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HOUSE No. 4647

Chapter 65 of the Acts of 2020

THE COMMONWEALTH OF MASSACHUSETTS

(2019-2020)

AN ACT PROVIDING FOR A MORATORIUM ON EVICTIONS AND FORECLOSURES DURING THE COVID-19 EMERGENCY.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to establish forthwith a moratorium on evictions and foreclosures during the governor's COVID-19 emergency declaration, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"COVID-19 emergency", the state of emergency concerning the novel coronavirus disease outbreak declared by the governor on March 10, 2020.

"Non-essential eviction", an eviction: (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: (a) criminal activity 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; or (b) 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; provided, however, that a non-essential eviction shall not include an eviction for a small business premises unit on account of the expiration of the term of a lease or tenancy or a default by the tenant of a small business premises unit under the terms of its lease or tenancy that occurred before the declaration of the COVID-19 emergency.

"Small business premises unit", a premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit; provided, however, that a small business premises unit shall not include a premises occupied by a tenant if the tenant or a party that controls, is controlled by or is in common control with the tenant: (i) operates multi-state; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has not less than 150 full-time equivalent employees.

SECTION 2. Notwithstanding section 7A of chapter 167E of the General Laws, section 65C1/2 of chapter 171 of the General Laws or any other general or special law to the contrary, from the effective date of this act until the termination of the COVID-19 emergency, due to the outbreak of the 2019 novel coronavirus, also known as COVID-19, written certification from a counselor with a third-party organization that a mortgagor has received counseling via a synchronous, real-time video conference or by telephone in lieu of counseling in person shall satisfy the requirements of clause (ii) of subsection (b) of said section 7A of said chapter 167E or clause (ii) of subsection (b) of said section 65C1/2 of said chapter 171; provided, however, that the third-party organization shall have been approved by the executive office of elder affairs for purposes of such counseling.

SECTION 3. (a) Notwithstanding chapter 186 or chapter 239 of the General Laws or any other general or special law, rule, regulation or order to the contrary, a landlord or owner of a property shall not, for the purposes of a non-essential eviction for a residential dwelling unit: (i) terminate a tenancy; or (ii) send any notice, including a notice to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises.

(b) Notwithstanding chapter 186 or 239 of the General Laws or any general or special law, rule, regulation or order to the contrary, a court having jurisdiction over an action for summary process pursuant to said chapter 239, including the Boston municipal court department, shall not, in a non-essential eviction for a residential dwelling unit or a small business premises unit: (i) accept for filing a writ, summons or complaint; (ii) enter a judgment or default judgment for a plaintiff for possession of a residential dwelling unit or small business premises unit; (iii) issue an execution for possession of a residential dwelling unit or small business premises unit; (iv) deny, 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) schedule a court event, including a summary process trial.

(c) A deadline or time period for action by a party to a non-essential eviction for a residential dwelling unit or small business premises unit, whether such deadline or time period was established before or after the effective date of this act, including, but not limited to, a date to answer a complaint, appeal a judgment or levy upon an execution for possession or a money judgment, shall be tolled.

(d) A sheriff, deputy sheriff, constable or other person shall not enforce or levy upon an execution for possession for a non-essential eviction of a residential dwelling unit or small business premises unit.

(e) A landlord shall not impose a late fee for non-payment of rent for a residential dwelling unit or a small business premises unit or furnish rental payment data to a consumer reporting agency, as defined in section 50 of chapter 93 of the General Laws, related to the non-payment of rent if, not later than 30 days after the missed rent payment, the tenant provides notice and documentation to the landlord that the non-payment of rent was due to a financial impact from COVID-19.

The executive office of housing and economic development shall develop forms and recommendations for the provision of notice and documentation to a landlord that the non-payment of rent was due to a financial impact from COVID-19.

(f) Nothing in this section shall relieve a tenant from the obligation to pay rent or restrict a landlord's ability to recover rent.

(g) The executive office of housing and economic development shall issue emergency regulations as necessary to implement this section.

SECTION 4. (a) Notwithstanding section 15B of chapter 186 of the General Laws or any other general or special law to the contrary, in order to address disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the COVID-19 emergency, a lessor who received rent in advance for the last month of tenancy pursuant to said section 15B, may access and utilize the funds received from said last month's rent in advance. A lessor may utilize such funds to pay for expenses, which may include, but shall not be limited to, mortgage payments, utilities, repairs and required upkeep; provided, however, that a lessor shall not deduct from said last month's rent in advance any amount to account for the tenant's nonpayment of rent; provided further, that the lessor shall notify the tenant in writing that: (i) the lessor utilized such funds before the last month of the tenancy; (ii) the lessor remains obligated to apply said rent in advance to its intended application as rent for the last month of tenancy; and (iii) the tenant is entitled to the same amount of interest from the lessor under said section 15B of said chapter 186 that would have accrued had the lessor not utilized such funds before the last month of the tenancy.

(b) Nothing in this section shall be construed to relieve a lessor of their obligations to apply said rent in advance to its intended application as rent for the last month of tenancy and to pay to the tenant any interest due as required pursuant to said section 15B of said chapter 186; provided, however, that the interest due to the tenant pursuant to said section 15B of said chapter 186 shall be calculated as though the lessor had not utilized such funds before the last month of the tenancy.

(c) The executive office of housing and economic development shall issue emergency regulations and guidance as necessary to implement this section and shall promulgate a standard form for the notification of tenants under subsection (a).

SECTION 5. (a) Notwithstanding chapter 239 or chapter 244 of the General Laws or any other general or special law to the contrary, a creditor, mortgagee or person having estate in the land mortgaged, a person authorized by a power of sale pursuant to section 14 of said chapter 244 or right of entry or the attorney duly authorized by a writing under seal or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person shall not, for the purposes of foreclosure of a residential property as defined in section 35B of said chapter 244 that is not vacant or abandoned: (i) cause notice of a foreclosure sale to be published pursuant to said section 14 of said chapter 244; (ii) exercise a power of sale; (iii) exercise a right of entry; (iv) initiate 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, 50 USC sections 3901 to 4043, inclusive.

(b) A creditor or mortgagee shall grant a forbearance to a mortgagor of a mortgage loan for a residential property as defined in said section 35B of said chapter 244 if the mortgagor submits a request to the mortgagor's servicer affirming that the mortgagor has experienced a financial impact from COVID-19. The forbearance shall be for not more than 180 days. Fees, penalties or interest beyond the amounts scheduled and calculated as if the mortgagor made all contractual payments on time and in full under the terms of the mortgage contract shall not accrue during the period of forbearance granted under this subsection. A payment subject to the forbearance shall be added to the end of the term of the loan unless otherwise agreed to by the mortgagor and mortgagee. Nothing in this subsection shall prohibit a mortgagor and mortgagee from entering into an alternative payment agreement for the payments subject to the forbearance. The mortgagee shall not furnish negative mortgage payment information to a consumer reporting agency related to mortgage payments subject to forbearance under this act.

(c) Nothing in this section shall be construed to relieve a mortgagor from the obligation to pay their mortgage or restrict the ability of a creditor, mortgagee or person having estate in the land mortgaged, or a person authorized by a power of sale or right of entry, or attorney duly authorized or person acting in the name of such mortgagee or person from recovering mortgage payments.

SECTION 6. Sections 3 and section 4 shall expire 120 days after the effective date of this act or 45 days after the COVID-19 emergency declaration has been lifted, whichever is sooner; provided, however, that the governor may postpone such expiration in increments of not more than 90 days; provided further, that the governor shall not postpone such expiration to later than 45 days after the COVID-19 emergency declaration has been lifted; and provided further, that any deadline or time period for action that is tolled under subsection (c) of said section 3 shall begin to run upon the expiration of said section 3.

SECTION 7. Subsection (a) of section 5 shall expire 120 days after the effective date of this act or 45 days after the COVID-19 emergency declaration has been lifted, whichever is sooner; provided, however, that the governor may postpone such expiration in increments of not more than 90 days; provided further, that the governor shall not postpone such expiration to later than 45 days after the COVID-19 emergency declaration has been lifted.

SECTION 8. Notwithstanding any general or special law to the contrary, a creditor or mortgagee shall not be required to grant a forbearance to a mortgagor of a mortgage loan for a residential property under subsection (b) of section 5 if the mortgagor's request for such forbearance is made after the expiration date in section 7.

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