

# Massachusetts Statewide Moratorium on Evictions and Foreclosures During COVID-19 Emergency Now Effective

April 20, 2020

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***[Note: The Governor has since extended this Massachusetts moratorium to October 17, 2020.]***

On April 20, 2020, Governor Baker signed into law “An Act providing for a moratorium on evictions and foreclosures during the COVID-19 Emergency.” The new law puts a temporary moratorium on non-essential evictions of residential and small business tenants. For residential mortgages, the law places a temporary restriction on foreclosures and mandates temporary loan forbearance.

### What does the eviction moratorium cover?

The moratorium on “non-essential evictions” (defined below) applies to both residential properties and “small business premises units” (defined below) which are occupied by small, for-profit or not-for-profit businesses. The eviction moratorium does not apply to commercial tenants that operate outside of Massachusetts, are publicly traded, or have 150 or more full-time equivalent employees. In addition, the moratorium does not apply to evictions of commercial tenants arising from the expiration of a lease term or a tenant default that occurred prior to March 10, 2020.

### What does the foreclosure moratorium cover?

The foreclosure moratorium applies to residential properties (defined below) with four or fewer units and prohibits mortgage lenders from (i) publishing notices of a foreclosure sale, (ii) exercising a power of sale, (iii) exercising a right of entry, (iv) initiating a judicial or non-judicial foreclosure or (v) filing a complaint to determine the military status of a borrower under the federal Service members Civil Relief Act. The foreclosure moratorium does not apply to commercial properties.

### What mortgage lender forbearance is required?

The law applies to residential properties with four or fewer units and requires lenders to grant forbearance for a period of not more than 180 days if a borrower submits a request to its lender affirming that it has experienced a financial impact from COVID-19. If a request for forbearance is made after the expiration of the foreclosure moratorium, a lender is not required to grant a forbearance. The forbearance requirements do not apply to commercial properties.

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## What is the effective date?

The effective date is April 20, 2020.

## How long will the moratoriums last?

**[Note: The Governor has since extended this Massachusetts moratorium to October 17, 2020.]**

The eviction and foreclosure moratoriums expire on the earlier of 120 days from the effective date or 45 days after the Massachusetts COVID-19 emergency declaration has been lifted, whichever is sooner. The Governor may extend the deadlines in increments of up to 90 days but the deadlines cannot be extended to later than 45 days from the date that the Massachusetts COVID-19 emergency declaration has been lifted.

## Does the law provide for forgiveness of rent or debt payments?

The law does not relieve a tenant from its obligation to pay rent, restrict a landlord's ability to collect rent, or forgive a borrower's obligation to make debt payments. For landlords, the law prohibits imposition of late fees for nonpayment of rent and providing rental payment data to consumer reporting agencies if within 30 days of a missed payment a tenant provides notice and documentation stating that nonpayment was due to the financial impact of COVID-19. For residential mortgage lenders and borrowers, loan payments subject to forbearance will be added to the end of the term of the loan unless otherwise agreed to by the lender and borrower. Similar to the restrictions imposed on landlords, the law prohibits a mortgage lender from imposing additional fees, penalties or interest and from providing negative mortgage payment information to a consumer reporting agency.

## Does the law include any other relief for landlords?

Subject to certain conditions, the law permits landlords who received rent in advance for the last month of tenancy to access and utilize the funds to pay for expenses (but not unpaid rent) including mortgage payments, utilities and repairs.

## How do the residential mortgage relief provisions of the Massachusetts law compare to the mortgage relief provisions of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act?

The CARES Act applies to properties that are subject to federally-backed mortgage loans (which include many Fannie Mae and Freddie Mac loans) and may cover large, multifamily apartment buildings, whereas the Massachusetts law is not limited to federally-backed loans, but excludes mortgage relief for multifamily properties with more than four units. The applicable time periods also differ between the federal and state laws.

Note that many other states have recent or pending orders and statutes affecting mortgages and leases. These vary broadly in their applicability.

## Key Definitions

**"COVID-19 emergency"** is the state of emergency declared by the Governor on March 10, 2020 related to the coronavirus disease outbreak.

**"Non-essential eviction"** is an eviction for (i) nonpayment of rent, (ii) resulting from a foreclosure, (iii) for no fault or no cause, or (iv) for cause that does not involve 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. A non-essential eviction does not include evictions for a small business premises unit due to expiration of a lease term or a default by the tenant of a small business premises unit that occurred prior to the declaration of the COVID-19 emergency.

“**Small business premises unit**” is a premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit. A small business premises unit does not include 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 150 or more full-time equivalent employees.

For purposes of the foreclosure moratorium and loan forbearance provisions of the law, “**Residential property**” is limited to real property located in Massachusetts, on which there is a dwelling house with accommodations for four or fewer separate households and occupied, or to be occupied, in whole or in part by the borrower. Residential property is limited to the principal residence of the borrower and does not include an investment property or residence other than a primary residence. Residential property does not include residential property taken in whole or in part as collateral for a commercial loan or a property subject to condemnation or receivership.

**If you have questions regarding these developments, please contact one of the following attorneys.**

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