

Locke Lord QuickStudy: Centers for Disease Control Order: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

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Introduction

In an action intended to mitigate the spread of COVID-19 and pursuant to authority under 42 U.S.C. 264¹ and 42 CFR Section 70.2,² the Centers for Disease Control (“CDC”) published an order (“Order”) on September 1, 2020, that, when it becomes effective, will prohibit landlords, property owners, and any “other person with a legal right to pursue eviction or possessory action” from evicting certain tenants and other occupants of residential property (each, a “Covered Person”) from that property.

The Order defines “evict” or “eviction” as any action to remove or cause the removal of a “Covered Person” from a residential property pursuant to a legal “right of eviction or a possessory action. The Order applies only to leased residential property, and expressly does not include a foreclosure on a home “mortgage.”

The Order provides that a “person” who holds eviction rights includes corporations, partnerships, and other entities, as well as individuals.

Effective Date, Expiration, and Jurisdiction

The Order is effective upon its publication in the Federal Register. Publication is expected on September 4, 2020. Unless rescinded, modified, or extended, the Order expires on December 31, 2020.

The Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection as the requirements listed in the Order. Practically speaking, this means the Order covers any jurisdiction in which there is not in effect a residential-eviction moratorium that is at least as broad as the CDC’s Order.

The Order does not preclude State, local, territorial, and tribal authorities from imposing additional “requirements that provide greater public-health protection and are more restrictive than “the requirements in the CDC’s Order.”

Who is Covered by the Order

The ban applies to the eviction of “Covered Persons.” A Covered Person is any tenant, lessee, or resident of property leased for residential purposes (excluding a hotel, motel, or other guest house rented to a temporary guest) who signs and delivers a declaration (“Declaration”) stating under penalty of perjury that the person:

- has used best efforts to obtain all available government assistance for rent or housing;
- either (i) expects 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), or (ii) was not required to report any income in 2019 to the IRS, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- cannot 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;
- 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
- if evicted would likely be homeless or forced to move into and live in close quarters in a congregate facility or other shared living setting (e.g., a shelter) because the person has no other available housing options.

The Order includes a form that may be used as a Declaration. A copy of the form is included at the end of this memorandum. Note, however, that any statement that contains the substance of the foregoing elements satisfies the requirements of the Order, provided the Declaration states it is made under penalty of perjury.

Who Must Complete the Declaration.

The Order provides that “[e]ach adult listed on the lease, rental agreement, or housing contract should complete this declaration.” The Order does not provide guidance on what is meant by “listed on the lease...” However, because the Order bars the eviction of “residents,” as well as “tenants” and “lessees,” any adult authorized under the lease to reside at the Property should sign a Declaration.

To Whom Must the Declaration be Delivered

Under the Order, Covered Persons must sign and deliver a Declaration to “to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live?” Although the Order does not expressly provide for it, it would be prudent for a landlord to treat delivery of a Declaration to a property manager as effective delivery.

What the Order Does Not Cover: Rent and Other Lease Obligations

The Order is limited. While it is in effect, it provides only for a moratorium on evictions. It expressly does not relieve any obligations to pay rent, make a housing payment, or comply with any other lease obligations. The Order does not preclude charging or collecting fees, penalties, or interest for a failure to pay rent on a timely basis. Thus, rental obligations continue to accrue, and a tenant may be held liable for back rent and fees when the moratorium expires.

The Order merely limits a landlord’s enforcement of eviction rights as a remedy for nonpayment of rent. The Order expressly provides that it does not preclude evictions based on a tenant’s: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents (although a tenant who contracts COVID-19 and takes reasonable precautions to not spread the disease should not be evicted for health or safety

reasons); (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other lease obligation, other than the timely payment of rent or similar housing-related payments (including non-payment or late payment of fees, penalties, or interest).

Penalties for Noncompliance

The Order provides that a person violating the Order may be subject to a fine of up to \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of up to \$250,000 if the violation results in a death or one year in jail, or both. An organization violating the Order may be subject to a fine of up to \$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.

These penalties are in addition to any other penalties that might be imposed under other applicable law.

Promulgated Form of Declaration

The form of Declaration included in the Order can be found [here](#).

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