

Eviction Protections During the COVID-19 Pandemic

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Housing instability and homelessness have enormous consequences for individuals, their communities, and our nation's public health. Evictions put lives at risk and strain our already overstretched public health systems. Families evicted from their homes and forced to double or triple up with other families face greater challenges in practicing social distancing. This challenge is heightened for people experiencing homelessness – whether in shelters or encampments – who find it impossible to self-quarantine. People who are homeless and contract coronavirus are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general public.

Recognizing that eviction moratoriums – like quarantine, isolation, and social distancing – are effective public health measures to prevent the spread of coronavirus, the federal government issued two temporary moratoriums on evictions for nonpayment of rent during the COVID-19 pandemic. The federal eviction protections enacted through the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” and then by the Centers for Disease Control and Prevention (CDC) were supplemented by a patchwork of state and local moratoriums implemented by governors and local officials.

CARES ACT EVICTION AND FORECLOSURE MORATORIUM

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), enacted March 27, 2020 instituted a 120-day federal eviction moratorium for tenants in certain rental properties with federal assistance or a federally-backed mortgage. The moratorium prohibited owners of covered properties from filing new evictions against tenants for

nonpayment of rent and charging additional fees related to nonpayment. Under the CARES Act moratorium, housing providers were required to provide tenants a 30-day notice to evict for nonpayment, which could not be given until after the 120-day moratorium period ended on July 24, 2020.

The moratorium enacted in CARES Act Section 4024(b) covered most residents of federally-subsidized housing programs, including those supported by HUD, USDA, or Treasury (Low Income Housing Tax Credit developments). The moratorium also extended to renters living in single-family and multifamily properties financed by federally-backed mortgages, such as those financed through Fannie Mae, Freddie Mac, HUD, or other federal agencies.

Additionally, the CARES Act instituted a moratorium on foreclosures for federally-backed mortgages. Landlords of federally-backed multifamily properties could request up to 90 days of forbearance, during which they were prohibited from evicting any tenants for nonpayment of rent.

The CARES Act offered renters eviction protections broader in scope than the measures enacted by the Federal Housing Finance Agency (FHFA) and the Federal Housing Administration (FHA) in response to the pandemic. FHFA, the regulator that oversees federally-backed mortgages, enacted a moratorium on some evictions and single-family foreclosures with loans backed by Fannie Mae or Freddie Mac, which was extended until February 28, 2021. The FHA also enacted a foreclosure and eviction moratorium for homeowners with FHA-insured single-family mortgages covered under the CARES Act, which was extended through March 31, 2021.

Shortcomings of CARES Act Moratorium

While the moratorium provided many renters an important short-term reprieve, it did not prevent people from accruing housing debt. Additionally, the limited CARES Act moratorium covered only 30% of renters nationwide, leaving many low-income households at risk of losing their homes during the pandemic.

Our country's complicated housing finance system made it difficult for renters to know if they were protected under the CARES Act, allowing some landlords to continue evicting tenants despite the moratorium. NLIHC created a searchable database and interactive map to allow some renters to determine whether their home was covered by the CARES Act moratorium. The federal eviction moratorium, however, lacked compliance and enforcement mechanisms, resulting in families losing their homes through evictions that violated the CARES Act.

Advocates urged Congress and federal agencies to enact a national, uniform moratorium on eviction and foreclosures for nonpayment of rent that would provide broader protections for renters and homeowners.

CDC FEDERAL EVICTION MORATORIUM

The CDC took unprecedented action on September 1, 2020 by issuing a temporary national moratorium on most evictions for nonpayment of rent to help prevent the spread of coronavirus. Citing the historic threat to public health posed by coronavirus, the CDC declared that an eviction moratorium would help to ensure that people are able to practice social distancing and comply with stay-at-home orders. The CDC eviction moratorium followed the expiration of many state and federal orders, including the CARES Act.

Effective September 4, the order declared a national moratorium on residential evictions for eligible renters for nonpayment of rent and nonpayment of other fees or charges until December 31, 2020. The emergency COVID-19 relief legislation enacted by Congress in December through the “Consolidated

Appropriations Act of 2021” extended the CDC eviction moratorium through January 31, 2021. President Joe Biden on January 20 issued an executive order instructing the CDC to immediately extend the federal eviction moratorium through March 2021. CDC Director Rochelle Walensky announced that the CDC will extend its eviction moratorium until at least March 31, 2021.

Any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and had not been completed, were subject to the moratorium. The CDC moratorium did not include rental assistance, and renters remained responsible for paying any back rent and fees accumulated during the moratorium.

To qualify for the protections, an individual was required to 1) be a “tenant, lessee, or resident of a residential property” and 2) provide a signed declaration to their landlord stating that they:

- Have “used best efforts to obtain all available government assistance for rent or housing;”
- Expect to earn no more than \$99,000 annually in 2020-2021 (or no more than \$198,000 jointly), or were not required to report income in 2019 to the IRS, or received an Economic Impact Payment;
- Are unable to pay rent in full or make full housing payments due to loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical costs;
- Are making their best efforts to make timely partial payments as close to the full rental/housing payment as possible;
- Would likely become homeless, need to live in a shelter, or need to move in with another person (aka live doubled-up) because they have no other housing options;
- Understand they will still need to pay rent at the end of the moratorium; and
- Understand that any false/misleading statements may result in criminal and civil actions.

The order applied to every state and territory with reported cases of coronavirus and to all standard rental housing, including mobile homes or land in a mobile home park.

In issuing the order, the CDC cited section 361 of the “Public Health Service Act” (42 USC § 264 and a regulation pursuant to the act, 42 C.F.R. 70.2), which grants the Secretary of Health and Human Services broad authority to enact measures to prevent the spread of disease. Landlords, property owners, and housing industry groups, however, filed numerous legal challenges against the CDC eviction moratorium in federal, state, and local courts, often arguing that the CDC did not have the authority to issue the order. These lawsuits contributed to legal uncertainty about the order, resulting in varying interpretations in court and uneven application and protections for renters.

Shortcomings of the CDC Eviction Moratorium

The federal eviction moratorium extended vital protections to renters at risk of eviction during the pandemic, helping to keep stably housed millions of people who otherwise would have been evicted. The CDC order, however, had significant shortcomings that prevented renters from making full use of the moratorium’s protections.

To receive protection under the CDC order, renters had to know about the moratorium and take affirmative steps to be protected. As a result, far too many eligible renters, especially those with the lowest incomes who may not have access to legal aid attorneys, internet, or printers, and other marginalized people such as immigrants, seniors, and people with disabilities, were wrongfully evicted from their home.

The CDC issued on October 9 a [Frequently Asked Questions](#) (FAQ) document that created loopholes in the moratorium’s protections, undermining the intent of the order by eroding protections for renters and making it more difficult for struggling renters to remain stably housed. The FAQ stated, contrary to the original order, that landlords may challenge tenant declarations and initiate eviction proceedings at any time, as

long as physical executions are not executed. Allowing landlords to challenge renters’ declarative statements created new opportunities for landlord intimidation and further shifted the burden to struggling renters who must gather paperwork to prove they need assistance to stay housed during the pandemic. Permitting landlords to initiate eviction proceedings – even when covered renters cannot be evicted until the moratorium ends – served no purpose other than to mislead, pressure, scare, or intimidate renters into leaving sooner.

While the CDC order imposed criminal penalties on landlords who violated the moratorium, no entity or persons were enforcing the order and there was no mechanism for renters to file complaints against landlords who violated the order. As a result, the criminal penalties in the order did not deter improper evictions and landlords continued to evict renters in violation of the moratorium without consequence. There were numerous cases where landlords evicted renters from their homes, even though renters provided their landlords with a signed declarative statement.

The CDC moratorium was a public health necessity, providing stability to millions of people who would have lost their homes. NLIHC and advocates across the country urged the CDC to extend, strengthen, and enforce the order’s protections. The CDC could have addressed the eviction moratorium’s shortcomings by making the protections automatic and universal, rescinding its FAQ document that weakened the moratorium’s protections, establishing a hotline number that renters could use to file complaints against landlords who violate the moratorium, and directing the U.S. Department of Justice to enforce the order.

FORECAST FOR 2021 / NEED FOR EMERGENCY RENTAL ASSISTANCE

The federal eviction moratoriums, paired with a patchwork of state and local protections, provided critical, short-term relief to many low-income households. However, eviction moratoriums, on their own, are not enough to prevent a wave

of evictions and an increase in homelessness when the protections are lifted and back-rent is owed. Emergency rental assistance is needed to keep renters stably housed after moratoriums are lifted and to ensure the continued viability of our country's essential affordable housing infrastructure.

The initial CDC order did not include emergency rental assistance. The COVID-19 relief bill enacted in December, however, established a \$25 billion Emergency Rental Assistance (ERA) program administered by the U.S. Department of the Treasury through the Coronavirus Relief Fund. Congress enacted and President Biden signed into law the “American Rescue Plan Act” in March 2021. The legislation includes nearly \$50 billion in essential housing and homelessness assistance, including over \$27 billion for rental assistance and \$5 billion in new funding for states and cities to provide housing stability for tens of thousands of people experiencing homelessness.

The American Rescue Plan Act did not include an extension of the federal eviction moratorium because the mechanism (“reconciliation”) that Democrats used to quickly pass the bill did not allow for it to be included. NLIHC has continued to urge President Biden and his administration to extend, strengthen, and enforce the eviction moratorium to keep renters stably housed while vital relief funds are distributed.

FOR MORE INFORMATION

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), <https://bit.ly/36HqwrX>.

NLIHC's Analysis of the CARES Act, <https://bit.ly/2JODPxe>.

National Housing Law Project (NHLP) Summary and Analysis of Federal CARES Act Eviction Moratorium, <https://bit.ly/39yMwXk>.

CDC Order: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, <https://bit.ly/2VEDJv2>.

CDC Federal Eviction Moratorium: Frequently

Asked Questions, <https://bit.ly/37Bq513>.

The “Consolidated Appropriations Act of 2021” (Pub. L. No. 116-260), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

NLIHC's National Eviction Moratorium resource page, <https://bit.ly/3mULNUx>.

NLIHC and NHLP, Overview of CDC Eviction Moratorium, <https://bit.ly/3g8x1H7>.

NLIHC and NHLP, National Eviction Moratorium: FAQ for Renters, <https://bit.ly/2JHG99n>.

The “American Rescue Plan Act of 2021” (Pub. L. No: 117-2), <https://bit.ly/30BD8wz>.