

COVID-19 Evictions and Foreclosures Update: Massachusetts – 9/8/2020

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The state moratorium on residential evictions, certain residential foreclosures, and certain commercial evictions (Chapter 65 of the Acts of 2020) remains in effect through October 17, 2020. Landlords challenging that moratorium in Superior Court were recently denied a request to stay enforcement. The court's decision, issued on August 26, 2020, is linked [here](#). Arguments regarding similar relief sought in a parallel federal case were heard last week. Legislation to extend foreclosure protections and a residential (not commercial) eviction moratorium beyond October 17 has been introduced in both State House chambers, but has not yet passed in the extended session. Governor Baker can also extend the moratorium under Chapter 65.

Should the state moratorium be invalidated, a recent order issued by the Centers for Disease Control and Prevention (CDC), published last week in the Federal Register (link [here](#)) would apply to residential landlords in Massachusetts. The CDC order does not apply to commercial properties and has a narrower scope than the now-expired CARES Act, in that it explicitly carves out foreclosure and makes no mention of federally-backed loans. The CDC order is in effect until December 31, 2020.

The CDC order probably does not currently apply in Massachusetts because it “does not apply in any State [. . .] with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.” Unlike the CDC order, Chapter 65 does not require a tenant to exhaust all sources of funding or make best efforts to pay rent before seeking protection. Chapter 65 provides more protection by not requiring a demonstration of hardship, except to avoid outcomes such as reporting nonpayment to credit agencies. Chapter 65 is also more comprehensive by limiting legal eviction to specific causes, and assigning the eviction determination to designated officials such as courts and sheriffs' offices. By contrast, the CDC order places the onus on landlords to comply, and includes criminal liability for noncompliance and the possibility of jail time if an eviction results in a death.

Court challenges to the CDC order can be expected given its national scope. Protections for commercial tenants remain in effect in Massachusetts, but will expire next month if the governor takes no further action. Protections from residential foreclosure in Massachusetts will expire next month as well unless extended or replaced with new legislation. Protections for residential tenants will continue to exist in some form until at least the end of the year unless invalidated before then by court order.

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National Law Review, Volume X, Number 252

Source URL: <https://natlawreview.com/article/covid-19-evictions-and-foreclosures-update-massachusetts-982020>