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INSIGHT

Federal Eviction Moratoriums in Response to the COVID-19 Pandemic

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On September 4, 2020, the Centers for Disease Control and Prevention (CDC) imposed a nationwide temporary federal moratorium on residential evictions due to nonpayment of rent. The stated purpose of the order is preventing the further spread of Coronavirus Disease 2019 (COVID-19), specifically by preventing homelessness and overcrowded housing conditions resulting from eviction. The action, which followed an Executive Order directing the CDC to consider such a measure, is unprecedented, both in terms of the federal reach into what is traditionally state and local governance of landlord-tenant law and its use of a public health authority for this purpose.

The national eviction moratorium took effect less than two weeks after the expiration of a different and narrower set of eviction protections established by the CARES Act (§4024).

This Insight compares the two eviction moratoriums across several key features and ends with a review of implementation issues raised by the CDC moratorium.

Key Features

Time Period

The CARES Act eviction moratorium began on March 27, 2020 and ended on July 24, 2020. Covered tenants could not be forced to vacate until 30 days after the expiration of the moratorium (August 23, 2020).

The national eviction moratorium issued by CDC took effect September 4, 2020, and was initially slated to extend through December 31, 2020, but was extended legislatively through January 31, 2021. On January 20, 2021, CDC announced its intent to extend the existing eviction moratorium order through March 31, 2021. It does not address notices to vacate.

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Coverage

The CARES Act eviction moratorium applied to federally related properties, which the act defined as properties participating in federal assistance programs or with federally backed financing. Researchers estimate the CARES Act eviction moratorium applied to between 28% and 46% of occupied rental units nationally.

The CDC eviction moratorium applies to all renters who attest to meeting income and other eligibility criteria set out in the order, which include having made all efforts to obtain government assistance for rent and being at risk of homelessness or overcrowded housing conditions upon eviction. Renters must assert their right to protection under the order by submitting a signed declaration of eligibility to their landlords (Attachment A of the order).

The CDC moratorium does not supersede more protective state and local government eviction protections.

Cause

The CARES Act eviction moratorium prohibited landlords from initiating eviction proceedings against a covered tenant for the nonpayment of rent and related fees.

The CDC eviction moratorium prohibits evictions for nonpayment of rent and related fees.

Fees, Penalties, and Back Rent

The CARES Act eviction moratorium prohibited landlords from charging fees or penalties for unpaid rent during the period of the moratorium. The law did not forgive unpaid rent amounts.

The CDC eviction moratorium does not prohibit landlords from charging fees or penalties for unpaid rent. Like the CARES Act, it does not forgive unpaid rent amounts.

Enforcement

The CARES Act eviction moratorium did not include any penalties for noncompliance or other provisions related to enforcement.

The CDC eviction moratorium contains several provisions related to enforcement, including potential penalties for landlords that violate the order and potential penalty of perjury for tenants who falsely declare their eligibility.

Implementation

The CDC eviction moratorium raises a number of questions that may continue to be at issue while the moratorium is in effect.

The legality of the order. A number of legal challenges to the CDC's action have been filed in federal court. Some federal district courts have held that the CDC has the statutory authority to issue the order and rejected plaintiffs' motions to enjoin its enforcement, while others have ruled in favor of landlords and other plaintiffs, holding the order unlawful. As of the date of this Insight, no rulings in favor of landlords apply nationwide, and cases are being appealed.

How the order will be enforced. Under state and local laws, contested evictions generally must be approved by local courts and any ambiguities in the CDC order are to be resolved by those courts. Press accounts suggest that courts across the country have begun to interpret the CDC eviction order's applicability, protections, and requirements. State court systems in Texas, Maryland, and Michigan, for example, have issued orders or guidance related to the CDC moratorium applicable in those states.

On October 9, 2020, the Administration released additional guidance about the eviction moratorium. It states that the order "does not preclude a landlord from challenging the truthfulness of a tenant's declaration" in court and "is not intended to prevent landlords from starting eviction proceedings," although actual evictions are prohibited while the order is in effect.

Will the order be effective in stopping evictions, particularly if tenants are unaware of the order or if there is confusion among courts, tenants, and landlords about if or how it applies? Since the CDC eviction moratorium has been in place, news articles report that evictions have continued, with landlords raising lease violations or lease expiration as grounds for eviction rather than nonpayment of rent, and that some tenants have been found not to have met the requirements of the order. It is unclear whether the potentially applicable penalties for violations of the CDC order have affected landlord decisions to pursue evictions and tenant decisions to pursue protections.

What are the implications of the moratorium, for both landlords, who are owed significant back rent, and for tenants, who owe rent and could face eviction when the moratorium ends? Recent research estimates that total rental arrears were $57 billion as of the end of January 2021.

The CARES Act provided funding that some states and localities have used to assist renters, and, since the CDC eviction moratorium was put in place, additional funding targeted to rental assistance has been appropriated. The FY2021 Consolidated Appropriations Act included $25 billion for states and localities to fund an Emergency Rental Assistance (ERA) program (Division N; §501). The American Rescue Plan Act provided an additional $21.55 billion for the ERA program (§3201).

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