

Insights: Alerts

CDC Orders Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

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On January 29, 2021, the Centers of Disease Control and Prevention Department of Health and Human Services (“**CDC**”) issued Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2 (the “**CDC Order**”) providing that “[s]ubject to applicability a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies” modifying and extending the previous moratorium order issued by the CDC to March 31, 2021.¹

The key provisions include the following:

- The CDC Order provides prior to March 31, 2021 (the “**Moratorium Period**”), an eviction proceeding cannot be commenced to remove “covered person” from a “residential property”.
- The CDC Order does not override any state, local, territorial, or tribal law that provides the same or greater level of public-health protection than the CDC Order, nor does it preclude the imposition of additional requirements that provide greater public-health protection and are more restrictive than the CDC Order.
- The CDC Order expands the scope of the prior order to include American Samoa.
- The CDC Order does not (A) suspend the obligation to pay rent, make a housing payment, or comply with any other lease obligations or (B) prevent the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent on a timely basis.
- In addition, nothing in the CDC Order precludes evictions based on a tenant: (A) engaging in criminal activity while on the premises; (B) threatening the health or safety of other residents²; (C) damaging or posing an immediate and significant risk of damage to property; (D) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (E) violating any other contractual obligation, other than the timely payment of rent (including non-payment or late payment of fees, penalties, or interest).

Key Terms:

- The CDC Order defines “covered person” as any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue

eviction or a possessory action, a declaration under penalty of perjury indicating that:

1. The individual has used best efforts to obtain all available government assistance for rent or housing;
 2. The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
 3. 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 (defined as any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year);
 4. the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
 5. eviction would likely render the individual homeless-or force the individual to move into and live in close quarters in a new congregate or shared living setting-because the individual has no other available housing options.
- The CDC Order defines “**evict**” and “**eviction**” as any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a residential property. It also does not include foreclosure on a home mortgage.
 - The CDC Order defines “**residential property**” to mean any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

Footnotes

¹ On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021.

² Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents.

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