

S.333 Summary – As passed Senate; H.Gen proposal of amendment

S.333 proposes to create moratoria on most eviction and foreclosure proceedings during the COVID-19 emergency period.

Sec. 1:

Subsection (a) – Definitions.

- (1) “Emergency period” is the period beginning with the declaration of emergency on March 13 and ending when the Governor declares the emergency ended, plus 30 days.
- (2) “Ejectment” refers to the eviction of a residential tenant; H.Gen adds resident of a mobile home park.
- (3) “Foreclosure” refers to any type of foreclosure action under 12 VSA chapter 172; H. Gen creates an exception for unoccupied properties and provides guidance on what it means for a property to be unoccupied.

Subsection (b) – Duties. This subsection articulates what this bill does and does not do:

- (1) a tenant still must pay rent
- (2) a tenant must continue to pay rent into court under an existing order
- (3) a borrower must make mortgage payments
- (4) the courts can still act in an emergency situation pursuant to Administrative Order 49

Subsection (c) – Pending foreclosure and ejectment actions. This subsection applies to actions that are already pending:

- (1) pending actions for ejectment and foreclosure, and any outstanding orders that could lead to a tenant or resident being dispossessed, are stayed until the end of the emergency period
- (2) courts must issue necessary orders to effect the stay

Subsection (d) – New foreclosure and ejectment actions. This subsection applies to actions that are not yet filed; H.Gen adds language to clarify that this subsection applies to new actions filed after the effective date of the act. New actions can be filed, but:

- (1) only by filing with the court, not by service on a defendant
- (2) immediately stayed
- (3) no service
- (4) once emergency period ends, 60-day service period under VRCP 3 begins tolling

Subsection (e) – Writs of possession not yet issued. This subsection applies to writs of possession not already issued by a court, and says that a court cannot issue a new writ of possession during the emergency period.

Subsection (f) – Writs of possession already issued. This subsection applies to writs of possession that were already issued prior to the effective date of the act, and says :

- (1) the writ is stayed as of March 13 and resumes running when the Governor terminates the state of emergency by declaration (not at the end of the +30 days); and

- (2) on that date of termination
 - (A) plaintiff shall serve or serve again the writ to the defendant
 - (B) plaintiff shall be restored to possession within 14 days of service

Subsection (g) – Rent escrow hearings. This subsection applies to the resumption of rent escrow hearings, which occur when a plaintiff files a motion to order the tenant to pay rent into court; this subsection applies to escrow hearings that occur within the first 45 days after the emergency period ends (not during emergency period)

- (1) if the hearing occurs within that 45 days, the court shall order the defendant to pay:
 - (A) rent as it continues to accrue during the pendency of the action; and
 - (B) rent that has already accrued
 - (i) since the date the motion was served, if served after effective date of act; or
 - (ii) since the end of the emergency period, if served before effective date

→ The purpose here is to reduce the amount of rent due into court; if not for (A) and (B), the tenant would have to pay rent into court from the date the ejectment action began, rather than at/after the emergency ends; so, if a rent escrow action is pending right now, and this act/court closure has stayed that action, under current law: there would be a hearing and if the court found that the tenant owes back rent, it must require the tenant to pay rent into court since the action began ~ e.g., from March until [the emergency ends in October] = 8-months' back rent, which most people can't pay. By contrast, under this subsection (g), back-rent would only accrue from the end of the emergency period

- (2) the court has the flexibility to reduce the amount of rent into court based on (A) tenant's ability to pay; and (B) whether tenant sought emergency assistance

→ Currently the court does not have this discretion

Subsection (h) – Resumption of actions for breach of rental agreement. This subsection applies to ejectment actions for breach of a material term of a rental agreement or for unlawful or dangerous activity, in which case the ejectment action can proceed when the Governor terminates the state of emergency (not the +30 days)

Sec. 2 – takes effect on passage