

## REAL ESTATE ALERT

### Amid COVID-19 Pandemic, Massachusetts Halts Evictions & Foreclosures, While Allowing Remote Notarizations

April 2020

Within the last ten days, Governor Charlie Baker has signed into law two new acts intended to address the significant economic and legal disruptions caused by the novel coronavirus pandemic and the Commonwealth's state of emergency response. The first, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, does just what its title states. The second, *An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19*, is more limited and is intended to promote, rather than restrict, legal action.

#### KEY PROVISIONS OF THE EVICTION AND FORECLOSURE MORATORIA

##### Evictions

Effective immediately, residential tenants are now protected from all so-called "non-essential evictions," and landlords are prohibited from imposing late fees or reporting to credit agencies when residential or small business tenants miss a rent payment "due to a financial impact from COVID-19."

"Non-essential evictions" are defined as evictions:

- for non-payment of rent;
- resulting from a foreclosure;
- for "no fault or no cause"; and
- for cause (except allegations of criminal activity or lease violations that impact the health or safety of other residents, health care workers, emergency personnel, or the public).

During the moratorium, residential landlords may not terminate a tenancy or send any notice, including a notice to quit, or a notice requesting or demanding that a tenant vacate the premises. This applies even to tenants without documentation of COVID-19-related impacts. It remains unclear if the moratorium is intended to apply to other types of actions that may result in eviction, such as condominium lien enforcement actions.

Protections regarding missed rent only apply to those providing documentation of “a financial impact from COVID-19.” The Executive Office of Housing and Economic Development is charged with developing forms of such notice and documentation. These forms do not yet exist. Tenants have 30 days from the missed payment to provide the required documentation.

As noted, in addition to residential tenants, the moratorium also protects small businesses from being evicted. To be protected, the business must not, by itself, with or as part of another business under common control:

- operate multi-state;
- operate multi-nationally;
- be publicly traded; or
- have 150 or more full-time equivalent employees.

Evictions following the expiration of a commercial lease, or for a default by a small business tenant that occurred before the declaration of the COVID-19 emergency, are not protected.

## **Foreclosures**

During the moratorium, residential property owners cannot be foreclosed on, and mortgage holders are required to grant a forbearance on mortgage payments for up to 180 days. During that period, no fees or penalties may be imposed (interest at the contractual rate continues to accrue on principal) if the mortgagor (borrower) submits a request to the loan servicer “affirming” he or she has “experienced a financial impact from COVID-19.” There is no guidance as to what information such an affirmation must contain, and the Act does not charge any agency with developing guidance. Payments subject to the forbearance will be added to the end of the term of the loan. Mortgage holders are prohibited from furnishing negative information to consumer credit reporting agencies for payments subject to a forbearance.

## **Moratorium Period**

The moratorium on evictions and foreclosures expires 120 days after the effective date of the act (August 18, 2020) or 45 days after the COVID-19 emergency declaration has been lifted, whichever is sooner. The Governor may postpone such expiration in increments of not more than 90 days, but not more than 45 days after the COVID-19 emergency declaration has been lifted.

## **VIRTUAL NOTARIZATION AUTHORIZED**

To facilitate the social distancing measures in place to combat the COVID-19 pandemic, this act (*Chapter 71 of the Acts of 2020*) authorizes attorneys and paralegals who are notaries to take acknowledgments and notarize deeds, wills and other documents remotely for the duration of the state of emergency. The act adopts a two-stage process, in which:

1. after reviewing two forms of identification, the notary observes – and videos – the document’s signing and the signer’s acknowledgment it was his or her free act and deed; and
2. after the document has been delivered to the notary, the notary holds a second video conference with the signer in which he or she confirms the document and his or her signature.

The notary is then required to complete an affidavit attesting to all of this. That affidavit and the videos are required to be kept for ten years.

Virtual notarization in compliance with this act will be valid for all purposes, including for recording with the registry of deeds of any county, for filing as a valid will and for filing or recording with any other state, local or federal agency, court, department or office.

## **CONTACT**

Both of these new acts present opportunities and pitfalls for homeowners, small businesses, landlords, and real estate practitioners. If you have questions concerning the information in this alert, please contact a member of our [Real Estate & Environmental Practice](#).