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What landlords and tenants need to know about Massachusetts House Bill 4615 and Senate Bill 2631 - by Andrew Bensson

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The evolving COVID-19 pandemic has impacted every industry and caused lawmakers to quickly address a slew of unforeseen circumstances. In real estate in particular, landlords and tenants faced with financial uncertainty are grappling with the best ways to handle rent, evictions, and mortgage payments. As a result, on April 2nd, the Massachusetts House of Representatives passed H.4615 (the House Bill), establishing a temporary moratorium on all but “emergency” evictions and

foreclosures, in response to governor Baker's Executive Order Number 591 issued on March 10th. On April 9th, the Massachusetts Senate passed S.2631 (the Senate Bill), an alternative version of the House Bill. A joint conference committee has been appointed to reconcile the bills for a final bill and transmittal to the governor.

House Bill H.4615 - Rent and Evictions

The House Bill establishes a moratorium, until thirty (30) days after the COVID-19 state of emergency is terminated, during which no landlord or owner may evict any residential or commercial tenant. In addition, during the moratorium, landlords and owners of either residential or commercial real estate may not (i) terminate any tenancy, or (ii) send any tenant any notice requesting or demanding that the tenant vacate the property. The moratorium excludes evictions for "emergency causes of actions" defined as any eviction that involves allegations of criminal activity or lease violations that are detrimental to the health and safety of other residents, health care workers, emergency personnel, anyone who is lawfully on the property, or the general public.

The House Bill moratorium prevents landlords from imposing late fees on tenants, provided that tenants deliver notice and documentation to their landlords that the direct or indirect financial impact of either the COVID-19 outbreak or the Governor's declaration of a state of emergency prevented the timely paying rent. Tenants must submit such notice and documentation within thirty (30) days after the missed rent payment. The House Bill does not describe the notice or type of documentation that a tenant must provide, but it does direct the Massachusetts Department of Housing and Community Development to develop forms and recommendations. During the moratorium, landlords may not notify consumer reporting agencies about their tenant's failure to pay rent.

Importantly, the House Bill explicitly states that no tenant is relieved of its obligation to pay rent, and no landlord is prevented from ultimately recovering rent.

The House Bill also covers all Massachusetts courts with jurisdiction over summary process actions under M.G.L. c. 239 and any other eviction procedures. Except for emergency evictions, courts may not (i) enter a judgment, default judgment, or execution for possession, (ii) accept any filing for a writ, summons, or complaint for possession of any real property, or (iii) deny a tenant's request for a stay of execution or continuance of a summary process case. All deadlines and time periods related to any summary process action (e.g. date to answer a complaint, appeal a judgment, etc.) are tolled until thirty (30) days after the Governor's state of emergency is terminated. Indeed, no sheriff, constable or any other person may enforce an eviction during the moratorium.

The House Bill's moratorium does not apply, however, in emergency eviction situations. If a landlord must pursue an emergency eviction, the House Bill allows a landlord to terminate any tenancy after providing their tenant with ten (10) days written notice to quit. The Chief Justice of the Massachusetts Housing Court will issue the form and manner in which landlords may pursue such emergency evictions. If a tenant does not leave the premises after a ten day notice, a landlord may proceed with the M.G.L. c. 239 summary process eviction procedure, noting, however, that access to courts during this time is challenging.

Mortgage Payments

If the House Bill is enacted, no lender, creditor, mortgagee, or any other person with an interest in residential property may (i) publish the notice of foreclosure sale, (ii) exercise the power of sale or right of entry, (iii) initiate any judicial or non-judicial foreclosure process, or (iv) file a complaint to determine the military status of a mortgagor during the moratorium. The House Bill does not extend the moratorium to foreclosures of loans on commercial property. The House moratorium also allows for mortgage counseling by video, rather than in person, during the moratorium.

As with rent payments and collections, the House Bill explicitly states that no borrower is relieved of its obligation to pay its mortgage, and no creditor or mortgagee is restricted from ultimately recovering mortgage payments.

Senate Bill S.2631

The Senate Bill establishes a different moratorium timeline and limits the moratorium to (i) “non-essential evictions” of residential and certain small business tenants, and (ii) residential foreclosures.

The Senate moratorium extends for 120 days after the Governor signs the Bill, regardless of when the emergency order is terminated. If the Senate Bill is enacted, the Governor may, however, extend the moratorium until thirty (30) days after the emergency declaration has been terminated.

During the moratorium, Landlords may not evict residential tenants and tenants in a “small business premises unit” due to (i) failure to pay rent, (ii) foreclosure, or (iii) causes that are not “emergency causes of action”, as defined in the House Bill. A “small business premises unit” is property occupied by a tenant for commercial purposes, whether the tenant is a for-profit or not-for-profit entity. However, tenants (or the party that controls, is controlled by, or is in common control with the tenant entity) that (i) operate in multiple states, (ii) operate in multiple countries, (iii) are publicly traded, or (iv) have 150 or more full-time equivalent employees are expressly excluded from the definition of “small business premises unit”. It’s important to note that the Senate’s moratorium does not include evictions of tenants in a small business premises unit due to (i) the expiration of the lease term or (ii) tenant’s default under the terms of its lease or tenancy that occurred before the Governor’s emergency declaration. The Senate Bill includes the same summary process procedures, court timelines, executions of eviction, and late-fee requirements described in the House Bill.

The Senate Bill would also prevent lenders, creditors, and mortgagors of residential property from (i) publishing a foreclosure sale, (ii) exercising a power of sale or right of entry, (iii) initiating any foreclosure procedures, or (iv) filing a complaint to determine a mortgagor’s military status. Residential mortgagors who submit a request to their lender during the moratorium stating that they experienced “financial impact from COVID-19” will be granted a reprieve from all fees, penalties, and interest beyond their scheduled and contractual payments for 180 days. The Senate Bill does not cover mortgagors or lenders of any commercial property.

Practical Implications and Other Actions

The final reconciled Bill, if enacted, may likely vary in several respects, but the House Bill offers a

more sweeping moratorium on evictions, rent payments, and foreclosures because it includes all landlords and tenants of commercial property, and all landlords, tenants, lenders, and borrowers related to residential property. The Senate Bill limits the moratorium for evictions and late fees to residential property and certain small business commercial tenants. The Senate Bill also presents the possibility of a longer moratorium, if the emergency declaration is terminated within three (3) months of the Senate Bill being enacted.

In Boston, many commercial real estate players are already committing to assist those affected by the outbreak and emergency declaration.

On March 14, 2020, Mayor Martin J. Walsh, the Greater Boston Real Estate Board, the Massachusetts Apartment Association, and the Massachusetts Association of Community Development Corporations created a partnership to impose a moratorium on evictions during the Governor's state of emergency. The partnership is urging its members to place a moratorium on evictions in Boston for ninety (90) days, with reviews every 30 days.

On March 18, 2020 the Chief Justice of the Massachusetts Housing Court issued Housing Court Standing Order 2-20 which continued all non-emergency summary process matters to April 21, 2020.

On March 30, 2020, Mayor Walsh announced that his administration is working with housing advocates, property owners, and the Boston Housing Authority to "halt all eviction proceedings until the crisis is over." He also announced that Boston would provide 1,000 rental vouchers to families of Boston Public School students, which would be equally distributed between families in shelters and those at risk of displacement.

As of April 10, 2020, twelve (12) banks, including Bank of America, Boston Private Bank & Trust Company, Cambridge Trust Company, Century Bank, Citizens Bank, City of Boston Credit Union, Dedham Savings Bank, Eastern Bank, Mortgage Network Inc., Prime Lending, Salem Five Bank, and Santander Bank have agreed to defer at least three (3) months of mortgage payments for residential borrowers in Boston who prove they have been financially impacted by the COVID-19 pandemic. These banks will also forego late fees and will work with borrowers on repayment plans.

Both landlords and tenants should continue to monitor the impact of COVID-19 and be aware of how they may be affected by the latest changes in law.

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