

COVID-19 EVICTION & FORECLOSURE MORATORIUM LAW

This document summarizes the COVID-19 eviction and foreclosure bill ([H.4647](#)) signed into law by Governor Baker on April 20, 2020.

EFFECTIVE DATES

Non-Essential Eviction Moratorium

120 days after the effective date of the act or 45 days after the COVID-19 emergency declaration is lifted, whichever is sooner.

The Governor may extend the moratorium in increments of up to 90 days. However, the Governor may not extend the moratorium beyond 45 days after the emergency declaration has been lifted.

The time periods and deadlines for non-essential eviction actions shall begin to run upon the expiration of the moratorium.

Foreclosure Moratorium

120 days after the effective date of the act or 45 days after the COVID-19 emergency declaration is lifted, whichever is sooner.

The Governor may extend the moratorium in increments of up to 90 days. However, the Governor may not extend the moratorium beyond 45 days after the emergency declaration has been lifted.

Mortgage Forbearance

A financial institution will no longer be required to grant mortgage forbearance at the request of the homeowner if the request is made after the foreclosure moratorium has expired.

NON-ESSENTIAL EVICTION MORATORIUM

Definition of Non-Essential Eviction

The bill prohibits non-essential evictions, which include evictions:

- (i) for non-payment of rent;
- (ii) resulting from a foreclosure;
- (iii) for no fault or no cause; or
- (iv) for cause that does not involve or include allegations of criminal activity or allegations of 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.

Eviction Moratorium for Commercial Tenants

The bill extends the non-essential eviction moratorium to “small business premises units” defined as a small business that does not operate in other states or countries, is not publicly traded, and that does not have more than 150 full time employees.

Prohibitions on Landlords & Owners

For non-essential evictions of residential units, the bill prohibits landlords or owners from:

- (i) terminating a tenancy; or
- (ii) sending any notice, including a notice to quit, requesting or demanding that a tenant vacate the premises.

Stopping & Delaying Non-Essential Eviction Actions in Court

For non-essential eviction actions, the bill prohibits courts from:

- (i) accepting for filing a writ, summons or complaint for possession;
- (ii) entering a judgement or default judgment;
- (iii) issuing an execution for possession;
- (iv) denying, upon the request of a defendant, a stay of execution, or upon the request by a party a continuance of a summary process case; or
- (v) scheduling a court event, including a summary process trial.

The bill pauses any deadline or time period for action in a non-essential eviction case for residential or small business premises units, the bill prohibits courts. These time periods include a date to answer a complaint, appeal a judgment, execution for possession or money judgment.

Prohibiting Executions for Possession

The bill prohibits a sheriff or anyone else from enforcing an execution for possession for a non-essential eviction for residential units or small business premises units.

Prohibiting Late Fees or Negative Credit Reporting

The bill prohibits a landlord from charging late fees for non-payment or providing rental payment data to any consumer reporting agency related to the non-payment if a tenant provides notice and documentation within 30 days of the non-payment that the non-payment was because of financial impact related to the COVID-19 outbreak.

The bill directs the Executive Office of Housing and Economic Development (EOHED) to develop these forms and recommendations for the provision of the notice and documentation to the landlord.

Obligation to Pay Rent

The bill explicitly states that nothing in this legislation shall be construed to relieve a tenant from the obligation to pay rent, or restrict a landlord's ability to recover rent.

Authority for Emergency Regulations

The bill authorizes EOHED to issue emergency regulations as necessary to implement these provisions.

AUTHORIZING LANDLORDS TO USE LAST MONTH'S RENT IN ADVANCE

The bill authorizes landlords who have received rent in advance for the last month of tenancy to use these funds in advance to pay for expenses including mortgage payments, utilities, repairs and required upkeep. These funds cannot be used to cover for any rent owed by the tenant.

The landlord must give notice to the tenant that the landlord plans to use the last month's rent for this purpose, that the tenant will not owe money for the last month's rent, and that the tenant will still be entitled to the same amount of interest had the landlord not used the last month's rent.

The bill directs EOHED to issue emergency regulations as necessary to implement this provision and to develop forms for notifying tenants.

FORECLOSURE MORATORIUM

Both the House and Senate prohibit foreclosures on residential properties. Specifically, the bills prohibit a party from:

- (i) Publishing a notice of a foreclosure;
- (ii) Exercising a power of sale;
- (iii) Exercising a right of entry;
- (iv) Initiating a judicial or non-judicial foreclosure process; or
- (v) File a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act.

The House effective date for this moratorium is until 30 days after the end of the emergency declaration. The Senate effective date is for 120 days.

MORTGAGE FORBEARANCE

The bill directs financial institutions to grant forbearances on residential mortgages upon the homeowner's request if the homeowner has experienced a financial impact related to COVID-19. The forbearance cannot be for longer than 180 days.

A financial institution may not charge fees, penalties, or interest related to these late payments. The missed mortgage payments shall be added to the end of the loan term, unless otherwise agreed to by the homeowner and the financial institution.

The bill also prohibits financial institutions from reporting negative data to credit reporting agencies for the mortgage payments subject to forbearance.

OBLIGATION TO MAKE MORTGAGE PAYMENTS

The bill explicitly states that nothing in this act shall be construed to relieve someone from the obligation to make mortgage payments. Nor does the act restrict a duly authorized person from the right to collect mortgage payments.

REVERSE MORTGAGE COUNSELING

The bill allows counseling for reverse mortgages to be done by video-conference or telephone during the emergency declaration. Once the emergency declaration lapses, counseling for reverse mortgages will revert back to the requirement that counseling be in person. The bill requires the Executive Office of Elder Affairs to approve reverse mortgage counselors.