



Guidance on CDC Order Temporarily Halting Certain Evictions

September 3, 2020

On September 4, 2020 the Centers for Disease Control and Prevention (CDC) is issuing an order to temporarily halt certain residential evictions. Below are the major provisions of the Order and related guidance.

What Does the Order Limit?

- Under the Order, a landlord, owner of a residential property, or other person with a legal right to pursue eviction shall not evict any **covered person** from any residential property in any jurisdiction through December 31, 2020.
- The Order does NOT stop the eviction process—instead, it obligates residents to execute and deliver a declaration to trigger the Order’s protections.
- Rental housing providers may proceed with their normal business operations, including delivering notices of non-renewal, notices to vacate and filing eviction petitions **unless and until** they receive a signed declaration from the resident and the declaration meets the criteria in the Order.

Who Does the Order Apply to?

- Any owner, landlord, or management company of residential property which includes homes, apartments, mobile homes, land in a mobile home park, or other dwelling leased for residential use.
- Does not apply to hotel, motels or other temporary guests, which should include short-term rentals.

Does the Order Protect all Residents?

- No, **only residents in rental properties who sign and deliver** to the owner (their landlord, the owner of the residential property, or other person with a legal right to pursue eviction) **a declaration**, under penalty of perjury, indicating that:
 - the individual has used best efforts to obtain all available government assistance for rent or housing;
 - the individual either:
 - 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);
 - was not required to report any income in 2019 to the IRS; or
 - received an Economic Impact Payment (stimulus check) pursuant to the CARES Act;
 - 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;
 - 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
 - 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 housing options.

Residents are required to provide an executed copy of the Declaration form (Attachment A in the Order) or a similar form under penalty of perjury. If a Resident gives an owner a form with this information, is the owner obligated to temporarily halt the eviction process?

- Yes, if the declaration meets the criteria. There is no process discussed in the Order regarding challenging or verifying a declaration. If you want to challenge the validity of a declaration, you should consult legal counsel.
- ***Owners should stop where they are in the eviction process any time they receive a declaration to evaluate the declaration and determine whether it complies with the Order.***

If multiple adults reside in a unit, are all the residents covered if only one provides this information?

- No. Protections are on a per-resident basis. Remember, to invoke the Order, a resident must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to the owner. Each adult listed on the lease should likewise complete and provide a declaration.
- The Order also provides that “available government assistance” means any governmental rental or housing payment benefits available to the individual or any household member. Thus, **all household members would need to show they applied for all government assistance available.**

Does the Order excuse residents from paying rent or other charges due under their leases?

- No, rent and other sums remain due and all late fees or other charges for failure to timely pay may be charged or collected.

Can late fees and other penalties accrue during the Order’s effective period?

- Yes. Late fees, penalties, and interest may accrue during the Order’s effective period (September 4, 2020 through December 31, 2020).

Are there circumstances when an owner can still evict a tenant?

- Yes, evictions for non-payment of rent can continue if the resident does not provide the required declaration. Even if you receive a valid declaration, evictions for anything other than monetary defaults may still proceed under the Order. This would include, but not be limited to:
 - for engaging in criminal activity while on the premises;
 - threatening the health or safety of other residents;
 - damaging or posing an immediate or significant risk of damage to property;
 - violating any applicable building code, health ordinance or similar regulation relating to health and safety; or

- violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Are owners required to disclose this Order and its provisions to their residents?

- No, there is no requirement for owners to disclose this Order or any of its provisions to their residents.

Does the Order provide additional rental assistance programs for residents?

- No. The Order does not include additional emergency rental assistance or funding for residents. The Order provides a reminder to States and units of local government of emergency funding already in place to fund rental assistance programs to prevent evictions, including grants from the Department of Housing and Urban Development (HUD) and the Coronavirus Relief Fund from the Department of the Treasury.

How does this impact other local orders and ordinances?

- The protections of this Order are in addition to, and do not replace, the protections provided by other valid state and local protections. For more information, see [this article](#) discussing a [recent Texas attorney general opinion](#) on the validity of local eviction-related orders. (These links are Texas-specific).
- 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 than the requirements listed in this Order.
- Check with your local Court or on the Court's website for any rules your Court may have developed regarding implementation of this CDC Order.

What are the penalties if an owner violates this Order?

- An individual found to violate it would be subject to federal criminal prosecution with a fine of up to \$100,000 and/or a year in jail if the violation did not result in a death, or up to a \$250,000 fine and/or a year in jail if the violation did result in a death.
- An organization found to violate it would be subject to a fine of up to \$200,000 per violation if the violation did not result in a death or \$500,000 if the violation did result in a death.

Does the Order Apply to All U.S. Jurisdictions?

- Yes. The Order does not currently apply to American Samoa, which has no reported cases of COVID-19, until such time as cases are reported.

DISCLAIMER: This guide was developed by Texas Apartment Association and the National Apartment Association. The Order is subject to additional analysis and interpretation. This information in this guide is intended to provide you with general information about the Order from our perspective and does not constitute legal advice. It is informational only and does not replace the advice of your own legal counsel. It is uncertain how courts will interpret and apply this Order. We continue to monitor the developments surrounding Coronavirus (COVID-19) and update our members in due course.