

Fair and Equal Housing Guarantee via Surety Bonds

Educational Resource for Legislators



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**Proudly produced by the members of
MassLandlords, Inc.**

MassLandlords, Inc. is a 501(c)6 nonprofit trade association. Our mission is to create better rental housing in Massachusetts by helping current, new, and prospective landlords run profitable, compliant, and quality businesses. To this end, MassLandlords organizes opportunities for landlord education and networking and advocates appropriate changes to the laws.

Launched in 2014 with 168 founding members and no staff. As of publication date, 1,855 members, 19 full and part-time staff, and counting.

June 2020



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WE ENTERED THE PANDEMIC WITH A HOUSING CRISIS, THIS IDEA WILL FIX BOTH

The Fair and Equal Housing Guarantee via Surety Bonds will be the first Massachusetts landlord and renter advocate joint effort in decades.



TOGETHER WE CAN TAKE MASSACHUSETTS housing policy to the next level. But unless we act, the Commonwealth will remain at the breaking point.

When the pandemic started, the housing crisis was already decades in the making. Hundreds of thousands of our one million renter households relied on public assistance, or else endured rent burdens of over 40 percent. Hundreds of municipalities (the vast majority) impeded the creation of new rental housing through household size restrictions, parking minimums, and minimum lot sizes. And mom and pop landlords were in exodus to other states, selling out to tear-down condo developers and slumlords who make money only because they ignore the law.

Now we have COVID-19, an illness which in its infectiousness and lethality has no modern analog. Our reaction to it has been anything but practiced. By comparison with other nations, the federal government has abdicated a coordinated response. In Massachusetts we are feeling our way through shut-downs of large swathes of the economy, an uncertain reopening, and the “new normal.” Already hundreds of millions of dollars of rent remains unpaid without hope of repayment.

A tidal wave of evictions is on the horizon. The exodus of rental housing providers is accelerating. But when Massachusetts guarantees rents, both our residents and our economy will be safeguarded against the fallout of the pandemic, however long it takes. A Fair and Equal Housing Guarantee through Surety Bonds is the answer.

I encourage you to read the enclosed materials in detail. In this resource, we outline how surety would work, why it’s at least a hundred times more powerful than anything else being considered, and how we can fund it without impacting the pandemic budget in the slightest.

This is a powerful concept. We invite you to join us in your support for this unprecedented program in these unprecedented times.

Sincerely,
Douglas Quattrochi
Executive Director
MassLandlords, Inc.

FAIR AND EQUAL HOUSING GUARANTEE VIA SURETY BONDS

Chapter 65, the Massachusetts eviction moratorium, is a one-sided unfunded mandate that in effect requires landlords to provide housing and pay for it too.

By Peter Vickery, Esq., Legislative Affairs Counsel

At MassLandlords we have a solution to a problem that coronavirus created and the Legislature and Governor exacerbated. First, before presenting the solution, let me describe the problem.

PROBLEM: UNFUNDED MANDATE

The eviction moratorium prevents landlords from enforcing rent collection, but we are still forced to provide and maintain housing.

Imagine if the Commonwealth required you to go work for your employer every day, but did not let you ask for the money or take them to court if they failed to pay you!

Or imagine that the Legislature passed a law requiring every municipality to build and operate a 5-star hotel (replete with spa) solely for state representatives and senators to stay in should they happen to be passing through. For the new law to take effect, the Commonwealth would have to provide the funding. Otherwise it would constitute an [unfunded mandate](#), and a town or city could go to court for an order exempting it.

That is similar to the predicament many MassLandlords members find themselves in as a result of Chapter 65, the eviction moratorium. Landlords have to provide a service but without any guarantee of payment. Yes, Chapter 65 says that tenants are supposed to pay rent. But if they do not, the landlord is not allowed to send a notice to quit (or even a request that they vacate), still less go to Housing Court to ask the judge to evict them.

Providing shelter during the COVID-19 pandemic is an essential public service. That

was the reason for the eviction moratorium law that the Massachusetts Legislature passed and Governor Charlie Baker signed on April 20. As Senator Brendan Crighton, co-chair of the Joint Committee on Housing, said, “If we’re telling people to stay at home, they need to have a home to stay in.”

That sounds fair enough.

If the government decides that it is in the public interest to keep people housed, then it is fair that nobody should face eviction for nonpayment of rent. But only if the public as a whole picks up the tab. If the burden falls only on the people who provide the housing – people who have their own bills to pay – then it’s **not** fair.

And because of the State government order to close “non-essential” businesses, more than one million people in Massachusetts have been unemployed. As a result, many are unable to afford to pay rent.

Who pays the rent for them? In effect, it is the people who provide the housing, i.e., the landlords.

Chapter 65 requires landlords to provide tenants with housing, but if the tenants can’t pay the rent then it is the landlords who have to absorb the loss. In effect, landlords are both providing a public service (housing) and also paying for it.

And that unfunded mandate is where the current law falls short. It is tantamount to taking private property without compensation, which both the State and Federal Constitutions prohibit. That is the problem.

SOLUTION: FUND THE MANDATE

The principle behind the MassLandlords solution is simple: fund the mandate by guaranteeing the rent. In other words, provide reasonable compensation for the taking.

We called our proposal the Fair and Equal Housing Guarantee to highlight the fact that the current law is unfair and unequal.

Chapter 65 treats one group of people (tenants) fairly, and another group (landlords) unfairly. It guarantees some people a place to live without guaranteeing anything to the people who own and pay for that place. And although according to our Constitution we are all equal in the eyes of the law and entitled to its equal protection, Chapter 65 denies landlords equal protection; it expressly prohibits them from taking tenants to court for nonpayment. But renters can take landlords to court for not maintaining a clean and sanitary dwelling.

In contrast, our rent guarantee would treat tenants and landlords fairly and equally. It would have the Commonwealth underwrite a bond and thereby stand as surety for renters who cannot afford to pay rent.

We are not talking about municipal or treasury bonds here, by the way. This kind of bond has nothing to do with the stock market. A surety bond is an industry standard practice to guarantee rental agreements. Think about it like insurance for unpaid rent.

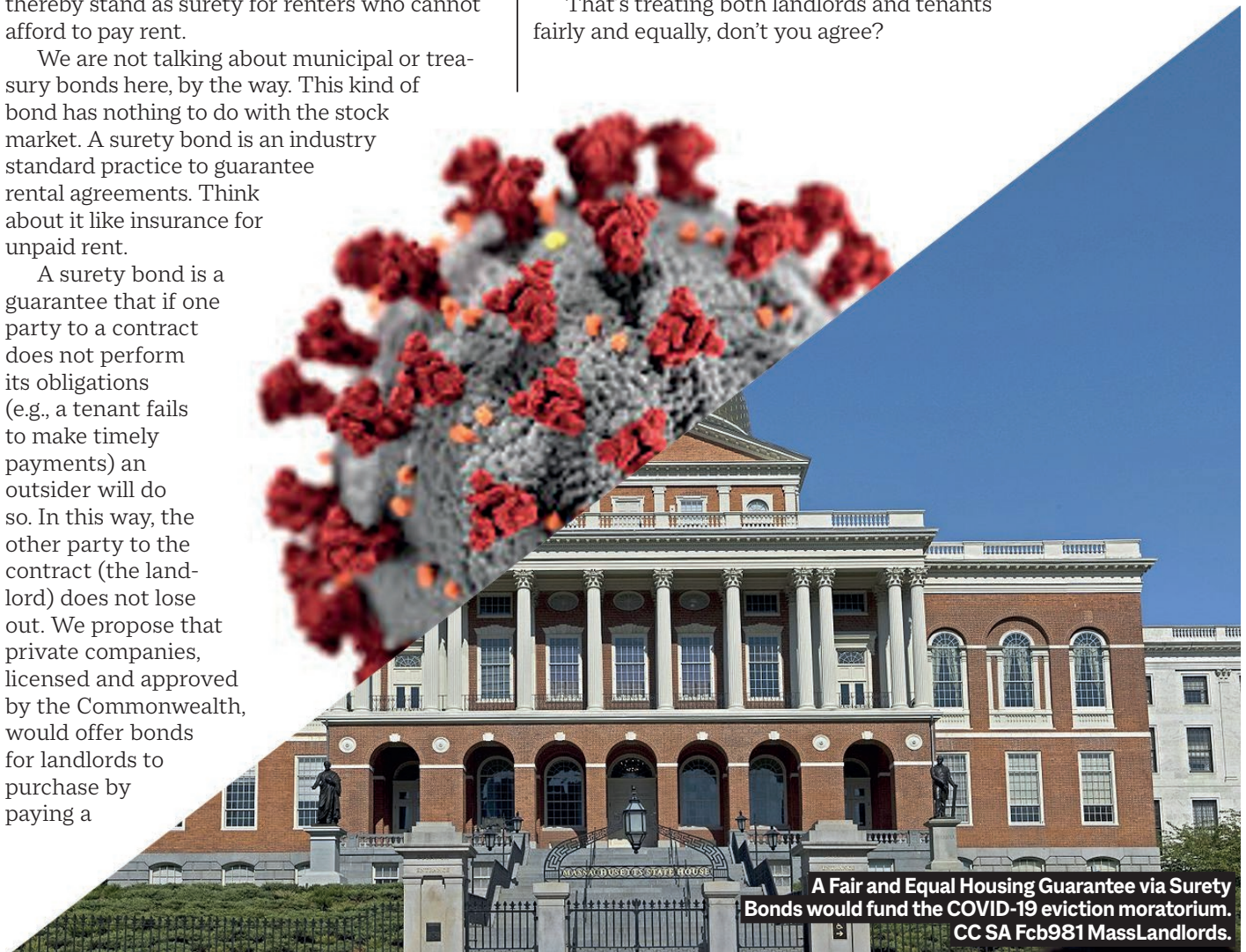
A surety bond is a guarantee that if one party to a contract does not perform its obligations (e.g., a tenant fails to make timely payments) an outsider will do so. In this way, the other party to the contract (the landlord) does not lose out. We propose that private companies, licensed and approved by the Commonwealth, would offer bonds for landlords to purchase by paying a

premium. The Commonwealth would reimburse the landlord for the price of the premium. If the tenant defaults, and the landlord is not able to obtain judgment or enforce the judgment (because of an ongoing eviction moratorium, for example) the company pays the landlord a sum of money equal to the unpaid rent. Then the Commonwealth reimburses the company.

CONCLUSION

The current law is a one-sided unfunded mandate. Under Chapter 65, landlords *must* provide housing but *must not* go to court to enforce the obligation to pay rent. With our Fair and Equal Housing Guarantee, landlords would continue to provide the public service *and* get paid. Landlords would provide something that the Commonwealth has deemed essential public good, namely stable housing, and the Commonwealth, i.e., the taxpayers as a whole, would both promise to pay if the tenants do not.

That's treating both landlords and tenants fairly and equally, don't you agree?



A Fair and Equal Housing Guarantee via Surety Bonds would fund the COVID-19 eviction moratorium. CC SA Fcb981 MassLandlords.

Mass. Citizens' Voices

A SURETY BOND WOULD HELP INCREASE RENTAL HOUSING

As a landlord and realtor in Metrowest and Worcester, I believe the surety bond is a great idea.

Many tenants aren't able to find rentals because they are too risky for the landlord (due to bad credit, insufficient income, etc.). If there was some way for landlords to guarantee the income when a tenant stops paying rent, then there would be more tenants who could be approved for apartments.

Gherri Way

Landlord and realtor, Worcester, MA



HOUSING SURETY BOND SPREADSHEET MODELS COSTS NOW, SAVINGS LATER

A detailed spreadsheet models our housing surety bond, the shortest path to moving beyond COVID-19. Surety bonds guarantee rental housing for the long term so that people stay home and abbreviate the recovery.

By Eric Weld, MassLandlords, Inc.

Massachusetts has an opportunity now — starting with a \$13 million investment that retroactively covers April — to guarantee that renters across the state can remain in their homes with the backing of a state-issued surety bond. Unlike the eviction moratorium recently signed by Governor Charlie Baker, which will end and which leaves landlords with no ability to cover housing costs for the period of the moratorium, the surety bond would achieve greater public health benefit with less economic damage. Our spreadsheet model explains how it works.

A surety bond is a guarantee of a rental contract. Surety bonds outlast all other pandemic responses. Landlords will have peace of mind that they will eventually be reimbursed for providing housing. Renters will have peace of mind that they will not lose their homes even in the aftermath of the pandemic as they work to recover financially.

Investing in a state-issued surety bond now will save potential billions of dollars later by making the curve flatter faster. The longer such a solution is delayed, the more expensive COVID-19 will eventually become for Massachusetts.

HOW MUCH DOES IT COST?

Using statistics from the [U.S. Census](#), state government and other reporting, MassLandlords compiled a spreadsheet model that details estimated costs of a housing surety bond. In short, the cost of the bond is the total of all rents unable to be paid minus the total of all federal and state safety net payments, including unemployment.

This proposal calls for a surety bond that includes a retroactive guarantee for April. Many rents went unpaid in April as millions of renters lost jobs, and as the state eviction moratorium went into effect. We calculate a cost of \$13 million to guarantee all April rents.

To arrive at this figure, we subtracted the amount of scheduled relief payments — including a one-time direct payment of \$1200 to each taxpayer as part of the CARES Act, plus federal and state unemployment support — for the month (totaling \$494.7 million) from the estimated amount of unpaid bills among Massachusetts renters, including rent, due to coronavirus response (\$537.1 million); then factored 30 percent of that amount, an estimation of the rent portion of total household bills. The April dollar amount represents approximately .02 percent of the state government's \$57 billion fiscal year 2020 budget.

\$13

We calculate a cost of \$13 million to guarantee all April rents.

Top-down estimates of stimulus + unemployment show ~\$1 billion shortfall

Month	"Households newly unable (able)"	"Total unable households"	Total missing income	Federal relief incoming
2020-04	11%	109,618	537,128,647	215,465,320
2020-05	11%	225,006	1,102,527,223	301,867,454
2020-06	11%	340,393	1,667,925,799	456,671,276
2020-07	10%	450,286	2,206,400,633	0
2020-08	-5%	395,339	1,937,163,216	0
2020-09	-5%	340,393	1,667,925,799	0
2020-10	-5%	285,447	1,398,688,382	0
2020-11	-5%	230,500	1,129,450,965	0

April serves as bellwether; May and June continue 10% nonpayment trend

Nationwide		RentHelper service	
By April 5, 2019	82%	By April 5, 2019	60%
By April 5, 2020	69%	By April 5, 2020	52%
Difference	13%	Difference	8%
Average difference		11%	

Unpaid in April	\$169,619,573	Unpaid households	115,387
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We use the data that 11 percent (more than 115,000) of the state's 1.1 million rental households have been unable to meet their April rental expenses for coronavirus-related reasons. Eleven percent is an average taken between reporting agencies comparing rents paid nationally by April 5, 2019 (71 percent) to those paid by April 5, 2020 (60 percent).

We assume an average rent statewide of \$1,470 per month (taken from U.S. Census, 2014-2018, median gross rent nationally, of \$1,225, per month and adding a 20 percent estimate for increase and other market pressures). Eleven percent of this market equals \$169.1 million.

We subtract 5 percent of renters who are not paying for reasons other than coronavirus (e.g. "rent strike" participants or others who are employed but decide not to pay rent). This leaves us with \$161.1 million in unpaid rent related to coronavirus inability to pay, among 109,618 households.

It is known that rent is [30 percent](#) of total household monthly expenditures. This means that an additional 70 percent of bills are poten-

tially going unpaid, bringing the total in unpaid household obligations to \$537.1 million. By subtracting total expected relief payments of \$494.7 million, we arrive at a shortfall of \$42.4 million in unpaid household bills for the month of April. Thirty percent of that amount (representing the rent portion of household bills) equals nearly \$13 million.

Importantly, these estimates account for undocumented individuals, an estimated 3 percent of the state's population (215,121 individuals, or about 90,363 households). For this population, a surety bond is essential because they are not eligible for CARES Act payments or state or federal unemployment relief. This means undocumented workers are more likely to venture outside their homes seeking employment, taking public transportation, and potentially spreading the virus.

MORE EXPENSIVE BY THE MONTH

If we cannot substantially eliminate the spread of COVID-19, our economy will remain shuttered for months. Each month the number of renter households unable to pay will increase.

State relief sought	Subject to fund	Total income surplus (shortfall)	Total rent excess (shortfall)
279,306,896	279,306,896	(42,356,430)	(12,706,929)
573,314,156	573,314,156	(227,345,613)	(68,203,684)
867,321,415	119,942,468	(1,091,312,055)	(327,393,617)
1,147,328,329		(2,206,400,633)	(661,920,190)
0		(1,937,163,216)	(581,148,965)
0		(1,667,925,799)	(500,377,740)
0		(1,398,688,382)	(419,606,515)
0		(1,129,450,965)	(338,835,289)

In May, short of further stimulus from the federal government, the price tag for a surety bond guaranteeing housing climbs substantially, to \$68 million. This is due in part to the absence of a CARES Act stimulus payment to taxpayers. But the increased May total also projects a continued increase in unemployment among renters as more businesses falter, lay off employees and close.

Another 11 percent of rental households unable to pay bills brings the May total to 225,000, with unpaid expenditures equaling \$1.1 billion. Subtracting expected federal unemployment relief of \$301.8 million, which continues into May, and state unemployment payments of \$573.3 million (\$875.1 million total), the result is a May shortfall of \$227.3 million. Again, taking 30 percent of that total, we have \$68 million.

The June cost for a surety bond continues this exponential increase, to more than \$327 million. Again, this figure assumes an additional 11 percent of households unable to pay bills as the statewide lockdown stretches into its third month. However, in June, the state's unemployment reserve, currently at \$1.63 billion, would be exhausted and able to cover less than 14 percent of unemployment claims, adding to the surety bond cost.

In July, the fourth month of stay-at-home orders, the surety bond cost doubles, to \$662 million, as federal relief runs out (state relief was exhausted in June).

Not until the fifth month, in August, would we hopefully see a return to economic activity and our first decrease in cost of a surety bond, receding to \$581 million. This presumes a slight uptick in employment as coronavirus cases decline and the percentage of households unable to pay their bills decreases by 5 percent, a trend that continues for subsequent months in this model.

A surety bond can be inexpensive if issued with a sharp curtailment in what constitutes

“essential” activity and extensive contact tracing, so that spread can be stopped entirely and not dragged out for months.

ACTION NEEDED NOW TO REDUCE FUTURE COSTS

It's important to note: with early action on a surety bond, people in rental housing will be more likely to obey stay-at-home orders with the knowledge that they will not be evicted for nonpayment due to coronavirus. Without such a guarantee, many renters continue to leave home each day seeking employment and income in order to pay their rent, fearful of losing their homes after the moratorium. As they do, a percentage of them may be spreading coronavirus without knowing it, prolonging the state's effort to reduce the number of cases, and delaying the time at which we can begin reviving the economy.

It is possible that action taken by the state government now to guarantee housing may alleviate the need for future intervention by positively influencing the coronavirus recovery. The projections in this spreadsheet model necessarily rely on current trends, and on federal and state relief based on today's numbers: CARES Act direct payments; federal unemployment, scheduled at \$2,580 per month; and [state unemployment](#) of \$4,900 per month (this is based on an application estimate of 52 percent among eligible unemployed, twice the normal average) while funds last.

Further stimulus for taxpayers, and to federal and state unemployment, may help offset these projections, and may help dampen projected increases in unemployment, and therefore unpaid bills, need for aid, etc.

Our spreadsheet model shows the economic challenges ahead. Suffice to say that, without a guarantee of rental housing costs, we are looking at a wave of both evictions and illnesses, and further downstream costs that they cause.

Early estimates of severity in the US were wrong. The longer we wait, the worse it will be, with no end in sight.

CIVIC PARTICIPATION: FAIR AND EQUAL HOUSING GUARANTEE VIA SURETY BONDS

Surety bond means if a renter doesn't pay rent because of coronavirus, the Commonwealth will pay it.



HAT DOES “SURETY BOND” MEAN IN PLAIN ENGLISH?

It means if a renter doesn't pay rent because of coronavirus, the Commonwealth will pay it. Timing will need to be determined after the crisis passes. The basic guarantee would mean, above and beyond any eviction moratorium, that no renter need leave their home voluntarily or otherwise, and no landlord need fear bankruptcy, tax liens, or emergency bills going unpaid indefinitely.

DOESN'T A SURETY BOND COST AS MUCH AS THE ENTIRE RENTAL INDUSTRY GDP?

No, the surety bond is a resource of last resort for those not participating in the economy and/or not receiving adequate assistance:

- Hundreds of thousands of Commonwealth residents continue to receive income while working from home or while responding to the crisis.
- Section 8, Massachusetts Rental Vouchers, RAFT, and many other housing subsidies continue to be paid and in some cases expanded.
- State unemployment, combined with federal stimulus and federal unemployment expansion, facilitate partial or full payments for many more households.

The bond is needed to cover everyone else. For instance:

- undocumented residents ineligible for relief,
- Schedule E earners (mom and pop retirees turned landlords) ineligible for unemployment, even federally,

— landlords with commercial loans that are not being forgiven, and everyone else for whom existing stimulus is inadequate.

WHY SHOULD WE PAY RENT, ISN'T HOUSING FREE FOR THE TIMEBEING?

No, housing is enormously expensive, and the **housing crisis** with which we entered the pandemic means there is no way for us to build more cheaply. We have immediate housing costs to cover:

- **Municipal tax bills** are due in May and June. These pay for first responders and other essential infrastructure like water and gas.
- **Sewer and main lines are clogging** due to the uneven distribution of toilet paper and the use of alternative unflushable materials.
- **Fire, leaks, infestation**, and normal housing problems continue in parallel to the pandemic.
- **Commercial mortgages** from private banks and lenders were not forgiven under the CARES Act.

HOW WOULD THE PROGRAM BE IMPLEMENTED?

The legislature would issue a declaration of surety, and landlords would apply to it later for payment later still. (Our first priority for government ought to be the medical response.) Surety payment will require landlords show two things:

- The rental agreement is documentable prior to the declaration of surety by the legislature;
- The rental agreement is going unpaid provably because of the pandemic, declaration of emer-

gency, or resulting shut-down of the economy or social services.

Surety will block landlords from evicting:

- No court of the Commonwealth shall accept for filing any claim for nonpayment on an agreement subject to surety prior to surety payment having been either issued or denied. (The proposed text would also close the “no fault” loophole.)

By blocking filing, surety will prevent renters from having a court record.

HOW WILL RENTAL AGREEMENTS BE DOCUMENTED?

Every documentable rental agreement going unpaid because of the crisis would be covered by the initial declaration. The primary check will be by address of record, not names of landlords or household members. Written and verbal agreements would have to count to cover every household. Examples:

- A written lease or tenancy-at-will dated prior to the declaration of surety would be documentable by submitting a copy of the written lease or tenancy-at-will.
- An unwritten (verbal) agreement paid via check would be documentable by submitting copies of voided checks or other proof of repeat payment prior to the declaration.
- An unwritten (verbal) agreement paid via cash would be documentable by affidavit of both parties.

In each case, the address of the rental agreement must be verifiable and unique. Surety cannot apply to two households claiming the same address, since the date set is the date on which surety is declared. After this date, anyone leaving voluntarily or otherwise will be making a mistake. We will all work hard to communicate to everyone to stay put under every circumstance. Fire or other casualty loss resulting in condemnation would end surety for that address.

HOW WOULD A SURETY BOND PAY OUT?

No additional cash disbursement need be made during the pandemic. The guarantee would outlast the pandemic, enabling the state to pay out guarantees over time according to any priority set by the legislature, including restrictions that the guarantee to be paid out of future tax revenue. Reasonable interest ought to be enacted with the guarantee.

Only the owner of record as recorded by the registry will be eligible to receive payment. We will have to check:

- For each address, is this unique or is surety being claimed (or has it been claimed) for this same address already?

- For each address, is the application for surety payment in the name of the owner of record?
- For each address, is the particular unit recognized as real and pre-existing either by the assessor’s office, the zoning plan, a record of constructions permits, or other trustworthy source?
- For each payee, is the owner a real person or entity not subject to Office of Foreign Asset Control (OFAC) or other restrictions on receiving payment?

IS THIS PROGRAM UNIQUE?

Not really, there are already surety bonds available for sale in Massachusetts to insure individual rental agreements. Bonds are also used by bonded movers, construction companies, and other industries. This would be the first time the Commonwealth would be offering to back an entire class of bond. It would be a new type of bond specific to COVID-19 intended to stabilize housing across the state.

WHO WOULD DO WHAT EXACTLY?

Renters would still have to pay rent if they could. If they can’t (and many can’t), they only have to show their landlord that their inability to pay rent is related to coronavirus. Any documentation they can provide would help the landlord. The intent is that documenting loss of work will be easy (e.g., proof of receiving unemployment inadequate to cover full rent after food and medications, or ineligible for unemployment, etc.).

Landlords would take their renter’s information to apply to the state for surety on their dwelling units (either all at once or as needed). They would purchase surety bonds from a surety bond company. They would wait before making a claim for payment.

- A landlord with cash reserves and/or adequate rent from other units could wait indefinitely for each surety bonded household to get back on their feet and resume paying, however long it takes, before making their claim. The bonds outlast the declaration of emergency. If the economy doesn’t rebound for many, many months or longer, such a landlord would have the option of letting the renter remain there that entire time, barred from filing for eviction for nonpayment, certain that they would eventually be paid for this service, so long as the renter’s documentation trail shows they are still unable to pay rent as a result of the coronavirus.
- A landlord with inadequate cash reserves and/or rent from other units could claim payment of the bond earlier and still pursue their rights if rent continues to go unpaid

Bond in the “surety” sense means ‘commitment,’ not like ‘stocks and bonds’.

after. A unit with a bond payment already made, or which has been rejected from the surety bond process for some reason, would not be subject to the indefinite eviction moratorium. But a unit once bonded cannot be re-bonded after, so landlords are encouraged to float their existing renters as long as possible.

Surety bond companies continue to operate as essential insurers. They would expand their operation to sell bonds to landlords. They would work with the Commonwealth to comply with terms of sale and payment.

An agency of the Commonwealth (e.g., the Department of Housing and Community Development) would administer the program. This includes reviewing applications from landlords, giving landlords the premium money to purchase surety bonds from a licensed surety bond company, reimbursing surety bond companies for eventual claims, and preventing fraud and abuse.

Clerks of the trial court would examine nonpayment and “no fault” filings for evidence (or check a database) that a surety bond has been issued and payment remains outstanding on that address. They would reject nonpayment and “no fault” filings for that unit until after the bond has been closed out.

WHY MAKE IT EFFECTIVE THE DAY OF SIGNING, AS OPPOSED TO RETROACTIVE TO THE DATE OF EMERGENCY OR IN THE FUTURE?

Renters and landlords continue to make the best of a bad situation, the market continues to limp forward, and many households have been relocated following prior levies of execution, voluntary move-outs, or mediated agreements for move-out. The only way to catch everyone today is to enact surety today, rather than an arbitrary date in the past.

If we make the effective date retroactive to the date of the emergency declaration, new rental agreements would not be covered even though the economy continues to slide.

If we make the effective date in the future after the date of passage, new rental agreements will be created that otherwise would not be created in an effort to get access to the surety bond.

A bond bill is likely to be affirmatively anti-discriminatory

COULD A BOND BILL LEAD TO DISCRIMINATION?

A bond bill is likely to be affirmatively anti-discriminatory: landlords are more likely to purchase bonds for households hardest hit by the pandemic and economic shutdown, including households that have, through systemic racism, already been denied the opportunity to build up large cash reserves and/or obtain work-from-home jobs. Because the Commonwealth is paying both the bond and the premium to purchase it, there is every reason to purchase a bond for every unit facing housing insecurity.

Landlord actions under a bond bill would still be subject to our Commonwealth’s tough anti-discrimination laws, which are in no way waived or reduced by the bill. For instance, if a landlord decided not to purchase a bond for any given household, i.e., because they hoped to evict that household as soon as a moratorium ended, they would be acting contrary to the purpose of the bill and their discriminatory intent could be discovered and stopped in court. “Why didn’t you bond this household? Which households did you bond? Why are you evicting this one household?” etc.

We would recommend landlords adopt a written policy that determines which units will be bonded and/or that landlords purchase bonds for all units facing housing insecurity.

WHAT ABOUT PEOPLE EXPERIENCING HOMELESSNESS?

Surety applies to existing housing. We need to keep everyone who has a home in their home indefinitely. We are dealing with the response to homelessness separately. By keeping everyone in their existing housing, we eliminate incoming pressure on the emergency assistance/homelessness system.

ISN’T THIS THE SAME AS AN EVICTION MORATORIUM?

No, state and federal eviction moratoriums will end far sooner than the economy will recover. It may take years for some households to become self-sufficient again, and it will take years for others to receive rental assistance (the wait for Section 8 was ten years before the pandemic). A declaration of surety applies as long as the rental agreement continues forward, however long it takes us to recover together.

MASSACHUSETTS EVICTION MORATORIUM: FULL EXPLANATION AND FAQ

Full explanation of the April 2020 COVID-19 Massachusetts eviction moratorium, including FAQ and easy to understand examples.



On April 20, 2020 the Governor signed into law [191-H.4647](#), “An Act providing for a moratorium on evictions and foreclosures during the [COVID-19 Emergency](#).” This bill took effect immediately. This article reviews the law from the point of view of a landlord and gives a roadmap for Massachusetts owners and managers.

HOW LONG DOES THE MA EVICTION MORATORIUM LAST?

The Massachusetts eviction moratorium started April 20, 2020 and lasts either:

- One hundred twenty (120) days from the effective date of the act, which means it ends at midnight on August 18, 2020, OR
- Forty-five (45) days after the Governor lifts the COVID-19 state of emergency that began on March 10, 2020, whichever comes sooner, unless the Governor extends the moratorium. The Governor has a strange power in this case: if the Governor never cancels the state of emergency, they can make the eviction moratorium last up to 90 days longer. They can repeat this as often as they want, effectively making the eviction moratorium permanent at their sole discretion. (See Section 6, lines 117 through 123.)

Note that every affected court case will have its timers reset to the end of the moratorium. Every affected case will be paused during the moratorium.

ARE ALL EVICTIONS BANNED?

No, the MA eviction moratorium defines a “non-essential eviction,” and stops only non-essential evictions.

WHAT’S A NON-ESSENTIAL EVICTION?

The following evictions are non-essential and are paused by the moratorium:

1. Nonpayment
2. Foreclosure
3. No fault/no cause
4. Any fault/cause except
 - a. Criminal activity that impairs health and safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property, or the general public (collectively, “others”);
 - b. Lease violations that may impact the health or safety of “others”.

In other words, the only evictions that can proceed will be directly related to health and safety.

Does a “person lawfully on the subject property” include me, my team, or my contractors? Yes, landlords and their agents have permission to be on their property, provided they give notice if entering a rented premises. We are still able to evict if a renter puts our own health and safety at risk.

CAN I EVICT FOR NONPAYMENT?

No.

CAN I EVICT FOR AN ILLEGAL DOG, DRUG DEALING, NOISE, OR UNAUTHORIZED RESIDENTS?

No, unless you prohibit animals, drugs, noise, or unauthorized residents in a written lease and you can demonstrate that this violation could have a measurable, provable impact on the health of someone else.

Does it have to be a lease? To be determined. “Tenancy at will” probably counts as well, but the law is poorly drafted and says “lease”.

WHAT’S THE DEAL WITH THE SMALL BUSINESS PROTECTION?

The MA eviction moratorium contains unexpected language about a “small business premises unit”. A “small business premises unit” is defined as a space rented by a for-profit or non-profit that is neither controlled by nor in control of:

- a multi-state entity;
- a multi-national entity;
- a publicly traded entity; or
- an entity with 150 or more full-time equivalent employees.

In other words, a “small business.” The law says you can continue a small business eviction that started before the COVID-19 state of emergency began.

It’s unclear what the intent of this section was. This section seems intended to help small businesses, but it permits more evictions of small business than it does of residential renters. For instance, if a small business was not paying rent prior to the pandemic, that case can still proceed.

IF A RENTER WASN’T PAYING PRIOR TO THE PANDEMIC, CAN I EVICT?

No, the MA eviction moratorium makes no distinction between renters who were already in arrears prior to the pandemic and those who stopped paying due to COVID-19. All non-essential evictions are paused.

CAN I SEND A NOTICE TO QUIT?

If you are pursuing a non-essential eviction, no, you may not:

- Terminate any tenancy, even if invoking a clause in a written agreement;
- Send any notice to vacate, even if worded as a friendly request.

You may not send a legal notice to quit, which has language about vacating.

If you are pursuing an essential eviction under the definition above, yes, you can send a notice. We recommend you contact an attorney first.

<p>CAN A COURT ACCEPT MY FILING?</p> <p>If you are pursuing a non-essential eviction, no, the courts may not:</p> <ul style="list-style-type: none"> — Accept a writ, summons, or complaint for filing; — Enter a judgment or a default judgment for a plaintiff for possession of a residential dwelling unit or small business premises unit; — Deny a defendant's request for a stay of execution or a continuance (delay); — Schedule a court event, including a summary process trial. <p>Or in plain English:</p> <ul style="list-style-type: none"> — The clerk will turn you away if you try to file; — If the renter doesn't show up, they don't automatically lose; — A renter can ask to stay past their previous move out date, and the courts must allow this; — There are no trials or hearings of non-essential evictions. <p>If you are pursuing an essential eviction under the definition above, the courts may still decline to accept for filing, or may decline to hear, according to their standing orders. This is a different thing from the eviction moratorium, representing another layer of difficulty. Contact an attorney if you believe you have an essential eviction.</p> <p>Does the law really say "summons, or complaint," aren't these the same document in summary process? Yes, this is poor drafting.</p> <p>Does this apply to district court, housing court, and Boston municipal court? Yes, the MA eviction moratorium applies to every court with jurisdiction over housing.</p>	<p>MY CASE WAS ALREADY STARTED, WILL IT KEEP GOING?</p> <p>If you are pursuing a non-essential eviction, no, your case deadlines are paused until the expiration of the moratorium, then your case will resume.</p> <p>If you are pursuing an essential eviction, your timeline may still be delayed by Housing Court standing orders. Contact an attorney.</p> <p>CAN A SHERIFF OR CONSTABLE CONDUCT A PHYSICAL MOVE-OUT?</p> <p>If you are pursuing a non-essential eviction, no, physical move-outs cannot take place during the moratorium.</p> <p>If you are pursuing an essential eviction, yes.</p> <p>CAN A LANDLORD CONDUCT A PHYSICAL MOVE-OUT?</p> <p>No, this is never allowed. Do not lock out a renter or turn off their utilities. Do not remove appliances or furniture originally included in the rental but not identified in the agreement.</p>	<p>CAN I CHARGE A LATE FEE? CAN I REPORT MY RENTER'S CREDIT HISTORY?</p> <p>If your renter does not provide both notice and documentation that their non-payment is due to "financial impact from COVID-19", yes. Your renter has 30 days from the missed payment to provide such documentation. That documentation must use the Executive Office of Housing and Economic Development form. (As of April 21, not yet available.)</p> <p>If your renter does provide such documentation, no, you may neither charge a late fee nor report negatively for credit purposes during the moratorium. (Note that the CARES Act imposes additional restrictions on credit reporting and late fees.)</p> <p>DOES THIS MEAN EVERYONE LIVES RENT-FREE FOR THE MA EVICTION MORATORIUM?</p> <p>The intent is "no", the law clearly says renters are still obligated to pay rent and landlords are still entitled to sue to get it back.</p> <p>The practical effect for many is "yes," since judgments entered are rarely paid, and cannot under MA law be ordered paid if the owing party receives any public assistance.</p>	<p>ARE ADDITIONAL RESTRICTIONS POSSIBLE?</p> <p>Yes, the Executive Office of Housing and Economic Development was granted regulatory authority to impose additional rules on landlords. As of April 21, we had not heard what other regulations were being considered.</p> <p>CAN I USE THE SECURITY DEPOSIT TO COVER UNPAID RENT?</p> <p>No, you may not use the security deposit under the eviction moratorium or under existing MA law until the tenancy is over. Then you may use it to cover unpaid rent not lawfully withheld. Contact an attorney before withholding from a security deposit to make sure owed rent was not lawfully withheld.</p> <p>CAN I USE LAST MONTH'S RENT TO COVER UNPAID RENT?</p> <p>No, this is expressly disallowed.</p>
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CAN I USE LAST MONTH'S RENT TO COVER UNPAID EXPENSES?

Yes, you may cannibalize last month's rent to pay for your mortgage, utilities, repairs, and upkeep on the rented premises. You must notify the renter in writing that you are doing so, that the last month's rent is still considered paid in full, and that the renter is still entitled to full interest for the entirety of the tenancy, however long into the future that may last. Your notice must use the Executive Office of Housing and Economic Development form. (As of April 21, not yet available.)

Note that taking this action will increase cash flow but will decrease net income; you will owe interest you have not received. You will not be able to ask for additional last month's rent.

MassLandlords Recommendation: do not use last month's rent as permitted by the eviction moratorium.

DO LANDLORDS GET FORECLOSURE PROTECTION?

If you are an owner occupy landlord in a building with four units or less, yes, your lender, or the person who bought your building in foreclosure, or their attorney, may not:

- Publish notice of a foreclosure sale;
- Sell your building;
- Enter your premises;
- Start foreclosure, whether via the courts or privately;
- File a complaint related to the foreclosure.

Any buildings you do not occupy or which are five units or more are not protected from foreclosure by the MA Eviction Moratorium. If the building was your home but it is currently vacant (e.g., you are living with family) the building is not protected.

DO LANDLORDS GET MORTGAGE FORBEARANCE?

If you are an owner occupy landlord in a building with four units or less, yes, your lender must accept requests for forbearance:

- Up to 180 days long;
- Without additional fees or interest;
- Without reporting you negatively for credit purposes;
- Without a balloon payment due at the end of the moratorium.

Any payments missed as part of forbearance will be due at the end of your loan, not at the end of the moratorium, unless you agree otherwise.

To get forbearance, you must affirm a financial impact from COVID-19. You and your lender may enter into another arrangement other than what is listed above if you both agree.

DOES THIS MEAN I DON'T HAVE TO PAY MY MORTGAGE?

No, nothing in the MA eviction moratorium means you don't need to pay your mortgage. Payments are at best rescheduled, and for most landlords, are still due on time.

CAN I APPLY FOR MORTGAGE FORBEARANCE AFTER THE MORATORIUM EXPIRES?

No, you must request mortgage forbearance while the moratorium is in effect.

CAN I STILL GET A REVERSE MORTGAGE?

Yes, and unexpectedly the eviction moratorium expands what constitutes reverse mortgage counseling to include electronic communications.

MA EVICTION MORATORIUM CONCLUSION

The Massachusetts eviction moratorium is one of several layers of legal changes affecting the way owners and managers operate through COVID-19. The [Federal CARES Act](#) restricted nonpayment notices on federally subsidized rentals and established mortgage forbearance and foreclosure protection in buildings with Fannie/Freddie backed mortgages. The Massachusetts courts have [standing orders](#) that have delayed cases. Now the Massachusetts eviction moratorium is the most restrictive and the most difficult law for landlords of the three. When in doubt about what to do, consult with an attorney.

EVICTION MORATORIUM UNFAIR TO MOM AND POP HOUSING PROVIDERS

I am a housing provider – a mom and pop, small-property owner and landlord in eastern Mass. I am a retired senior and receive a small pension, a limited social security benefit, and a small VA service connected disability payment. I depend upon my rental income to pay for my medical expenses, my mortgages, property taxes, insurance, and other bills.

Over the years I have invested a significant amount of time and money to improve my apartments. For my four-family house, after 15 years of sweat equity and money invested, I still have a net \$94,223 negative cash flow balance on my original investment. Only in 2019 did I finally have a small positive cash flow of \$10,800.

I very well understand that there is currently a housing crisis. A large number of people have lost their jobs and are unsure of their future financial security. I do understand that their ability to pay for the necessities of shelter, food, and health care are being seriously impacted.

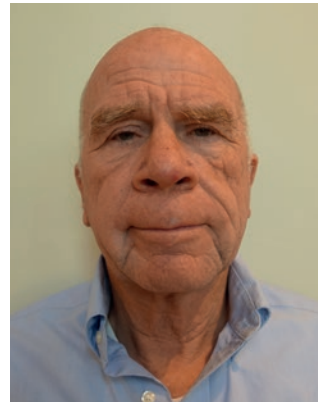
But placing the burden on housing providers is unfair. We still have to pay mortgages, taxes, insurance, utilities, and expenses. If we don't pay property taxes, the city will place a lien on our property. With the current eviction moratorium, there is no practical remedy for us if the renters cannot or will not pay their rent. Yes, we can take them to court in three to six months for the back rent and hope to be able to collect the rent. Last year I went to court to evict a tenant for repeated non-payment of rent. In July, she moved out with no forwarding address still owing me over \$3,500 in rent and legal expenses. Neither the police nor I can locate her.

In closing: Would someone go to the supermarket, fill up a shopping cart full of groceries, and at the checkout counter say, "I'll pay for the groceries after the COVID crisis is over"? I don't think so.

Please do consider the plight of the housing providers as well.

Frederik C. Winsser

Ipswich, MA



EVICTION MORATORIUM SURVEY RESULTS: 22% OF PROVIDERS UNABLE TO PAY FOR HOUSING

Massachusetts eviction moratorium causes landlords to lose confidence, offers no way to pay bills.

On Thursday April 16 MassLandlords launched a [survey](#) of members about the eviction moratorium then expected to pass into law ([191-H4647](#)). Over the following 24 hours, 116 of our 1,800 members participated. The survey shows decreasing confidence in rent collection, uneven impact of the moratorium, and housing providers being unable to maintain housing and/or exiting the business.

SURVEY METHODOLOGY

The survey asked members to indicate agreement or disagreement with a set of statements. The survey used a score voting mechanism, which was already familiar to members and the fastest available tool to get input. A score of “0” indicated “disagreement with all my heart”, a score of “100” indicated “agreement with all my heart,” and a score of “50” was a point of indifference. Future surveys might assign discrete categories of agreement such as “strongly agree”, but for the purpose of this analysis, the following terms correspond to the following scores:

- “undecided”: a score of exactly 50
- “agreed”: a score greater than 50 but less than 75
- “strongly agreed” a score greater than or equal to 75
- “disagreed” a score less than 50 but greater than 25
- “strongly disagreed” a score less than or equal to 25.

As the survey will be used for allocation of MassLandlords resources, the survey was open to members only.

DECREASING CONFIDENCE IN ABILITY TO PROVIDE HOUSING

The difference between March and May in terms of rent collection is the most significant result, with 80% of members agreeing or strongly agreeing with the statement “My March rents were fully paid” and only 46% agreeing or strongly agreeing that “My May rents will be fully paid.”

When asked “I will be able to pay all of my bills this year,” 22% of members disagreed or strongly disagreed. (Landlords do not qualify for unemployment, SBA paycheck protection loans, and other relief measures including, with some exceptions, the mortgage forbearance in the moratorium bill itself.)

Sample of open-ended comments reproduced verbatim:

- “I am a nurse that owns a 2 family house. If my tenant is unable to pay their rent, I would have to work 6 shifts every week. That would be a hardship during this Covid-19 Pandemic.”
- “Answering for my 83 year old parents who can’t do technology well. They have 13 units that are their income and have worked 40+ years to own them. I don’t think they’ll be able to pay their bills this year from rental income without going into savings.”
- “Real estate taxes and possibly insurance needs the same breaks to match the in adequate rents or eviction delay.”

MARCH

80%

of members agreed or strongly agreed with the statement “My March rents were fully paid.”

MAY

46%

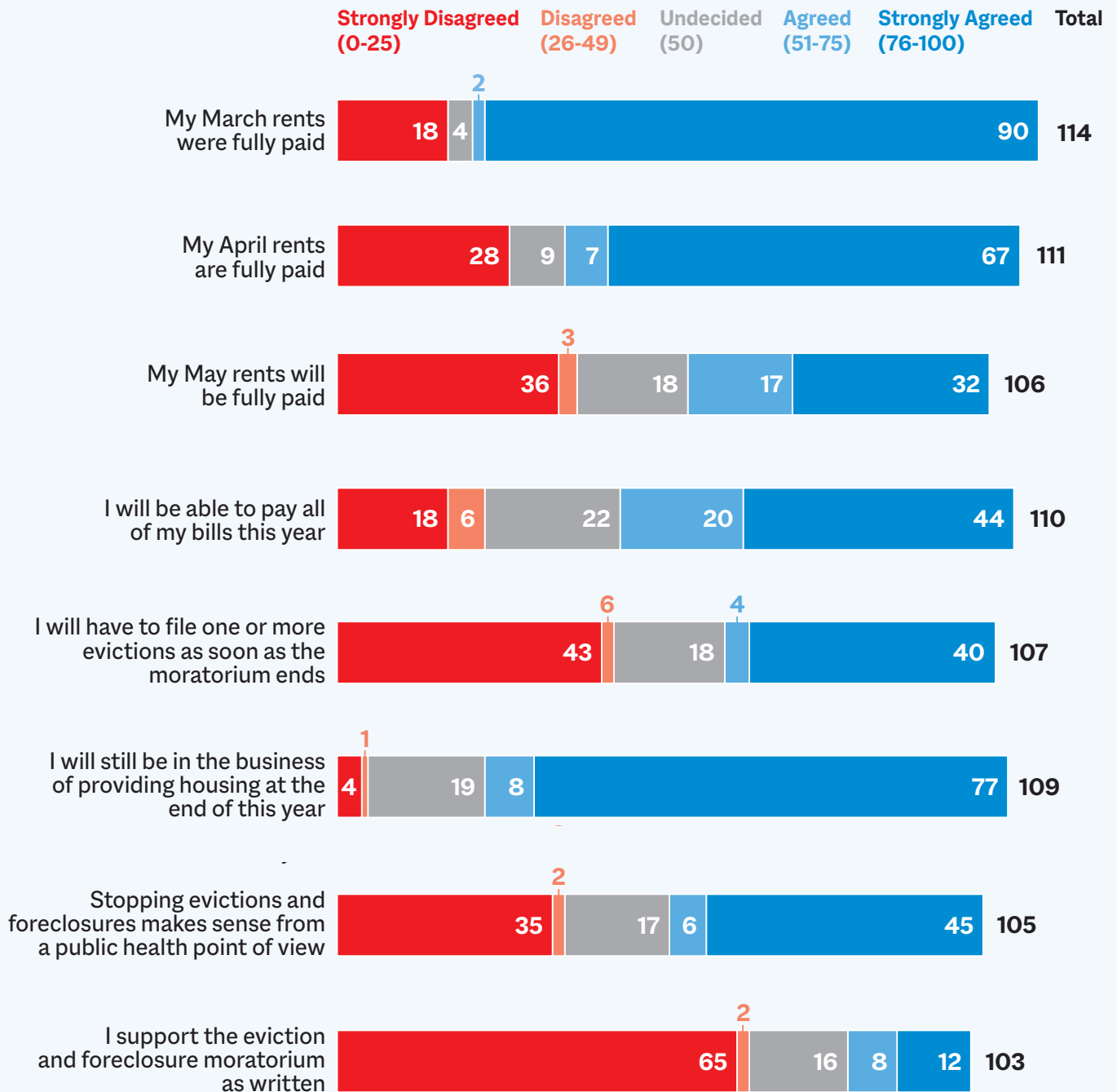
agreed or strongly agreed that “My May rents will be fully paid.”

BILLS

22%

of members disagreed or strongly disagreed when asked “I will be able to pay all of my bills this year.”

Number of respondents for each survey statement broken down into agreement categories



MANY EVICTIONS ARE INEVITABLE WITHOUT ADDITIONAL FUNDING

EVICTIONS

42%

of members agreed or strongly agreed, when asked, "I will have to file one or more evictions as soon as the moratorium ends."

When asked, "I will have to file one or more evictions as soon as the moratorium ends," 42% of members agreed or strongly agreed, and another 16% were undecided. Some entered the pandemic with rent already owing, others pointed out the rent strike.

Sample of open-ended comments (anonymized but otherwise verbatim):

- "We had an eviction hearing for non payment pending in [Western MA] with a court date of 3-18-20 when the city closed down. We were already in dire straits before the covid shutdown. The courts need to reopen with appropriate social distancing just like stores and other public places are doing now."
- "I don't know what to do because [my tenant] has not paid her Feb. 2020 rent and March 2020 rent."
- "2 tenants are just not paying even though they didn't have any change in income. Why pay if gvt. says OK not to pay."

DECREASING INTEREST IN PROVIDING HOUSING

BUSINESS

71%

of members agreed or strongly agreed when asked, "I will still be in the business of providing housing at the end of this year."

When asked, "I will still be in the business of providing housing at the end of this year," 71% of members agreed or strongly agreed, but 5% of members disagreed or strongly disagreed.

Sample of open-ended comments reproduced verbatim:

- "no rents, i'm out of business"
- "With laws like this I want out to get of this business"
- "Although i plan on keeping my existing properties, i will not invest money into this state in the future. I'll be moving my investments to the south."
- "What I personally am doing is refusing to rent my properties as they become vacant until this regulatory uncertainty is removed"

MIXED SUPPORT FOR ANY MORATORIUM

PUBLIC HEALTH

36%

of members disagreed or strongly disagreed, and

49%

of members agreed or strongly agreed when asked, "Stopping evictions and foreclosures makes sense from a public health point of view."

When asked, "Stopping evictions and foreclosures makes sense from a public health point of view," 36% disagreed or strongly disagreed, and 49% agreed or strongly agreed. In the context of score voting as applied to elections and issues, this result indicates lack of consensus.

When asked, "I support the eviction and foreclosure moratorium as written," 65% disagreed or strongly disagreed, 20% agreed or strongly agreed.

Sample of open-ended comments reproduced verbatim:

- "I support the moratorium, but assuming that the state of emergency will be lifted fairly soon."
- "The hardship of this pandemic cannot be shifted entirely to those who provide housing. It is an inappropriate response."
- "We are lucky most tenants have income so far"

MORATORIUM

65%

of members disagreed or strongly disagreed, and

20%

of members agreed or strongly agreed when asked, "I support the eviction and foreclosure moratorium as written."

MassLandlords has advocated for a [rental housing guarantee](#) instead or in addition to an eviction moratorium.

Mass., Citizens' Voices

FIVE LOW-INCOME APARTMENTS SIT EMPTY DUE TO EVICTION MORATORIUM

I had five low-income rooms available for rent in April and I decided to not rent them out. I simply cannot afford to take a risk, not even on somebody who can pay the rent right now. Why? Because if that changes, say if they get laid off from their "non-essential" job, I can't ask a judge to evict them for nonpayment and let me rent the unit to someone else. Since people are staying home all day, using more electricity, more water, etc., the costs of having a nonpaying resident are far more than just the missing rent and I simply cannot afford those expenses. As a direct result of the eviction moratorium, we have literally removed five apartments from the low-income stock.

Branch Yules

Landlord, Hudson, MA



EVICTIION MORATORIUM RESPONSE: BOARD VOTE FOR SURETY BOND

The eviction moratorium response survey showed 87% of members supported a lobbying effort, with preferred remedy being a surety bond.

On Friday, May 1, the [MassLandlords Board of Directors](#) voted unanimously to support the [surety bond bill](#) as a legislative response to the eviction moratorium. This vote is consistent with membership priorities expressed in the recent moratorium response survey.

EVICTIION MORATORIUM RESPONSE SURVEY

The [eviction moratorium response survey](#) was launched on Friday April 24. 10% of members responded in the first four hours, an additional 17% responded over the next week, with 485 total responses as of 4:30pm on Thursday April 30. Members were asked to evaluate proposals on a scale from 0 (never do this) to 100 (do this immediately), where 50 was pure indifference.

Proposals were suggested in two rounds. The first round had four general proposals. Numbers shown in underline correspond to the graph far below.

Proposals in round one:

01. Certification: Do nothing out of the ordinary. Focus on the Certified Massachusetts Landlord and one-on-one help.

02. Strike: Go on strike by refusing to pay real estate taxes.

03. Lobby: Lobby for a second law that would compensate owners for the moratorium, like a surety bond or rental subsidies.

04. Sue: File a lawsuit to have the law overturned as unconstitutional, or to be compensated for lost rent and property value.

Follow-up questions were asked immediately based on the responses to round one:

If the respondent supported certification:

05. Cert Detail: We're too small to take on this law at this time. By growing and establishing credibility for the association, we will eventually get the resources we need to prevent bad policy in the future.

- I will become certified/maintain my certification.
- I will continue to support MassLandlords' mission to create better rental housing with dues and/or Property Rights Supporter investments as we grow.

If the respondent supported a tax strike:

06. Strike Detail: Organize nonviolent collective action now, like a real estate tax strike. Real estate taxes make sense to eliminate because like the eviction moratorium, taxes are under government control. This action will attract attention to springboard to another solution TBD.

- I will participate in a real estate tax strike.

- If the city or a court issues an order to pay, I would be willing to go to jail for contempt. I have nothing else to lose/I'm ruined by this law.

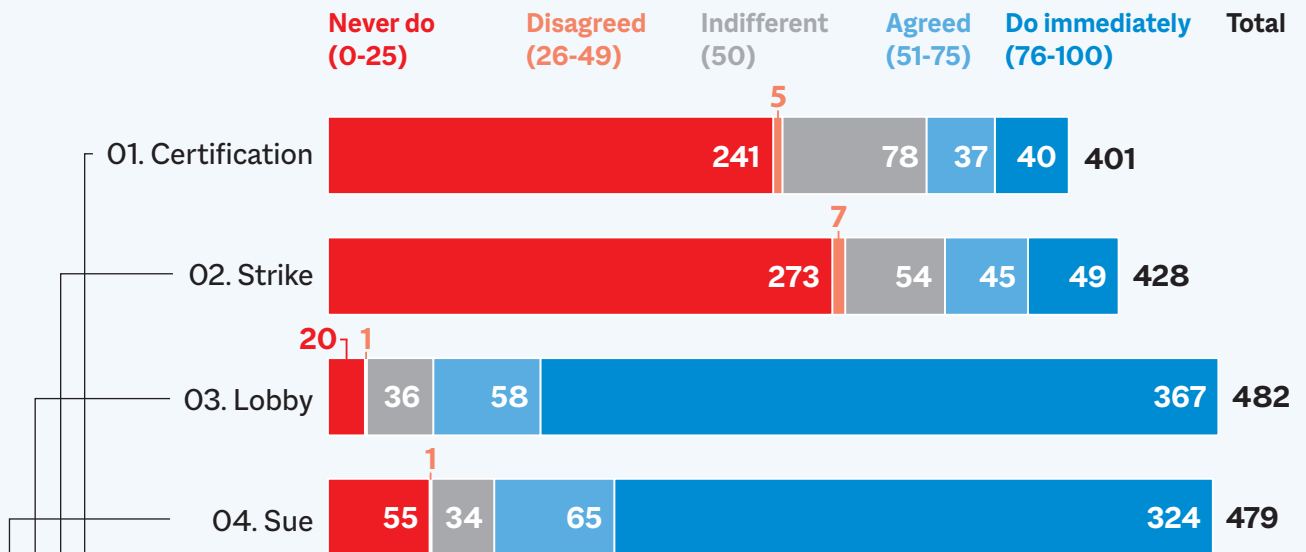
If the respondent support lobbying:

07. Surety: Lobby for a law now to enact state-wide surety bonds. Housing providers are essential to the success of a stay-at-home order, so the state should guarantee that housing costs are covered. Every landlord should get paid for COVID-19 related losses via surety bonds or insurance backed by the Commonwealth

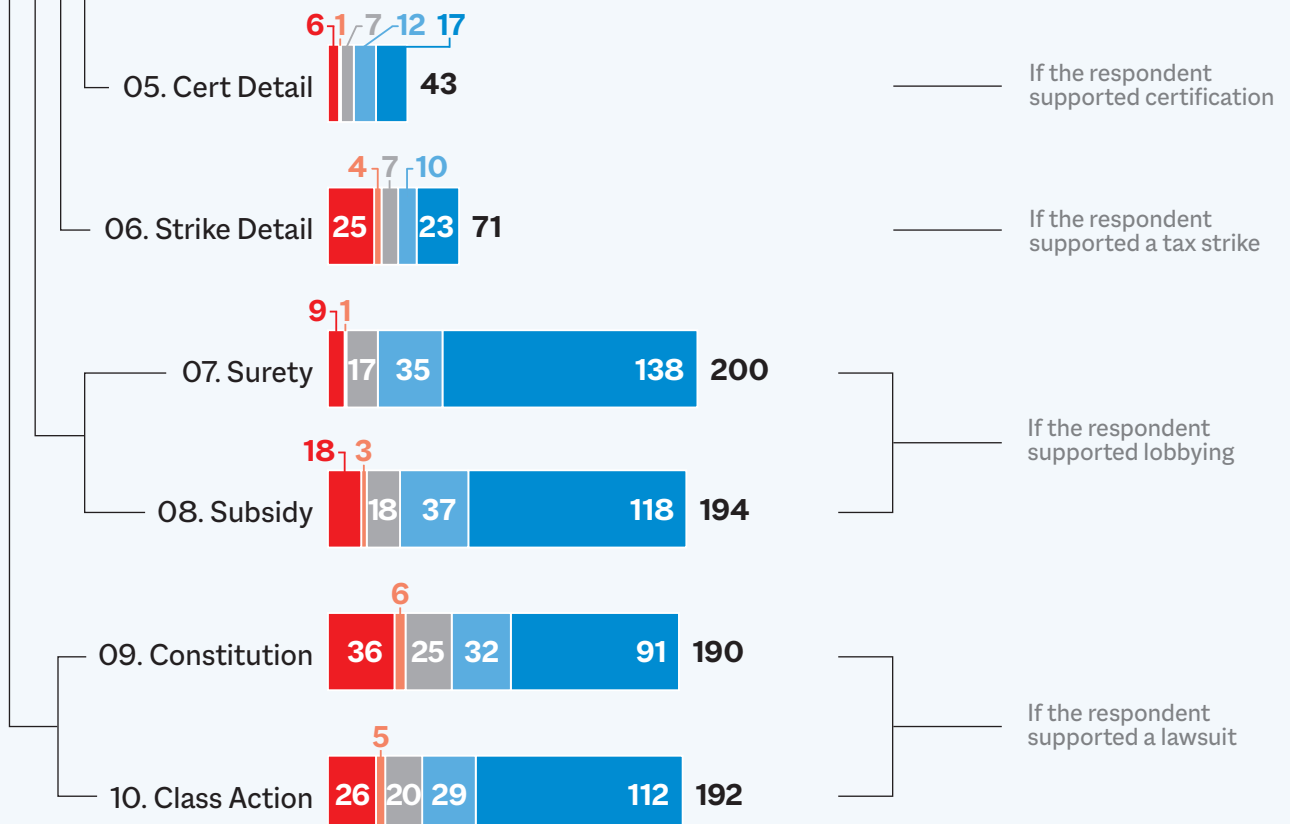
- I am willing to talk to my Rep and Senator many times until they understand the need for another law to be passed to pay for the moratorium.
- I am willing to donate for a significant lobbying effort.

Number of respondents for each survey question broken down into agreement categories

Round 1



Follow-up questions



Percentage of members supporting each proposal

87%
**LOBBYING
EFFORT**

80%
LAWSUIT

23%
TAX STRIKE

19%
CERTIFICATION

08. Subsidy: Lobby for a law now to enact additional rental subsidies. Housing providers are essential to the success of a stay-at-home order, so the state should just pay for rent. Rental subsidies like Section 8, RAFT, and others can be a logical follow-up to the eviction moratorium, paying fully for the time landlords must provide free housing.

- I am willing to talk to my Rep and Senator many times until they understand the need for greatly expanded rental subsidies.
- I am willing to donate for a significant lobbying effort.

If the respondent supported a lawsuit:

09. Constitution:

Litigate now to stop this law on constitutional grounds.

This is an unconstitutional taking of private property for a public purpose without compensation. There are other constitutional issues with the eviction moratorium.

- I would be willing to fund the litigation for years if necessary, all the way to the Supreme Judicial Court of Massachusetts and/or the Supreme Court of the United States.
- I can find other donors.
- I would be willing to be a lead plaintiff if needed, and to appear in public or be named on public documents in order to defend my rights and those of my fellow citizens.

10. Class Action: Litigate after the pandemic as a class action. After the public health crisis has passed, we should

collect all the evidence of unpaid rent and lost value, add it up, and file a class action lawsuit against the Commonwealth for the costs.

- I would be willing to give MassLandlords evidence of my losses.
- I would be willing to get non-members to provide data about their losses, too.
- I would be willing to donate to get the lawsuit started.

INTERPRETATION

The survey results lend themselves to the following interpretation.

There was little support for doing nothing. Only 19% of members supported certification as a primary goal in response to the eviction moratorium.

There was little support for a tax strike. Only 23% of members support a tax strike, and of those, only about half were willing to go to jail for contempt of court.

There was strong support for a lawsuit. 80% of members supported a lawsuit. Of those, there was roughly equal support of a suit on constitutional grounds vs a class action lawsuit. 0% of members disagreed, and 12% strongly disagreed.

There was strongest support for a legislative remedy. 87% of members supported a lobbying effort. Of those, surety bonds were preferred to an expansion of rental subsidies. 0% of members disagreed, and 4% of members strongly disagreed with a legislative remedy.

Mass. Citizens' Voices

ONLY 2% OF NONPAYMENT JUDGEMENTS ARE EVENTUALLY PAID

Over 15 years as a property manager, I've unfortunately had to take tenants to court for nonpayment many times. Only 2% of the judgments I've received for my owners have ever been paid, and those only because of state subsidy like RAFT.

Sheryl Chase

Property manager, West Springfield, MA



I HAD TRIED TO REACH OUT BUT HAVEN'T RECEIVED ANY RESPONSE

I came to Massachusetts to pursue my dream of higher studies in Environmental Science and Policy. As a resident of Massachusetts, I had tried to reach out to the Representative and the Senator for help during the Covid-19 crisis. But to my disappointment, I haven't received any response or assistance from their end. As an international student, I was unable to pay my rent during this pandemic. I have been disappointed to see how difficult it is here to get attention on matters of the utmost importance, particularly housing.

Raina Hasan

Worcester



Mass. Citizens' Voices

15 Lexington St., Apt 2,
Watertown. MA 02472

May 24, 2020

TO" Mass. Landlords Association

I am writing a letter of appreciation for my landlord, Ms. Halina Wong, because I hear rumors from so many who claim that their landlord is unfair.

We first moved here in 2004, my wife, my son, my daughter and me. My son and daughter have since married and move into there own homes but my wife and I have stayed in this one apartment now for 16 years.

Ms. Wong has treated us like a member of her family; always asking about our heath and welfare because now both my wife and I are quite a bit older. She takes care of any...even the slightest problem,,,with amazing speed even though we tell her it is not that urgent and encourage her to save her money.

My only anxiety is that, if we had to move. I suppose we would eventually find something but where in the world would we ever find such a kind and compassionate landlord like Ms. Wong?

And in these days of covid19, I am sure the financial burden on landlords is heavy indeed. Landlords are our heroes now and Ms. Wong is Super Hero.

Yours truly,

Daniel E. Charboneau

Daniel E. Charboneau

ESTIMATES OF POST-MORATORIUM EVICTION FILINGS NOW EXCEED HOUSING COURT ANNUAL CASELOAD

The housing crisis baseline combined with COVID-19 moratorium will likely result in one year's worth of eviction cases being filed the week the moratorium expires..

MassLandlords has compiled a detailed estimate of the number of eviction filings expected when the [Massachusetts eviction moratorium ends](#). The estimate begins with the “normal” rate of filings during the housing crisis and adds onto this survey data (consistent with rent collection data) for additional cases arising from COVID 19 and our governmental responses (hereinafter simply “COVID-19 and our response”). The number of filings will be not less than 30,000 if the state of emergency is lifted now, and not less than 70,000 if the state of emergency continues to January.

This range can be viewed in the context of normal caseload for a year, which is 30,000 cases. The uncertainty surrounding COVID-19 and our response ought to make policy makers sit up and take note at the need to pay arrears and/or open the courts.

EVICTIION MORATORIUM BACKGROUND

The Massachusetts eviction moratorium does not provide funding to pay rent arrearages, it simply sidelines the courts, preventing almost all mediation, filing and hearings. The moratorium lasts until either the moratorium expires (August 18) or 45 days after the Governor cancels the state of emergency, whichever comes sooner, unless extended by the Governor.

At time of writing, there was no indication from the Governor that the moratorium would be allowed to lapse. In other words, the moratorium is expected to last as long as the state of emergency, which is to say, as long as COVID-19 remains a concern.

ESTIMATE ONE: HOUSING COURT DATA BASELINE

[Massachusetts eviction data](#) from the 12 months prior to the start of the state of emergency (March 2020) provide a look at the “housing crisis baseline”, before COVID-19 and our response. Each month prior to the state of emergency, 2,500 summary process cases were filed each month statewide. If the economy were no worse under the state of emergency, then at least that many cases would need to be filed per the baseline in order to keep up with the housing crisis. Since we know the economy is much worse under the state of emergency, this number gives a lower limit of filings.

In addition, the Housing Court started deferring non-emergency cases March 13, 2020. Between that time and when the Massachusetts eviction moratorium was signed into law on April 20, 2020, 2,300 summary process cases were filed that are now continued (paused) pending resolution of the state of emergency.

If the state of emergency were fully lifted at time of writing (in May), it would be another 45 days before any notices could be issued, and at least another 14 days before any case could be filed. This would mean cases from March through July would still have yet to be filed, a total of 10,500 new cases from the baseline. Add to these the 2,300 continued cases.

At least 12,800 cases are pending from activity unrelated to COVID-19 and our response. Each month that passes after May adds another 2,500 baseline cases.

ESTIMATE TWO: MASSLANDLORDS SURVEY DATA

Massachusetts rent collection data from participants in the [MassLandlords rent collection survey](#) show a cumulative March-May default rate of 19.2% (n = 3,030 unit-months). (Twitter followers note that this is down from the initial 30% preliminary data tweeted May 19.) Survey data may be biased toward nonpayment, but this result is consistent with various other non-survey data-points including a [Wall Street Journal Zillow](#) article (31% nonpayment by April 5) and RentHelper data. A separate MassLandlords survey “[Eviction Moratorium Survey Results: 22% of Providers Unable to Pay for Housing](#)” is also consistent.

According to the most recent census, there are approximately 1,100,000 renter households in Massachusetts, of whom approximately [143,000](#) live in state or federally subsidized housing and may be assumed stable for the purpose of this analysis. The remaining market households (957,000) currently do not receive any housing-related assistance (although they may receive unemployment, stimulus, etc.). If the 19.2% nonpayment scaled to these market households, then approximately 180,000 households are now in arrears despite stimulus.

How much of these arrears are normal? Data from the [National Multifamily Housing Council Rent Payment Tracker](#) show nationwide arrearage at 7% to be “normal” (April 2019). We therefore remove 7% from the 19.2% and consider 12.2% the additional arrearage due to COVID-19 and our response (117,000 households).

What percentage of arrearages result in a filing? In Massachusetts, April 2019 saw 2,500 cases, or only 3% of “normal” arrears. If the 2019 ratio applies, then an additional 3,500 households per month will be triggering filings. Note that under the climate of COVID-19 and the eviction moratorium, landlords may decide less or more frequently to file evictions than at any other time. This inclination is not known and will likely vary by the individual.

At least 14,000 cases are already pending due to COVID-19 and our response. Each month that passes adds another 3,500 cases due to COVID-19 and our response.

HOW DOES THIS COMPARE WITH HOUSING COURT CASELOAD?

The Housing Court staff are currently able to process 30,000 cases per year. The day the eviction moratorium expires, the entire backlog would likely be filed at once.

How likely? Landlord perception of the eviction moratorium is very poor. An April 16 survey of members (n = 116) showed a 50-50 split as to whether an eviction moratorium was a desirable public health response to COVID-19. [Two-thirds of members opposed](#) or strongly opposed the specific moratorium enacted. Landlords generally have not qualified for or received public funding, leaving eviction the only option to avoid insolvency.

If the state of emergency were rescinded at time of writing in May, such that the moratorium expires in June and the first notices were served in July, the Housing Court staff would be asked to handle a year’s-worth of cases in that first week of filing. If the moratorium lapses in August, then 18 months’ worth of cases would be filed in that first week. If the moratorium lapses in January, then two years’ worth of cases would be filed in that first week.

The Housing Court will need to hire substantially, or else reduce the amount of work required to decide a case, or else extend case duration to many multiples of normal. Considering that Housing Court staff play an essential role in mediation and alternative dispute resolution, the eviction moratorium seems in retrospect to have been overly quick to sideline this entire branch of civil service. A variety of strategies could have already been employed to address many of these arrearages.

The District Courts (not elsewhere contemplated) process approximately 10,000 summary process cases per year. Cases that cannot be dealt with by the Housing Court may be redirected to District Courts. It seems unlikely that District Courts will be any better equipped to ramp up for the deluge of filings.

WILL OPENING THE ECONOMY HELP?

A return to normal economic activity will not impact the results for a May or June expiration, which already account for normal recovery from arrears. Note that the number of filings (30,000 for a May expiry) is below the total arrearage (180,000). Specific policies must be enacted (e.g., [A Fair and Equal Housing Guarantee via Surety Bonds](#)) to cover all unpayable arrears or else the backlogged cases will be filed.

Furthermore, until COVID-19 ceases to be a concern, certain economic activities will likely continue to be disallowed (e.g., restaurants, attendance at sporting events). These sectors

will be entirely unable to offer dependent households a return to normal earnings, let alone an operating surplus to cover arrears. Many renter households operate in service industries that remain shuttered or else at reduced capacity.

POST-MORATORIUM EVICTION FILINGS CONCLUSION

The disruption of the unfunded eviction moratorium has been severe.

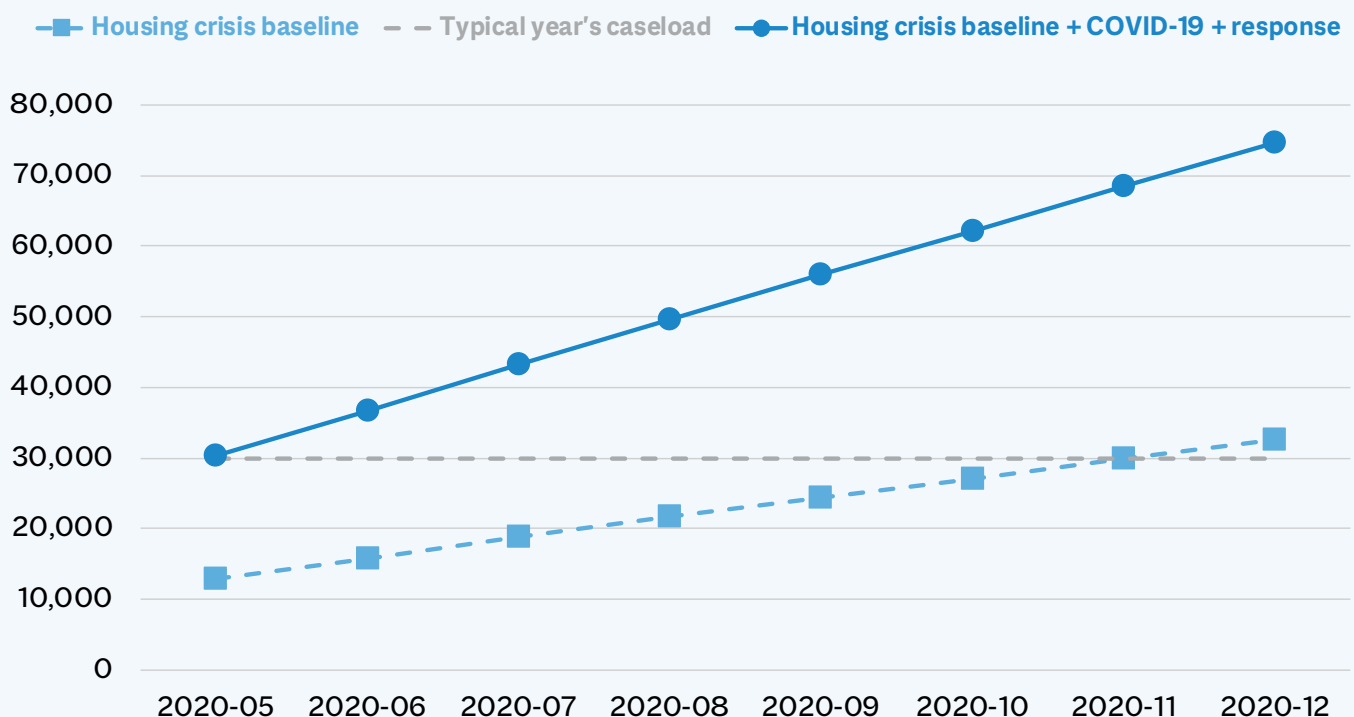
If the moratorium ends reasonably quickly without funding, then the Housing Court will need to double or triple in size to process the backlog of cases with normal quality and duration.

If funding along the lines of surety is enacted, then existing arrearages would be covered as well as future arrearages, however long

COVID-19 and the moratorium last. The shut-down of the courts could continue (at least as far as nonpayment is concerned) without serious impact to owners or renters.

If funding is not secured and the moratorium remains in effect, the model will break when key assumptions are rendered inaccurate. For instance, there is no reason why the 3% file rate on arrearages should continue in the face of no public support. Landlords are entitled to file on 100% of arrearages, and may feel it best to file against both the renter and the Commonwealth for having exacerbated the magnitude of the loss. Hundreds of thousands of cases more than are estimated here are possible, potentially leading to disruptions to a third of the rental housing in Massachusetts.

The number of cases that are expected to be filed, by month in which the moratorium begins to expire




Graph assumes expiration happens by Governor cancelling the state of emergency, which starts a 45-day clock before notices can be served, and 14 days before any cases can be filed.

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HOW SURETY COULD BE FUNDED

A modest increase in the single-family excise tax, avoidable with change of zoning, could both fund the moratorium and solve the housing crisis.



To properly implement a statewide surety on rental housing, between \$500 million and \$2 billion need to be available over the next ten years.

Although potentially an eye-popping sum, this funding can come in a way that does not stress short-term budgets and which will simultaneously solve the long-term housing crisis. The proposed answer lies in the much larger \$27 billion per year market for single-family housing and the existing Chapter 64D excise tax.

CAUSE OF THE HOUSING CRISIS

Prior to COVID-19, we had a housing crisis: There was not enough housing for all of us to live where we can afford and where we need to be. The housing crisis particularly affects people of color. We have documented at our [zoning](#) policy page how single-family zoning has a racist origins:

Zoning itself was on uncertain constitutional ground until the Supreme Court upheld it as a valid exercise of the police power... in the case of *Ambler Realty Co. v. Village of Euclid*. [A] lower court... noted the commonly offered rationale for zoning:

“The blighting of property values and the congesting of population, **whenever the colored or certain foreign races invade a residential section, are so well known** as to be within the judicial cognizance.” *Euclid*, 297 F. 307, 313 (N.D. Ohio 1924).

Single-family zoning still has racist disparate impact. Although supporters today espouse non-racist arguments, their advocacy perpetuates a system which was designed to exclude people of color. Advocacy around traffic congestion, student-teacher ratios, noise and other problems associated with density can all be discussed and addressed without regard to counting the number of families living on a lot. The implication of single-family zoning is, “If you aren’t wealthy enough to afford as much house and yard as we have, you are not welcome to live next door.” Single-family zoning therefore ought to be looked at critically as the funding source.

In Massachusetts in 2019, 53,228 single-family homes were sold at an average sales price of \$516,550 (aggregate market \$27 billion, MLS Property Information Network, Inc.).

MECHANISM FOR FUNDING: EXCISE

MGL Chapter 64D, Section 1 established an excise tax on recorded deeds. This excise tax can be increased specifically on single-family zoned properties. The increase would then be set aside to cover surety. In essence, it would be a “transfer tax.”

Unlike the “transfer taxes” suggested this legislative session and previously, the transfer tax here does not tax multifamily housing. We should only tax what we want less of. If single-family zoning is racist, then we should tax single-family zoning. If multifamily housing is anti-racist, then we should not tax multifamily housing.

Such a “transfer tax” would not apply to any single-family building transacted on land zoned for multifamily housing. In other words, if a community wanted to exempt itself from this additional excise tax, all it would have to do is grant as-of-right multifamily use on those lots.

Because the increase in excise tax would be very affordable (of the order of 1% of real estate transaction value), wealthy single-family communities could continue to resist zoning changes in favor of paying the tax.

In this way, the tax remains progressive with perfectly aligned incentives: Either pay the tax to pay for the housing crisis, or change the land use to remove the cause of the housing crisis.

Excess monies raised from the tax over time, or interest on the fund reserves, could be set aside for continued preservation and production of affordable housing, or for “second wave” or future pandemic stabilization.

Other funding mechanisms may exist, but we believe any solution should seek to extract funding from the causes of the housing crisis for best alignment of incentives.

Key Takeaways

A "Fair and Equal Housing Guarantee via Surety Bonds" is a landscape-changing policy that would guarantee rental housing during the pandemic and simultaneously address the housing crisis.

Eligible landlords would purchase surety bonds to guarantee full rent for every rental unit affected by COVID-19. In exchange for a guarantee of being paid back, however long it takes, landlords cannot evict for nonpayment.

The bonds would be paid for and underwritten by the Commonwealth, specifically by a \$300 million increase in the Chapter 64 excise tax applied only to deeds for land zoned single family. According to MLS, \$27 billion worth of single family deeds were transferred in 2019.

To avoid the tax, simply convert the single-family zoned lot to multifamily as-of-right.

For updates on statistics, visit <https://masslandlords.net>