



1.0 Law & Legal CLE Credit – A/V Approval # 113 9975

Recording Availability – May 13, 2020

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue – Suite 700 Seattle, WA Adobe Connect Live Stream	Tuesday, May 12, 2020	2:00 PM to 3:00 PM	Recent Changes to Landlord-Tenant Law Due to COVID

AGENDA

1:45 PM – 2:00 PM	Login
2:00 PM – 2:15 PM	The Federal Moratorium
2:15 PM – 2:30 PM	The Washington State Moratorium
2:30 – 2:40 PM	Seattle changes
2:40 PM- 2:55 PM	Recent changes to eviction law
2:55 PM – 3:00 PM	Question

Biographies

EDMUND WITTER is the Managing Attorney for the Housing Justice Project at the King County Bar Association. Previously, he practiced in New York City as a Supervising Attorney at the Legal Aid Society in New York City, where he oversaw its housing unit in the Bronx. Prior to that, he worked at the New York City Corporation Counsel's Office.

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COVID-19 AND ITS IMPACT ON EVICTIONS

Federal Moratorium on Evictions (CARES Act)

- Applies to **federally-backed mortgages** and **federally-subsidized properties** (e.g., Low Income Housing Tax Credit, Section 8, and Public Housing).
- Prohibits initiating or filing any cases for **nonpayment of rent until after July 24, 2020**
- **Prohibits late fees or other charges related to nonpayment of rent**
- Prohibits any **“notices to vacate”** from being issued until after July 23, 2020.
 - Notice must provide 30 days to vacate.

Federally Subsidized Properties

- Public housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
- Section 8 project-based housing (42 U.S.C. § 1437f)
- Section 202 housing for the elderly (12 U.S.C. § 1701q)
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- McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)
- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
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- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

How to find
out if
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[Preservationdatabase.org](https://www.preservationdatabase.org)



Washington Housing Finance
Commission (for Low Income
Housing Tax Credit)



Federally-Backed Properties (non-exhaustive)

- <https://nlihc.org/federal-moratoriums>
- <https://www.seattletimes.com/business/real-estate/live-in-an-apartment-or-senior-living-facility-heres-how-long-your-coronavirus-eviction-moratorium-lasts/#map>

To Whom Does It Apply?

(a) DEFINITIONS. —In this section:

(1) COVERED DWELLING. —The term “**covered dwelling**” means a dwelling that— (A) is occupied by a tenant— (i) pursuant to a residential lease; or (ii) without a lease or with a lease terminable under State law; and (B) **is on or in a covered property.**

(2) COVERED PROPERTY. —The term “**covered property**” means any property that— (A) participates in— (i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or (ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or (B) has a— (i) Federally backed mortgage loan; or (ii) Federally backed multifamily mortgage loan.

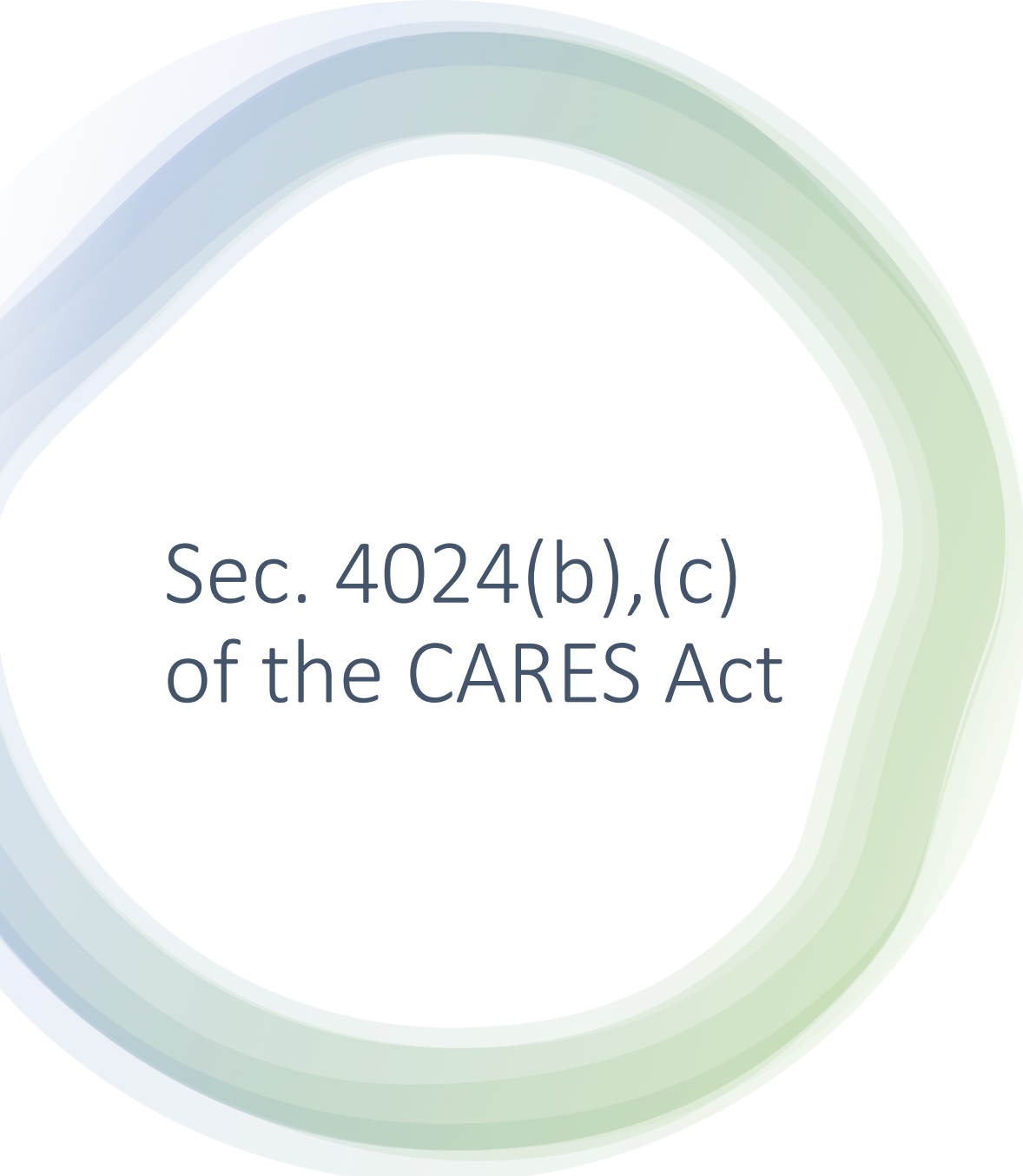
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Covered Dwellings

Based on the language in the statute, a covered dwelling is one that exists in a property that participates in a covered program regardless if the tenant participates in the covered program.

E.g., a private multifamily landlord would have to apply these benefits to **all** residents even if there is only one Section 8 voucher holder residing in the building.

But See HUD Eviction Moratorium COVID-19 FAQs for Public Housing Agencies (April 21, 2020).



Sec. 4024(b),(c) of the CARES Act

- (b) MORATORIUM. —During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not— (1) make, or cause to be made, **any filing** with the court of jurisdiction to initiate a legal action to recover possession of the **covered dwelling** from the tenant for **nonpayment of rent or other fees or charges**; or (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
- (c) NOTICE. —The lessor of a covered dwelling unit— (1) **may not require the tenant to vacate** the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a **notice to vacate**; and (2) may not issue a **notice to vacate** under paragraph (1) **until after** the expiration of the period described in subsection b.

What eviction actions are prohibited?

1. No filing or initiation of non-payment actions during moratorium.
2. No new notices to vacate during the moratorium.

What evictions are permitted?

1. Filings for outstanding notices (other than rent) served before March 23, 2020.

What does **notice to vacate** refer to?

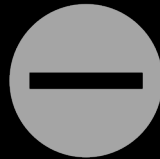
The plain language and the lack of any limitation in 4024(c) as compared to 4024(b), seems to refer any notice that demands the tenant to vacate, regardless of basis.

“In contrast to the eviction and late fee protections of Section 4024(b), which are expressly limited to nonpayment, Section 4024(c) does not expressly tie the notice of vacate requirement to a particular cause. Section 4024(c) arguably prohibits landlord from being able to force a tenant to vacate a covered dwelling for nonpayment or *any other reason* until August 23, 2020 ...” (emphasis in original). CRS Insight IN11320, *CARES Act Eviction Moratorium*.

30 Day Notices to Vacate: the New Norm



Unlike other provisions in the CARES Act, there is no general sunset provision in Section 4024.



4024(c) 30 day notice requirement is required for all future notices in perpetuity for covered dwellings in 4024(a).

Gov. Inslee's State Moratorium

- Until June 4:
 - Bars all evictions and notices unless eviction is necessary due to significant and immediate risk to health and safety of others
 - Prohibits late fees from 2/29 to 6/4/2020
 - No increases on rent or deposit
 - Applies to any type of residency
 - Prohibits charging rent for period in which tenant did not have access to
 - Cannot report to debt collector unless offered an individualized payment plan
- After June 4:
 - Requires LL to provide individualized payment plan for any debt accrued from 2/29/2020 to 6/4/2020 before commencing eviction/collection***

Applies to virtually all residential housing types:

- Residential (private and public)
- Mobile Homes
- Transitional Housing
- Motels/Hotels
- AirBnB
- Campgrounds

Questionable?

- Shelters
- Tenants at Will





“WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who lawfully occupy or reside in less traditional dwelling situations that may or may not be documented in a lease, including, but not limited to, roommates who share a home; transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; and camping areas;”

“Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20.”

- Gov. Inslee’s Order April 16, 2020

Payment Plans

[E]ffective immediately and until June 4, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State: . . .

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State. This includes 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, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident.**

Questions:

- Can a landlord commence collection activities *before* June 4?
- Does the prohibition on collection without a payment plan endure *past* June 4?
- Does a landlord have to include all of June's rent or just pro rata rent to June 4 in the payment plan?
- Does the payment plan need to contemplate the tenant's future ability to pay prospective rent after June 4?
- What happens if is in court in July, didn't receive a suitable payment plan for rent through June 3, but can't pay July's rent?
- What happens to tenants who have no income?
- What's a reasonable payment plan?



Thread



Governor Jay Inslee 
@GovInslee



When the moratorium is lifted,
landlords cannot turn unpaid rent
into enforceable debt unless:

- 1 they offer a reasonable payment plan, AND
- 2 the tenant fails to comply or refuses that plan

4/4

6:13 PM · 4/16/20 · [Twitter Web App](#)

99 Retweets **410** Likes



Rent Increases

Landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent or the amount of any deposit for any dwelling or parcel of land occupied as a dwelling. This prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was not deemed essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak.

Early Terminations of Tenancy

“Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident’s access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.” Gov. Inslee’s Order from April, 2020.

- "Prohibits landlord from assessing (or threatening to assess) rent for housing/parcel where the tenants access or use was prevented as a result of COVID. Such as:
- Seasonal/college housing closed;
- People who planned to move in but are prevented from doing so due to COVID-19;
- People who were forced to leave due to COVID needs of their own or others.” Gov. Inslee’s Website

Seattle Moratorium

- **Prohibits evictions for nonpayment of rent where the tenant has incurred a financial hardship for six months after the civil emergency is lifted]**
- **Only applies to tenants who can declare the tenant fell behind in rent due financial hardship**
- **Protects against terminations due to multiple 14 day notices**
- **Does not protect against refusal to renew a lease.**
- **Requires 14 day notices to state that inability to pay is a defense six months after civil emergency**

Seattle CB 119784

a. Subject to the requirements of subsection 22.206.160.C.9.b, it is a defense to eviction if the eviction would result in the tenant having to vacate the housing unit within six months after the termination of the Mayor's eviction moratorium, and if the reason for terminating the tenancy is:

- 1) The tenant fails to comply with a 14-day notice to pay rent or vacate pursuant to RCW 59.12.030(3) for rent due during , or within six months after the termination of, the Mayor's residential eviction moratorium; or
- 2) The tenant habitually fails to pay rent resulting in four or more pay-or-vacate notices in a 12-month period.

For purposes of this subsection 22.206.160.C.9, "termination of the Mayor's residential eviction moratorium" means termination of subsection 1.C (creating a defense to a pending eviction action) of the moratorium on residential evictions ordered by the Mayor's civil emergency order, as amended by the Council in Resolution 31938 on March 16, 2020.

b. The tenant may invoke the defense provided in subsection 22.206.160.C.9.a only if the tenant has submitted a declaration or self-certification asserting the tenant has suffered a financial hardship and is therefore unable to pay rent.

c. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsections 22.206.160.C.9.a.1-2, and if the landlord issues that notice within six months after the termination of the Mayor's residential eviction moratorium, the 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 that statement.

d. An award of attorneys' fees and statutory court costs to a landlord arising from an eviction proceeding arising from a notice to terminate a tenancy due to a reason listed in subsections 22.206.160.C.9.a.1-2 is prohibited unless otherwise allowed by law.



Seattle CB 119762

- Requires a landlord to offer a payment plan to a tenant who falls behind in rent six months after end of civil emergency where payment is due to March 3 civil emergency declared by Mayor
- Bars all late fees or other charges due to nonpayment of rent for six months after the end of the civil emergency for all tenants.
- Payment plan has to be:
 - If one month or less, then three equal installments over three months
 - If more than one but equal to less than 2 months, then over five months.
 - If more than two months, then six equal payments with balance due at the end.

Seattle CB 119762

- A. A tenant who fails to pay rent when due during, or within six months after the termination of, the civil emergency proclaimed by Mayor Durkan on March 3, 2020, may elect to pay such overdue rent in installments. The tenant shall pay one month or less of overdue rent in three consecutive, equal monthly installments. The tenant shall pay over one month and up to two months of overdue rent in five consecutive, equal monthly payments. The tenant shall pay over two months of overdue rent in six consecutive, equal monthly payments. Any remainder from an uneven division of payments will be part of the last payment. 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.
- B. No late fees, interest, or other charges due to late payment of rent shall accrue during or within six months after the end of the civil emergency.



Seattle CB 119787


- Any eviction that occurs six months after civil emergency may be good cause for Limited Dissemination unless eviction is due to imminent threat to health or safety of neighbors, landlord, or household members.
- Landlord may not use any eviction occurring six months after end of civil emergency
 - Rebuttable presumption that landlord did so if adverse action is taken after viewing credit report with eviction on it subject to this ordinance

Seattle Winter Moratorium (SMC 22.206.160.C.8)


- Bars any eviction in which the tenant would have to vacate between Dec. 1 and March 1 of the following year.
- Applies to tenants who:
 - Reside in a unit where the owner has an “ownership interest” in more than 4 units in Seattle
 - Earn less than 100% AMI

Winter eviction does not apply to the following types of evictions:

- The tenant's conduct has a substantial detrimental impact on or constitutes an imminent threat to the health or safety of the other tenants or the owner.
- The tenant fails to comply with a 3-day or 10-day notice for a drug-related activity nuisance, or maintenance of an unlawful business.
- The tenant, or with consent a sub-tenant, or guest has engaged in criminal activity on the property or on the public right-of-way abutting the premises. Criminal activity means drug-related activity and other criminal activity that affects the health or safety of other tenants or the owner.
- Removal of the unit from the market after receipt of a notice of violation.
- The owner seeks to reduce the number of individuals residing in the rental unit to comply with maximum occupancy limits.
- An emergency order exists requiring the unit(s) to be vacated.



What to do after the
moratoria?



Eviction Process



Predicate Notice



Summons/Complaint



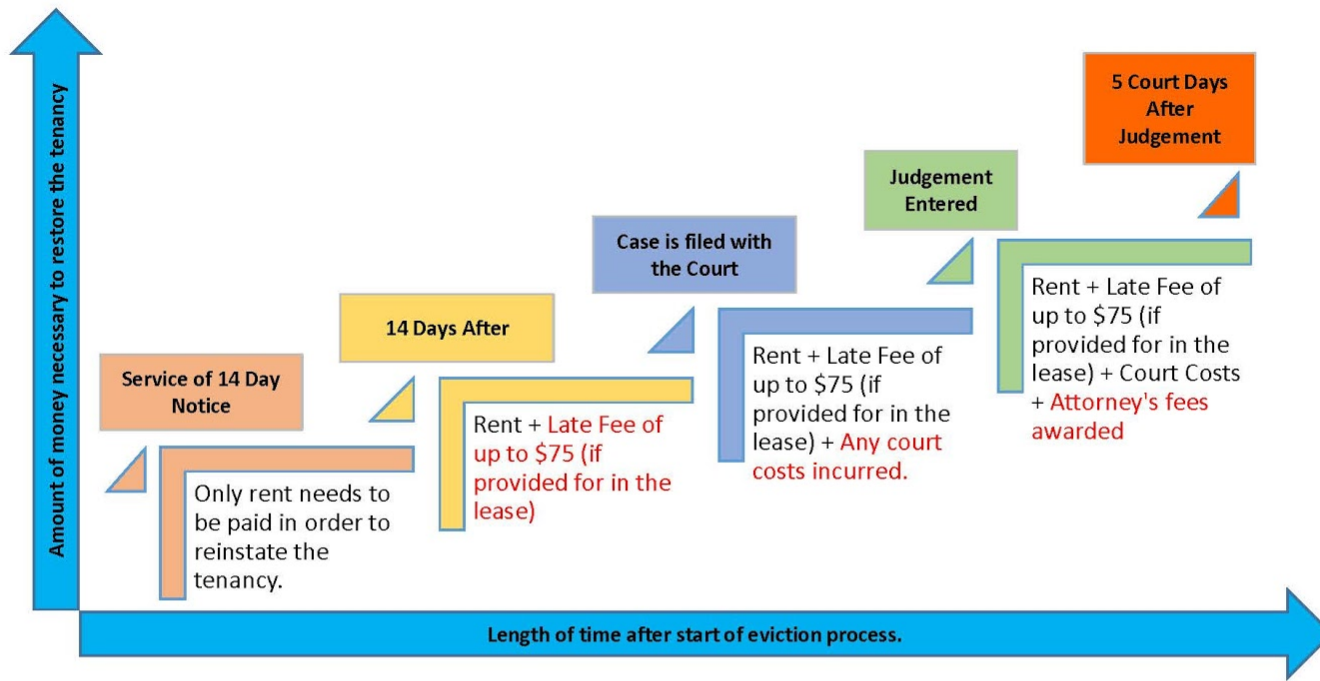
Tenant Response/Notice of Appearance



Court Hearing



Eviction (in most cases, one week after hearing)



Reinstatement
as of Right
RCW
59.18.410(2)

Rental Assistance (SB 6378)



A tenant relying on a rental assistance program may suspend all court proceedings by serving the landlord with a pledge letter and/or other amounts necessary to reinstate under .410(2)



Pledge cannot require other landlord to enter into any other conditions other than providing payment information (e.g., landlord cannot be required to provide extended lease agreement as part of pledge)



Once landlord provides necessary payment information (e.g., W-9, confirmation of amount) the court case is suspended for 7 court days for processing payment.



If payment is not received, landlord may continue with eviction.

Relief for Tenant: Reinstatement by Judicial Discretion

- As an alternative to reinstatement under Sec. 7(2), the tenant can ask for a payment plan from the court within the court's discretion. RCW 59.18.410(3)
- There are three routes:
 - Tenants pays out of pocket
 - Tenant relies on charity such as Home Base
 - Landlord Mitigation Fund
- Not available if tenant has three or more pay or vacate notices

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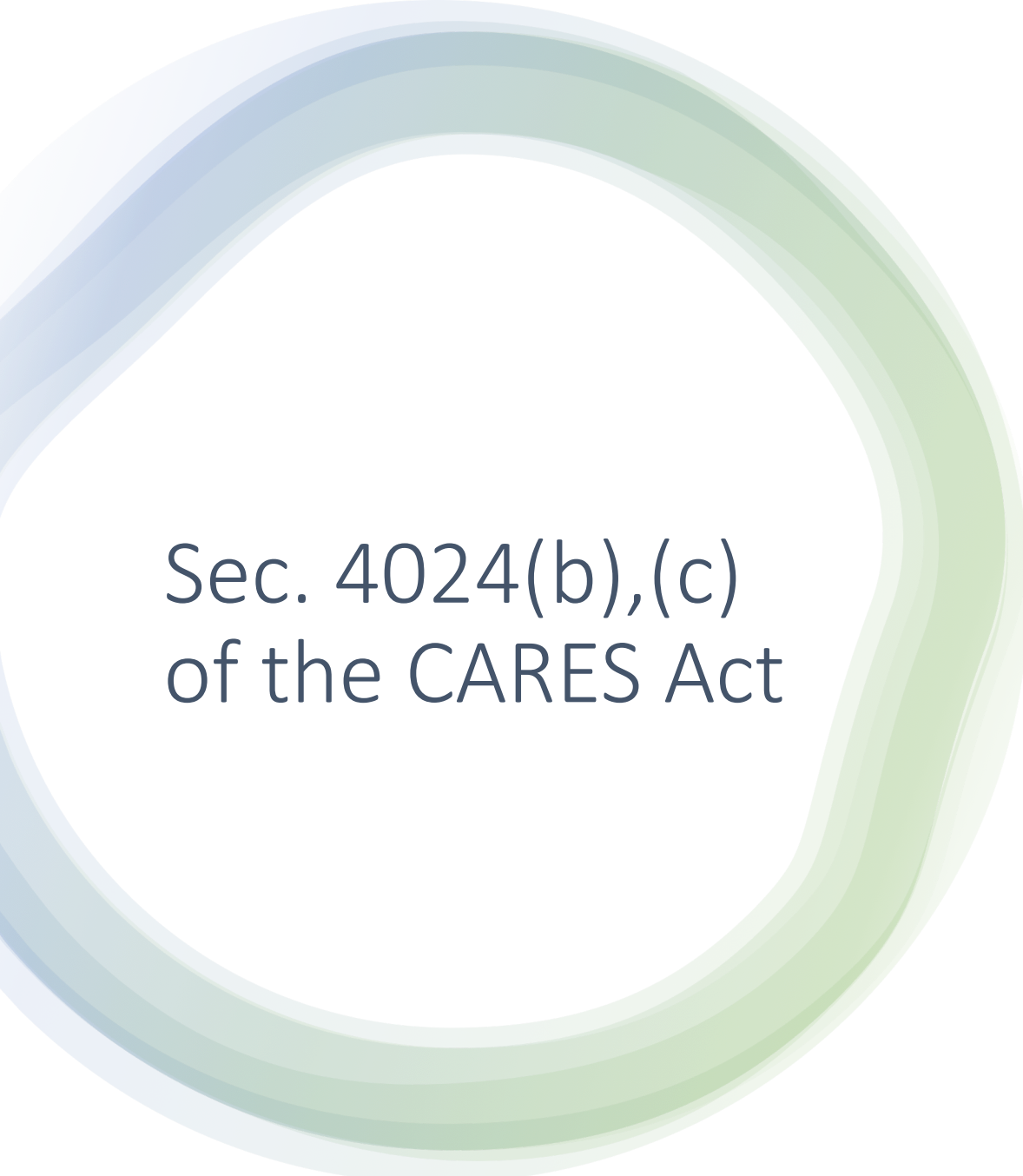
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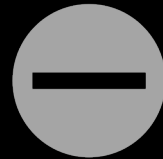
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- Can a landlord commence collection activities *before* June 4?
- Does the prohibition on collection without a payment plan endure *past* June 4?
- Does a landlord have to include all of June's rent or just pro rata rent to June 4 in the payment plan?
- Does the payment plan need to contemplate the tenant's future ability to pay prospective rent after June 4?
- What happens if is in court in July, didn't receive a suitable payment plan for rent through June 3, but can't pay July's rent?
- What happens to tenants who have no income?
- What's a reasonable payment plan?



Thread



Governor Jay Inslee 
@GovInslee



When the moratorium is lifted,
landlords cannot turn unpaid rent
into enforceable debt unless:

- 1 they offer a reasonable payment plan, AND
- 2 the tenant fails to comply or refuses that plan

4/4

6:13 PM · 4/16/20 · [Twitter Web App](#)

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Rent Increases

Landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent or the amount of any deposit for any dwelling or parcel of land occupied as a dwelling. This prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was not deemed essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak.

Early Terminations of Tenancy

“Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident’s access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.” Gov. Inslee’s Order from April, 2020.

- "Prohibits landlord from assessing (or threatening to assess) rent for housing/parcel where the tenants access or use was prevented as a result of COVID. Such as:
- Seasonal/college housing closed;
- People who planned to move in but are prevented from doing so due to COVID-19;
- People who were forced to leave due to COVID needs of their own or others.” Gov. Inslee’s Website

Seattle Moratorium

- **Prohibits evictions for nonpayment of rent where the tenant has incurred a financial hardship for six months after the civil emergency is lifted]**
- **Only applies to tenants who can declare the tenant fell behind in rent due financial hardship**
- **Protects against terminations due to multiple 14 day notices**
- **Does not protect against refusal to renew a lease.**
- **Requires 14 day notices to state that inability to pay is a defense six months after civil emergency**

Seattle CB 119784

a. Subject to the requirements of subsection 22.206.160.C.9.b, it is a defense to eviction if the eviction would result in the tenant having to vacate the housing unit within six months after the termination of the Mayor's eviction moratorium, and if the reason for terminating the tenancy is:

- 1) The tenant fails to comply with a 14-day notice to pay rent or vacate pursuant to RCW 59.12.030(3) for rent due during , or within six months after the termination of, the Mayor's residential eviction moratorium; or
- 2) The tenant habitually fails to pay rent resulting in four or more pay-or-vacate notices in a 12-month period.

For purposes of this subsection 22.206.160.C.9, "termination of the Mayor's residential eviction moratorium" means termination of subsection 1.C (creating a defense to a pending eviction action) of the moratorium on residential evictions ordered by the Mayor's civil emergency order, as amended by the Council in Resolution 31938 on March 16, 2020.

b. The tenant may invoke the defense provided in subsection 22.206.160.C.9.a only if the tenant has submitted a declaration or self-certification asserting the tenant has suffered a financial hardship and is therefore unable to pay rent.

c. If a landlord issues a notice to terminate a tenancy due to a reason listed in subsections 22.206.160.C.9.a.1-2, and if the landlord issues that notice within six months after the termination of the Mayor's residential eviction moratorium, the 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 that statement.

d. An award of attorneys' fees and statutory court costs to a landlord arising from an eviction proceeding arising from a notice to terminate a tenancy due to a reason listed in subsections 22.206.160.C.9.a.1-2 is prohibited unless otherwise allowed by law.



Seattle CB 119762

- Requires a landlord to offer a payment plan to a tenant who falls behind in rent six months after end of civil emergency where payment is due to March 3 civil emergency declared by Mayor
- Bars all late fees or other charges due to nonpayment of rent for six months after the end of the civil emergency for all tenants.
- Payment plan has to be:
 - If one month or less, then three equal installments over three months
 - If more than one but equal to less than 2 months, then over five months.
 - If more than two months, then six equal payments with balance due at the end.

Seattle CB 119762

- A. A tenant who fails to pay rent when due during, or within six months after the termination of, the civil emergency proclaimed by Mayor Durkan on March 3, 2020, may elect to pay such overdue rent in installments. The tenant shall pay one month or less of overdue rent in three consecutive, equal monthly installments. The tenant shall pay over one month and up to two months of overdue rent in five consecutive, equal monthly payments. The tenant shall pay over two months of overdue rent in six consecutive, equal monthly payments. Any remainder from an uneven division of payments will be part of the last payment. 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.
- B. No late fees, interest, or other charges due to late payment of rent shall accrue during or within six months after the end of the civil emergency.



Seattle CB 119787


- Any eviction that occurs six months after civil emergency may be good cause for Limited Dissemination unless eviction is due to imminent threat to health or safety of neighbors, landlord, or household members.
- Landlord may not use any eviction occurring six months after end of civil emergency
 - Rebuttable presumption that landlord did so if adverse action is taken after viewing credit report with eviction on it subject to this ordinance

Seattle Winter Moratorium (SMC 22.206.160.C.8)


- Bars any eviction in which the tenant would have to vacate between Dec. 1 and March 1 of the following year.
- Applies to tenants who:
 - Reside in a unit where the owner has an “ownership interest” in more than 4 units in Seattle
 - Earn less than 100% AMI

Winter eviction does not apply to the following types of evictions:

- The tenant's conduct has a substantial detrimental impact on or constitutes an imminent threat to the health or safety of the other tenants or the owner.
- The tenant fails to comply with a 3-day or 10-day notice for a drug-related activity nuisance, or maintenance of an unlawful business.
- The tenant, or with consent a sub-tenant, or guest has engaged in criminal activity on the property or on the public right-of-way abutting the premises. Criminal activity means drug-related activity and other criminal activity that affects the health or safety of other tenants or the owner.
- Removal of the unit from the market after receipt of a notice of violation.
- The owner seeks to reduce the number of individuals residing in the rental unit to comply with maximum occupancy limits.
- An emergency order exists requiring the unit(s) to be vacated.



What to do after the
moratoria?



Eviction Process



Predicate Notice



Summons/Complaint



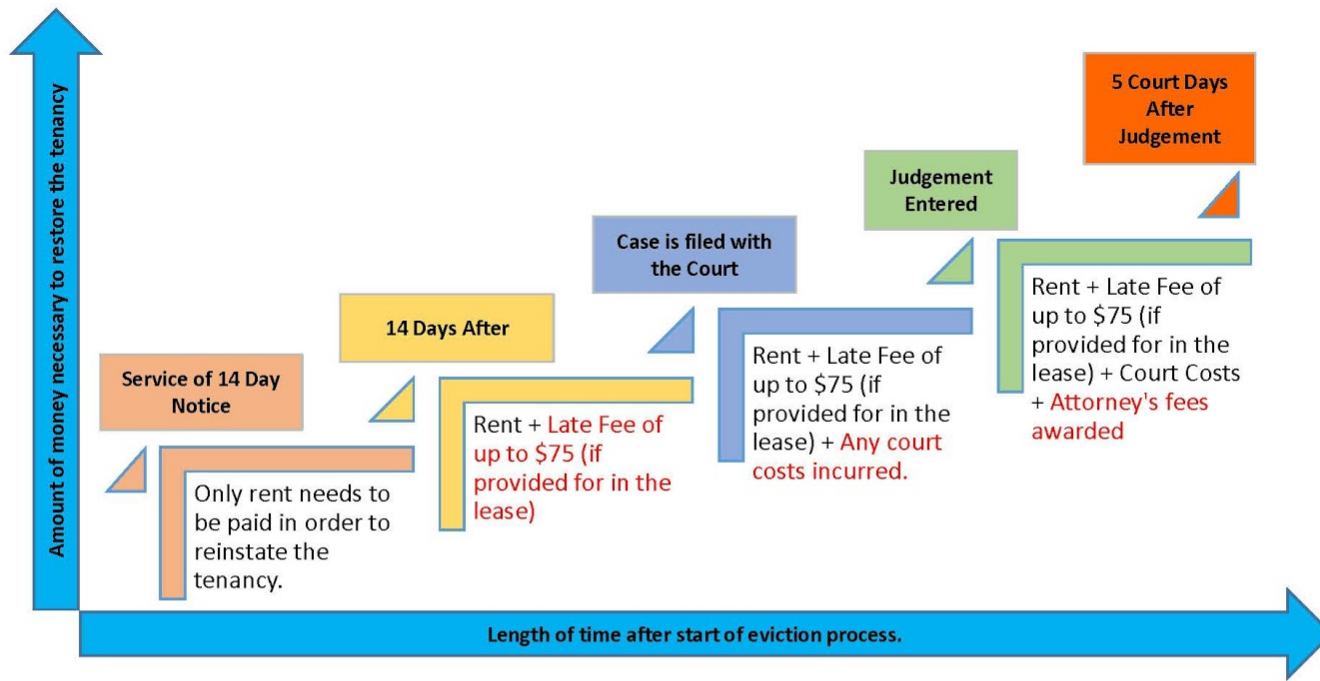
Tenant Response/Notice of Appearance



Court Hearing



Eviction (in most cases, one week after hearing)



Reinstatement
as of Right
RCW
59.18.410(2)

Rental Assistance (SB 6378)



A tenant relying on a rental assistance program may suspend all court proceedings by serving the landlord with a pledge letter and/or other amounts necessary to reinstate under .410(2)



Pledge cannot require other landlord to enter into any other conditions other than providing payment information (e.g., landlord cannot be required to provide extended lease agreement as part of pledge)



Once landlord provides necessary payment information (e.g., W-9, confirmation of amount) the court case is suspended for 7 court days for processing payment.



If payment is not received, landlord may continue with eviction.

Relief for Tenant: Reinstatement by Judicial Discretion

- As an alternative to reinstatement under Sec. 7(2), the tenant can ask for a payment plan from the court within the court's discretion. RCW 59.18.410(3)
- There are three routes:
 - Tenants pays out of pocket
 - Tenant relies on charity such as Home Base
 - Landlord Mitigation Fund
- Not available if tenant has three or more pay or vacate notices