

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 890 Session of  
2021

---

INTRODUCED BY SAVAL, COSTA, HUGHES, HAYWOOD, CAPPELLETTI, MUTH,  
COMITTA, STREET, KANE, A. WILLIAMS, TARTAGLIONE AND BREWSTER,  
OCTOBER 14, 2021

---

REFERRED TO URBAN AFFAIRS AND HOUSING, OCTOBER 14, 2021

---

AN ACT

1 Providing for equitable housing recovery.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Equitable  
6 Housing Recovery Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall  
9 have the meanings given to them in this section unless the  
10 context clearly indicates otherwise:

11 "Borrower." A mortgagor of a mortgage loan.

12 "COVID-19." The novel coronavirus as identified in the  
13 proclamation of disaster emergency issued by the Governor on  
14 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and  
15 any renewal of the state of disaster emergency.

16 "COVID-19 disaster emergency." The disaster emergency as  
17 described in the proclamation of disaster emergency issued by

1 the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March  
2 21, 2020), and any renewal of the state of disaster emergency.

3 "COVID-19 eviction." An eviction proceeding in which the  
4 plaintiff's action is based, at least in part, upon nonpayment  
5 of rent or includes a claim for rent or other financial  
6 obligation for use and occupancy due and payable during the  
7 eviction delay period.

8 "Eviction." A court action for ejectment or for the recovery  
9 of possession of real property arising under the act of April 6,  
10 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of  
11 1951, in which the plaintiff's action is based, at least in  
12 part, upon nonpayment of rent or other financial obligation for  
13 use and occupancy.

14 "Eviction delay period." The period of time beginning on the  
15 date of issuance of the proclamation of the COVID-19 disaster  
16 emergency and ending on the date on which the secretary  
17 certifies that all the money for use in the Rental and Utility  
18 Assistance Grant Program has been expended or January 1, 2023,  
19 whichever is later.

20 "Forbearance." A temporary suspension of payments, including  
21 principal and interest and any escrowed payments required to be  
22 paid in the mortgage loan contract.

23 "Foreclosure." Includes any of the following:

24 (1) An action of mortgage foreclosure under 231  
25 Pa.R.C.P. Subch. I (relating to action of mortgage  
26 foreclosure).

27 (2) An action to sell property to recover delinquent  
28 real estate taxes under any of the following:

29 (i) The act of May 16, 1923 (P.L.207, No.153),  
30 referred to as the Municipal Claim and Tax Lien Law.

1 (ii) The act of July 7, 1947 (P.L.1368, No.542),  
2 known as the Real Estate Tax Sale Law.

3 (3) An action in ejectment under 231 Pa.R.C.P. Subch. C  
4 (relating to action in ejectment) in which the plaintiff  
5 obtained title to the property as a direct or indirect result  
6 of an action described in paragraph (1) or (2) and is seeking  
7 to eject one or more persons who occupied the property prior  
8 to such sale.

9 (4) An action under the act of November 24, 1976  
10 (P.L.1176, No.261), known as the Manufactured Home Community  
11 Rights Act.

12 "Foreclosure delay period." The period of time beginning on  
13 the effective date of this act and ending on January 1, 2023, or  
14 180 days from the termination of the borrower's final  
15 forbearance period under section 4(b), whichever is later.

16 "Government sponsored enterprise" or "GSE." Any of the  
17 following:

18 (1) The Federal National Mortgage Association, also  
19 known as "Fannie Mae."

20 (2) The Federal Home Loan Mortgage Corporation, also  
21 known as "Freddie Mac."

22 "GSE loan." A loan owned or guaranteed by the GSEs.

23 "Loss mitigation guidelines." As follows:

24 (1) Protocol established by the owner, guarantor or  
25 investor for a mortgage loan describing the sequence and  
26 content of loss mitigation options that a mortgage servicer  
27 must follow in reviewing a borrower for alternatives to  
28 foreclosure.

29 (2) The term includes:

30 (i) The guidelines for loss mitigation developed by

1 the GSEs, the Federal Housing Administration, the United  
2 States Department of Veterans Affairs or the United  
3 States Department of Agriculture.

4 (ii) The guidelines and protocols applicable to  
5 private label mortgage loans through securitization  
6 agreements or other contractual terms.

7 (3) For federally-backed mortgage loans, the guidelines  
8 include COVID-19 forbearance and postforbearance loss  
9 mitigation options, waterfalls, borrower contact  
10 requirements, fee limits, foreclosure prohibitions and  
11 timelines.

12 "Loss mitigation option." As the term is defined in 7  
13 Pa.C.S. § 6102 (relating to definitions).

14 "Mortgage loan." As the term is defined in 7 Pa.C.S. § 6102.

15 "Mortgage servicer." As the term is defined in 7 Pa.C.S. §  
16 6102.

17 "Rental and Utility Assistance Grant Program." The rental  
18 assistance program established under Articles I-D and I-E of the  
19 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal  
20 Code.

21 "Secretary." The Secretary of Human Services of the  
22 Commonwealth.

23 Section 3. Tenant protections.

24 (a) Eviction relief.--Notwithstanding any other provision of  
25 law, the following shall apply relating to COVID-19 eviction  
26 actions:

27 (1) No court in this Commonwealth may accept any filing  
28 or pleading instituting a new COVID-19 eviction action until  
29 60 days following the end of the eviction delay period. The  
30 following apply:

1 (i) A landlord may not charge fees or penalties  
2 under the act of April 6, 1951 (P.L.69, No.20), known as  
3 The Landlord and Tenant Act of 1951, for nonpayment of  
4 rent due and payable during the eviction delay period.

5 (ii) No fees or penalties that result from delayed  
6 or nonpayment of rent during the eviction delay period  
7 may be assessed.

8 (2) If an eviction action arising under The Landlord and  
9 Tenant Act of 1951 was filed or a judgment by agreement has  
10 been executed within 30 days prior to the issuance of the  
11 proclamation of the COVID-19 disaster emergency, a landlord  
12 may not proceed with the action until 60 days following the  
13 end of the eviction delay period. The following apply:

14 (i) It shall not be a breach of a covered judgment  
15 by agreement if the tenant complies with all applicable  
16 conditions of the agreement within 60 days following the  
17 end of the eviction delay period.

18 (ii) No writ may be executed until 60 days following  
19 the end of the eviction delay period.

20 (iii) A landlord, during the eviction delay period,  
21 otherwise eligible to charge fees or penalties under The  
22 Landlord and Tenant Act of 1951, may not charge fees or  
23 penalties during the eviction delay period or during the  
24 60-day period following the eviction delay period.

25 (iv) No fees or penalties that result from delayed  
26 or nonpayment of rent during the eviction delay period  
27 may be assessed.

28 (b) COVID-19 eviction criteria.--Notwithstanding any other  
29 provision of law, following the 60-day period of time after the  
30 eviction delay period provided under subsection (a)(1) and (2),

1 no landlord or property owner may commence a COVID-19 eviction  
2 action unless it establishes all of the following criteria:

3 (1) The parties to the eviction action have exhausted  
4 all available opportunities, and worked in good faith, to  
5 obtain rental assistance through the Rental and Utility  
6 Assistance Grant Program for which the landlord and tenant  
7 are eligible and have not obtained sufficient money through  
8 such programs to cure the arrearage through no fault of the  
9 landlord.

10 (2) As of the date the complaint is filed, no  
11 administrative orders to correct violations of any municipal  
12 or Commonwealth codes, regulations, ordinances and statutes,  
13 nor any civil or criminal proceedings to enforce uncorrected  
14 violations of these laws, are pending with respect to the  
15 rental unit.

16 (3) The landlord has provided notice to the tenant of  
17 the availability of the defense specified under subsection  
18 (d).

19 (c) Affidavit requirement.--Until the end of the eviction  
20 delay period, no landlord may commence an action for eviction  
21 without providing the tenant and the court with a sworn  
22 affidavit stating that the landlord has satisfied the criteria  
23 in subsection (b).

24 (d) COVID-19 defense.--A defendant in a COVID-19 eviction  
25 action shall have a complete defense to a claim to recover  
26 possession where any portion of the nonpayment of rent or other  
27 financial obligation for use and occupancy, or any portion of a  
28 mortgage loan delinquency for which the defendant was  
29 responsible, was due to a financial hardship related to or  
30 exacerbated by the COVID-19 pandemic and any of the following

1 conditions are met:

2 (1) Eviction would likely result in the defendant  
3 becoming homeless, needing to move into a homeless shelter or  
4 needing to move into a new residence shared by other people  
5 who live in close quarters.

6 (2) The defendant's household includes any of the  
7 following:

8 (i) A minor child.

9 (ii) An individual with a disability as defined in  
10 section 3 of the Americans with Disabilities Act of 1990  
11 (Public Law 101-336, 42 U.S.C. § 12102).

12 (iii) An individual who is 60 years of age or older.

13 (iv) An individual with a medical condition that the  
14 Centers for Disease Control and Prevention deemed to  
15 cause an increased risk of experiencing severe illness  
16 from a COVID-19 infection.

17 (e) Hearing required.--No court may issue an order for  
18 interim payment of rent or use and occupancy due and payable  
19 during the eviction delay period, without conducting a hearing  
20 and explicitly finding that the tenant is not reasonably likely  
21 to establish the defense specified under subsection (d).

22 (f) Continuance required.--Notwithstanding any other  
23 provision of law, a court with jurisdiction over a COVID-19  
24 eviction proceeding shall grant a continuance for a time period  
25 until the application for rental assistance through the Rental  
26 and Utility Assistance Grant Program is approved or denied if,  
27 either at the time the answer is timely filed or on the date the  
28 trial is scheduled to commence, all of the following conditions  
29 are satisfied:

30 (1) The plaintiff's complaint for possession of

1 residential property is based upon or includes any claim for  
2 rent or use and occupancy due and payable during the eviction  
3 delay period.

4 (2) The nonpayment of rent or use and occupancy was due  
5 to a financial hardship related to or exacerbated by the  
6 COVID-19 disaster emergency.

7 (3) As follows:

8 (i) Subject to subparagraph (ii), the defendant  
9 demonstrates, to the satisfaction of the court, that the  
10 defendant has a pending application for rental assistance  
11 through the Rental and Utility Assistance Grant Program.

12 (ii) Notwithstanding subparagraph (i):

13 (A) The court may consider any meritorious  
14 counterclaim brought in the proceeding.

15 (B) The court shall issue a stay of execution on  
16 a judgment for possession if the requirements under  
17 this subsection are met.

18 (C) The court may not enter a judgment or issue  
19 an execution, or allow the levy on an execution,  
20 before the application has been approved or denied.

21 Section 4. Homeowner protections.

22 (a) Foreclosure relief.--Notwithstanding any other provision  
23 of law, the following apply relating to a foreclosure for a  
24 foreclosure delay period:

25 (1) No court may accept a new action relating to the  
26 foreclosure on a residential property until 60 days following  
27 the foreclosure delay period. The following apply:

28 (i) During the foreclosure delay period, a plaintiff  
29 or petitioner, otherwise eligible to charge fees or  
30 penalties, may not charge fees or penalties during the

1 time of the foreclosure delay period or during the 60-day  
2 period following the foreclosure delay period.

3 (ii) No fees or penalties that result from delayed  
4 or missed payments during the foreclosure delay period  
5 may be assessed.

6 (2) If an action relating to the foreclosure of a  
7 residential property was commenced prior to the date of  
8 issuance of the proclamation of the COVID-19 disaster  
9 emergency, a plaintiff or petitioner may not proceed with an  
10 action until 60 days after the end of the foreclosure delay  
11 period. The following apply:

12 (i) During the foreclosure delay period, a plaintiff  
13 or petitioner, otherwise eligible to charge fees or  
14 penalties, may not charge fees or penalties during the  
15 foreclosure delay period or during the 60-day period  
16 following the foreclosure delay period.

17 (ii) No fees or penalties that result from delayed  
18 or missed payments during the foreclosure delay period  
19 may be assessed.

20 (b) Loss mitigation compliance.--

21 (1) A mortgage servicer shall comply with all applicable  
22 Federal loss mitigation guidelines regarding COVID-19-related  
23 forbearances and postforbearance loss mitigation options.

24 (2) Within 30 days of the effective date of this act,  
25 each mortgage servicer shall send to each borrower in this  
26 Commonwealth with a mortgage loan that is serviced by the  
27 mortgage servicer a notice of COVID-19 mortgage relief  
28 specifying the general loss mitigation guidelines that apply  
29 to the borrower's loan. The notice must include all of the  
30 following:

1 (i) The identity of the entity that owns the loan  
2 and the identity of any Federal entity that owns, insures  
3 or guarantees the loan.

4 (ii) A summary of the forbearance and  
5 postforbearance loss mitigation options that are  
6 available for the loan that is serviced, including  
7 references to where the complete loss mitigation  
8 guidelines are available to the public.

9 (iii) Information on how to request the available  
10 forbearance and postforbearance loss mitigation options.

11 (3) The Department of Banking and Securities shall  
12 create a template of the notice under paragraph (2) in  
13 English and Spanish. The following apply:

14 (i) The notice shall clearly indicate "This is an  
15 Important Notice. Please have it translated." in the  
16 seven most commonly spoken languages in this  
17 Commonwealth, based on the most recent Federal decennial  
18 census.

19 (ii) The envelope containing the notice must state  
20 in minimum size 12 font "Important Notice" in the seven  
21 most commonly spoken languages in this Commonwealth,  
22 based on the most recent Federal decennial census.

23 (4) The mortgage servicer shall disclose and implement  
24 COVID-19 forbearance and postforbearance loss mitigation  
25 options that:

26 (i) are consistent with the COVID-19 loss mitigation  
27 guidelines for forbearance and postforbearance relief  
28 applicable to loans owned or insured by a GSE, the  
29 Federal Housing Administration, the United States  
30 Department of Veterans Affairs or the United States

1 Department of Agriculture whenever one of these Federal  
2 entities owns or insures the mortgage loan; or

3 (ii) if the mortgage loan is not owned or insured by  
4 a Federal agency under subparagraph (i), are consistent  
5 with the loss mitigation guidelines for a GSE loan,  
6 including any amendments, updates or revisions to that  
7 guidance.

8 (5) A mortgage servicer that claims that investor  
9 guidelines, applicable law or other restrictions prohibit the  
10 mortgage servicer from implementing the forbearance or  
11 postforbearance options described in paragraph (4) shall  
12 provide to the Office of Attorney General and all affected  
13 borrowers documentation of the specific guidelines and laws  
14 that the mortgage servicer contends support the inability to  
15 implement those options. A borrower shall have the  
16 opportunity to dispute the claim. All of the following apply:

17 (i) The Office of Attorney General shall have the  
18 authority to exercise oversight over and investigate such  
19 disputes and assess appropriate penalties if a mortgage  
20 servicer makes a claim of exemption not substantially  
21 justified in law or fact.

22 (ii) A mortgage servicer is presumed to have the  
23 ability to comply with paragraph (4) unless the mortgage  
24 servicer has documented in accordance with this section  
25 that investor guidelines, applicable law or other  
26 restrictions prohibit the mortgage servicer from  
27 implementing the forbearance or postforbearance options  
28 described in paragraph (4) and this documentation is not  
29 in dispute.

30 (iii) Assertion of an unjustified claim for

1 exemption shall constitute an unfair or deceptive act or  
2 practice for which the borrower may seek remedies under  
3 the act of December 17, 1968 (P.L.1224, No.387), known as  
4 the Unfair Trade Practices and Consumer Protection Law.

5 (6) If a mortgage servicer claims an inability to  
6 implement paragraph (4), the mortgage servicer shall provide  
7 notice to the borrower of all forbearance and postforbearance  
8 options available for the mortgage loan that are consistent  
9 with this law and to the extent that it is within the  
10 servicer's contractual authority to do so. A mortgage  
11 servicer that intends to offer only lump sum repayment or  
12 short-term repayment plans as options for reinstatement after  
13 forbearance shall clearly and conspicuously disclose that  
14 these will be the affected borrower's limited options before  
15 the borrower enters into a forbearance plan or, if the  
16 borrower is in a forbearance plan on the effective date of  
17 this act, within 30 days of the effective date of this act.

18 (7) Mortgage servicers shall ask borrowers the language  
19 in which they prefer to communicate, shall document that  
20 language preference in the servicing file and shall provide  
21 oral interpretation or a bilingual representative fluent in  
22 that language when communicating about loss mitigation  
23 options in accordance with the requirements of this section.

24 (8) A mortgage servicer shall attach to a notice of sale  
25 recorded and served in connection with a foreclosure a  
26 certification of service of the disclosures described in  
27 paragraph (2). A mortgage servicer may not record or serve a  
28 notice of sale, schedule a foreclosure sale, publish notice  
29 of a foreclosure sale, conduct a foreclosure sale or file a  
30 complaint of judicial foreclosure unless the mortgage

1 servicer has done all of the following:

2 (i) Provided the disclosures with the content, and  
3 in accordance with the time frame, described in paragraph  
4 (2).

5 (ii) Considered each borrower who expressed an  
6 interest in COVID-19 mortgage relief for the options  
7 available under the loss mitigation guidelines described  
8 in the disclosures provided under paragraph (4).

9 (c) Remedies.--

10 (1) A borrower who is harmed by a material violation of  
11 this section may bring an action to obtain injunctive relief,  
12 damages, restitution and any other remedy to redress the  
13 violation.

14 (2) A court may award a prevailing borrower reasonable  
15 attorney fees and costs in an action based on a violation of  
16 this section in which injunctive relief against a sale,  
17 including a temporary restraining order, is granted.

18 (3) A court may award a prevailing borrower reasonable  
19 attorney fees and costs in an action for a violation of this  
20 section in which relief is granted but injunctive relief  
21 against a sale is not granted.

22 (4) The rights, remedies and procedures provided to  
23 borrowers by this section are in addition to and independent  
24 of any other rights, remedies or procedures under any other  
25 law.

26 (5) This section shall not be construed to alter, limit  
27 or negate any other rights, remedies or procedures provided  
28 to borrowers by law.

29 (d) Waivers prohibited.--A waiver by a borrower of the  
30 provisions of this section shall be deemed contrary to public

1 policy and is void and unenforceable.

2 (e) Forms.--The Department of Banking and Securities shall  
3 develop and issue regulations and standardized forms for the  
4 written documentation required in subsection (b), but the  
5 absence of such forms shall not render this act inoperable.

6 Section 5. Certification of secretary.

7 When all the money for use in the Rental and Utility  
8 Assistance Grant Program has been expended, the secretary shall  
9 certify that fact and shall transmit notice of that fact to the  
10 Legislative Reference Bureau for publication in the Pennsylvania  
11 Bulletin as soon as practicable.

12 Section 6. Violations.

13 A violation of this act shall constitute an unfair or  
14 deceptive act or practice under the act of December 17, 1968  
15 (P.L.1224, No.387), known as the Unfair Trade Practices and  
16 Consumer Protection Law, and shall be subject to the enforcement  
17 provisions and remedies contained in that act.

18 Section 7. Severability.

19 The provisions of this act are severable. If a provision of  
20 this act or the application thereof to a person or circumstance  
21 is held invalid, the invalidity shall not affect other  
22 provisions or applications of this act which can be given effect  
23 without the invalid provision or application.

24 Section 8. Effective date.

25 This act shall take effect immediately.