

Eviction Moratorium – Landlords Remain Locked Out (for now)

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As the COVID summer of 2020 drew to a close, the Centers for Disease Control issued a nationwide moratorium on evicting tenants from residential properties, in an effort to promote public health and stem the tide of the pandemic. This CDC eviction moratorium went into effect on September 4th, and applied to any eviction based on non-payment of rent due to unemployment or reduced income. The CDC created an affidavit for tenants to sign, and give to their landlords, as notice that the tenants are seeking protection under the moratorium.

For landlords, the moratorium did not erase the tenant's rent obligation but rather prevented a collection or eviction action based on non-payment of rent. It also did not prevent evictions for other reasons, such as damaging rental property or posing a threat to the health and safety of other tenants. The CDC emergency order carried with it stiff fines for landlords who violated the law – a singular landlord could be fined up to \$100,000, or \$250,000 if the violation results in death. Likewise, a property management company or a similar organization may be fined up to \$200,000 per eviction, or \$500,000 per eviction if the violation results in death.

The CDC's eviction moratorium originally had a "sunset" date of January 31, but was extended via Executive Order from President Biden, and is now set to expire on March 31, 2021. With COVID infection rates down across the country, it is unlikely the moratorium will be extended again. In fact, there's rumblings of its more imminent demise.

A Federal Court in Texas ruled in late February that the CDC's eviction moratorium was unconstitutional. In *Terkel v. Centers for Disease Control & Prevention*, No. 6:20-CV-00564, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021), the court found that the CDC's eviction moratorium exceeded the scope of Congress' powers under the Commerce Clause and the Necessary and Proper Clause of the Constitution. The plaintiffs in *Terkel* benefit from this ruling, as do other landlords in Texas; however, landlords in other states cannot rely upon the ruling as controlling precedent. The same or a sufficiently similar legal challenge must be mounted in other states for landlords in those states to benefit. In the meantime, the CDC (via the Department of Justice) plans to appeal the ruling and seek a stay of court's ruling; that appeal will undoubtedly remain undecided past March 31st.

Locally, Pittsburgh City Council issued a ban on evictions through March 15th. Whether that will be extended remains to be seen. At the County level, there is rent assistance available for those who qualify. This rent assistance includes periods of past due rent in arrears. To be eligible for this program, tenants must either (1) qualify for unemployment or experience reduced income; (2) demonstrate a risk of becoming homeless; or (3) have a household income at or below 80% of the area median. If they qualify, the tenants can receive up to 12 months of assistance with the priority on paying rent that is past due. Importantly, tenants and landlords may apply for this program and the funds are paid directly to the landlord. However, Allegheny County is not accepting new applications for the program until March 15, 2021 due to limited funding. Interested parties can check the website at <https://covidrentrelief.alleghenycounty.us/> for the reopening of applications.

Finally, on Thursday, February 25, 2021, the Allegheny County Courts extended its Judicial Emergency through June 30, 2021, and issued new procedures for landlord-tenant actions. This latest Judicial Emergency Order is another example of how Court procedures during COVID-19 remain in flux, and drastically differ from county to county. Please contact our office if you have any questions regarding landlord-tenant actions related to COVID-19. Thank you.

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