



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

PHN 2020-32

To: All Local Housing Authority (LHA) Executive Directors
From: Ben Stone, Associate Director, Division of Public Housing
Re: Guidance on End of Eviction Moratorium
Date: October 14, 2020

Need to Know: With the Eviction Moratorium ending October 17th, **DHCD Strongly Urges LHAs** to take all reasonable measures to avoid non-essential evictions after the moratorium ends.

1. CDC Eviction Prevention Order
2. DHCD recommends prioritizing evictions as follows:
 - i. Evictions filed before March 25
 - ii. Health & Safety and Emergency Evictions
 - iii. Evictions for Cause Other than Non-payment
 - iv. Non-Payment of Rent
3. Emergency Regulation change to require retroactive interim determinations (effective August 20)
4. New Resources for Upstream Prevention to reduce evictions, including expansion of Tenancy Preservation Program to Cover Low-Income Seniors
5. Out-of-Court Repayment agreements encouraged
6. Updated Court Procedures
7. Resources and model documents

Background

The COVID-19 pandemic and attendant economic recession affects the ability of many households to pay rent. Bearing in mind the impact on public health, shelter resources, and the courts, the Commonwealth has taken several steps to limit evictions during the pandemic.

- March 25: DHCD issues [PHN 2020-12](#) urging LHAs to postpone all non-emergency evictions;
- April 20: Governor signs [law establishing moratorium](#) on non-emergency evictions in all forms of housing, with end to moratorium August 18 or as extended by Governor;
- May 11: DHCD issues [PHN 2020-21A](#) on rent policy, including prohibiting interest and fees for late rent payments and requiring waiving of minimum rent for tenants with nominal or no income. This part of the rent policy still stands;
- July 16: Governor [extends eviction moratorium](#) until October 17;
- August 20: DHCD issues [emergency regulation](#) requiring rent redetermination back to date of verified income loss;

- September 4: [Center for Disease Control issues nationwide eviction prevention order](#) through December 31. State moratoriums with more stringent protections override Federal rules while in effect. See [notice from HUD Office of Public & Indian Housing](#) for more details;
- October 12: Baker-Polito [announces an eviction diversion strategy](#);
- October 17: State Eviction moratorium ends and [CDC Eviction Prevention Order](#) goes into effect in Massachusetts;
- December 31: CDC Eviction Prevention Order Expires.

With the eviction moratorium ending on October 17, DHCD is issuing these *recommendations* with the goal of preserving tenancy for as many public housing residents as possible while allowing Public Housing managers to move forward with using the eviction process to enforce leases after making all reasonable efforts to avoid eviction filings.

DHCD urges LHAs to balance the need to collect rent and enforce lease violations that affect the health, safety, and comfort of other tenants with the public health and public policy imperative to maintain stable housing for as many residents as possible. We understand that LHAs seek to avoid evictions and view an eviction as a “failure” to maintain tenancy and support the tenants; DHCD therefore urges LHAs, in the light of the public health and economic crisis, to redouble their efforts to avoid eviction filings and evictions through early intervention, mediation, upstream prevention through service provision, and repayment agreements.

1. CDC Eviction Prevention Order

When the state moratorium expires on October 17th, the more limited moratorium established by Center for Disease Prevention and Control (CDC) will become effective in Massachusetts. Through December, the CDC moratorium will prevent evictions for non-payment for qualified tenants who submit a written declaration to their landlord. Courts will accept filings and process cases, and may enter judgments, but will not issue an execution for possession (the court order that allows a landlord to physically remove a tenant) until after the expiration of the CDC order. Declaration forms may be found at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>. Massachusetts Courts will require landlords to submit an affidavit stating whether they have or have not received this declaration for a summary process filing.

Protection is limited to households who provide the written declaration to their landlords and who meet certain income and vulnerability criteria as follows.

- Household incomes up to <\$99,000 for calendar year 2020 (<\$198,000 if filing a joint tax return), or
 - were not required to report any income to the IRS in 2019, or
 - received a Federal CARES Act Stimulus check.
- Household is unable to pay the full rent due to substantial loss of income, paid work or wages, a lay-off, or extraordinary out-of-pocket medical expenses. (An “extraordinary” medical expense is any unreimbursed medical expense likely to exceed 7.5% of adjusted gross income for the year.)
- If evicted, household would likely become homeless, need to move into a homeless shelters or have to double-up with others in a crowded situation, because household has no other available housing options.
- Household has tried to obtain available government assistance to pay rent.
- Household is making best effort to pay as much partial rent, on time, as possible, taking into account other basic expenses.

DHCD strongly recommends establishing priorities for working through the backlog of deferred and potential evictions. With Housing and District Courts and mediation resources likely stretched following the end of the state eviction moratorium and the upcoming end to CDC Eviction Prevention Order on December 31, DHCD recommends addressing deferred and potential evictions in the following order of prioritization. Again, we encourage LHAs to attempt mediation, establish out-of-court repayment agreements, and other upstream prevention measures to limit evictions other than for safety or criminal activity-related reasons for the duration of the COVID-19 emergency.

- Evictions Initiated before March 25: LHAs may first proceed with evictions filed before DHCD issued PHN 2020-12 recommending LHAs defer all non-emergency evictions. These evictions could not have been due to pandemic-related economic disruption. In order to reduce tenancy loss, DHCD encourages LHAs to pursue repayment agreements or agreements to comply with leases with these tenants before proceeding in court. These cases would include those that were pending at the time that the courts suspended filings for non-emergency evictions. See Attachment A: *Model Pending Eviction Letter*.
- Health & Safety/Emergency Evictions: While the state eviction moratorium permitted “essential” evictions, i.e. those due to criminal activity and other lease violations that may impact the health or safety of residents or the public, LHAs may not have been able to address them due to low capacity at the Housing or District Courts during the COVID-19 period. LHAs should move forward immediately with any evictions due to criminal activity or those involve repeated, unresolved lease violations that affect health and safety concerns, damaging LHA property, and/or threats or harassment towards other residents or LHA staff. LHAs may also prioritize evictions for tenants that have apparently abandoned units, freeing up these units to house another qualified applicant.
- Evictions for cause other than non-payment: LHAs may then move towards initiating evictions for lease violations that substantially disturb the quiet enjoyment and comfort of other residents. These can include repeated disturbances, parties, and loud noises; repeated failure to follow LHA rules; and failure to maintain property in a safe condition. DHCD strongly encourages LHAs to pursue mediation where available before initiating eviction proceedings – see item 4(a). LHA may use Coronavirus Relief Funds for mediation services, as well as utilizing existing programs such as the [Tenancy Preservation Program](#). If an LHA must move forward with a notice to quit, Housing Courts provide mediation free of charge through the [Housing Specialist program](#) and many District Courts provide private mediators through the [Alternative Dispute Resolution](#) program.
- Non-Payment of Rent Evictions: DHCD recommends only moving forward with evictions related to non-payment of rent initiated after March 25 after addressing the eviction causes noted above. Within this group, LHA should prioritize households that have a long history of nonpayment that is not plausibly related to the COVID-19 pandemic. DHCD urges LHAs to work with tenants, as far as possible, including informing tenants proactively of late rent and their obligations (See Attachment B *Model Non-Payment Notice*), setting up repayment agreements prior to or following issuing a notice to quit (See Attachment C: *Model Out-Of-Court Agreement*), and accessing local resources – see item 4(b). Additionally, LHAs should establish, if they haven’t already, streamlined procedures for processing interim redeterminations for income loss and must provide retroactive rent relief back to the first month of verified income loss – see item 3.

We understand that LHAs already work hard to avoid evictions and appreciate your support in further minimizing the use of eviction proceedings during the COVID emergency.

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DHCD understands that these measures may affect LHAs' ability to collect rent in a timely manner as well as performance on the Tenants Account Receivable (TAR) metric in the annual Performance Management Review (PMR). DHCD will not issue PMR ratings for 2020 fiscal year end PMRs and will take this eviction policy guidance into account when setting TAR operational guidance thresholds for 2021 PMRs.

3. Retroactive Rent Re-Determination Requirement

[Effective August 20](#), DHCD issued an emergency regulation (see below) that requires LHAs to retroactively adjust rent back to the first month of verified income loss in order to reduce arrearages and set up more achievable repayment agreements. This applies to interim redeterminations after the effective date of August 20.

760 CMR 6.04 (5)(b)

(b) Decreases. If, in any month, the monthly gross household income of a tenant household decreases, the tenant may provide the LHA with verified information substantiating the decrease in gross income. Following receipt of such information, the LHA shall re-determine rent. The LHA shall give the tenant written notice of any decrease in rent which shall be effective on the first day of the month following receipt of the information or at such earlier time as the LHA shall find to be warranted in the event that circumstances delayed receipt of verified information. Provided, however, that until the termination of the state of emergency declared by the Governor under Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19, the decrease in rent shall be retroactively effective to the first day of the month following the date of the verified decrease in income. The notice shall set out the monthly gross household income and the monthly net household income, on the basis of which the re-determined monthly rent was calculated.

4. Upstream Prevention

The Baker-Polito Administration's [Eviction Diversion Initiative](#) includes substantial increase in resources for upstream prevention and mediation. DHCD encourages LHAs to take advantage of mediation and repayment agreements to avoid summary process filing as far as possible. DHCD is working with stakeholders on standing up community mediation services and they may not be available immediately.

a. Evictions for Cause Other than Non-payment

DHCD recommends the following steps to address behavior-related evictions either before issuing a notice to quit or before going to court:

- Early communication of issues and potential consequences;
- Linking tenants with behavioral health and trauma services;
- Exploring reasonable accommodations;
- Pursuing mediation resources, including:
 - Resident Service Coordinators or Mixed Population Coordinators if LHA has them on staff;
 - [Tenancy Preservation Program](#) for tenants with behavioral issues related to disability, those eligible for family emergency assistance, or seniors [Expanded Eligibility as part of Eviction Diversion Initiative];

- Community mediation services;
- Other local mediation resources, including those that LHAs may pay for with Coronavirus Relief Fund supplemental funds disbursed per [PHN 2020-29](#).
- Establishing out-of-court agreements requiring tenants to comply with lease.

b. Non-Payment of Rent

DHCD recommends taking the following steps to address non-payment of rent before issuing a notice to quit or before going to court.

- Notifying tenant immediately of late rent. LHAs should particularly remind tenants this month of expiration of eviction moratorium, their obligation to pay rent, and current rent arrears. See Attachment B. This notice should include information on how to request an interim rent redetermination as well as resources available to help pay rent, including:
 - Applying for unemployment insurance and other public benefits; and
 - Linking tenant with [Housing Consumer Education Centers](#).
- Establishing out-of-court repayment agreements. See item 4 and Attachment C for best practices and standard terms.
- In certain cases, helping tenants to apply for Residential Assistance for Families in Transition (RAFT).
 - Public Housing Tenants as well as others whose rent is calculated based on a percentage of income must seek a rent adjustment first before accessing RAFT. The regional housing agency will evaluate the situation and may be able to assist with seeking rent adjustment or repayment plan for past due rent. If the rent adjustment is not granted or there are other household financial considerations, the RAFT or another program may be able to help.

In both modes of upstream prevention efforts LHAs should strive to effectively engage the most vulnerable households such as elderly, disabled, low literacy, non-English speaking, and chronically ill residents, as well as other eligible households.

5. Repayment Agreements

DHCD recommends that LHAs establish standard repayment agreements with tenants who have fallen behind in rent, first before issuing a notice to quit or through a court-enforced agreement if necessary. Any agreement should spell out terms and consequences clearly in plain language to avoid multiple rounds of negotiations.

These agreements should clearly state the repayment terms. DHCD recommends that repayment terms include the following:

- Exact accounting of amount owed;
- Monthly rent payment based on current income;
- Monthly back-rent repayment of arrearages. LHAs should take into account tenants ability to pay when setting monthly repayment terms; a helpful rule of thumb is to cap total rent + repayment at approximately 40% of adjusted net income, but LHAs can and should deviate from this guidance based on a tenant's specific circumstances;
- Clear, formula-based trigger for adjusting rent and repayment amounts if income changes; Clear statement of any lump sum payment: LHA may waive lump sum payment of late rent based on tenant's ability to pay. DHCD recommends doing so in most cases; and
- Clear establishment of consequences (proceeding with notice to quit, moving to court proceedings, eviction) if tenant fails to pay back and current rent as laid out in agreement.
- Agreements should be translated as needed in accordance with LHA's Language Access Plan.

The above recommendations also apply to private managers of public housing, and private managers of public housing may modify the model forms for their use.

Your LHA attorney may already have drafted a form that you may use for such agreements, and may modify it as necessary to adapt to the current circumstances in accordance with DHCD's recommendations above.

See Attachments C for a model out-court repayment agreement. While DHCD will not require LHAs to use this exact template at this time, it incorporates the principles noted above and is meant to serve as a resource for LHAs during this period.

6. New Court Procedures

On October 5 the Massachusetts Housing Court issued [Standing Order 6-20: Temporary Modifications to Court Operations based on the Coronavirus \(COVID-19\) Pandemic and the Expiration of Chapter 65 of the Acts of 2020 \(Eviction Moratorium\)](#). This notice makes the following changes to normal operations, as follow. See Order, linked above, for more detail.

- Housing Court Divisions will be open for in-person business, but will strive to do as much business remotely as possible.
- Summary process cases will be scheduled based on order in which they were filed.
- Pending summary process cases will be addressed through a two-tier process:
 - First Tier will be conducted remotely with Housing Specialist, with goal of determining applicability of CDC moratorium, identify available resources to assist with housing costs, and attempt a mediation.
 - Second Tier, the actual trial, will be held no sooner than 14 days after first tier case event, and most will be held by video conference.
- New Summary process cases will be handled in the same manner, with first tier event at date assigned by the court.
- Plaintiff must file an affidavit indicating whether the plaintiff has received a declaration from the tenant under CDC Order.

The Boston Municipal Court and Massachusetts District Courts will follow a similar two-step process. See [Standing Order 11-20](#) (Boston Municipal Court) [and Standing Order 10-20](#) (Massachusetts District Courts) for more detail.

7. Resources

The below links and attachments offer helpful resources in preventing evictions.

[HUD Eviction Prevention and Stability Toolkit](#): Tools and best practices, many drawn on for this PHN, for preventing evictions in public housing.

[Tenancy Preservation Program](#): Homelessness prevention program funded by DHCD and MassHousing that provides mediation between landlord and tenant for tenants facing eviction as a result of behavior related to a disability.

[Action Plan to Reduce Evictions in Boston](#) – See Appendix A for Metro Boston tenancy preservation resources.

[Alternative Dispute Resolution Programs](#) – Mediation programs available through Housing Court and other courts.

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Attachment A: **Model Pending Eviction Letter**

Attachment B: **Model Non-Payment Notice**

Attachment C: **Model Out-Of-Court Agreement**

Attachment D: **CDC Declaration Form**