

# A Practical Guide to the Newly Enacted Massachusetts Eviction Moratorium

Governor Baker declared a state of emergency on March 10, 2020. On April 20, 2020, the Governor also signed into law House Bill No. 4647, which is titled “An Act Providing For A Moratorium On Evictions And Foreclosures During The COVID-19 Emergency.” A copy of the so-called “moratorium” is [linked here](#) for your convenience. As you may own and/or manage residential properties, Bernkopf Goodman LLP offers the following overview and practical guidance as to the impact of this moratorium to your businesses in Q&A format.

## 1. What generally does the “moratorium” prohibit for residential landlords?

In simple terms, this Act now prohibits a residential landlord from issuing any notice to quit, terminating a tenancy, or commencing any eviction cases for non-payment of rent, failure to vacate at the end of a tenancy, or for material lease violations that do not involve allegations of criminal activity or lease violations that may impact the health and safety of other residents or persons upon the property.

## 2. When does the Act take effect?

Governor Baker signed the Act on April 20, 2020, and it was immediately effective on that date.

## 3. How long does the moratorium last?

The moratorium remains in effect through the earlier of: (i) August 18, 2020, or (ii) forty-five (45) days from the lifting of the state of emergency. However, Governor Baker may postpone such expiration in increments of not more than ninety (90) days, but in no event can he postpone expiration more than forty-five (45) days from the lifting of the state of emergency.

## 4. Does the Act cover all evictions?

The Act applies only to what is called a “non-essential eviction”. A non-essential eviction includes an eviction for:

- (a) non-payment of rent;
- (b) a foreclosure;
- (c) no fault or no cause (e.g., expiration of lease term); and
- (d) any lease violation unless it is based upon allegations of criminal activity or other conduct that impacts the health and safety of other residents or persons on the property.

It should also be noted that, for residential tenancies, the Act applies even if a tenant default or lease expiration occurred prior to the COVID-19 pandemic. The Act also applies regardless of a residential tenant’s ability to pay or whether they have actually suffered any impact, e.g., loss of job or health issues, as a result of the COVID-19 pandemic.

## **5. What else does the Act prohibit?**

As noted above, a landlord shall not serve any notice requesting or demanding that a residential tenant vacate the apartment for any “non-essential eviction”. Thus, while a residential landlord could technically send a demand for rent such letter cannot contain any language suggesting that a failure to pay may lead to termination of the tenancy or any language that a tenant may need to vacate the property. Consistent with the above, a residential landlord also cannot seek to terminate a tenancy at will during the moratorium.

In addition, the Act includes a section prohibiting all courts with jurisdiction over summary process cases from accepting new cases, entering judgments or executions, or scheduling any court events in non-essential evictions. While certain courts were previously accepting Agreements for Judgment, they are no longer permitted to enter any judgment. If you are already holding an execution for possession, a sheriff or constable is prohibited from enforcing it. However, the deadline or time period for you to act is tolled during the moratorium so you will not lose any rights.

Further, the Act prohibits a landlord from imposing a late fee for non-payment of rent or from furnishing rental payment data to a credit reporting agency, if within 30 days of the missed payment the tenant provides notice to the landlord that the missed payment was due to the financial impact from COVID-19. The Executive Office of Housing and Economic Development is charged with developing forms and recommendations, but it has not yet done so.

## **6. What if I am holding last month’s rent or a security deposit?**

The Act specifically permits a landlord to access and use a tenant’s last month’s rent deposit to pay certain stated expenses if a tenant fails to pay rent. The permitted expenses include mortgage payments, utilities, repairs, and required upkeep. In order to do so, a landlord must notify the tenant in writing that: (i) that the funds have been so utilized before the last month of the tenancy; (ii) that the landlord remains obligated to apply that amount to last month’s rent; and (c) that the tenant continues to be entitled to interest on such deposit as if such funds were not utilized before the last month of the tenancy. However, the Act is clear that a landlord cannot use last month’s rent in advance for non-payment of rent. Lastly, the Act does alter any security deposit laws.

## **7. Does the Act apply to commercial tenants?**

Yes and No.

Certain provisions of the Act apply to a “small business premises unit,” which includes premises occupied by a tenant for a commercial purposes (profit and not for profit), but excludes tenants (or the party that controls, is controlled by, or is in common control with the tenant entity) that operate multi-state, operate multi-nationally, are publicly traded, or have not less than 150 full-time equivalent employees. Thus, if you have a multi-national corporation as your tenant, the Act would not apply.

Distinct from residential landlords, commercial landlords of a small business premises unit are able to serve a notice of default and to issue a notice terminating a tenancy. Further, while the Court ban on

accepting new summary process cases applies to non-essential evictions for both residential and small business premises units, the Act expressly notes that a non-essential eviction shall not include – with respect to only a small business premises tenant – an eviction on account of expiration of the lease or a default that occurred prior to the declaration of the COVID-19 emergency. As such, under the Act, a landlord of a small business premises unit can terminate a tenancy, but then cannot practically file a summary process action unless it is based upon lease expiration or it is based upon a pre-state-of-emergency default. With that said, many courts still have their own Standing Orders halting all non-emergency evictions until May 4, 2020.

The prohibitions against imposing a late fee or reporting to a credit reporting agency also apply to a small business premises unit if the tenant provides the requisite notice and documentation within 30 days after a missed payment. A landlord of a small business premises unit can also use last month's rent in the same fashion as a residential landlord.

## **8. What is the practical impact to my business?**

At this time, we are seeing tenant groups promoting a free rent period and encouraging tenants not to pay landlords. However, the Act does not excuse a tenant's obligation to pay rent. To the contrary, the Act expressly provides that: Nothing in this section shall relieve a tenant from the obligation to pay rent or restrict a landlord's ability to recover rent (emphasis added). As such, while landlords cannot take certain steps to proceed with a non-essential eviction during the moratorium, including any steps to terminate a tenancy for non-payment of rent in the residential context, we are working with landlords to send a notice reminding tenants that their obligation to pay rent remains in full force and effect.

In the interim, landlords can still work with tenants on making alternate payment arrangements. Such agreements should be documented in writing and are not prohibited by the Act. In fact, landlords are encouraged to work with tenants to resolve unpaid rent as there could be severe consequences to tenants who have large arrearages once the moratorium expires. Lastly, while the Act does not spell out the penalties for landlords that violate its mandate, it is expected that tenants will file claims for breach of quiet enjoyment, wrongful termination, and/or a violation of Chapter 93A for any failure to comply with the Act.

[Click here to download a copy of House Bill No. 4647.](#)

To the extent you have specific questions regarding the Act, please reach out to your Bernkopf Goodman team member, or contact [Jason A. Manekas](#), Esquire at 617-790-3308, or [jmanekas@bg-llp.com](mailto:jmanekas@bg-llp.com).