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CDC Orders Freeze on Residential Evictions Until December 31, 2020

Effective September 4, 2020, the [Centers for Disease Control and Prevention](#) (CDC) issued the "[Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19](#)" (the "Eviction Moratorium") to help prevent the spread of COVID-19. The Eviction Moratorium comes eight days after the end of the 120 day eviction moratorium established by the [Coronavirus Aid, Relief and Economic Security Act](#) (the "CARES Act"), which prohibited landlords from forcing tenants to vacate their residential leased premises from July 24 until August 27, 2020. The Eviction Moratorium expires at the end of this year and applies nationally to any state, local, territorial, or tribal area that does not have a moratorium with the same or a greater level of protection on residential evictions, with the exception of the American Samoa (until COVID-19 cases are reported). The Eviction Moratorium simply sets the minimum protections for residential tenants in the nation and does not preempt local governments from enacting eviction moratoriums with superior protections, which some have already done while others have proposals to do so. A landlord's failure to comply with the Eviction Moratorium by evicting a qualified residential tenant may result in a steep criminal penalty, including a year in jail or a fine up to \$500,000.

Who is Covered?

The Eviction Moratorium prohibits landlords from evicting qualified residential tenants from September 4 through and including December 31, 2020 for non-payment of rent. Hotel rooms, motel rooms, and homes rented on a temporary or seasonal basis (such as a condo rented for a one week vacation) are not covered by the Eviction Moratorium. Additionally, the Eviction Moratorium does not prohibit the eviction of tenants who violate other obligations under their lease or occupancy agreement or under the law, such as: (1) engaging in criminal activity on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an imminent risk of significant damage to the premises; or (4) violating

any codes, ordinances, or regulations related to health and safety.

Under the Eviction Moratorium, legal evictions are stayed for residential tenants who declare that they meet the following requirements and are not otherwise in violation of their lease or occupancy agreement, or the law, besides for the non-payment of rent.

- The tenant used best efforts to obtain all government assistance for rent or housing offered, such as applying for grants offered by the [Department of Housing and Urban Development](#) (HUD).
- The tenant meets one of the following financial conditions: (1) has an expected annual income of no more than \$99,000 for 2020 or no more than \$198,000 if filing jointly; (2) had no requirement to report any income to the [Internal Revenue Service](#) (IRS) in 2019; or (3) received a stimulus check per the CARES Act.
- The tenant is unable to pay rent because of either a substantial loss of household income (for example, a furlough or lay-off) or extraordinary medical expenses not covered by insurance.
- To the best of its ability, the tenant is making partial payments on time that are as close as possible to the full payment, given the tenant's circumstances.
- An eviction would likely cause the tenant to become homeless or force the tenant to live in close quarters in a new congregate or shared living arrangement.

To legally invoke the protections under the Eviction Moratorium, residential tenants are required to declare that they meet all the above requirements by executing a declaration under penalty of perjury and providing it to their landlord. The CDC offers a form declaration that residential tenants can use.

Continuing Obligations

The Eviction Moratorium is a temporary measure deferring tenants' rent obligations; it does not abate or waive tenants' rent obligations

under a lease or occupancy agreement. On the expiration of the moratorium, landlords have the right to collect from residential tenants the full amount of the unpaid rent together with charges for interest, penalties, or other fees for tenants' failure to pay rent on time (to the extent provided in the lease agreement) as well as pursue all remedies available under applicable laws.

Authority and Rationale

The CDC does not issue orders impacting the national real estate leasing market every day. While some may argue that the CDC has overstepped its powers (and will no doubt challenge the enforceability), the CDC bases its authority to issue the Eviction Moratorium on Section 361 of the Public Health Service Act ([42 CFR § 70.2](#)), which the CDC also uses to issue Orders for Quarantine. Under 42 CFR § 70.2, the Director of the CDC is authorized to take measures to prevent the spread of disease if the Director determines state and local health authorities have not sufficiently done so. According to the CDC, the enactment of the Eviction Moratorium stems from the novel coronavirus and the CDC's intent to stop its spread. The CDC points to the many steps already taken to control the spread of coronavirus, including border closures, stay-at-home-orders, mask requirements, and the continued spread of coronavirus despite these efforts. The CDC notes that eviction moratoria can be an effective measure to prevent the spread of communicable diseases, such as the coronavirus. By prohibiting legal evictions for failure to pay rent, more individuals who are either ill or more susceptible to the consequences of this disease because of underlying health conditions can self-isolate. Additionally, it allows state and local governments to more effectively implement quarantine and social distancing directives to help slow the spread of coronavirus if individuals have a place to live. The CDC also points to the increase of homelessness and congregate housing arrangements as it correlates to the spread of the coronavirus—the more individuals in homeless shelters and other similar shared living settings, the more difficult it becomes to social distance to prevent the spread of the disease. Lastly, the background to the Eviction Moratorium notes that unsheltered

homeless individuals have an increased likelihood of experiencing severe illness from coronavirus.

Implications

Unlike the CARES Act, the CDC's Eviction Moratorium does not provide residential tenants with rent relief funds or other monetary aid to pay rent. When the moratorium ends January 1, 2021, tenants will be obligated to pay deferred rent, plus penalties and interest, to their landlords or possibly be evicted. Residential tenants are facing financial uncertainty given the COVID-19 pandemic, and despite the moratorium, may still be unable to pay their debts to landlords in 2021. Landlords may be faced with an influx of tenants claiming under the Eviction Moratorium resulting in unexpected consequences from rent deferrals, such as the inability to pay their lenders or honor their own lease obligations. Landlords should be prepared for how this could impact their business and know their legal rights when it comes to the Eviction Moratorium. Understanding the requirements under the Eviction Moratorium will be critical for both tenants and landlords in these next four months. Failing to correctly evict (as a landlord) or invoke the moratorium (as a tenant) could result in unintended consequences that both parties want to avoid.

For more articles about legislation passed concerning COVID-19 and other COVID-19 legal issues, visit Frost Brown Todd's [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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