

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

1. **Washington State Moratorium on Rent Increases and Residential Evictions.** Governor Inslee’s “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](#)) are currently set to expire on **May 31, 2020**. Recent activity has included a statewide ban on residential evictions imposed on March 18, 2020 by [Proclamation 20-19](#).

On April 16, 2020, the Governor issued [Proclamation 20-19.1](#) extending the statewide ban on residential evictions and expanding protections for residential and commercial tenants until **June 4, 2020**. The extended moratorium applies to “a dwelling or parcel of land occupied as a dwelling”, thus prohibiting residential evictions in additional dwelling situations that include transient housing in hotels and motels, short-term rentals such as Airbnb and VRBO, transitional housing, RVs, lots rented and occupied by motor home owners), and camping areas. (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** or the amount of any deposit. 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. Did not operate an “essential business” pursuant to the “Stay Home – Stay Healthy” Proclamation; or
 - iii. Otherwise lost staff or customers due to COVID-19.

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** (i.e., the date when a State of Emergency was proclaimed in Washington).
 - ii. Treating any unpaid rent as an **enforceable debt**, where such non-payment was because of COVID-19 and occurred **after February 29, 2020** (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.**

- 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 the action is necessary to respond to a significant and immediate risk to the health or safety of others created by the resident.
- v. Seeking or enforcing (or threatening to seek or enforce) **judicial eviction orders or agreements to vacate**, unless the action is necessary to respond to a significant and immediate risk to the health or safety of others created by the resident.
- c. **Local law enforcement is prohibited** from acting on (i.e., serving or threatening to serve) **eviction orders** affecting any dwelling, unless the resident is creating a significant and immediate risk to the health or safety of others.
- d. A "significant and immediate risk to the **health or safety 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; and
 - iii. Excludes residents who may have been exposed to, or may have contracted, COVID-19 or who are following Dept. of Health guidelines regarding isolation or quarantine.
- e. Violators may be subject to criminal charges for a **gross misdemeanor**.

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. Independent of the King County Sheriff's actions, access to the King County Court system for evictions has already been significantly limited anyway:

- a. All civil jury trials are continued to a date on or after **July 7, 2020**, and the Court vows to act in accordance with the moratoria issued by Governor Inslee and several King County cities, including Seattle, [Kirkland](#), and others. See [Order #17](#) issued on April 22, 2020.
- b. Through June 5, 2020, while public health advisories are in effect, motions for default, motions for default judgment, and requests for entry of judgment will be denied without prejudice per [Order #15](#) issued on March 27, 2020 and [Order #17](#).

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. In order to align with Proclamation 20-19.1, this Emergency Order has been extended until **June 4, 2020** pursuant to Mayor's May 2, 2020 [Executive Order 2020-05](#). 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 all **residential** evictions. In order to align with Proclamation 20-19.1, this Emergency Order has been extended until **June 4, 2020** pursuant to Mayor's May 2, 2020 [Executive Order 2020-05](#). 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](#) (Note: SMC may not be updated yet) 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 **June 4, 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, 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 [CB 119788](#), 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 [CB 119787](#), 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](#) dated May 14, 2020, was recently extended until **June 30, 2020**.

©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.