

# CDC Issues Nationwide Order Barring Evictions for Most Renters

Articles, COVID 19: Answers to Business Challenges September 9, 2020

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Last week, the Centers for Disease Control and Prevention (CDC) issued an Order that temporarily halts evictions for most renters through the end of 2020. Given its unexpected issuance and broad scope, we have put together the Q&A list below, regarding the Order and its impact. We encourage you to contact our firm with additional questions.

## ***1. What does the Order do?***

The Order protects tenants facing eviction, when the tenant's circumstances place him/her within the protected class described within the Order (as outlined below). The Order prohibits "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action" from evicting "any covered person" from "any residential property" through December 31, 2020.

A "covered person" is defined as any "tenant, lessee, or resident of a residential property" who provides the CDC's Declaration Form to "their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action . . ." The Declaration Form is attached to the Order, and is available here: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf>.

By completing the Declaration Form, the individual is attesting to the following facts under penalty of perjury:

- The individual has used best efforts to obtain all available government assistance for rent or housing;
- The individual either expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return); was not required to report any income in 2019 to the IRS; or received a stimulus check pursuant to the CARES Act.
- The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
- Eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared living setting because the individual has no other available housing options.

The scope of the Order is broad in terms of application to specific rental properties; the Order defines a "residential property" as "any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes . . ." "Residential property" does not include any "hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

## ***2. Why did the CDC issue the Order now?***

With the preamble to the Order, the CDC states that it issued the Order to slow the spread of COVID-19. The Order is intended to prevent homelessness, and/or forcing evicted tenants from finding housing with friends or relatives, in an effort to stem the tide of the global health crisis. Close human contact increases the risk that COVID-19 will spread from person-to-person; preventing homelessness and communal living will further the CDC goal of limiting close human contact in order to decrease the risk of spreading COVID.

Congress previously provided a 120-day moratorium on eviction filings through the CARES Act, which was enacted in late March. The CARES Act eviction moratorium, however, expired on July 24, 2020. The CDC's Order essentially picks up where the CARES Act left off by imposing an eviction moratorium through the end of 2020.

***3. Does the CDC possess the authority to issue the Order?***

The CDC states that it issued the Order under two sources of authority: Section 361 of the Public Health Service Act (42 U.S.C. § 264), and the federal regulation at 42 C.F.R. § 70.2. Section 361 of the Public Health Service Act gives the Surgeon General of the Public Health Service — with the approval of the Secretary of Health and Human Services — the authority to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States . . . or from one State . . . into any other State . . .” In addition, the federal regulation at 42 C.F.R. § 70.2 states, “Whenever the Director of the [CDC] determines that the measures taken by health authorities of any State . . . are insufficient to prevent the spread of any of the communicable diseases . . . he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary.”

The fact that the Order was issued unilaterally by the CDC, without adherence to the Administrative Procedures Act, means that it will likely be challenged in Court. Unless/until a successful challenge overturns the Order, it remains effective and fully enforceable.

***4. Does the Order contain any financial relief to landlords?***

No. The Order contains no financial relief to landlords. Any such relief likely would have to be provided by Congress through legislation.

***5. How long will the Order remain in effect?***

Barring a Court challenge, the Order is in effect through December 31, 2020.

***6. Do qualifying tenants still have to pay rent while the Order is in effect?***

Yes. The Order does not relieve any individual from their obligation to pay rent, make housing payments, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract.

***7. Can a landlord still charge or collect fees, penalties, or interest due to the failure to pay rent on a timely basis?***

Yes. The Order does not preclude a landlord from charging or collecting fees, penalties, or interest as a result of the failure to pay rent on a timely basis.

***8. Can a landlord evict a covered person for reasons other than failure to pay rent?***

Yes. The Order states that tenants and lessees are required to follow all terms of their lease and rules of the place where they live while the Order is in effect. They may be evicted for reasons *other than* not paying rent or making a housing payment.

The Order specifically sets forth: “Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

***9. Does the Order prohibit evictions on home mortgages?***

No. The Order does not bar foreclosures on home mortgages.

***10. What are the penalties for violating the Order?***

Assuming that a renter or lessee has not provided his or her landlord with a Declaration Form, it appears that a landlord can still seek to evict a renter or lessee from a rental property while the Order is in effect. The tenant, however, may try to block the eviction by providing the landlord with a completed Declaration Form. A landlord may face financial and/or criminal penalties for ignoring a valid Declaration Form and proceeding with self-help or other means of eviction before December 31, 2020. Specifically, the Order states that a person violating the Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both. If the violation results in a death, the person may be subject to a fine of no more than \$250,000, or one year in jail, or both. An organization that violates the Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death. Conversely, if the violation results in a death, the organization may be subject to a fine of no more than \$500,000 per event.

For additional information contact Ken Scholtz or Shane Miller.