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FAQ's about MA moratorium on evictions and foreclosures - by Christopher Vaccaro

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On April 20th, Mass. governor Charlie Baker signed into law House Bill 4647, establishing a moratorium on certain evictions and foreclosures during the COVID-19 Emergency. The governor had declared the emergency on March 10th. Below are answers to frequently asked questions on the moratorium.

Who benefits from the moratorium? Tenants occupying residential properties or “small business premises units,” and borrowers that own “residential property.”

How does the moratorium work? During the moratorium, landlords cannot evict tenants renting residential properties or “small business premises units,” except in very limited circumstances, and mortgage lenders cannot foreclose on mortgages secured by “residential property.”

How long is the moratorium in effect? The moratorium took effect on April 20th, when governor Baker signed it into law. The moratorium remains in effect until the first to occur of (i) 120 days after its effective date, or (ii) 45 days after the COVID-19 Emergency declaration is lifted. However, the governor can extend the moratorium in 90-day increments, but not longer than 45 days after the COVID-19 Emergency declaration is lifted.

Does the moratorium prevent evictions of commercial tenants? Only if the commercial tenant occupies a “small business premises unit,” which is a specifically defined term under the law. Landlords still have the same eviction rights as before, for all other commercial tenants.

What is a “small business premises unit” under the moratorium? A “small business residential unit” is leased premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit; excluding leased premises where the tenant or the tenant’s affiliate (i) operates multi-state or multi-nationally, (ii) is publicly traded, or (iii) has 150 or more full-time employees.

What is a “residential property” for purposes of the foreclosure moratorium? A “residential property” is defined as property with a dwelling house for four or fewer separate households and occupied, in whole or in part, by the borrower as a principal residence. Residential properties do not include investment properties, second homes, vacation homes, and property mortgaged as collateral for a commercial loan.

Does the moratorium prohibit all evictions involving residential property and “small business premises units”? No, but it prohibits almost all evictions. The moratorium prohibits “non-essential evictions,” which are defined as evictions (i) for non-payment of rent, (ii) resulting from foreclosure, (iii) for no fault or no cause, or (iv) for cause that does not involve or include criminal activity or 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. “Non-essential evictions” do not include evictions involving small business premises units because of the expiration of the lease term or a tenant default that occurred before the declaration of the COVID-19 Emergency.

How does the moratorium restrict landlords’ eviction rights during “non-essential evictions?” During the moratorium, landlords may not, for the purposes of a non-essential eviction, terminate a residential tenancy or send any notice, including a notice to quit, requesting or demanding that a residential tenant vacate the premises. This restriction does not apply to commercial tenancies, including tenancies of small business premises units.

Does the moratorium on evictions restrict the court system? Yes. During the moratorium, courts that handle eviction cases may not, in a non-essential eviction, (i) accept for filing any writ, summons or complaint; (ii) enter a judgment or default judgment evicting a tenant; (iii) issue an execution for

possession; (iv) deny a tenant's request for a stay of execution, or a continuance of a summary process case; or (v) schedule a court event, including an eviction trial. This restriction applies to eviction actions involving both residential properties and small business premises units.

What happens to statutory time periods, expiration dates, and deadlines involving evictions during the moratorium? All deadlines and time periods are "tolled" during the moratorium. This means that relevant time periods are suspended during the moratorium, and do not begin to run until after the moratorium is over.

If a landlord obtained an eviction judgment against a residential or small business tenant before the moratorium took effect, can the landlord get a sheriff or deputy sheriff to execute the judgment? No, not until the moratorium expires.

Can landlords collect late fees or report delinquent tenants to consumer reporting agencies? During the moratorium, landlords cannot collect late fees from tenants, or report tenants to consumer reporting agencies, if within 30 days after the rent due date the tenant provides the landlord with notice and documentation that the non-payment of rent was due to a financial impact from COVID-19.

Are tenants relieved from any obligation to pay rent during the moratorium? No. The moratorium does not relieve tenants from their obligations to pay rent, or restrict landlords' ability to recover rent. It only prevents landlords from evicting tenants protected by the moratorium. Landlords may still sue tenants for unpaid rent, without seeking to evict them.

Can landlords use tenant security deposits or last month's rent payments, during the COVID-19 emergency? The moratorium law is silent on security deposits. It does not specifically allow landlords to apply, or prohibit landlords from applying, security deposits to unpaid rent. However, the law offers a small benefit to landlord's regarding last month's rent payments. Landlords may use last month's rent payments to pay for expenses, including mortgage payments, utilities, repairs and required upkeep, but landlords may not use last month's rent in advance to pay tenants' unpaid rent.

What procedures must landlords follow when using last month's rent? When landlords use last month's rent early, they must notify tenants in writing that (i) the landlord utilized such funds before the last month of the tenancy, (ii) the landlord remains obligated to apply said rent in advance to its intended application as rent for the last month of tenancy, and (iii) the tenant is entitled to the same amount of interest from the landlord on the last month's rent, as required by statute if the landlord had not utilized such funds before the last month of the tenancy.

How does the moratorium affect mortgage foreclosures? Foreclosure activities on "residential properties" are prohibited during the moratorium. For these purposes, "residential properties" are, generally speaking, one- to four-family dwellings that the borrower occupies as his or her primary residence, and which are not collateral for a commercial loan. During the moratorium, mortgage lenders may not, with respect to "residential properties" (i) publish a notice of a foreclosure sale, (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 borrower under the federal Service members Civil Relief Act.

Can borrowers obtain forbearance arrangements from their mortgage lenders? Yes. Mortgage lenders must grant a forbearance for residential properties when borrowers submit requests affirming that they have experienced a financial impact from COVID-19. The forbearance shall be for not more than 180 days. Payments subject to the forbearance shall be added to the end of the term of the loan unless otherwise agreed to by the borrower and lender. Borrowers and lenders may still enter alternative payment agreements for payments subject to the forbearance. Lenders may not furnish negative mortgage payment information to a consumer reporting agency related to mortgage payments subject to forbearance arrangements.

If the borrower and lender enter into a forbearance arrangement, can the lender charge the borrower late fees? No. If there is a forbearance arrangement, the lender may not charge fees, penalties or interest beyond the amounts scheduled and calculated as if the borrower had made all contractual payments on time.

Can borrowers get a forbearance arrangement from their mortgage lenders after the moratorium expires? The law does not require lenders to grant forbearances to borrowers for residential properties after the moratorium expires.

Are borrowers relieved of their obligations to make mortgage payments during the moratorium? No. The moratorium does not relieve borrowers from their obligations to make mortgage payments. Nor does it restrict lenders' rights to recover mortgage payments from borrowers. The moratorium only prohibits lenders from foreclosing on protected residential properties.

Are there any state regulatory agencies involved in the moratorium? Yes. The Massachusetts Executive Office of Housing and Economic Development is required to issue emergency regulations necessary to implement sections of the law dealing with evictions and landlords' use of last month's rent. No regulations have been issued as of April 22nd.

How can one learn more about the moratorium law? Additional information on the moratorium law is available online at the Massachusetts legislature's website: <https://malegislature.gov/Bills/191/H4647>, or by contacting the author at cvaccaro@dfllp.com.

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