

Insights: Alerts

Broad Moratorium on Residential Evictions Issued by the CDC Faces Judicial Challenge

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Task Force page](#) and/or your email for updates.

On September 4, 2020, the Center For Disease Control (the “CDC”) issued a broad, nationwide, moratorium on residential evictions on the basis that it is an effort to prevent further spread of the COVID-19 virus. The order is in effect through December 31, 2020. Unlike prior moratoriums, this new moratorium applies to all residential rental properties regardless of how the properties are owned or financed. The moratorium applies only in a state or territory that has not enacted a comparable or more stringent moratorium on residential evictions. In states or territories that have enacted a moratorium on residential evictions, the state moratorium is likely to be the controlling restriction for landlords.

The CDC cited Section 361 of the Public Health Law (42 U.S.C. § 264) as authority for establishing the moratorium. Section 361 allows regulations “necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.” 42 U.S.C. § 264(a). COVID-19 is a communicable disease under this Section. The Order found that allowing evictions will cause people to relocate into homes of relatives or other congregant living arrangement and increase the unsheltered homelessness population. CDC further determined these circumstances increase the likelihood of spreading COVID-19 from a State or possession into another State or possession and a moratorium that allows eligible residential renters to remain in their current premises helps prevent the spread of COVID-19.

The CDC requires each tenant submit a Declaration to the landlord in order to be eligible for the protections of the eviction moratorium. A sample Declaration is attached as Exhibit A to the Order. The Declaration, made under penalty of perjury, must include the following statements concerning the individual's circumstances:

- He or she has “used best efforts to obtain all available government assistance for rent or housing”;
- He or she is expected “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 U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act”;

- He or she is unable to pay the full rent due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expense”;
- He or she is “using best efforts to make timely partial payments that are as close to full payment” as circumstances allow taking into account other nondiscretionary expenses”; and
- He or she will either become homeless or move into a residence shared by others who live in close quarters because no other housing options are available.

In addition, the individual must acknowledge responsibility for paying the full rent and all other fees and these fees may be due and owing when the moratorium ends on December 31, 2020. The eviction moratorium does not mean that all tenants can skip paying their rent. Tenants are expected to pay some or all of their rent in accordance with their lease if possible. Landlords can work with their tenants to develop a payment plan just as they have in the past. The order also explicitly states that landlords can continue to charge late fees, penalties and interest on unpaid rent.

The CDC Order is being challenged. There is a lawsuit pending in the United States District Court for the Northern District of Georgia styled as *Brown v. Azar*, Civil Action No. 1:20-CV-03702-JPB. The lawsuit alleges the moratorium order was issued in violation of the federal Administrative Procedures Act and violates the right to access to the courts guaranteed by the United States Constitution, the Supremacy Clause and the Tenth Amendment.

The Plaintiff requested a hearing on a Temporary Restraining Order. A hearing has not been scheduled and no injunctive relief has been granted. Thus, the Order currently remains in place and enforceable in States where no stricter eviction moratorium has issued.

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