

An Act Stabilizing Housing Through Surety Bonds: **Executive Summary**

MassLandlords, (MassLandlords.net) the largest non-profit for owners and managers of Mass. residential real estate, with over 1,700 members, is requesting your review of their Bill entitled: **An Act Stabilizing Housing Through Surety Bonds** to establish a **Rent Payment Surety Bond Guarantee Fund** (*see attached bill and FAQ*)

What is a surety bond: A **surety** bond is a promise by a **surety** or guarantor to pay one party a certain amount if a second party fails to meet some obligation, such as fulfilling the terms of a contract – or in this case paying rent. Surety bonds are regularly used in real estate, construction and other businesses. In this case, the **Commonwealth of Massachusetts** would **pay housing providers (landlords)** if a **tenant** fails to meet their obligations due to COVID-19.

Why create this program: There are federal, state, and court-level eviction moratoria in-place, but these will all end before the economy recovers. COVID-19 emergency relief will arrive late for millions, will be inadequate long term, and will be entirely inaccessible to hundreds of thousands of Common-wealth tenants. SBA loans and mortgage forbearance will not adequately reduce housing costs for tens of thousands of housing providers who are ineligible or when payments come due. Many housing providers will have no choice but to have to evict tenants once the moratorium ends.

What this Act does: According to this Act, the legislature would issue a declaration of surety which housing providers could apply for and be granted now. Bonded housing providers would receive this reassurance and thus be able to plan to meet their ongoing housing costs while continuing to safely house renters with reduced/no ability to pay. The State would pay out guarantees over time according to legislative priorities including that the guarantee be paid out of future tax revenue, reasonable interest included. State resources would be prioritized for medical/urgent expenses. This Act will:

- Send tenants a clear message that they do NOT need to leave their homes now or in the future if they cannot pay because of COVID-19.
- Send housing providers a clear message that they can support housing-insecure households however long the economic recovery will take given availability of the surety bond.

Impact: Housing providers who obtain a Surety Bond will be prevented from filing for eviction for nonpayment until after the surety company has paid or denied the claim. Housing providers with surety bonds who want to be paid rent will need to obtain tenant documentation to demonstrate that surety payment should be paid. **Housing providers who don't obtain a surety bond who file for eviction will face likely dismissal due to not pursuing this financial benefit available to them.**

Anti-Discrimination: Housing provider/landlord actions under this bill would still be subject to the State's anti-discrimination laws, which are in no way waived or reduced by the bill. For instance, if a landlord decided not to purchase a bond for any given household, i.e., because they hoped to evict that household as soon as the moratorium ended, they would be acting contrary to the purpose of the bill and their discriminatory intent could be discovered and stopped in court. "Why didn't you bond this household? Which households did you bond? Why are you evicting this one household?" etc.

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Surety Bond FAQ from MassLandlords

What does “surety bond” mean in plain English?

It means if a renter doesn't pay rent because of coronavirus, the Commonwealth will pay it. Timing will need to be determined after the crisis passes. The basic guarantee would mean, above and beyond any eviction moratorium, that no renter need leave their home voluntarily or otherwise, and no landlord need fear bankruptcy, tax liens, or emergency bills going unpaid indefinitely.

Doesn't a surety bond cost as much as the entire rental industry GDP?

No, the surety bond is a resource of last resort for those not participating in the economy and/or not receiving adequate assistance:

- Hundreds of thousands of Commonwealth residents continue to receive income while working from home or while responding to the crisis.
- Section 8, Massachusetts Rental Vouchers, RAFT, and many other housing subsidies continue to be paid and in some cases expanded.
- State unemployment, combined with federal stimulus and federal unemployment expansion, facilitate partial or full payments for many more households.
- The bond is needed to cover everyone else. For instance:
- undocumented residents ineligible for relief,
- Schedule E earners (mom and pop retirees turned landlords) ineligible for unemployment, even federally, landlords with commercial loans that are not being forgiven, and everyone else for whom existing stimulus is inadequate.

Why should we pay rent, isn't housing free for the timebeing?

No, housing is enormously expensive, and the **housing crisis** with which we entered the pandemic means there is no way for us to build more cheaply. We have immediate housing costs to cover:

- **Municipal tax bills** are due in May and June. These pay for first responders and other essential infrastructure like water and gas.
- **Sewer and main lines are clogging** due to the uneven distribution of toilet paper and the use of alternative unflushable materials.
- **Fire, leaks, infestation**, and normal housing problems continue in parallel to the pandemic.
- **Commercial mortgages** from private banks and lenders were not forgiven under the CARES Act.

How would the program be implemented?

The legislature would issue a declaration of surety, and landlords would apply to it later for payment later still. (Our first priority for government ought to be the medical response.) Surety payment will require landlords show two things:

- The rental agreement is documentable prior to the declaration of surety by the legislature;
- The rental agreement is going unpaid provably because of the pandemic, declaration of emergency, or resulting shut-down of the economy or social services.
- Surety will block landlords from evicting;
- No court of the Commonwealth shall accept for filing any claim for nonpayment on an agreement subject to surety prior to surety payment having been either issued or denied.

By blocking filing, surety will prevent renters from having a court record.

How will rental agreements be documented?

Every documentable rental agreement going unpaid because of the crisis would be covered by the initial declaration. The primary check will be by address of record, not names of landlords or household members. Written and verbal agreements would have to count to cover every household. Examples:

- A written lease or tenancy-at-will dated prior to the declaration of surety would be documentable by submitting a copy of the written lease or tenancy-at-will.
- An unwritten (verbal) agreement paid via check would be documentable by submitting copies of voided checks or other proof of repeat payment prior to the declaration.
- An unwritten (verbal) agreement paid via cash would be documentable by affidavit of both parties.

In each case, the address of the rental agreement must be verifiable and unique. Surety cannot apply to two households claiming the same address, since the date set is the date on which surety is declared. After this date, anyone leaving voluntarily or otherwise will be making a mistake. We will all work hard to communicate to everyone to stay put under every circumstance. Fire or other casualty loss resulting in condemnation would end surety for that address.

How would a surety bond pay out?

No additional cash disbursement need be made during the pandemic. The guarantee would outlast the pandemic, enabling the state to pay out guarantees over time according to any priority set by the legislature, including restrictions that the guarantee to be paid out of future tax revenue. Reasonable interest ought to be enacted with the guarantee.

Only the owner of record as recorded by the registry will be eligible to receive payment. We will have to check:

- For each address, is this unique or is surety being claimed (or has it been claimed) for this same address already?
- For each address, is the application for surety payment in the name of the owner of record?
- For each address, is the particular unit recognized as real and pre-existing either by the assessor's office, the zoning plan, a record of constructions permits, or other trustworthy source?
- For each payee, is the owner a real person or entity not subject to Office of Foreign Asset Control (OFAC) or other restrictions on receiving payment?

Is this program unique?

Not really, there are already surety programs in place in Massachusetts for bonded movers, construction companies, and many others. This would be the first application of this tried-and-true idea to housing.

Who would do what exactly?

Renters would still have to pay rent if they could. If they can't (and many can't), they only have to show their landlord that their inability to pay rent is related to coronavirus. Any documentation they can provide would help the landlord. The intent is that documenting loss of work will be easy (e.g., proof of receiving unemployment inadequate to cover full rent after food and medications, or ineligible for unemployment, etc.).

Landlords would take their renter's information to apply to the state for surety on their dwelling units (either all at once or as needed). They would purchase surety bonds from a surety bond company. They would wait before making a claim for payment.

- A landlord with cash reserves and/or adequate rent from other units could wait indefinitely for each surety bonded household to get back on their feet and resume paying, however long it takes, before making their claim. The bonds outlast the declaration of emergency. If the economy doesn't rebound for many, many months or longer, such a landlord would have the option of letting the renter remain there that entire time, barred from filing for eviction for nonpayment, certain that they would eventually be paid for this service, so long as the renter's documentation trail shows they are still unable to pay rent as a result of the coronavirus.
- A landlord with inadequate cash reserves and/or rent from other units could claim payment of the bond earlier and still pursue their rights if rent continues to go unpaid after. A unit with a bond payment already made, or which has been rejected from the surety bond process for some reason, would not be subject to the indefinite eviction moratorium. But a unit once bonded cannot be re-bonded after, so landlords are encouraged to float their existing renters as long as possible.

Surety bond companies continue to operate as essential insurers. They would expand their operation to sell bonds to landlords. They would work with the Commonwealth to comply with terms of sale and payment.

An agency of the Commonwealth (e.g., the Department of Housing and Community Development) would administer the program. This includes reviewing applications from landlords, giving landlords the premium money to purchase surety bonds from a licensed surety bond company, reimbursing surety bond companies for eventual claims, and preventing fraud and abuse.

Clerks of the trial court would examine nonpayment filings for evidence (or check a database) that a surety bond has been issued and payment remains outstanding on that address. They would reject nonpayment filings for that unit until after the bond has been closed out.

Why make it effective the day of signing, as opposed to retroactive to the date of emergency or in the future?

Renters and landlords continue to make the best of a bad situation, the market continues to limp forward, and many households have been relocated following prior levies of execution, voluntary move-outs, or mediated agreements for move-out. The only way to catch everyone today is to enact surety today, rather than an arbitrary date in the past.

If we make the effective date retroactive to the date of the emergency declaration, new rental agreements would not be covered even though the economy continues to slide.

If we make the effective date in the future after the date of passage, new rental agreements will be created that otherwise would not be created in an effort to get access to the surety bond.

What about people experiencing homelessness?

Surety applies to existing housing. We need to keep everyone who has a home in their home indefinitely. We are dealing with the response to homelessness separately. By keeping everyone in their existing housing, we eliminate incoming pressure on the emergency assistance/homelessness system.

Isn't this the same as an eviction moratorium?

No, state and federal eviction moratoriums will end far sooner than the economy will recover. It may take years for some households to become self-sufficient again, and it will take years for others to receive rental assistance (the wait for Section 8 was ten years before the pandemic). A declaration of surety applies as long as the rental agreement continues forward, however long it takes us to recover together.