

Agency Order Issued by CDC: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

September 08, 2020

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Effective immediately upon publication in the Federal Register through December 31, 2020: Broad, sweeping order precluding residential evictions through the end of 2020 from any residential property (private or government owned) where tenant provides the required form of declaration to their landlord.

Summary

A Landlord shall not evict any “covered person” from any residential property.

- Does not apply in any state with a moratorium on residential evictions that provides the same or greater level of public health protection than the requirements in the Order.
- Does not preclude state and local authorities from imposing additional requirements that provide greater public health protection and are more restrictive than the requirements in the Order.
- Does not relieve any individual of the obligation to pay rent or comply with any other obligation that the individual may have under a lease.
- Does not preclude the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent on a timely basis under the terms of any applicable contract.

These persons may still be evicted for reasons other than not paying rent.

How to Invoke the Order

- Tenants must provide an executed copy of the declaration form (or a similar declaration under penalty of perjury) to their landlord of the residential property where they live.
- Each adult listed on the lease should complete and provide a declaration.
- These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live.

The Order prevents these persons from being evicted or removed from where they are living through December 31, 2020.

Who Is a "Covered Person"?

A “covered person” is a tenant of a residential property who provides to their landlord a declaration under penalty of perjury indicating that:

- The individual has used best efforts to obtain all available government assistance for rent.
- The individual either (1) expects to earn no more than \$99,000 in annual income for 2020 (or no more than \$198,000 if filing a joint tax return), (2) was not required to report any income in 2019 to the IRS, or (3) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
- The individual is unable to pay the full rent due to substantial loss of household income, loss of compensable hours of work or wages, a layoff, or extraordinary out-of-pocket medical expenses.
- 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.
- 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.

Criminal Penalties

Any person violating the Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death, or one year in jail, or both, or as otherwise provided by law.

An organization violating this Order may be 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 or as otherwise provided by law.

The U.S. DOJ may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

Authority for Agency Order

Agency states the Order is “a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States” and that “measures by the states, localities, or U.S. territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.”

Agency claims the Order is not a “rule” within the meaning of the Administrative Procedure Act (APA) but rather “emergency action taken under the existing authority of 42 CFR 70.2.”

However, to the extent the Order qualifies as an APA rule, Agency claims “notice and comment and a delay in the effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in the effective date,” citing 5 U.S.C. 553(b)(3)(B).

Finally, the Order states that if it qualifies as a rule under the APA, “the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date.” Agency claims “there would be good cause under the CRA to make the requirements herein effective immediately.”

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