

CDC Moratorium on Residential Evictions Continues but Not Without Exception

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On March 28, 2021, the United States Centers for Disease Control and Prevention (CDC) extended its nationwide moratorium on residential evictions, prohibiting the eviction of residential tenants who qualify under the CDC's rules. Due to expire on March 31, 2021, the moratorium will remain in effect until June 30, 2021.

Residential landlords will note that the moratorium is not blanket in nature and does not bar all residential evictions.

The moratorium only applies to monetary defaults. If a residential tenant breaches his/her lease via any conduct other than the failure to pay rent, then the moratorium is inapplicable.

Additionally, the moratorium only applies to "covered persons." The moratorium defines "covered persons" as persons who provide a declaration, under penalty of perjury, that the following conditions apply to them:

1. They have used best efforts to obtain all available government assistance for rent or housing;
2. They either (i) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020, or expect to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000.00 if filing a joint tax return), (ii) were not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (i.e., a stimulus check);
3. They are 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 layoff, or extraordinary out-of-pocket medical expenses;
4. They are using best efforts to make timely partial payments that are as close to the full payment as their circumstances permit, taking into account other nondiscretionary expenses; and
5. Eviction would likely render them homeless, or force them to move into and live in close quarters in a new congregate or shared living setting, because they lack other available housing options.

If a residential tenant fails to provide the foregoing averments, then the moratorium is inapplicable.

Finally, some courts are even striking the moratorium down on constitutional grounds. Last week, a United States district court judge in Texas ruled that the federal government exceeded its constitutional power by imposing the moratorium. The judge quipped, "Although the COVID-19 pandemic persists, so does the Constitution."

Given the fluidity of the residential eviction legal landscape due to COVID-19, residential landlords should continue to remain apprised of the changing laws and regulations that may (or may not) affect their remedies against defaulting tenants.