

CDC Issues Moratorium on Residential Evictions Through 2020

By: Steven E. Ostrow, C. Jason Kim and Marissa Levy

Real Estate Alert

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On September 1, 2020, the Centers for Disease Control and Prevention (CDC) announced that it was issuing an order (CDC Order) to temporarily halt residential evictions to prevent the further spread of COVID-19. The CDC Order became effective on September 4, 2020 and will remain in effect through December 31, 2020.

The purpose of the CDC Order is to keep tenants in their residences to reduce crowding in shelters or other shared housing and to reduce the number of unsheltered homeless, as those conditions have been shown to increase the spread of COVID-19.

Applicability & Protections

The CDC Order is broader than the previous eviction moratorium under the Coronavirus Relief and Economic Security Act (CARES Act), which applied only to federally-funded housing and expired on July 24, 2020. Eligible renters include those who qualified for a stimulus check under the CARES Act and individuals who expect to make less than \$99,000 this year or a joint-filing couple that expects to make less than \$198,000.

The eviction ban only suspends, for the duration of the CDC Order, proceedings brought for the nonpayment of rent. The CDC Order does not eliminate a tenant's obligation to pay rent to the best of their ability or to pay fees under their lease. Nor does the CDC Order alleviate a tenant's obligation to comply with all other lease terms and housing rules, permitting eviction for reasons other than failure to pay rent (including, for example, engaging in criminal activity on the premises, threatening the health or safety of other residents or violating any other contractual obligation). The CDC Order does not provide any monetary relief to tenants. Unpaid rent will continue to accrue for the duration of the moratorium, along with any additional late fees, which amounts will become due once the CDC Order expires.

State and local governments can still implement greater protections to renters, and the CDC Order will not supersede eviction moratoria in any area where equal or greater protections exist.

Requirements

To take advantage of the moratorium, a tenant, lessee or resident of residential property must provide their landlord with the executed Declaration Form attached to the CDC Order (or a declaration in substantially similar form), under penalty of perjury, which establishes that the occupant meets the following criteria:

- the individual has used best efforts to obtain all available government assistance for rent or housing;
- the individual either (i) 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); (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service; or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of 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 as close to full payment as possible, taking into account other nondiscretionary expenses; and
- eviction would likely make the declarant homeless or force the declarant to move into close quarters or shared living because no other options exist.

Penalties

Violation of the CDC Order may result in criminal penalties for an individual or organization, which differ depending on whether the violation results in a death. For individuals, where the violation does not result in a death, fines of up to \$100,000 or one year in jail, or both, may be imposed. Where the violation results in a death, fines of up to \$250,000 or one year in jail, or both, may be imposed. An organization violating the CDC Order is subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death.

Enforceability

The CDC Order was issued under a regulation implementing section 361 of the Public Health Services Act (PHS Act) that applies when the Director of the CDC determines that measures taken by state health authorities are "insufficient to prevent the spread of any . . . communicable diseases." When that determination is made, the regulation empowers the CDC Director to "take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection."

The enforceability of the CDC Order has already been questioned. One of the issues is whether the CDC Order exceeds the authority granted to the CDC Director under the PHS Act and the regulation. The regulation specifically refers to filling the gaps left by "insufficient" state-imposed public health measures, but does not expressly include actions overriding contracts between citizens such as the CDC Order which prohibits landlords from exercising their eviction rights under residential leases and state law. As with state-ordered eviction moratoriums and state rent relief laws, the courts will decide if the CDC Order is a valid exercise of the CDC's power to limit the spread of the pandemic.

Foreclosure and Eviction Moratoria Extensions

On August 27, 2020, the Department of Housing and Urban Development announced the third extension of its Foreclosure and Eviction Moratorium for properties with mortgages backed by the Federal Housing Administration through the end of the year. That same day the Federal Housing Finance Agency announced that Fannie Mae and Freddie Mac will extend their Eviction and Foreclosure Moratorium until at least December 31, 2020. The moratoria were set to expire on August 31, 2020.

If you have questions please contact Steven E. Ostrow (ostrows@whiteandwilliams.com; 212.714.3068), C. Jason Kim (kimcj@whiteandwilliams.com; 212.714.3077) and Marissa Levy (levymp@whiteandwilliams.com; 646.837.5753) or another member of our Real Estate and Finance Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

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