

## *Template: State Legislation – Rent and Mortgage Cancellation*

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[PolicyLink, April 23, 2020]

## **[State] Emergency COVID-19 Rent and Mortgage Cancellation Act of 2020.**

**WHEREAS**, COVID-19 is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in [State]; and

**WHEREAS**, on [date] [state declaration of emergency]; and

**WHEREAS**, [State] is experiencing a severe housing affordability crisis and [XX] percent of residents are renters, who would not be able to locate affordable housing within [State] if they lose their housing; and

**WHEREAS**, in [State], more than [XX] of our community members are homeless and live outdoors, in tents or in vehicles; and

**WHEREAS**, because homelessness can exacerbate vulnerability to COVID-19, it is necessary to take measures to preserve and increase housing security for [State] residents; and

**WHEREAS**, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

**WHEREAS**, [cite any relevant public hearings – e.g. where public gave commentary about the need to prevent residential evictions during the COVID-19 crisis]; and

**WHEREAS**, [cite applicable shelter-in-place orders]; and

**WHEREAS**, many [State] residents are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent or mortgage payments; and

**WHEREAS**, many [State] businesses are suffering economic losses related to COVID-19, in particular since the establishment of the Shelter in Place Order; and

**WHEREAS**, many landlords charge late fees which can operate as an unfair penalty if a tenant is unable to pay rent due to reasons related to COVID-19; and

**WHEREAS**, some landlords refuse to provide a W-9 form when required for a tenant to access rental assistance from a government or non-profit agency; and

**WHEREAS**, during this state of emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness; and

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**WHEREAS**, an emergency ordinance restricting evictions based on failure to pay rent during the COVID-19 crisis would help ensure that residents stay housed during the pandemic and would therefore reduce opportunities for transmission of the virus; and

**WHEREAS**, on March 18, 2020, the Federal Housing Administration (FHA) enacted a 60-day moratorium on foreclosures and evictions for single family homes with FHA-insured mortgages, and the Federal Housing Finance Agency suspended foreclosures and evictions for single family homes with mortgages backed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) for 60-days; and

**WHEREAS**, on March 27, 2020, the United States Congress passed, and President Trump signed, the Coronavirus Aid, Relief, and Economic Security (CARES Act), a \$2.2 trillion for a coronavirus stimulus package, which includes a direct payment to qualified individuals, small business loans, corporate tax cuts, and financial support for hard-hit industries such as airlines; and

**WHEREAS**, [include local statistics re demographics of renters, including race and income] [cite intent to promote racial and economic equity]; and

**WHEREAS**, [include any other language regarding process/status of the legislation (e.g. emergency powers, voting without a meeting, etc.)];

**NOW, THEREFORE**, be it ordained by [State legislative body]

### **Section 1. Title and Authority.**

(a) **Title.** This act may be referred to as the [State] Emergency COVID-19 Rent and Mortgage Payment Cancellation Act of 2020.

(b) **Authority.** [State] enacts this Act during a time of emergency, to protect public health, safety, and well-being, using its police powers and all other applicable legal authority pursuant to law. [cite specific state authority; e.g. state constitutional provisions re emergency powers, state authority to protect health and safety, etc.]

### **Section 2. Definitions.**

The following terms shall have the following meanings in application of this Act.

(a) “Act” means this [State] Emergency COVID-19 Rent and Mortgage Payment Cancellation Act of 2020.

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**(b)** “Eviction” or “to evict” means using any judicial or nonjudicial means to involuntarily remove a resident from a dwelling unit, including but not limited to:

- i.** issuing a notice to vacate or other effort to remove a resident based on lease termination, eviction notice, or mortgage foreclosure;
- 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 utility service to premises; or
- vi.** allowing premises to become unfit for human occupancy by failing to provide necessary maintenance or repairs.

**(c)** “Eviction notice” means any notice directing a resident to vacate residential premises, based on asserted lease termination or violation, or mortgage foreclosure.

**(d)** “Eviction case” means any judicial or administrative proceeding that seeks recovery of possession of residential premises from a resident, based on asserted lease termination or violation, or mortgage foreclosure.

**(e)** “Eviction order” means any order entered in an eviction case that directs or authorizes the removal of a resident from residential premises. “Eviction order” 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. “Eviction order” does not include an order restoring a resident to possession of premises entered under Section \_\_\_.

**(f)** “Landlord” means the owner or managing agent of residential property that is occupied by a tenant.

**(g)** “Housing emergency period” is the time period from the date of enactment of this Act until the date 90 calendar days after [State] adopts a resolution terminating the housing emergency period, after a public hearing, with findings that (i) the extension of the housing emergency period is no longer necessary to limit or control the spread of COVID-19; and (ii) no economic or safety-related circumstance exists that justifies extending the housing emergency period. [Note: Could include reference to a target unemployment rate here]

**(h)** “Mortgage holder” means the owner of a mortgage secured by property in which a resident is domiciled.

**(i)** “Mortgagor” means a property owner domiciled in residential property that is security for a mortgage loan with right of foreclosure.

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(j) “Resident” means a natural person who occupies or asserts a right to possession of premises either (i) under a written or unwritten rental agreement with a landlord or a sublease thereof, or (ii) as owner or former owner of property that is or was secured by a mortgage and in which that natural person is domiciled. “Resident” also includes any member of a resident’s household, whether or not listed on a written lease or contract.

(k) “Residential mortgage loan” means a mortgage loan secured by residential property with right of foreclosure.

(l) “Residential premises” means property in which a resident is domiciled, in [State].

(m) “Tenant” is a resident who occupies or asserts a right to possession of premises under a written or unwritten rental agreement with a landlord or a sublease thereof.

### **Section 3. Rent Payment Cancellation.**

(a) **Rent Payment Cancellation.** Notwithstanding any other provision of law, no tenant shall be obligated to pay rent for occupancy in residential premises respecting such occupancy during the housing emergency period (“cancelled rent”).

(b) **Fines.** No tenant may be charged a fine or fee for non-payment of cancelled rent, and nonpayment of cancelled rent shall not be grounds for any termination of tenancy or eviction.

(c) **Debt.** No tenant or tenant household may be treated as accruing any debt based on nonpayment of cancelled rent.

(d) **Repayment.** No tenant or tenant household may be held liable for repayment of cancelled rent.

(e) **Credit Scores.** The non-payment of cancelled rent shall not be reported to a consumer reporting agency, nor shall such nonpayment adversely affect a tenant or member of a tenant household’s credit score.

(f) **Moratorium on Rent Increases and Lease Terminations.** For a 365-day period after expiration of the housing emergency period:

- i. no landlord may increase the rent due under a residential lease agreement above the amount due under the lease at the conclusion of the housing

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emergency period, and rent increases scheduled under a lease may not take effect until the conclusion of the 365-day period; and

- ii. residential leases terminable or scheduled to be terminated shall be extended at least until the conclusion of the 365-day period, under terms as existed in the lease at the conclusion of the housing emergency period.

#### **Section 4. Mortgage Payment Cancellation.**

(a) **Mortgage Payment Cancellation.** Notwithstanding any other provision of law, no mortgagor under a residential mortgage loan shall be obligated to make mortgage payments of principal and interest that become due during the housing emergency period (“cancelled mortgage installments”).

(b) **Debt.** No mortgagor under covered residential mortgage loans may be held responsible for payment of cancelled mortgage installments, or treated as accruing any debt for non-payment of cancelled mortgage installments.

(c) **Foreclosure.** A mortgage holder under a residential mortgage loan (or servicer for such mortgage holder) may not commence or continue any judicial foreclosure action or non-judicial foreclosure process or any action for failure to make a payment on a cancelled mortgage installment.

(d) **Fees, Penalties and Interest.** No fees, penalties, or additional interest beyond the amounts scheduled or calculated as if the mortgagor made all contractual payments on time and in full under the terms of the mortgage contract in effect as of the commencement of the housing emergency period shall accrue.

(e) **Credit Scores.** The non-payment of a cancelled mortgage installment shall not be reported to a consumer reporting agency, nor shall such non-payment adversely affect a mortgagor’s credit score.

#### **Section 5. Permanent Prohibition of Evictions Based on Non-Payments that Became Due During Housing Emergency Period.**

[Note: following is not a substitute for a general eviction moratorium. It is instead a permanent prohibition on evictions based on nonpayment during the initial emergency period. See separate model ordinance language for an eviction moratorium [here](#).]

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(a) **Prohibition.** This Act permanently prohibits evictions from residential premises in [State] based on any prohibited basis, as defined below. Records of eviction procedures brought in violation of this Act shall be sealed or expunged.

(b) **Prohibited Basis for Evictions.** Each of the following is a prohibited basis for eviction:

- i. failure to pay, in whole or in part, any amount of rent due under a lease of residential premises, or related fees or charges, if such amounts, fees, or charges became due during the housing emergency period;
- ii. occupancy of residential property by a former mortgagor, if a mortgage on the property was subject of a foreclosure action based on failure to pay, in whole or in part, any mortgage payment, or related fees or charges, that became due during the housing emergency period.

(c) **Prohibited Eviction Procedures.** No landlord or residential property owner may advance an eviction action on a prohibited basis with regard to residential premises located in [State]. With regard to any attempted eviction or eviction case based on a prohibited basis:

- i. Any eviction notice is void and may not be enforced.
- ii. No court or other tribunal may accept such eviction case for filing, or hear or decide any such eviction case pending at the start of the effective period of this Act.
- iii. No eviction order may be served, executed, or established.
- iv. Eviction notices, eviction orders, and eviction cases that commenced prior to the effectiveness of the housing emergency period may not be processed, advanced, or enforced, either by courts or by other local governmental or law enforcement authorities.

(d) **Types of Property.** Requirements of this Section 5 apply to all types of property in which a resident resides, including but not limited to residential or single-room occupancy motels and hotels, public housing, and manufactured homes.



(e) **Executive Action.** Officers, employees, agents, and departments of [State] shall take no actions to initiate, advance, apply, or enforce evictions prohibited by this Act. Such officers, employees, agents, and departments shall take all appropriate action to advance the intent of this Act, protecting health and safety of residents by allowing residents to remain in their homes regardless of failure to make rent or mortgage payments during the housing emergency period. [State officials] shall brief [state and local law enforcement] on public responsibilities related to this Act.

## **Section 6. Enforcement.**

(a) **Notification.** The [state housing dept] shall establish and carry out a system to notify all tenants and mortgagors of residential property within [state] of the requirements of this Act, with specificity regarding the Cancellation of payment obligations set forth in Sections 3 and 4 herein; and of tenants' and mortgagors' right to pursue legal action as set forth in this Section. Notification will be provided in all languages commonly spoken in [State]. Information and training will be provided to housing court, law enforcement, and other impacted agencies on compliance.

(b) **Emergency Resident Claim to Restore Access to Premises.** Any resident displaced from residential premises in violation of Section 5 may bring an action in a court of competent jurisdiction for an order or writ ordering the resident to be restored to such premises. Such a claim shall constitute an emergency and critical function of the judicial system. The court shall schedule a hearing on the complaint for as soon as practicable after claim filing. 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 resident to immediate and temporary possession of the premises pending the hearing. [Such a claim may be filed electronically] [Such hearing may be held by telephonic or videoconference or through other remote means] [Add other procedures for claim processing.]

### **(c) Civil Action.**

**i. In General.** Any resident or mortgagor aggrieved by violation of this Act by an adverse action taken by a landlord or mortgage holder for exercising rights under this Act section may commence a civil action under this section against the landlord or mortgage holder in a court of valid jurisdiction, not later than two years after such violation.

**iii. Private Civil Action for Damages.** A resident 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 resident 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. Sovereign immunity is waived with respect to any violation of Section 3 of this Act

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committed by a public official or agency, including any public housing agency or governmental landlord. [filing and court appearance done remotely, to protect safety of participants]

**iv. Civil Penalties for Noncompliance.** A landlord or mortgage holder that attempts to displace a resident from residential premises in violation of this Act shall be subject to civil penalties assessed by [State]. [State/department/official] shall establish a system of civil penalties for landlords and mortgage holders found to be in noncompliance with this Act.

**(d) No Terminations Based on Assertions of Rights.** No landlord shall terminate, or attempt to terminate, a residential tenancy that existed during the housing emergency period wholly or in part because of the resident’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 resident’s assertion of such right or protection.

**(e) No Entry.** Except as provided in this subsection, it shall not be a violation of a residential rental agreement for a resident who occupies residential premises to deny entry by the landlord during the housing emergency 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).

**(f) Lease termination by tenant or by mutual agreement.** Nothing in this Act prohibits a resident from terminating a rental agreement in the manner otherwise prescribed by contract or relevant law. Nothing in this Act prohibits a landlord and resident from terminating a tenancy by mutual agreement.

## **Section 7. Request for Further Action.**

### **(a) Further [State] Action.**

- i.** [direction to State housing agency staff to develop within 30 days and bring back for legislative approval]:
  - i.** An affordable housing relief fund for homeowners, small landlords, and affordable housing providers affected by rent/mortgage cancellation; requirements and criteria on those receiving relief to promote housing stability and affordability should also be determined.
  - ii.** creation of emergency programs that provide homes and expanded services for all unhoused people, including but not limited to evictees; people released from detention; and tenants forced to

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leave due to habitability problems, safety concerns, and domestic violence; etc.

- iii. creation of emergency funds for habitability repairs and accessibility conversions during the housing emergency period;
- iv. creation of mechanisms offering tenants the opportunity to purchase when landlords fail to pay for repairs.

ii. [direction to State housing agency staff to develop within 180 days and bring back for legislative approval]:

- i. Creation of an Affordable Housing Acquisition Fund, to acquire properties with distressed mortgages or which landlords wish to sell, in order to convert these properties to permanently affordable housing owned by non-profits, cooperatives, community land trusts, public housing agencies, or other government units.
- ii. Creation of COVID-19 bonds as well as other revenue sources for the Affordable Housing Acquisition Fund.
- iii. A COVID-19 Opportunity to Purchase law to give the State and municipalities, non-profits, and tenants the right of first refusal over all sales of all property and delinquent mortgage debt that occur during the housing emergency period, to prevent their acquisition by private equity firms and large corporate landlords.
- iv. Explore properties that might be acquired by eminent domain for the creation of permanently affordable housing.
- v. Dedicate vacant public land to the creation of permanently affordable housing
- vi. Establish rent control laws and a rent board to implement rent controls, to be instituted when a rent freeze is lifted.

**(b) Federal Action.** The [legislative body] hereby requests and urges United States senators and representatives to enact comprehensive legislation to further protect residents, tenants, homeowners and small businesses from the adverse health, safety and economic impacts of this crisis. This includes, but is not limited to, the following:

- iii. a national moratorium on mortgage foreclosures based on failure to pay during the housing emergency period;
- iv. creation of emergency direct assistance programs for rent and mortgage payments, and other housing-related expenses such as utilities, property taxes, and insurance, with the requirement that beneficiaries cancel rent for tenants;
- v. urging banks and financial institutions to suspend rents and mortgages;
- vi. creation of emergency grant programs to small businesses and nonprofits;
- vii. creation of emergency programs that provide homes and expanded services for all unhoused people, including but not limited to evictees;

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- people released from detention; and tenants forced to leave due to habitability problems, safety concerns, and domestic violence.
- viii. creation of emergency funds for habitability repairs and accessibility conversions during the housing emergency period;
  - ix. creation of mechanisms offering tenants the opportunity to purchase when landlords fail to pay for repairs;
  - x. creation and financing of an Affordable Housing Acquisition Fund, to acquire properties with distressed mortgages or which landlords wish to sell, in order to convert these properties to permanently affordable housing owned by non-profits, cooperatives, community land trusts, public housing agencies, or other government units;
  - xi. creation of COVID-19 bonds as well as other revenue sources for the Affordable Housing Acquisition Fund;
  - xii. a COVID-19 Opportunity to Purchase law to give the State and municipalities, non-profits, and tenants the right of first refusal over all sales of all property and delinquent mortgage debt that occur during the housing emergency period, to prevent their acquisition by private equity firms and large corporate landlords;
  - xiii. explore use of eminent domain and public land for the creation of permanently affordable housing; and
  - xiv. establish rent control laws, to be instituted when a rent freeze is lifted.

(c) **Action by Financial Institutions.** The [legislative body] hereby requests and urges banks and financial institutions to suspend mortgage payments, foreclosures, and late fees for owner-occupied homes, non-profit affordable housing providers, Project-Based Section 8, HUD housing, LIHTC, and small landlords who are “natural persons”, with immediate forgiveness, and encourages financial institutions to provide zero-interest emergency unsecured loans and grants to small businesses and non-profits within [State] that are unable to meet rent, mortgage, or other fixed operating costs.

## Section 8. Miscellaneous.

(a) **Severability.** If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Act. The [legislative body] hereby declares that it would have adopted this Act and each section, subsection, clause or phrase herein irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

(b) **Term.** This Act becomes effective upon the date of its enactment by [State] and continues in effect indefinitely, except for provisions specified above as effective only during the housing emergency period.

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