

Oregon Extends Eviction Ban, Allows Deferred Loan Payments and Prohibits Foreclosures

Legal Alert
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Responding to the financial hardships created by the COVID-19 pandemic, Oregon has extended its ban on residential and commercial evictions, and adopted a new law temporarily prohibiting foreclosures and allowing borrowers to defer loan payments.

Evictions

On March 22, 2020, Oregon Governor Kate Brown imposed a temporary moratorium on residential evictions and lease terminations based on nonpayment of rent or other charges, in order to protect residential tenants financially affected by the COVID-19 pandemic. On April 1, 2020, the Governor expanded that moratorium to cover commercial tenants. The moratorium was due to expire on June 30, 2020. However, last week the Oregon legislature stepped in and adopted HB 4213, now signed by the Governor, which extends the moratorium and adopts additional protections for both residential and commercial tenants.

Under the new law, a landlord may not terminate a rental agreement or initiate or continue an eviction proceeding, or threaten to take such actions, if it is based on a tenant's failure to pay rent or other charges that become due between April 1, 2020 and September 30, 2020. A landlord is also prohibited from assessing, or threatening to assess, a late fee or other penalty based on the tenant's nonpayment of rent or other charges during this period. For residential tenancies, a landlord is also prohibited from reporting a tenant's nonpayment of rent during this period as delinquent to any consumer credit reporting agency. After September 30, 2020, a tenant who failed to pay rent or other charges between April 1, 2020 and September 30, 2020 has a six-month grace period (until March

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31, 2021) to pay the delinquent balance. In essence, the new law prevents a landlord from exercising its principal remedies if a tenant stops paying rent between April 1, 2020 and September 30, 2020, and the new law goes one step further by allowing tenants six months to pay the deferred amount.

The moratorium on lease terminations and evictions under this new law only applies to situations of nonpayment of rent and other charges, and does not apply if there are other causes for termination of the lease.

After September 30, 2020, a landlord may deliver a written notice to a tenant advising the tenant that the moratorium has ended and that failure to pay rents or other sums due after September 30 may result in the landlord terminating the tenancy. The notice must also make other disclosures to the tenant, including a disclosure of the tenant's right to the six-month grace period to pay the delinquent rents. If the landlord gives this notice, the tenant must notify the landlord of the tenant's intention to use the six-month grace period. The failure of the tenant to give the required notice to the landlord entitles the landlord to recover damages equal to 50 percent of one month's rent following the grace period. There are both substantive and technical requirements applicable to these notices, so landlords and tenants are advised to consult with legal counsel concerning compliance with these notice requirements.

Deferred Loan Payments and Foreclosures

The Oregon legislature has also passed, and the Governor has signed, HB 4204, which requires lenders to allow borrowers to defer loan payments without being in default under the borrower's loan or financing agreement. Under this new law, if a borrower notifies its lender at any time after March 8, 2020 and before September 30, 2020 that the borrower will not be able to make an installment loan payment, the lender may not treat such nonpayment as a default under the borrower's loan or financing agreement during such period. In lieu of treating the nonpayment as a default, the lender must defer from collecting the installment payment and must permit the borrower to pay the deferred amount at the scheduled or anticipated date the loan is due in full. Also, during this period, the lender may not impose late charges or penalties, impose a default rate of interest, require or charge for an inspection, appraisal or broker's opinion of value if not permitted in the absence of default, initiate cash management or lockbox procedures if not already in place, take control of operating revenue from the property, or declare a default based on the borrower's failure to meet certain financial covenants due to inadequate revenue resulting from the COVID-19 pandemic. A lender who takes any such action may be liable for actual damages, court costs and attorney fees incurred by the borrower.

The notification to be provided by the borrower to the lender need only be given once. If the property securing the loan is a residence with four or fewer dwelling units, the notice must attest that the borrower's failure to pay is a result of a loss of income to the COVID-19

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pandemic. If the property is commercial property or residential property with more than four dwelling units, the notice must include financial statements or other evidence that demonstrates a loss of income related to the COVID-19 pandemic and must disclose any funds the borrower received from the U.S. Small Business Administration as a so-called “PPP” loan.

Also, during this period (March 8, 2020 to September 30, 2020), a lender may not foreclose a trust deed, mortgage or security interest on any property securing payment of the loan, except in very limited circumstances. The law specifically provides that a court may not enter a judgment of foreclosure and sale or issue a writ of execution, and a trustee may not conduct a trustee’s sale, during this period.

The new law also requires every lender authorized to do business in the state of Oregon to provide written notice by mail to all of the lender’s borrowers of a borrower’s rights under the new law.

These two new laws, HB 4213 and 4204, adopt significant protections for tenants and borrowers, and impose significant restrictions on the rights and remedies of landlords and lenders. If you have questions about the new laws, please contact [Joseph West](#) or [Thomas Scott](#).

For additional resources on how to navigate the business disruptions caused by COVID-19, please visit our [COVID-19 Resource Center](#) and reach out to the Foster Garvey team with any questions.