

CDC Issues National Moratorium on Residential Evictions: What it Means for Landlords and Tenants

Amundsen Davis Real Estate Alert
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On September 4, 2020, the Centers for Disease Control and Prevention (CDC) issued an order (Order) that places a moratorium on residential evictions due to non-payment of rent through and including December 31, 2020. While there is already debate occurring on whether the CDC has the authority to enact such a ban, the purpose of this alert is to summarize the Order for anyone who may be affected by its implementation rather than argue for or against its legality.

The Order came into existence because of the spread of the COVID-19 pandemic. In the Order, the CDC referenced a study that found that the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918, H1N1 influenza pandemic. The CDC found that eviction moratoria and housing stability helps protect the public health because homelessness increases the likelihood of individuals moving into close quarters at homeless shelters or other congregate settings.

The Order only applies to property that has been leased for residential purposes, but shall not apply to any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined by local laws. The Order also does not apply to foreclosure on a home mortgage, although it is unclear as to whether it prevents the removal of a mortgagor after the conclusion of a residential foreclosure case. Finally, the Order does not apply in any state, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than what is listed in the Order.

In order to invoke the protections of the Order, a residential tenant must provide a landlord with a declaration, under penalty of perjury, stating that, 1) they have used "best efforts" to obtain all available government assistance for rent or housing; 2) their income is less than \$99,000 in 2020 (or \$198,000 if filing joint income tax returns); 3) they are unable to pay rent due to substantial loss of household income; 4) they are using "best efforts" to make timely partial payments; 5) that if they are evicted they are likely to become homeless; 6) that

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they understand that they must still pay rent and abide by all other non-monetary terms of their residential lease; and 7) that the moratorium expires on December 31, 2020, and that the landlord may evict them after this date if full rent is not paid.

Because the Order is not effective against a landlord until after the tenant provides the declaration noted above, the Order does not prevent evictions from being completed if a sworn declaration is not given to the landlord by the tenant. If a tenant does not qualify for or seek to invoke the protections of the Order, it is inapplicable.

Residential landlords need to determine if state or municipal actions have been taken that provide the same or greater protection than the Order to determine if it applies.

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