the lessor remains obligated to apply the funds for the last month of tenancy; and 3) the tenant is entitled to the same amount of interest that would have accrued had the funds not been utilized before the last month of the tenancy.

Implications on Eviction Proceedings

During this moratorium, courts **may not:** accept the filing of summary process evictions and complaints; enter default judgments or judgments for possession; issue executions; deny stays of eviction or requests to continue; or schedule court events in all non-essential eviction matters for residential dwelling units or small business premises units. To implement the moratorium, the Act tolls deadlines and time frames for action in these matters, including the date to answer a complaint, appeal a judgment, and, importantly, levy upon an execution for possession or money judgment. Accordingly, sheriffs, deputy sheriffs, constables and other authorized persons are prohibited from enforcing or levying upon executions for possession in these non-essential evictions while the moratorium is in effect.

As a result of this new legislation, any Housing Authority or municipal entity that acts as a landlord should be aware that they will not be permitted to proceed with most routine tenant evictions, including for non-payment of rent, which are essentially held in abeyance during the moratorium.

We will continue to keep you updated on additional developments in the face of this continually-evolving pandemic. A reminder that we have established a **Coronavirus "hotline"**, at coronavirushelp@k-plaw.com. A dedicated team of our attorneys is available through this "hotline" e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries.

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