

Massachusetts COVID-19 Moratorium on Small Business and Residential Evictions

April 21, 2020

Massachusetts has adopted a moratorium on the evictions of tenants of small business units and residential units during the COVID-19 emergency.

In general, the moratorium applies to “non-essential evictions” of “small business premises units” and residential units. The moratorium law defines a “small business premises unit” as a premises occupied by either a for-profit or non-profit tenant for commercial purposes, but excludes premises occupied by a tenant that (i) operates multi-state, (ii) operates multi-nationally, (iii) is publicly traded, or (iv) has not less than 150 or more full-time equivalent employees. Notably, if a parent or subsidiary entity of the tenant, or an entity in common control with the tenant, satisfies those conditions then the premises are also excluded from the moratorium.

The moratorium law defines “non-essential evictions” broadly, including evictions as a result of non-payment of rent, for no fault or no cause, and for cause. However, the definition does exclude evictions from small business premises units due to a lease expiration or default that occurred prior to the declaration by the Governor of the COVID-19 emergency on March 10, 2020.

With respect to small business premises units, the primary features of the moratorium legislation are as follows:

- Landlords are prohibited from imposing late fees for non-payment of rent if not later than 30 days after the missed rent payment the tenant provides notice and documentation that the non-payment of rent was due to a financial impact from COVID-19.
- Judicial proceedings for non-essential evictions are essentially halted, as courts are prohibited from accepting filings to commence eviction proceedings, entering judgments, issuing executions for possession, denying requests for stays or continuances, or scheduling trials and other court events.
- All deadlines or time periods in non-essential eviction proceedings are extended or tolled throughout the emergency, including deadlines to answer complaints and to file appeals.
- Sheriffs, constables and others are prohibited from enforcing an execution for possession of the premises.

We note that the statute does not prohibit a landlord from sending notices to a tenant of a small business premises unit, including “reservation of rights” notices, demand or default notices, or termination notices.

All of the above-described conditions and restrictions apply to non-essential evictions of residential dwelling units as well. In addition, the moratorium imposes the following additional limitations and restrictions on landlords of residential dwelling units:

- Landlords are prohibited from terminating a tenancy or sending any notice requesting or demanding that a tenant vacate the premises, including a notice to quit.
- Landlords are permitted to apply last months' rent payments against certain specified property expenses, subject to providing notice to the tenant, crediting the tenant with interest, and remaining obligated to apply the rent toward the last months' rent payment

We note that the statute does not prohibit a landlord from sending "reservation of rights" notices, or demand or default notices to a tenant of a residential dwelling unit, provided that the notices do not request or demand that the tenant vacate the premises.

The moratorium also requires mortgagees to grant forbearance and prohibits foreclosures on certain residential property foreclosures.

The provisions of the moratorium expire on the earlier of (a) 120 days after the effective date of the moratorium (i.e., April 20, 2020) or (b) 45 days after the COVID-19 Emergency has been lifted. The Governor, however, has the power to extend the expiration date in increments of up to 90 days. The expiration date cannot be later than 30 days following the lifting of the COVID-19 Emergency

As we are all aware, the COVID-19 crisis continues to evolve and there will be future developments that impact both landlords and tenants. We will continue to provide updates, and if you have specific questions or need additional information, please contact your Goulston & Storrs attorney.