

## Model Eviction Moratorium Act

### § 1. Short Title.

This act may be referred to as the Emergency COVID-19 Eviction Moratorium Act of 2020.

### § 2. Definitions.

The following definitions apply throughout this Act:

- (a) *Eviction.* The term “eviction” or “to evict” means using any judicial or non-judicial means to involuntarily remove a resident from a dwelling unit, including but not limited to:
- i. issuing a notice to vacate or other lease termination or eviction notice,
  - ii. filing, serving, or otherwise initiating a judicial eviction lawsuit,
  - iii. prosecuting a pending eviction lawsuit, other than as necessary to request a continuance or other suspension of the matter or to comply with an order of the tribunal,
  - iv. seeking or causing any order for the physical eviction of a resident to be executed;
  - v. suspending or terminating any landlord-supplied utility service to premises; or
  - vi. allowing premises to become unfit for human occupancy by failing to provide necessary maintenance or repairs.
- (b) *Landlord.* The term “landlord” means the owner or managing agent of residential property that is occupied by a resident.
- (c) *Tenant.* The term “tenant” means a person who occupies or asserts a right to possession of premises under a rental agreement with a landlord. “Tenant” also includes any member of a tenant’s household, whether or not listed on a written lease or contract.
- (d) *Eviction notice.* The term “eviction notice” means any notice directing a resident to vacate residential premises or purporting to terminate a tenancy.
- (e) *Eviction case.* The term “eviction case” means any judicial or administrative proceeding that seeks recovery of possession of residential premises from a resident.
- (f) *Eviction order.* The term “eviction order” means any order entered in an eviction case that directs or authorizes the removal of a resident from residential

premises. This does not include an order entered in any type of case to protect a resident from domestic violence, sexual violence, stalking, or other violence, even if compliance with that order may necessitate the absence of the person subject to the order. This does not include an order restoring a resident to possession of premises entered under Section 4.

(g) Moratorium period. The term “moratorium period” is the time period beginning on the date of enactment of this Act and extending until the moratorium is terminated.

### **§ 3. Moratorium on Evictions.**

(a) There is hereby declared a moratorium on evictions from residential premises in the state that shall remain in effect until terminated by the governor in the manner prescribed by Section 5.

(b) Throughout the moratorium period:

- i. No landlord shall evict a tenant from residential premises located within the state.
- ii. Any eviction notice issued to a tenant during the moratorium period is void and shall not be enforced against the tenant;
- iii. No court or other tribunal shall accept any eviction case for filing, or hear or decide any pending eviction case. All deadlines pertaining to the filing, service, or other prosecution of any eviction matters are tolled for the duration of the moratorium period.
- iv. No eviction order shall be served or executed during the moratorium period.

### **§ 4. Enforcement.**

(a) Any tenant displaced from residential premises in violation of Section 3 of this Act may bring an action in a court of competent jurisdiction for a writ of reentry to be restored to such premises. Such a claim shall constitute an emergency and critical function of the judicial system. The procedure for such a claim shall be as follows:

- (i) The tenant shall initiate such action by filing a sworn complaint stating the factual basis for the claim and requesting relief as authorized in this subsection;
- (ii) The court shall schedule a hearing on the complaint for as soon thereafter as practicable. Such hearing may be held by telephonic or videoconference or through other remote means if practical and available to the parties and the court.

- (iii) Unless the hearing on the complaint is held the same day as it is filed, the court shall consider the sworn allegations in the complaint and may issue an ex parte order that entitles the tenant to immediate and temporary possession of the premises pending the hearing.
- (b) A tenant adversely affected by any violation of Section 3 of this Act may bring a civil action to restrain further violations and to recover his or her damages, costs, and reasonable attorney fees. In the case of a willful violation, such tenant shall also be awarded a statutory damage equal to his or her actual and consequential damages or three times the monthly rent, whichever is greater. An action under this subsection may be combined with or brought in addition to an action under subsection (a) of this section.
- (c) Sovereign immunity is waived with respect to any violation of Section 3 of this Act committed by a public official or agency, including any public housing agency or governmental landlord.

**§ 5. Termination of Moratorium, Procedure.**

- (a) The governor shall terminate the moratorium upon making determinations that:
  - (i) The suspension of eviction proceedings in the state is no longer necessary to limit or control the spread of COVID-19; and
  - (ii) No other circumstance exists that justifies keeping the moratorium in effect.
- (b) The moratorium period shall terminate on the date specified by the governor, which shall not be sooner than fourteen (14) days after the governor has issued a formal executive order stating the date on which the moratorium period will terminate. Such executive order shall list the persons and agencies consulted and shall describe the facts and circumstances considered in making the determinations required by subsection (a).

**§ 6. Limitations on residential property management practices.**

- (a) Except as provided in subsection (b) of this section, it shall not be a violation of a residential rental agreement for a tenant who occupies residential premises to deny entry by the landlord during the moratorium period. For purposes of this section, “landlord” includes any person accompanying the landlord or authorized by the landlord to enter premises (such as a prospective buyer or future tenant).
- (b) If a condition exists in residential premises that substantially endangers or impairs the health or safety of a tenant or other persons in the vicinity of the premises, or

that is causing or threatening to cause substantial damage to the premises, then the tenant shall not unreasonably deny the landlord permission to enter the premises solely for purposes of remedying the condition. In such case, the landlord shall not permit entry by any person who is, or who any person has good cause to believe is, a carrier of COVID-19, and shall not fail to make adequate assurances that appropriate social distancing and cleaning measures will be taken to avoid risk of virus transmission during the entry, and to comply with such measures. Such adequate assurances must account for:

- (i) the tenant's report that the tenant or a member of the tenant's household has or believes in good faith to have been recently exposed to COVID-19 and denies access for reasons of self-isolation or quarantine; and
- (ii) the tenant's report that the tenant or a member of the tenant's household is at a higher risk for more serious complications from COVID-19.

A landlord who enters premises under this provision shall not fail to promptly leave the premises if the tenant revokes permission to enter, including because of the landlord's failure to observe social distancing or cleaning measures.

- (c) No landlord shall impose or collect any fee upon a tenant of residential premises in the state based on the late payment of rent coming due within the moratorium period. Any such fee previously collected shall be refunded to the tenant. A person injured by a violation of this subsection shall have the right to bring a civil action in a court of competent jurisdiction to recover any such fees unlawfully withheld, along with his or her costs and reasonable attorney fees. In the case of a willful violation, such person shall also be awarded a statutory damage equal to the greater of triple his or her actual damages or \$1,000.
- (d) No landlord shall terminate or decline to renew a residential tenancy because of a rent delinquency that arose during the moratorium period without allowing the tenant an opportunity to propose a reasonable payment plan after the termination of the moratorium period. For purposes of this subsection:
  - (i) A payment plan is presumptively reasonable if (A) the tenant would make future rental payments in full as they come due, (B) any arrearage on the tenant's account would be paid in full within twelve (12) months of the agreement, and (C) the tenant has, or there is good cause to believe the tenant will have, the means to make the required payments according to schedule.
  - (ii) In an eviction case governed by this subsection, the burden to prove that an opportunity to propose a reasonable payment plan shall be on the landlord. The burden to show that a payment plan was offered, and the terms of the

proposed plan, shall be on the tenant. If the terms of the plan are presumptively reasonable, then the burden shall be on the landlord to justify why the plan was not accepted. If the terms of the plan are not presumptively reasonable, then the burden shall be on tenant to show why the landlord should have accepted the plan nonetheless.

(iii) Except as provided in subsection (d), this subsection does not preclude a landlord from terminating, after termination of the moratorium period, the tenancy of a tenant who became delinquent in rent during the moratorium period for a good cause reason unrelated to the tenant's rent delinquency.

(e) A landlord may terminate a residential tenancy that existed during the moratorium period for a reason other than a delinquency in rent only as follows:

(i) By giving a new eviction notice that provides the full cure period required by other law, if any; or

(ii) By giving the tenant at least thirty (30) days' notice in writing to vacate the premises if (A) no eviction notice would have been required to terminate the tenancy prior to the moratorium period or (B) an eviction notice was given before the moratorium period and the deadline for the tenant to preserve the tenancy by curing the lease violation, if any, expired prior to the moratorium period.

(f) No landlord shall terminate, or attempt to terminate a residential tenancy that existed during the moratorium period wholly or in part because of the tenant's assertion or exercise of a right or protection arising under this Act. It shall be a defense to a lease termination or eviction proceeding that the landlord's action was motivated wholly or in part by the tenant's assertion of such right or protection. A person injured by a violation of this subsection shall have the right to bring a civil action in a court of competent jurisdiction to recover any such fees unlawfully withheld, along with his or her costs and reasonable attorney fees. In the case of a willful violation, such person shall also be awarded a statutory damage equal to the greater of triple his or her actual damages or \$1,000.

## **§ 7. Lease termination by tenant or by mutual agreement.**

(a) Nothing in this Act prohibits a tenant from terminating a rental agreement in the manner otherwise prescribed by contract or relevant law.

(b) Nothing in this Act prohibits a landlord and tenant from terminating a tenancy by mutual agreement.

## **Appendix A**

The authors of this model moratorium believe that criminal laws and civil mechanisms for obtaining orders for protection against domestic and sexual violence, stalking, and other kinds of violence or criminal activity are sufficient and better-suited to address theoretical situations that may require the restraint or removal of a person engaged in seriously dangerous or destructive activity in residential premises during the moratorium period. However, jurisdictions that nonetheless require an exception authorizing eviction on such circumstances may consider the following language:

### **§ 8 Exception for imminently hazardous criminal activity.**

(a) Notwithstanding other provisions of this Act, a court may authorize a landlord to serve an eviction notice or file an eviction proceeding, process or hear an eviction case, or authorize the service or execution of an eviction order where:

- (i) the tenant is engaged in criminal activity on the premises that poses an imminent and direct threat to the health and safety of other tenants or the landlord, or that causes substantial physical damage to the premises or property of others; and
- (ii) Eviction of the tenant is the most practical and effective lawful means of preventing or stopping the criminal activity.

(b) In considering whether to grant relief to a landlord under this section, the court shall weigh the risk of potential spread of coronavirus caused by the eviction against the nature and degree of health and safety risk posed by the criminal activity.

(c) Nothing in this section shall be construed to reduce or eliminate a landlord's duty to make a reasonable accommodation in rules, policies, practices, or services, that may be necessary to afford person equal opportunity to use and enjoy a dwelling.