

# EFFECTS OF COVID-19 EMERGENCY ON LEASES IN WASHINGTON

## I. INTRODUCTION

The current global pandemic of the coronavirus disease (COVID-19) is affecting many aspects of daily life and business. Circumstances and guidance surrounding the spread of the disease change day by day, and governments are rapidly instituting emergency protocols, orders, and restrictions across industries in an attempt to support their citizens and economies.

As part of their emergency measures, jurisdictions throughout the state of Washington are instituting moratoriums on tenant evictions. This memorandum summarizes the current state of these moratoriums and analyzes their impact on landlords.

## II. GENERAL BACKGROUND

The first confirmed case of COVID-19 in the United States was announced by the state of Washington on January 21, 2020. The first deaths were announced in late February. As of March 2020, Washington has one of the highest reported numbers of confirmed cases in the country.

In response to the outbreak, the state of Washington and many of its local jurisdictions have begun issuing emergency orders relating to the administration of leases. Washington landlord and tenant law is codified in Title 59 of the Revised Code of Washington (“RCW”); the residential landlord-tenant act is codified in RCW 59.18 *et seq.*

## III. EVICTION MORATORIUMS BY JURISDICTION <sup>1</sup>

A concise summary of the key elements of the moratoriums currently in effect can be found in Section IV. A more detailed explanation of the individual policies follows.

### a. The State of Washington

On March 18, 2020, the governor issued a proclamation “prohibit[ing] the following activities related to residential evictions by all residential landlords operating residential rental property in Washington State”:

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<sup>1</sup> Because circumstances are evolving, it is likely that additional moratoriums, or extensions of moratoriums, will arise after the date of this memorandum.

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1. Residential landlords are prohibited from serving a notice of unlawful detainer for default payment of rent related to such property under RCW 59.12.030(3)
2. Residential landlords are prohibited from issuing a 20-day notice for unlawful detainer related to such property under RCW 59.12.030(2), unless the landlord attaches an affidavit attesting that the action is believed necessary to ensure the health and safety of the tenant or other individuals.
3. Residential landlords are prohibited from initiating judicial action seeking a writ of restitution involving a dwelling unit if the alleged basis for the writ is the failure of the tenant or tenants to timely pay rent. This prohibition includes, but is not limited to, an action under Chapters 59.12 or RCW 59.18 RCW.
4. Local law enforcement is prohibited from serving or otherwise acting on eviction orders that are issued solely for default payment of rent related to such property. Nothing in this Proclamation is intended to prohibit local law enforcement from acting on orders of eviction issued for other reasons, including but not limited to waste, nuisance or commission of a crime on the premises.

The moratorium is initially in place for 30 days, concluding Friday, April 17, 2020.

The proclamation warns that landlords in violation of the order “may be subject to criminal penalties pursuant to RCW 43.06.220(5),” which is the statute proscribing the governor’s powers in a state of emergency. Pursuant to this subsection, “[a]ny person willfully violating any provision of an order issued by the governor under this section is guilty of a gross misdemeanor.”

In essence, the moratorium takes away a landlord’s enforcement rights under RCW 59.12 (Unlawful Detainer) and RCW 59.18 (Residential Landlord Tenant Act) to remove residential tenants for the nonpayment of rent. Removal for valid criteria unrelated to the payment of rent remains an option, and the calculation of default fees is not addressed in the proclamation.

## **b. The City of Seattle - Residential**

On March 14, 2020, the mayor issued an emergency order placing a temporary moratorium on residential evictions. On March 16, 2020, the City Council modified, expanded, and approved of the order. Pursuant to the expanded order:

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A. Effective immediately, a moratorium on residential evictions is hereby ordered until the earlier of the termination of the civil emergency declared in the Proclamation of Civil Emergency dated March 3, 2020 or 60 days from the effective date of this Emergency Order. The decision to extend the moratorium shall be evaluated and determined by the Mayor based on public health necessity;

B. A residential landlord shall not initiate an unlawful detainer action, issue a notice of termination, or otherwise act on any termination notice, including any action or notice related to a rental agreement that has expired or will expire during the effective date of this Emergency Order, unless the unlawful detainer action or action on a termination notice is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members. Further, no late fees or other charges due to late payment of rent shall accrue during the moratorium; and

C. It shall be a defense to any eviction action that the eviction of the tenant will occur during the moratorium, unless the eviction action is due to actions by the tenant constituting an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members. For any pending eviction action, regardless if the tenant has appeared, a court may grant a continuance for a future court date in order for the matter to be heard at a time after the moratorium is terminated; and

D. Effective immediately, the Sheriff of King County is requested to cease execution of eviction orders during the moratorium.

The moratorium is initially in place for 60 days, concluding Friday, May 15, 2020.

This moratorium is more expansive than the one imposed over the state for three general reasons: (1) the 60-day effective period, (2) banning fees for late payment of rent during the moratorium, and (3) rather than limiting evictions for solely rent-related reasons, all residential evictions other than those related to tenant actions imminently threatening the health or safety of others are prohibited.

In sum, the moratorium takes away a landlord's enforcement rights under RCW 59.12 (Unlawful Detainer) and RCW 59.18 (Residential Landlord Tenant Act) to remove residential tenants unless the tenant is an imminent threat to health or safety, and it prohibits late fees for non-payment of rent.

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## c. The City of Seattle – Commercial

On March 17, 2020, the mayor issued an emergency order placing a temporary moratorium on small business evictions. Pursuant to the order:

A. Effective immediately, a moratorium on small business and nonprofit tenant evictions for non-payment of rent or due to the expiration of the lease’s term are hereby ordered until the earlier of the termination of the civil emergency declared in the Proclamation of Civil Emergency dated March 3, 2020 or 60 days from the effective date of this Emergency Order. The decision to extend the moratorium shall be evaluated and determined by the Mayor based on public health necessity;

B. For purposes of this moratorium, “small business” shall have the same meaning as in RCW 19.85.020(3): “Small business’ means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other business, and that has fifty or fewer employees” per establishment or premises;

C. For purposes of this moratorium, a “nonprofit” shall mean an entity that: (1) is a “not for profit corporation” or “nonprofit corporation” under RCW 24.03.005(16) or is designated a “public benefit not for profit corporation” or “public benefit nonprofit corporation” under RCW 24.03.490; (2) holds tax-exempt status under 26 U.S.C. § 501(c)(3);

...

The moratorium is effective for 60 days from entry of the order, or until May 16, 2020.

This moratorium bans late fees, interest, or other charges due to late payment of rent during the moratorium, and requires owners to “endeavor to enter into a payment plan, or other workout agreement to assist a distressed small business or nonprofit in rent relief, including but not limited to the deferred payment of rent, discount to rent, or other strategies to address the economic disruption caused by the COVID-19 civil emergency.”

## d. The City of Everett

On March 17, 2020, the mayor issued an emergency order placing a temporary moratorium on residential evictions. Pursuant to the order:

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A. Effective immediately, a moratorium on residential evictions for non-payment is hereby ordered until the earlier of the termination of the Civil Emergency declared in the Proclamation of Civil Emergency dated March 4, 2020, or 30 days from the effective date of this Emergency Order. The decision to extend the moratorium shall be evaluated and determined by the Mayor based on public health necessity.

B. An owner of a housing unit shall not issue a notice of termination or initiate an eviction action for non-payment of rent or otherwise act on a termination notice for non-payment of rent during this moratorium. Further, no late fees or other charges due to late payment of rent shall accrue during the moratorium.

C. For any pending eviction action for the non-payment of rent, it shall be a defense to any eviction action that the eviction of the tenant would occur during the moratorium. Given the public health emergency and public safety issues, a court may grant a continuance for a future hearing date for the eviction action to be heard after the moratorium.

D. In any action seeking a writ of restitution involving a dwelling unit where the alleged basis for the writ is the failure of the tenant or tenants to timely pay rent, it shall be a defense to the action that writ would be executed before the termination of the Civil Emergency declared by the Mayor on March 4, 2020. Given the public health emergency and public safety issues, a court may grant a continuance for a future hearing date for the eviction action to be heard after the moratorium.

The moratorium is initially in place for 30 days, concluding Thursday, April 16, 2020.

Functionally, the moratorium provides the same limitations as that issued by the state of Washington.

## **e. The City of Burien**

On March 23, 2020 the city council passed Resolution No. 426 to approve a moratorium on residential evictions. The resolution supports the state's moratorium on residential evictions, and adds the following requirement:

A landlord or owner of a residential housing unit shall not require payment of late fees or charges due to delinquent payment of rent during this temporary moratorium. All residential tenant late fees and charges shall be waived during the Governor's temporary moratorium on evictions.

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Therefore, the moratorium expands upon the one imposed over the state banning fees for late payment of rent during the moratorium.

## **f. The City of Renton**

On March 23, 2020, the Renton City Council passed Resolution No. 4404 supporting the state's moratorium on residential evictions. At this time, the City of Renton has not expanded upon the state's moratorium.

## **g. The City of Auburn**

On March 23, 2020, the Auburn City Council passed Resolution No. 5506 to approve a moratorium on residential evictions. The resolution supports the state's moratorium on residential evictions, and adds the following requirement:

The City Council ratifies the Mayor's Emergency Proclamation 2020-03 establishing a 30-day temporary moratorium restricting a landlord or owner of a residential housing unit from requiring payment of late fees or charges due to delinquent payment of rent. All residential tenant late fees and charges shall be waived during the temporary moratorium.

Therefore, the moratorium expands upon the one imposed over the state banning fees for late payment of residential rent during the moratorium.

Also on March 23, 2020, the Auburn City Council passed Resolution No. 5508 to approve a moratorium on commercial evictions. The resolution states:

No landlord or commercial property owner shall evict a commercial tenant in the City of Auburn during this local emergency period if the tenant provides one week notice to the landlord or commercial property owner before payment is due that the tenant is unable to pay rent due to circumstances related to the COVID-19 pandemic. Within one week of the tenant's notice, the tenant must provide the landlord or commercial property owner with documentation supporting the tenant's inability to pay rent due to circumstances related to the COVID-19 pandemic.

These circumstances include loss of business income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health care expenses related to being ill with COVID-19 or caring for a member of the tenant's household who is ill with COVID-19, or reasonable expenditures that stem from government-ordered emergency measures.

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Thus, so long as the tenant provides notice and documentation of hardship, commercial evictions are temporarily prohibited in the Auburn.

## **h. The Cities of Bellevue, De Moines, Federal Way, and Lynwood**

At this time, these cities have not implemented any independent emergency orders affecting evictions. If you lease property in a city in Washington not included in this memorandum, please reach out to inquire about any additional local restrictions.

## **i. King County <sup>2</sup>**

On March 17, 2020, the King County Sheriff's office announced that effective immediately they are "temporarily suspending the service and enforcement of evictions until further notice." The language of the Sheriff's letter appears to include residential and commercial evictions, and "will remain in effect" until revoked.

In response, the King County Superior Court has stayed residential eviction cases until April 17, 2020, and stayed small business and nonprofit evictions in the City of Seattle until May 3, 2020. The court's emergency order reads:

. . . Therefore all hearings, motions, and trials on residential eviction cases are stayed until April 17, 2020. For the City of Seattle all hearings on small business and nonprofit evictions are stayed until May 3, 2020.

This order lists no exceptions for emergency eviction or unlawful detainer proceedings, so we recommend seeking the advice of an attorney should an emergency situation present itself.

## **j. Snohomish County <sup>3</sup>**

On March 19, 2020 the Snohomish County Sheriff's office announced that effective immediately they "will not proceed with any residential evictions filed solely on the basis of non-payment of rent." The proclamation states that it does not cover "commercial properties or evictions resulting from criminal behavior, nuisance, or other reasons." In response, the Snohomish County Superior Court issued an emergency order confirming the Sheriff's action. This moratorium remains in effect until April 17, 2020.

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<sup>2</sup> The cities of Seattle, Burien, Bellevue, Renton, Auburn, Des Moines, and Federal Way are in King County.

<sup>3</sup> The cities of Everett and Lynwood are in Snohomish County.

## IV. IMPACT AND RECOMMENDATIONS

At this time, due to significant overlap between these rapidly emerging policies, there are five key geographic areas to consider in administrating leases: (1) the state of Washington generally, (2) King County, (3) the city of Seattle, (4) the city of Burien, and (5) the city of Auburn.

The moratorium covering the state of Washington prohibits residential evictions based on the nonpayment of rent for at least 30 days. A landlord may still remove a tenant for valid criteria unrelated to the payment of rent, including but not limited to waste, nuisance, or commission of a crime on the premises. A landlord's willful violation of the order may constitute a gross misdemeanor.

Practically, we advise that you take the following actions in Washington:

- Stop all action on any ongoing default and eviction actions related to payment of rent;
- Do not initiate new default or eviction actions related to payment of rent; and,
- Set up a chain of command to evaluate and give permission for any and all default or eviction actions not related to the payment of rent in this time period.

The King County Superior Court has stayed residential eviction cases until April 17, 2020, and stayed small business and nonprofit evictions in the City of Seattle until May 3, 2020. The King County Sheriff's office has temporarily suspended "the service and enforcement of evictions until further notice." The language of the Sheriff's letter appears to include residential and commercial evictions, and "will remain in effect" until revoked.

In King County, we advise that you take the following additional actions:

- Stop all action on any ongoing residential, small business, or nonprofit default and eviction actions for any reason;
- Do not initiate new residential, small business, or nonprofit default or eviction actions for any reason;
- Contact your lawyer in King County to discuss any and all default or eviction actions not related to the payment of rent in this time period and your possible options for emergency enforcement.

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The city of Seattle has issued a more expansive 60-day moratorium<sup>4</sup> on residential evictions, barring landlords from removing tenants for any reason unless the tenant is an imminent threat to health or safety. The city has further prohibited the accumulation of late fees for non-payment of rent during the moratorium.

The city of Seattle has also issued a 60-day moratorium on commercial evictions for small businesses and non-profits. This moratorium bans late fees, interest, or other charges due to late payment of rent during the moratorium, and requires owners to “endeavor to enter into a payment plan, or other workout agreement to assist a distressed small business or nonprofit in rent relief, including but not limited to the deferred payment of rent, discount to rent, or other strategies to address the economic disruption caused by the COVID-19 civil emergency.”

And, we advise that you take the following actions in Seattle, specifically:

- Stop all action on any ongoing default and eviction actions for any reason;
- Do not initiate new default or eviction actions for any reason;
- Stop calculating, and remove from accounting, any late fees or other charges incurred due to late payment of rent accruing during the moratorium in the city of Seattle;
- Set up a chain of command to address and implement payment plans or workout agreements for any tenant that constitutes a small business or non-profit and fails to make rent payments in this time period; and,
- Set up a chain of command to evaluate and give permission for any and all default or eviction actions relating to an imminent threat to health or safety in this time period.

The city of Burien has added to the state’s residential eviction moratorium a requirement that landlords not charge late fees during the moratorium. Therefore, we advise that you take the following actions in Burien, specifically:

- Stop calculating, and remove from accounting, any late fees or other charges incurred due to late payment of residential rent accruing during the moratorium.

The city of Auburn has also added to the state’s residential eviction moratorium a requirement that landlords not charge late fees during the moratorium. Auburn has also placed a temporary moratorium on commercial evictions.

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Therefore, we advise that you take the following actions in Auburn, specifically:

- Stop calculating, and remove from accounting, any late fees or other charges incurred due to late payment of residential rent accruing during the moratorium;
- Stop all action on any ongoing default and eviction actions for any reason;
- Do not initiate new default or eviction actions for any reason;
- Set up a chain of command to address and implement documentation of hardships for commercial tenants who cannot pay rent in this time period.

## V. CONCLUSION

The state of Washington and several of its cities and counties are rolling out emergency measures to combat the effect of the COVID-19 pandemic. In particular, several moratoriums on tenant evictions and late fees have been implemented or are being considered. This is a rapidly evolving situation, and landlords in the state of Washington must keep up with ever-changing requirements for the administration of leases.

Please do not hesitate to reach out to us with questions, and we hope that this memorandum will be of help in your business pursuits in Washington.

Best regards,



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**NOTE:** This memorandum was published on March 30, 2020. The status and requirements of these moratoriums change daily.

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These are the opinions of the authors, not HCMP. Statements here do not represent specific legal advice.

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**Landlord-Tenant Solutions During the COVID-19 Outbreak**

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**Impact of COVID-19 on Restaurants and Bars**

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**Families First Coronavirus Response Act**

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