

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

Federal, state, and local rules related to COVID-19 are changing quickly. Our guide is based on the facts and guidance available as of September 2, 2020. Future developments may render our guide outdated.

1. **Washington State Moratorium on Rent Increases and Residential Evictions**. In relation to the COVID-19 statewide emergency announced in [Proclamation 20-05](#) dated February 29, 2020, as amended, Governor Jay Inslee imposed a statewide moratorium on residential evictions on March 18, 2020, by [Proclamation 20-19](#), which was extended and expanded on April 16, 2020, by [Proclamation 20-19.1](#), and extended again on June 2, 2020, by [Proclamation 20-19.2](#).

On July 24, 2020, the Governor issued [Proclamation 20-19.3](#), further extending the statewide ban on residential evictions and protections for residential and commercial tenants reflected in the three prior Proclamations, until **October 15, 2020**. This extension order also made minor clarifications to some of the existing restrictions, such as confirming that the moratorium does not apply to operators of facilities licensed or certified by the Dept. of Social and Health Services, so that they are not prevented from taking necessary actions to transfer or discharge residents for health or safety reasons in accordance with the laws that apply to those facilities. Also, the Governor directed his executive senior policy advisors to convene an informal workgroup with stakeholders and legislators no later than **September 15, 2020** to discuss a broad range of issues and will consider how future extensions could address options to increase rent. For more background, please review the [Press Release](#) issued in conjunction with Proclamation 20-19.3

This 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, 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. 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.

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 repayment 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.**

Failure to provide a reasonable repayment plan shall be a **defense** to any lawsuit or other attempts to collect.

The Washington State Attorney General's [website](#) provides an [Unpaid Rent Repayment Plan Worksheet form](#) to assist landlords and tenants in creating a reasonable repayment plan. Landlords and tenants may choose to attach this worksheet to any final, signed repayment plan agreement they enter into, as a way to show the process they used to develop the repayment plan. According to this worksheet, the tenant should make the first proposal for a reasonable repayment rate and schedule, as may be supported by tenant's explanation or document(s). The landlord may accept tenant's proposed repayment rate and schedule, or make a counter-proposal. Landlord's proposed repayment rate and schedule must be good-faith estimates of tenant's ability to repay the unpaid rent based on the information the tenant has provided. The landlord should consider whether the amount of unpaid rent could be or should be reduced. The landlord and the tenant should document in writing the date, repayment rate, and repayment schedule of each proposal and counter-proposal, as well as any final agreement. The worksheet also lists supporting documents that the tenant can provide to the landlord. The tenant may redact documents, and the landlord may not share those documents with others without the tenant's written permission. The landlord may not require any specific category or type of documentation.

- 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. 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. 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. Retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., 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. 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.
- NEW:** Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution, that contain the findings required by this section.
- 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. 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. Landlords and tenants are expected to communicate in good faith with one another, and to work together on the timing and terms of payment and

repayment solutions. **NEW:** Governor encourages landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

To enforce Proclamation 20-19, as extended, Washington State Attorney General Bob Ferguson recently filed a [complaint in Spokane County Superior Court](#), asserting that Whitewater Creek, Inc., an Idaho property management company, violated Proclamation 20-19 and the Washington State Consumer Protection Act (RCW Chapter 19.86) by threatening to evict several residents of low-income housing complexes in Spokane County. See [Press Release](#). This action follows the Attorney General's previous lawsuit to enforce the eviction moratorium against JRK Residential Group, Inc., a Nevada-based property management company with residential units in Tacoma, Silverdale, and Marysville, Washington, for issuing notices to pay or vacate in violation of the moratorium, which lawsuit resulted in a settlement by JRK of nearly \$350,000, which included almost \$300,000 paid directly to residential tenants in the form of refunds, payments, and rent forgiveness. See [Press Release](#).

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. According to the King County Sheriff's office [website](#), such cases will be reviewed on an individual basis, to determine whether to proceed with the eviction.

3. **King County Superior Court**. Pursuant to [King County Superior Court Order #18](#) issued on May 27, 2020, 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.

4. **Unincorporated King County Tenant Protections**. On June 23, 2020, King County Council passed [Ordinance 19118](#) providing several protections for small commercial tenants and residential tenants through **March 1, 2021 if** their failure to pay was due to circumstances occurring as a result of the COVID-19 pandemic:

- a. **Small commercial tenants**. A small commercial tenant who fails to pay rent when due between March 1, 2020, and March 1, 2021, **may elect** to pay the overdue rent through a **repayment plan**.

- b. In an **unlawful detainer action** against a small commercial tenant for nonpayment of rent that was due between March 1, 2020, and March 1, 2021, the landlord must demonstrate that:
 - i. The landlord offered the tenant a **repayment plan** that was reasonable based on the individual financial, health and other circumstances of the tenant; and
 - ii. The tenant refused or failed to comply with such plan.A failure to provide a reasonable repayment plan is a **defense** to eviction.
- c. **Late fees**, interest or other charges arising from the late payment do not apply to late payment by small commercial tenants between March 1, 2020, to March 1, 2021, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.
- d. **“Small commercial tenant”** means a business entity (including a sole proprietorship, corporation, partnership or other legal entity) that:
 - i. Is owned and operated **independently** from all other businesses. A franchisee with 5 or fewer franchise units is considered owned and operated independently from its franchisor;
 - ii. Has **50** or fewer employees per establishment or premises;
 - iii. Has either:
 - 1. Been **forced** to close due to an emergency order issued by the Governor, or
 - 2. Has gross receipts from the previous calendar month of 2020 that are less than **70%** of its gross receipts for the same month in 2019; and
 - iv. Is neither:
 - 1. A general sales and service business with 10 or more establishments in operation located anywhere in the world, nor
 - 2. An entertainment use business with 5 or more establishments in operation located anywhere in the world.
- e. **Residential tenants**. Where an **unlawful detainer action** against a residential tenant is based on any reason enumerated in this section, it is a **defense** to eviction if the eviction was initiated because of a failure to pay rent when due between March 1, 2020, and March 1, 2021. The defense is available only where the reason for termination of the tenancy is based on:
 - i. The tenant’s failure to comply with a 14-day notice to pay rent or vacate under RCW 59.12.030(3); or
 - ii. The tenant’s habitual failure to comply with the material terms of the rental agreement (excludes short-term rentals as defined by RCW 64.37.010) to pay rent that causes the owner to serve a notice to comply or vacate or a notice to pay rent or vacate 3 or more times in a 12-month period.
 - 1. “Owner” means one or more persons, jointly or severally, in whom is vested:
 - a. All or any part of the legal title to property; or
 - b. All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

- f. To assert the defense above, the residential tenant must prove that the failure to pay rent was due to the following **circumstances** occurring as a result of the COVID-19 pandemic:
 - i. The tenant's illness;
 - ii. Loss or reduction of income;
 - iii. Loss of employment;
 - iv. Reduction in compensated hours of work;
 - v. Business or office closure;
 - vi. A need to miss work to care for a family member or child, where that care is uncompensated; or
 - vii. Other similar loss of income due to the COVID-19 pandemic.
- g. A residential tenant who fails to pay rent when due between March 1, 2020, and March 1, 2021, **may elect** to pay the overdue rent through a **repayment plan**.
- h. In an **unlawful detainer action** based on nonpayment of rent that was due between March 1, 2020, and March 1, 2021, the landlord shall demonstrate that:
 - i. The landlord offered the tenant a **repayment plan** that was reasonable based on the individual financial, health and other circumstances of the tenant; and
 - ii. The tenant refused or failed to comply with such plan.A failure to provide a reasonable repayment plan shall be a **defense** to eviction.
- i. **Late fees**, interest or other charges do not apply to late payment by tenants between March 1, 2020, to March 1, 2021, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.
- j. A **residential rental agreement may not be terminated** by the landlord under RCW 59.12.030(2) (month-to-month tenancies), RCW 59.18.200 or RCW 59.18.220, where the tenant has entered into a repayment plan until after the tenant has completed the repayment plan, or the tenant refused or failed to comply with, a repayment plan that was reasonable based on the individual financial, health and other circumstances of the tenant. This section shall not prohibit a landlord from otherwise terminating a tenancy due to behavior resulting in an imminent threat to health and safety of other persons on the premises.
- k. **Mobile or Manufactured Home Park**. Where an **unlawful detainer action** against a tenant of a mobile or manufactured home park is based on any reason enumerated in this section, it is a **defense** to eviction if the eviction was initiated because of a failure to pay rent due between March 1, 2020, and March 1, 2021. The defense is available only where the reason for termination of the tenancy or occupancy or failure to renew a tenancy or occupancy is based on:
 - i. The tenant's failure to comply with a 14-day notice to pay rent or charges or vacate due to nonpayment of rent or charges under RCW 59.20.080(1)(b);
 - ii. The tenant's failure to comply with a 14-day notice to comply or vacate due to a failure to pay rent by the due date provided for in the rental agreement 3 or more times in a 12-month period, commencing with the date of the first violation under RCW 59.20.080(1)(m);
- l. To assert the defense above, the tenant of the mobile or manufactured home park must prove that the failure to pay rent was due to one or more of the following **circumstances** occurring as a result of the COVID-19 pandemic:

- i. The tenant's illness;
 - ii. Loss or reduction of income;
 - iii. Loss of employment;
 - iv. Reduction in compensated hours of work;
 - v. Business or office closure;
 - vi. A need to miss work to care for a family member or child, where that care is uncompensated; and
 - vii. Other similar loss of income due to the COVID-19 pandemic.
- m. A tenant of a mobile or manufactured home park who fails to pay rent due between March 1, 2020, and March 1, 2021, **may elect** to pay the overdue rent through a **repayment plan**.
- n. In an **unlawful detainer action** based on nonpayment of rent that was due between March 1, 2020, and March 1, 2021, the landlord shall demonstrate that:
 - i. The landlord offered the tenant a **repayment plan** that was reasonable based on the individual financial, health and other circumstances of the tenant; and
 - ii. The tenant refused or failed to comply with such plan.

A failure to provide a reasonable repayment plan shall be a **defense** to eviction.
- o. **Late fees**, interest or other charges do not apply to late payment of rent by tenants between March 1, 2020, to March 1, 2021, and do not apply to repayment of those amounts made in accordance with a repayment plan, so long as the payments are timely made under the plan.
- p. **"Mobile or manufactured home park"** means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes or park models, for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.
- q. **No Retaliation**. A landlord may not take any reprisal or retaliatory action against a tenant who exercises rights under this ordinance. There is a **presumption** that the action of the landlord violates this section if the action occurs **during** a repayment plan period or **60** days after completing the repayment plan.

5. **King County Eviction Prevention and Rent Assistance Program**. King County has created a new program to assist households economically impacted by the coronavirus due to illness, loss of income or unemployment who have been unable to meet rent obligations and are at risk for eviction. Over **\$41 million** has been dedicated to helping local area residents. King County is seeking interest forms from tenants, small landlords, large property landlords and managers, manufactured home park owners and managers, and nonprofits who wish to participate in the program. The rental assistance program will pay some large residential landlord properties and manufactured home parks in bulk payments for eligible tenants. The program will also seek to distribute tenant rental assistance to smaller landlords whose eligible tenants qualify for assistance through a lottery process. Funding will be prioritized for the highest-need individuals and zip codes (i.e., the top 20% of zip codes with continued unemployment claims per capita and/or the zip codes in the top 20% of COVID-19 deaths per capita). In addition to setting tenant eligibility requirements, the program requires that landlords agree to the following as a condition of receiving funding:

- a. Accept 3 months of rental assistance on behalf of the participating tenant at the lesser of either (a) 80% of the otherwise applicable total rent for 3 months; or (b) fair market rent for the 3 months.

- b. Any rental debt owed by the tenant for more than 3 months must be forgiven. If rental debt is less than 3 months, assistance may be paid for past due and future rent up to 3 months not to extend beyond December 2020.
- c. Not terminate or refuse to renew the participating tenant's tenancy absent good-cause until March 31, 2021.
- d. Not raise rent on current tenant(s) served by this program until March 31, 2021.

6. **City of Seattle Ordinance on Personal Liability in Commercial Leases**. Effective July 31, 2020, the City of Seattle enacted [Ordinance 126166](#) temporarily prohibiting the enforcement of personal liability provisions in commercial leases or other rental agreements:

- a. **A provision in a commercial lease or other commercial rental agreement** that makes the tenant or one or more persons who are not the tenant wholly or partially personally liable for payment of rent, utility expenses, taxes, fees, or charges relating to routine building maintenance for the leased premises **is not enforceable** if the tenant is a small business or non-profit and:
 - i. Enforcement of the provision would occur during the civil emergency proclaimed by the Mayor on March 3, 2020 or within **six months** after the expiration of the Mayor's Proclamation and the tenant was subject to **in-person limitations** under Governor's Proclamations 20-07, 20-13, 20-14; 20-24, 20-25, 20-25.1, 20-25.2, 20-25.3, 20-25.4, 20-25.5, 20-25.6 or any subsequent extensions; or
 - ii. The tenant's business or non-profit **closed or ceased operations** pursuant to Governor's Proclamations 20-07, 20-13, 20-14, 20-24, 20-25, 20-25.1, 20-25.2, 20-25.3, 20-25.4, 20-25.5, 20-25.6, or any subsequent extensions.
- b. For purposes of this ordinance, a **"small business"** means any business entity (including a corporation, partnership, or other legal entity) that:
 - i. 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. has **50** or fewer employees per establishment or premises;
 - iii. is neither:
 - 1. a general sales and service business with 10 or more establishments in operation located anywhere in the world; nor
 - 2. an entertainment use business with 5 or more establishments in operation located anywhere in the world.

Further analysis of this ordinance is available [here](#).

7. **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:
 - i. 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. Has **50** or fewer employees per establishment or premises;
 - iii. 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. 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.

8. **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 extended several times pursuant to [Executive Order 2020-05](#) and [Executive Order 2020-06](#), and was further extended pursuant to [Executive Order 2020-09](#) through **December 31, 2020** or until the termination of the Proclamation of Civil Emergency dated March 3, 2020, whichever is earliest. 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:
 - i. Is 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).

9. **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 extended several times pursuant to [Executive Order 2020-05](#) and [Executive Order 2020-06](#), and was further extended pursuant to [Executive Order 2020-09](#) through **December 31, 2020** or until the termination of the Proclamation of Civil Emergency dated March 3, 2020, whichever is earliest. 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.

10. **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 December 31, 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. This ordinance may effectively stall most residential evictions until **July 2021**.

11. **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). See [SMC 22.206.160](#).C.8. 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.

12. **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.

13. 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.

14. Presidential Executive Order. On August 8, 2020, President Trump issued an [Executive Order](#) announcing the policy to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency. This Order provides the following general instructions to other federal agencies:

- a. The Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention (CDC) must **consider** whether any measures temporarily halting residential evictions for failure to pay rent are **reasonably necessary** to prevent the spread of COVID-19 from one State into any other State.
- b. The Secretary of the Treasury and the Secretary of HUD must **identify** all available Federal funds to provide temporary financial assistance to renters and homeowners who, as a result of COVID-19, are struggling to meet their monthly rental or mortgage obligations.
- c. HUD must **take action** to promote the ability of renters and homeowners to avoid eviction or foreclosure resulting from financial hardships caused by COVID-19. Such action may include encouraging and providing assistance to public housing authorities, affordable housing owners, landlords, and recipients of Federal grant funds in minimizing evictions and foreclosures.
- d. In consultation with the Secretary of the Treasury, the Director of the Federal Housing Finance Agency must **review** all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.

15. HUD Moratorium on Foreclosures and Evictions. 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; pursuant to [Mortgagee Letter 2020-19](#), was extended until August 31, 2020; and then pursuant to [Mortgagee Letter 2020-27](#), was recently extended until **December 31, 2020**. The only exceptions to HUD's moratorium relate to vacant or abandoned properties.

16. Centers for Disease Control and Prevention (CDC) Moratorium on Residential Evictions. On September 1, 2020, the CDC issued a national [Order](#) halting residential evictions through **December 31, 2020** under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2. This Order is effective from its publication date on September 4, 2020. It does not apply in areas with a moratorium on residential evictions that provides the same or greater level of public-health protection, and it does not preclude local authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order. This Order does not cover foreclosures on a home mortgage.

Declaration. To invoke this Order, tenants need to submit to their landlord a declaration containing specific statements contained in a form attached as Attachment A to the Order. Under this Order, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any "covered person" from any residential property. "Covered person" means any tenant who provides their landlord a declaration under penalty of perjury stating that:

- (1) The individual has used best efforts to obtain all available **government assistance** for rent or housing;
- (2) The individual either (i) expects to earn no more than **\$99,000** in annual income for 2020 (or no more than **\$198,000** if filing a joint tax return), (ii) was not required to report any income in 2019, or (iii) received an Economic Impact Payment (stimulus check);
- (3) The individual is **unable to pay** the full rent or make a full housing payment due to substantial **loss of household income**, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- (4) The individual is using **best efforts to make timely partial payments** that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
- (5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has **no other available housing** options.

"Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to tenant.

"Residential property" means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but does not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant.

Limitations. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a lease. This Order does not preclude the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent. The tenants may also still be evicted for reasons other than not paying rent or making a housing payment, i.e. based on:

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Criminal Penalties. A person violating this Order may be subject to (1) if the violation does not result in a death—a fine up to \$100,000, one year in jail, or both, or (2) if the violation results in a death—a fine up to \$250,000, one year in jail, or both, or (3) as otherwise provided by law.

An organization violating this Order may be subject to a fine of up to (1) \$200,000 per event if the violation does not result in a death or (2) \$500,000 per event if the violation results in a death or (3) as otherwise provided by law.

©2020 All Rights Reserved. Stoel Rives LLP - The purpose of this advisory is for general informational purposes only and should not be treated as legal advice. No attorney-client relationship attaches as a result of any exchange of information, including this communication. Please do not send us confidential information or sensitive materials. Unsolicited information sent to Stoel Rives by persons who are not clients of the firm is not subject to any duty of confidentiality by the firm. Prior results do not guarantee a similar outcome.