

# Stoel Rives Third Updated Guide to Washington State Eviction Moratoria and Tenant Protections

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*Federal, state, and local rules related to COVID-19 are changing quickly. Our guide is based on the facts and guidance available today. Future developments may render our guide outdated.*

## 1. **Washington State Moratorium on Rent Increases and Residential Evictions.**

Governor Inslee has renamed his “Stay Home – Stay Healthy” Proclamations ([Proclamation 20-25](#), [Proclamation 20-25.1](#), [Addendum to Proclamation 20-25](#), [Proclamation 20-25.2](#), [Proclamation 20-25.3](#)) to “Safe Start – Stay Healthy” in the June 1, 2020 [Proclamation 20-25.4](#), which allows the *Safe Start Washington* Phased Reopening [Plan](#) to be applied on a county-by-county basis. This proclamation is set to expire on July 1, 2020. On March 18, 2020, the Governor imposed a statewide ban on residential evictions by [Proclamation 20-19](#), which was extended and expanded on April 16, 2020 by [Proclamation 20-19.1](#).

On June 2, 2020, the Governor issued [Proclamation 20-19.2](#), modifying and extending the statewide ban on residential evictions and protections for residential and commercial tenants until **August 1, 2020**. The moratorium applies to “a dwelling or parcel of land occupied as a dwelling”, prohibiting residential evictions of those who have lawfully occupied or resided in less traditional dwelling situations **for a minimum of 14 days or more** (the 14-day requirement is new), whether or not documented in a lease, including roommates who share a home; **long-term care facilities**; transient housing in hotels and motels; short-term rentals such as Airbnb and VRBO; motor homes; RVs; lots rented and occupied by motor home owners; and camping areas. Evictions are now permitted based on **property** damage (in addition to health and safety risk), except for damage that is not urgent in nature. (See the [Press Release](#).) During this broad moratorium:

- a. **Residential and commercial landlords** (including property owners and property managers) are **prohibited** from **increasing** (or threatening to increase) the rate of **rent**. This prohibition applies to **commercial rental property** if the commercial tenant has been **materially impacted** by COVID-19, i.e., the commercial tenant:
  - i. Is personally impacted and is unable to work;
  - ii. Operates a “non-essential” business pursuant to Proclamation 20-25; or
  - iii. Otherwise lost staff or customers due to COVID-19.

**NEW: This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre- COVID-19 state of emergency).**

(For situations where this exception does not apply, according to [Seattle Times](#), the Attorney General’s office has taken the position that month-to-month fees (including fees for converting year-long leases into month-to-month tenancies) are a form of rent increase that is not allowed under this proclamation; the rent cannot be higher than it was on April 15; tenants whose landlords began charging month-to-month fees after April 16 may ask for a refund of the difference.)

- b. **Residential landlords are prohibited from:**
- i. Assessing (or threatening to assess) **late fees after February 29, 2020.**
  - ii. Treating any unpaid rent as an **enforceable debt**, where such non-payment was because of COVID-19 and occurred **after February 29, 2020 and during the State of Emergency proclaimed in all counties in Washington State** (including attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, and/or reporting to credit bureaus), **unless the landlord demonstrates that:**
    1. **the landlord offered the resident a re-payment plan that was reasonable based on resident's individual financial, health, and other circumstances; and**
    2. **the resident refused or failed to comply with such plan.****NEW: Failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**
  - iii. Assessing (or threatening to assess) **rent** for any period during which the **resident's access or occupancy was prevented** because of COVID-19 (e.g., seasonal/college housing closed; people who planned to move in but are prevented from doing so; and people who were forced to leave due to COVID-19-related needs of their own or others).
  - iv. Serving or enforcing (or threatening to serve or enforce) **any notice requiring a resident to vacate** (including an eviction notice, notice to pay or vacate, notice of unlawful detainer, **notice of termination** of rental, or notice to comply or vacate (e.g. requiring a non-paying tenant to move to a lesser unit)). This prohibition applies to tenancies **expiring** during the moratorium. This prohibition applies **unless:**
    1. the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident, or
    2. **NEW: the landlord provides at least 60 days' written notice of intent to:**
      - a. **personally occupy the premises as a primary residence, or**
      - b. **sell the property.**
  - v. Seeking or enforcing (or threatening to seek or enforce) **judicial eviction orders**, **unless:**
    1. the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident, or
    2. **NEW: the landlord provides at least 60 days' written notice of intent to:**
      - a. **personally occupy the premises as a primary residence, or**
      - b. **sell the property.**
  - vi. **NEW: Retaliating against individuals for invoking their rights or protections under Proclamations 20-19, 20-19.1, 20-19.2, or any**

- other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.
- c. **Local law enforcement is prohibited** from acting on (i.e., serving or threatening to serve) **eviction orders** affecting any dwelling, unless:
    - i. the resident is creating a significant and immediate risk to the health, safety, or property of others, or
    - ii. **NEW: the landlord provides at least 60 days' written notice of intent to:**
      - 1. **personally occupy the premises as a primary residence, or**
      - 2. **sell the property.**
  - d. A "significant and immediate risk to the **health, safety, or property of others** created by the resident":
    - i. Needs to be described with particularity;
    - ii. Cannot be established merely based on resident's health condition or disability;
    - iii. Excludes the situation, in which a resident who may have been exposed to, or contracted, COVID-19 or is following Dept. of Health guidelines regarding isolation or quarantine; and
    - iv. **NEW: Excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord pre-COVID-19 but regarding which the landlord previously took no action.**
  - e. Violators may be subject to criminal charges for a **gross misdemeanor**.
  - f. **NEW: The proclamation also encourages landlords and tenants to communicate in good faith with one another, and to work together on the timing and terms of payment and repayment solutions.**

2. **King County Sheriff's Suspension of Evictions**. On March 17, 2020, via [Notice #8](#), King County Sheriff Johanknecht sent a letter to King County Superior Court Presiding Judge Rogers announcing that the Sheriff's Office is "**temporarily suspending the service and enforcement of evictions until further notice**" and "until we are confident the threat of COVID-19 has dissipated and we have sufficient resources to resume civil evictions." The Sheriff's letter appears to apply to all types of evictions: residential, commercial, and post-foreclosure. However, any eviction orders received by the Sheriff's Office will be reviewed to determine if the order is based on waste, nuisance or commission of a crime. Such cases will be reviewed on an individual basis, to determine whether to proceed with the eviction. [Source](#).

Independent of the King County Sheriff's actions, access to the King County Court system for evictions has already been significantly limited anyway because all civil jury trials are continued to a date on or after **August 3, 2020**. See [Order #18](#) issued on May 27, 2020.

Pursuant to Order #18, as various federal, state, and local moratoria orders provide for **exceptions**, parties must be prepared to provide the following when submitting an unlawful detainer Order to Show Cause, default judgment, or other unlawful detainer filing that argues for the underlying exception: (1) a declaration under oath providing the necessary specific facts to justify the exception; (2) a proposed Order permitting the filing based on the exception;

and (3) the moving party must serve a copy of the required declaration on the respondent prior to seeking entry of the Judgment.

Order #18 also requires the parties to make a good faith effort to **mediate** as local moratoria expire. When requesting a show cause hearing, plaintiff must provide a Declaration showing (1) efforts to mediate and (2) verification that the property is exempt from the moratorium provided for under the CARES Act.

The Court will cap the number of Orders to Show Cause in person to meet social distancing requirements. The proposed date of any Order to Show Cause submitted to Ex Parte via the Clerk may be modified by the Court, without notice, prior to issuance.

3. **City of Seattle Ordinance on Commercial Tenancies**. Effective April 17, 2020, the City of Seattle enacted [Ordinance 126066](#) relating to commercial tenancies involving certain qualified small businesses and non-profit entities that temporarily restricts increases in commercial rents and authorizes repayment of late rent in installments. This ordinance provides that:

- a. A commercial landlord leasing to a qualified small business or nonprofit on a month-to-month basis **cannot increase** the amount of **rent** charged until the civil **emergency** is terminated.
- b. A commercial landlord leasing to a qualified small business or nonprofit on other than a month-to-month basis shall **not**, until the civil emergency is terminated:
  - i. **Increase** the amount of rent unless the increase was authorized in a written lease in effect before the effective date of this ordinance; or
  - ii. **Renew** the lease or enter into a new lease with the small business or nonprofit if the new lease requires a rental payment that exceeds the payment due under the expired lease.
- c. A qualified small business or nonprofit tenant that fails to pay rent when due **during or within 6 months after** the termination of the civil emergency may elect to pay its overdue rent in **installments** during that period on a payment schedule.
- d. A written installment payment schedule for overdue rent shall be negotiated between the landlord and the qualified small business or nonprofit, provided that:
  - i. The repayment schedule **may not require** the qualified small business or nonprofit to pay, in addition to rent payment already due for the month, **more than 1/3 of late rent within any month** following the month for which full rent was not paid unless agreed by the tenant; and
  - ii. Rent in arrears must ultimately be paid in full **no later than one year after** the termination of the civil emergency.
- e. **No late fees**, interest, or other charges due to late payment of rent shall accrue **during or within one year after** the termination of the civil emergency originally proclaimed by the Mayor on March 3, 2020.
- f. For purposes of this ordinance, a **“small business”** means any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) that meets all of the following conditions:

- i. It is owned and operated independently from all other businesses (a franchisee with 5 or fewer franchise units shall be considered owned and operated independently from its franchisor);
- ii. It has **50** or fewer employees per establishment or premises;
- iii. It has either:
  - i. Been forced to **close** due to an emergency order issued by the Governor or Mayor; or
  - ii. Has gross receipts from the previous month in 2020 that are less than **70%** of its gross receipts for the same month in 2019; and
- iv. It is neither:
  - i. A general sales and service business with 10 or more establishments in operation located anywhere in the world; nor
  - ii. An entertainment use business with 5 or more establishments in operation located anywhere in the world.

4. **City of Seattle Moratorium on Commercial Evictions**. On March 17, 2020, the City of Seattle Mayor issued an [Emergency Order](#) imposing a moratorium on certain small business and nonprofit tenant commercial evictions for non-payment of rent or due to the expiration of the lease's term. This Emergency Order was originally extended through June 4, 2020 pursuant to [Executive Order 2020-05](#), and was recently further extended through **August 1, 2020** pursuant to [Executive Order 2020-06](#). During this commercial eviction moratorium:

- a. **No late fees**, interest, or other charges due to late payment of rent can be charged.
- b. An owner of property "shall 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."
- c. An owner of property may **not evict, terminate** the lease of, or terminate the right to possession of any small business or nonprofit tenant.
- d. It is a defense to any eviction action for non-payment of rent that it would occur during the moratorium. Courts may grant continuances for eviction hearings to be heard after expiration of the moratorium.
- e. For purposes of this eviction moratorium, a "**small business\***" means (per [RCW 19.85.020\(3\)](#)) any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) that is:
  - i. Owned and operated independently from all other businesses; and
  - ii. Has **50** or fewer employees per establishment or premises.

(\*Note that the definition of "small business" in the eviction moratorium differs in important ways from the definition of "small business" in Seattle's April 17, 2020 Ordinance on Commercial Tenancies discussed above).

5. **City of Seattle Moratorium on Residential Evictions**. The City of Seattle Mayor issued an [Emergency Order](#), as amended by the Council in Resolution 31938 on March 16, 2020, imposing a moratorium on **residential** evictions. This Emergency Order was originally extended through June 4, 2020 pursuant to [Executive Order 2020-05](#), and was recently

further extended through **August 1, 2020** pursuant to [Executive Order 2020-06](#). During this residential eviction moratorium:

- a. No **late fees** or other charges due to late payment can accrue.
- b. A residential landlord cannot initiate an eviction action, issue a termination notice, or otherwise act on a termination notice (including any action or notice relating to a rental agreement expiring during the moratorium), unless the action is due to tenant's actions constituting imminent threat to the health or safety of others.
- c. It is a defense to any eviction action that the eviction will occur during the moratorium, unless the eviction is due to tenant's imminent threat to the health and safety of others. Courts may grant continuances for eviction hearings to be heard after expiration of the moratorium.

6. **City of Seattle Extension of Moratorium on Residential Evictions**. Effective May 6, 2020, the City of Seattle enacted [Ordinance 126075](#) providing that an owner may not evict a residential tenant if the tenant has a defense to the eviction under [SMC 22.206.160](#).C.9. This Ordinance amended [SMC 22.206.160](#) to provide tenants a defense in court if the following requirements are satisfied:

- a. The eviction would result in the tenant having to vacate within six months after the termination of Seattle residential eviction moratorium (which is currently set to expire on August 1, 2020 – see above).
- b. The reason for terminating the tenancy is:
  - i. The tenant fails to comply with a 14-day notice to pay rent or vacate for rent due **during**, or within **six months** after the termination of, the Seattle's residential eviction moratorium; or
  - ii. The tenant habitually fails to pay rent resulting in four or more pay-or-vacate notices in a 12-month period.
- c. The tenant has certified that the tenant has suffered a financial hardship and is therefore unable to pay rent.

If within six months after the termination of the Seattle's residential eviction moratorium, a landlord issues a notice to terminate a tenancy for non-payment of rent, that notice must contain the following statement: **"If you cannot pay rent, during or within 6 months after the end of the Mayor's moratorium on evictions, your inability to pay is a defense to eviction that you may raise in court."** It is a defense to eviction if the notice does not contain such statement.

Landlord may not recover an award of attorneys' fees and court costs arising from an eviction proceeding arising from a notice to terminate a tenancy for non-payment of rent within this six-month period.

Unlike the winter evictions moratorium (see below), this law also does not exclude landlords owning four or fewer units or high-income tenants. Together with the winter evictions moratorium, most residential evictions may effectively be stalled until **March 2021**.

7. **City of Seattle Moratorium on Residential Evictions in Winter**. On February 10, 2020, the City of Seattle passed a non-COVID-19 related [Ordinance 126041](#) providing tenants whose incomes do not exceed median income a defense to evictions for non-payment



of rent if the eviction would result in the tenant having to vacate between **December 1 and March 1** (except for landlords owning four or fewer units). The City has created a rent mitigation fund to provide funds to eligible low-income tenants at risk of residential eviction during winter months, if other sources of funds are not available to assist the tenant, or to provide financial assistance to a non-profit corporation or other housing provider that cannot evict a tenant during winter months because the unit is subject to restrictions on tenant incomes or rent as a condition of that assistance. If the City has provided sufficient funds for mitigation, then landlord's notice to terminate tenancy due to non-payment of rent must contain information about how to access the tenant mitigation fund.

8. **City of Seattle Ordinance on Installment Plans for Residential Tenancies**. On May 15, 2020, the City of Seattle enacted [Ordinance 126081](#) relating to residential tenancies that sets guidelines for tenant-landlord payment plans in the year after Seattle's COVID-19 emergency ends. A tenant who fails to pay rent when due during, or within **six months** after the termination of, the civil **emergency** (note: not six months after expiration of the evictions moratorium), may elect to pay such overdue rent in **installments** as follows:

- a. The tenant shall pay one month or less of overdue rent in three consecutive, equal monthly installments.
- b. The tenant shall pay over one month and up to two months of overdue rent in five consecutive, equal monthly payments.
- c. The tenant shall pay over two months of overdue rent in six consecutive, equal monthly payments.
- d. Any remainder from an uneven division of payments will be part of the last payment.
- e. The tenant may propose an alternative payment schedule, which, if the landlord agrees to it, shall be described in writing and signed by the tenant and landlord and deemed an amendment to any existing rental agreement.

**No late fee**, interest, or other charge due to late payment of rent can accrue during, or within **one year** after the termination of, the civil emergency.

If a landlord issues a notice to terminate tenancy for non-payment of rent that was due during, or within **six months** after the termination of, the civil emergency, the notice must contain the following statement: "**City law entitles you to pay overdue rent in installments. If your landlord does not accept payment according to the installment schedule, you may raise this as a defense to eviction in court.**" It is a **defense** to eviction if the notice does not contain the required information.

Failure of the owner to accept payment under the installment schedule provided pursuant to this ordinance is a **defense** to eviction.

Landlord may not recover an award of attorneys' fees and court costs arising from an eviction proceeding raising defenses authorized by this ordinance.

9. **City of Seattle Ordinance on Limited Use of Eviction History for Residential Tenancies**. On May 15, 2020, the City of Seattle enacted [Ordinance 126080](#) prohibiting landlords from taking an adverse action against a tenant based on prior notices or evictions that occur during or within the **six months** following the end of the civil **emergency**, unless

the eviction is due to actions by the tenant that constitute an imminent threat to the health or safety of neighbors, the landlord, or the tenant's or landlord's household members.

10. **HUD Moratorium on Foreclosures and Evictions**. Finally, on March 18, 2020, the U.S. Department of Housing and Urban Development issued [Mortgagee Letter 2020-04](#) directing mortgage servicers to stop all foreclosures and evictions for single-family homeowners with FHA-insured mortgages under all FHA Title II Single Family forward and Home Equity Conversion Mortgage (reverse) mortgage programs. This moratorium was originally scheduled to expire on May 17, 2020, but, pursuant to [Mortgagee Letter 2020-13](#), was extended until June 30, 2020, and then pursuant to [Mortgagee Letter 2020-19](#), was recently extended until **August 31, 2020**. The only exceptions to HUD's moratorium relate to vacant or abandoned properties.

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