

**No. 101. An act relating to establishing a moratorium on ejectment and foreclosure actions during the COVID-19 emergency.**

(S.333)

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Ejectment and Foreclosure Actions; Moratoria \* \* \*

Sec. 1. LANDLORDS AND TENANTS; HOUSING LENDERS;

TEMPORARY HOUSING-RELATED MORATORIA

(a) Definitions. As used in this section:

(1) “Emergency period” means the period beginning with the Governor’s declaration of a state of emergency on March 13, 2020, arising from COVID-19, and ending 30 days after the Governor terminates the state of emergency by declaration.

(2) “Ejectment” refers to an ejectment action brought under 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169 against the tenant of a residential dwelling unit, or under 10 V.S.A. chapter 153 against a mobile home park resident.

(3)(A) “Foreclosure” refers to a foreclosure action brought under 12 V.S.A. chapter 172 against a dwelling house, as defined in 12 V.S.A. § 4931(2), that is occupied.

(B) For purposes of this act, a dwelling house is deemed to be occupied unless all of the following are true:

(i) There are circumstances that would lead a reasonable person to believe that the dwelling house is not occupied as a full-time residence.

including evidence that utilities are disconnected, mail is not being delivered, or the dwelling house is empty of necessary household furnishings.

(ii) The mortgage on the dwelling house is not current.

(iii) The mortgagee has made reasonable attempts to ascertain the mortgagor's residence and has a reasonable belief that the dwelling house is no longer the mortgagor's residence.

(b) Duties. This section does not:

(1) relieve a tenant of the obligation to pay rent pursuant to 9 V.S.A. § 4455;

(2) relieve a tenant in a pending ejectment action of the obligation to pay rent into court pursuant to an existing order under 12 V.S.A. § 4853a;

(3) relieve a borrower under a residential loan agreement of the obligation to make timely payments pursuant to the terms of the loan agreement; or

(4) limit a court's ability to act in an emergency pursuant to Administrative Order 49, issued by the Vermont Supreme Court, as amended, which may include an action that involves criminal activity, illegal drug activity, or acts of violence, or other circumstances that seriously threaten the health or safety of other residents.

(c) Pending foreclosure and ejectment actions.

(1) Upon the effective date of this act, all pending actions for ejectment under 12 V.S.A. chapter 169, actions for foreclosure under 12 V.S.A.

chapter 172, and any outstanding orders in those actions that could lead to execution of a writ of possession against a tenant or resident are stayed until the end of the emergency period.

(2) A court of this State, before which is any matter stayed pursuant to subdivision (1) of this subsection, shall issue any necessary orders and provide notice to the parties of the stay.

(d) New foreclosure and ejectment actions. During the emergency period, after the effective date of this act, a landlord may commence an ejectment action pursuant to 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169, and a residential mortgage lender may commence a foreclosure action pursuant to 12 V.S.A. chapter 172, subject to the following:

(1) The plaintiff may commence the action only by filing with the Civil Division of the Superior Court and not by service pursuant to V.R.C.P. 3.

(2) The court shall stay the action as of the date of filing until the end of the emergency period.

(3) The plaintiff shall not attempt to serve and a sheriff or constable shall not serve any civil process.

(4) The deadline for completing service of process pursuant to V.R.C.P. 3 is 60 days after the emergency period ends.

(e) Writs of possession not yet issued. During the emergency period, a court shall not issue a writ of possession:

(1) in an ejectment action:

(A) pursuant to 12 V.S.A. § 4853a(h) because a tenant failed to pay rent into court; or

(B) pursuant to 12 V.S.A. § 4854 if the court has entered a judgment in favor of the plaintiff but did not issue a writ of possession with the judgment; or

(2) in a strict foreclosure action pursuant to 12 V.S.A. § 4941(e) because the property is not redeemed; or

(3) in an action for foreclosure by judicial sale pursuant to 12 V.S.A. § 4946(d) upon expiration of all periods of redemption.

(f) Writs of possession already issued.

(1) A writ of possession that was issued by a court prior to the effective date of this act is stayed as of the start date of the emergency period and resumes running when the Governor terminates the state of emergency by declaration.

(2) If a writ of possession was issued but not executed prior to the effective date of this act, then after the Governor terminates the state of emergency by declaration:

(A) the plaintiff shall serve or serve again the writ to the defendant; and

(B) the plaintiff shall be restored to possession not sooner than 14 days after service.

(g) Rent escrow hearings.

(1) For any hearing on a motion to order a defendant to pay rent into court that occurs within the first 45 days after the emergency period ends, if the court finds that the tenant is obligated to pay rent and has failed to do so, then notwithstanding 12 V.S.A. § 4853a(d), the court shall order the defendant to pay into court:

(A) rent as it accrues from the date of the order while the proceeding is pending; and

(B) rent accrued from:

(i) the date the motion was served, if the motion was served after the effective date of this act; or

(ii) the end of the emergency period, if the motion was served before the effective date of this act.

(2) The court may reduce the amount of rent the defendant must pay into court under this subsection after considering:

(A) the tenant's inability to pay due to circumstances arising in the emergency period; and

(B) whether the tenant made good faith attempts to secure available emergency rental payment funds.

(h) Resumption of actions for breach of rental agreement. Notwithstanding any provision of this act to the contrary, an ejectment action for breach of a rental agreement pursuant to 9 V.S.A. § 4467(b) may proceed in court when the Governor terminates the state of emergency by declaration.

\* \* \* Effective Date \* \* \*

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 14, 2020