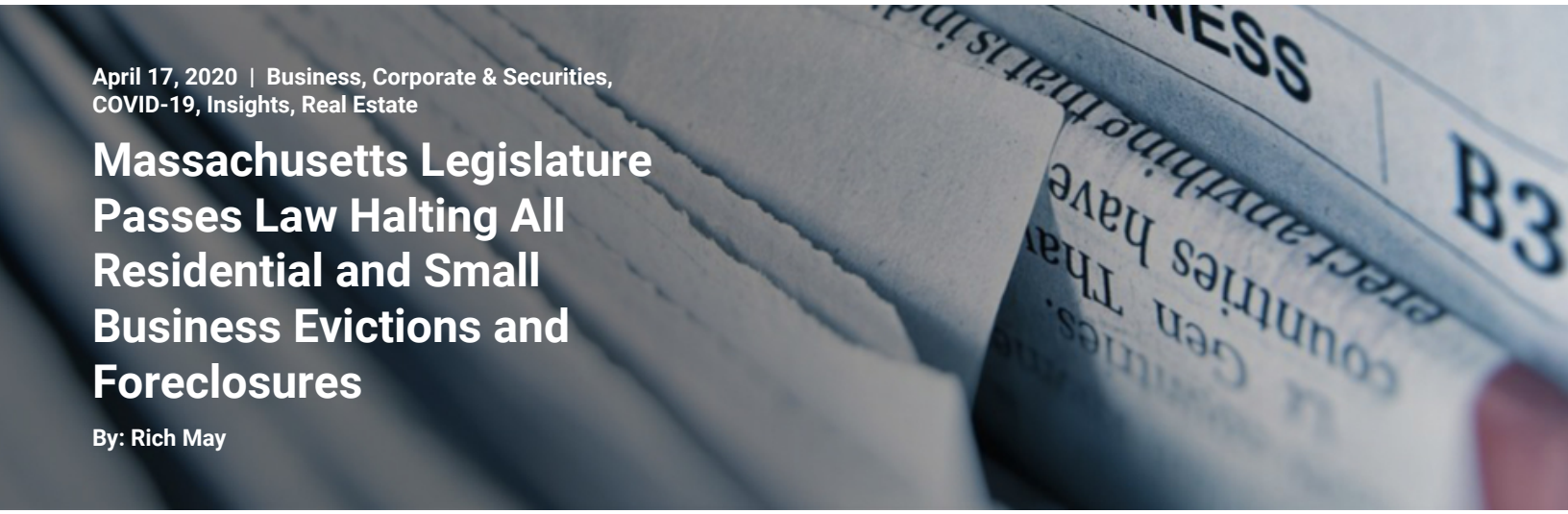

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Massachusetts Legislature Passes Law Halting All Residential and Small Business Evictions and Foreclosures

By: Rich May



Update 4/21/20: the below summary, written when this legislation was pending, has been updated to reflect the bill now having been signed into law.

The Massachusetts legislature has enacted, and on April 20, 2020 the Governor signed into law, H.4647 which puts a temporary moratorium on evictions and foreclosures in Massachusetts in response to the COVID-19 (coronavirus) declaration of emergency. This legislation has been pending for over a month and will provide some relief for renters and homeowners alike who are suffering financial strain as a result of the ongoing pandemic.

Evictions

The new law stops landlords from initiating or conducting "non-essential" evictions, and also halts presently pending evictions by staying their deadlines. "Non-essential" evictions include those for non-payment of rent. Landlords also may not impose late fees if the tenant provides timely documentation that the nonpayment was due to a "financial impact from COVID-19." However, landlords may still conduct evictions arising from health and safety violations. This reprieve is only temporary and tenants are not relieved of their obligations, so evictions and collection actions for nonpayment could commence after the law expires (see below).

This temporary eviction prohibition applies to both residential tenancies and those involving "small business premises units." These are properties occupied by any commercial tenant that (i) does not operate in multiple states or internationally, (ii) is not publicly traded, and (iii) has fewer than 150 full-time equivalent employees. Landlords of small business premise units may still terminate such tenancies by sending notices to quit, but will not be able to move forward with the eviction process while the law is in force.

Foreclosures

Unlike evictions, the law's moratorium on foreclosures only applies to residential properties. Lenders, mortgagees, and any person acting in the name of a mortgagee

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cannot initiate a residential foreclosure action where the property is the principal residence of the borrower. Pending residential foreclosures are also stayed. The only exception is if the residential property is vacant or abandoned, in which case an eviction may be commenced or continue to proceed.

Similarly, mortgage holders and creditors are required to grant forbearance to borrowers holding mortgages on residential property. All the borrower must do is submit a forbearance request with a certification that the borrower "has experienced a financial impact from COVID-19." The forbearance will be for a maximum of 180 days and no fees, penalties, or interest may apply beyond what would otherwise be included in the ordinary course if payments had been made on time and in full.

Timeline

The prohibitions on evictions and foreclosures are both temporary, but precisely when they expire depends on how long the current emergency lasts. Each prohibition will expire either August 18, 2020, or 45 days after the Governor's COVID-19 emergency declaration has been lifted, whichever is sooner. However, the statute allows the Governor some limited authority to extend the expiration deadlines further. Rich May will continue to monitor the situation so that our attorneys may advise tenants, landlords, homeowners, and lenders on when these protections and obligations expire.

Overlap with existing Federal Law

Finally, it should be noted that the protections and obligations provided by H.4647 to Massachusetts renters, small business owners, landlords, homeowners, and lenders overlap with and are in addition to the Federal protections and obligations already in effect as a result of the CARES Act. The Massachusetts Attorney General has already warned landlords that she is watching for unlawful evictions. It is important for affected parties to be aware of all of their rights and to comply with all of their obligations under both Federal and State laws.

Any tenants, small businesses, homeowners, landlords, or lenders with questions can contact Rich May, P.C. attorneys Nathaniel Donoghue, Jeff Loeb or David Glod.

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