Expansive New Massachusetts Law Upends Process for Residential Evictions and Foreclosures in Wake of COVID-19, Effectively Alters Terms of Mortgages

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Massachusetts has passed an expansive law aimed at protecting tenants and homeowners during the COVID-19 emergency – “An Act Providing For A Moratorium On Evictions And Foreclosures During The COVID-19 Emergency” (“Act”). The law will remain in effect for 120 days, or 45 days after the Commonwealth’s emergency declaration ends, whichever comes first. The Act provides a mechanism to extend the moratorium for an additional 90 days if necessary, subject to the caveat appearing at the end of this paper.

Evictions – Generally Stayed

The Act stays all non-essential residential and certain small business evictions. This includes non-payment of rent evictions, no fault evictions, and post-foreclosure evictions. Essential evictions involve criminal activity or lease violations that impact the health and safety of other residents, health care workers, emergency personnel or the general public.

Pursuant to the Act, a landlord may not terminate a tenancy or send any notice to quit or vacate the premises during the pendency of the moratorium. Courts are prohibited from accepting any new eviction summons and complaint, entering judgment or default judgment for possession, issuing executions for possession, denying a request to stay an execution, denying any request to stay an eviction case and scheduling any court hearings.

All court deadlines are tolled during the moratorium period, including deadlines to appeal a judgment.

In addition, a landlord may not impose any late fees for non-payment of rent or report the account late to any credit reporting agencies if a tenant provides notice and documentation that their inability to make timely payments results from COVID-19’s financial impacts.

This moratorium does not, however, waive rental obligations. Tenants will need to make their full rental payments after the moratorium expires to avoid eviction at that time.

Foreclosures – Moratorium on Process

The foreclosure moratorium applies to owner-occupied buildings that are four units or less. Mortgagees, or anyone having the power of sale under Mass. Gen. Laws ch. 244, § 14, may not:

- Cause a notice of a foreclosure sale to be published;
- Exercise the power of sale;
- Exercise a right of entry;
- Initiate a judicial or non-judicial foreclosure process; or
- File a complaint to determine the military status of a mortgagor under the Servicemembers Civil Relief Act.
Foreclosures – Forced Loan Forbearance, Deferment of Principal and Interest to End of Loan Term

The Act also requires a creditor or mortgagee to grant a loan forbearance if requested by a mortgagor due to the financial impact of COVID-19. The forbearance shall not last more than 180 days, and the mortgagee cannot charge to the account any additional fees, penalties or interest beyond that which would normally accrue if the loan had been timely. At the end of the forbearance period, the amount subject to the forbearance will be added to the end of the loan term unless the parties come to another arrangement.

Impact

The Act creates obvious practical concerns relating to the foreclosure and eviction process generally and to the continued litigation of pre-foreclosure mortgage cases, including what litigation actions the Act considers part of the foreclosure process and thus subject to the moratorium. Title insurance companies appear to be taking a very expansive view of what litigation actions are part of the foreclosure process. Best practices require mortgagees moving forward in pre-foreclosure litigation during the moratorium to consult with their counsel and title insurance companies to ensure that any actions do not negatively impact post-foreclosure title insurability.

Caveat

This QuickStudy is intended solely to summarize key provisions of the Act. It is not intended to, and does not, analyze the constitutionality or enforceability of the Act’s provisions, whether under the United States Constitution or that of the Commonwealth. Certain provisions may be susceptible to challenge on constitutional grounds.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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