

Residential Moratorium Redux: Has Anything Changed?

Article

Amundsen Davis Real Estate Alert

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By now we have all heard about the eviction moratorium order (Order) that was issued by the Centers for Disease Control and Prevention (CDC) in September, 2020. We have also likely heard that the moratorium expired, and then was re-implemented by the CDC. How has anything changed?

The only changes to the CDC moratorium are that: 1) it expires by its own terms on October 3, 2021; and 2) it only applies in U.S. counties experiencing “substantial” and “high” transmission of COVID-19, as those terms are defined by the CDC, as of August 3, 2021. These are the only meaningful differences between the September, 2020 moratorium, and the August, 2021 moratorium. A brief summary of the moratorium follows.

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 was 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 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 October 3, 2021, and that the landlord may evict them after this date if full rent is not paid.

PROFESSIONALS

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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.

While there are other questions about the new moratorium, like whether it is constitutional or not, those questions will need to be answered by the courts. Until there is a legal challenge and ruling by the courts on the constitutionality of the new moratorium Order, courts hearing eviction cases will likely adhere to the limitations in the Order. Everyone affected by the Order – owners, tenants, and mortgagees – should understand how the Order will affect their businesses or livelihood.

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