

FEDERAL MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT

The Centers for Disease Control and Prevention (CDC) took unprecedented action on September 1 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 ensure people are able to practice social distancing and comply with stay-at-home orders. The CDC issued on October 9 [guidance](#) creating new burdens for renters seeking moratorium protections. While the new guidance does not rescind the moratorium on most evictions for nonpayment of rent, it states that landlords may challenge tenant declarations and initiate eviction proceedings at any time. The new guidance undermines the intent of the CDC's order

by eroding protections for renters and making it more difficult for struggling renters to remain stably housed.

The moratorium took effect September 4 and was initially set to expire on December 31. The emergency COVID-19 relief measure enacted in December 2020 included \$25 billion in emergency rental assistance and an extension of the federal eviction moratorium through January 31. President Joe Biden on January 20 issued an executive order instructing the CDC to extend the federal eviction moratorium. In response to President Biden's request, the CDC on January 29 issued an [order](#) extending the federal eviction moratorium through March 31, 2021. Extending the moratorium through March provides time for emergency rental assistance to be distributed.

WHY DID THE CDC ISSUE THIS ORDER?

In its [notice](#), the CDC argues coronavirus presents a historic threat to public health and eviction moratoriums can be an effective public health measure to prevent the spread of coronavirus. An eviction moratorium is necessary to ensure people are able to follow best practices recommended by the CDC to cut down on coronavirus transmission, including quarantine, isolation, and social distancing. Moreover, the notice states housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk of COVID-19.

CDC cites NLIHC's report [Out of Reach: The High Cost of Housing](#) and explains that the high cost of housing makes individuals who have experienced a drop in income since the onset of the pandemic particularly vulnerable to eviction.

DOES THE FEDERAL MORATORIUM STOP ALL EVICTIONS?

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 March 31, 2021. Any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and have not been completed, are subject to the moratorium.

Tenants can still be evicted for:

- Conducting criminal activity on the property;
- Threatening the health or safety of other residents;
- Damaging or posing an immediate and significant risk of damage to the property;
- Violating applicable building codes, health ordinances, or other regulations related to health and safety; and
- Violating any contractual obligation other than the timely payment of rent, late fees, penalties, or interest.

DOES THE FEDERAL MORATORIUM BLOCK ALL STAGES OF AN EVICTION?

The CDC guidance on the order states that landlords may initiate eviction proceedings at any time, but covered tenants cannot be evicted until the moratorium expires on March 31, 2021. However, in most states, eviction suits would still be prohibited by state law if brought before the CDC moratorium expires. If sued for eviction, seek legal assistance.

Permitting landlords to initiate eviction proceedings – even when covered renters cannot be evicted until the moratorium ends – provides landlords new opportunity to intimidate tenants who are behind on rent and pressure tenants to vacate their homes sooner. Evictions – even a single eviction filing – creates a long-term mark on a renter’s record, hindering their access to future housing opportunities. Some renters avoid that mark by vacating their home before the formal eviction proceedings occur. Other renters, especially the most marginalized renters, such as immigrants, seniors, and people with disabilities, fear the court process or cannot participate in court proceedings due to accessibility issues.

WHAT AUTHORITY DOES CDC HAVE TO ISSUE THIS ORDER?

The order cites 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.

IS THE MORATORIUM EFFECTIVE IN MY STATE OR TERRITORY?

The order applies to every state and territory with reported cases of coronavirus. The order ensures that the federal moratorium applies in all jurisdictions, except where state, local, or tribal areas have an eviction moratorium that “provides the same or greater level of public health protection” than the CDC order. For jurisdictions that have their own moratoriums, the stronger of the state/local moratorium (or related COVID-19 tenant protection law) and CDC moratorium will likely prevail, but the order is not fully clear on this point.

DOES THE FEDERAL MORATORIUM COVER ALL FORMS OF RENTAL HOUSING?

The order applies to all standard rental housing, including mobile homes or land in a mobile home park. However, it does not cover individuals renting hotels, motels, or other guest homes rented temporarily. Whether or not individuals living in hotels, motels, or renting guest homes are protected from eviction would depend on state/local law.

WHAT STEPS MUST RENTERS TAKE TO BE PROTECTED BY THE EVICTION MORATORIUM?

To qualify, an individual must 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 2021 (or no more than \$198,000 jointly), or were not required to report income in 2020 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 (March 31, 2021); and
- Understand that any false/misleading statements may result in criminal and civil actions.

A sample declaration is included at the end of this FAQ.

Because of the requirement that tenants be “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, [or] lay-offs,” there are some low-wage workers who have not experienced a drop in income who will not be protected under this order unless they have “extraordinary out-of-pocket medical costs.” Out-of-pocket medical costs are considered “extraordinary” if they are likely to exceed 7.5% of a household’s adjusted gross income for the year.

ARE LANDLORDS REQUIRED TO NOTIFY THEIR TENANTS OF THE CDC ORDER AND DECLARATION?

According to the CDC guidance, landlords are not required to notify their tenants of the CDC order and declaration. Many qualified renters are unaware of the legal steps they must take to be protected, and as a result, some landlords are moving quickly to file evictions before renters learn of the moratorium and can make use of its protection. Since the moratorium is only effective if renters are aware of its protections, NLIHC and NHLP urge federal agencies to require federally supported rental property owners and housing authorities to provide tenants written notice of their rights under the moratorium and what they must do to be protected.

CAN LANDLORDS CHALLENGE TENANTS’ DECLARATIVE STATEMENTS?

The CDC guidance states that landlords may challenge renters’ declarative statements, creating new opportunities for landlord intimidation and further shifting the burden to struggling renters who must gather paperwork to prove they need assistance to stay housed during the pandemic. The guidance raises new questions regarding tenant protections and poses significant risks of intimidation and confusion that may deter eligible tenants from invoking the protection of the CDC order. The CDC guidance does not provide standards or procedures governing such challenges, so it will be important for courts to allow such challenges only when landlords present evidence suggesting a material falsehood exists in a tenant’s declaration, and place the burden of proof on landlords to establish that a tenant is not a covered person.

ARE RENTERS STILL RESPONSIBLE FOR BACK RENT AND FEES/PENALTIES ACCUMULATED DURING THE EVICTION MORATORIUM?

Yes, renters must pay any back rent or fees accumulated during the moratorium.

WHAT HAPPENS IF A LANDLORD VIOLATES THE MORATORIUM?

While landlords may be able to file an eviction lawsuit under the CDC's moratorium, many such cases are improper under state law and should be dismissed.

Landlords in violation of the moratorium may be subject to a fine of up to \$100,000, one year in jail, or both; the fine increases to \$250,000 if the violation results in the death of a tenant. Organizations found to be in violation of the moratorium may be subject to a fine of up to \$200,000 per violation, or up to \$500,000 per violation if the violation results in a death.

DOES THE MORATORIUM INCLUDE RENTAL ASSISTANCE?

The initial CDC order did not include rental assistance. The [COVID-19 relief bill](#) enacted in December 2020 established a \$25 billion [emergency rental assistance \(ERA\) program](#) administered by the U.S. Department of Treasury. While the relief bill provided essential and desperately needed protections for renters, [additional resources and protections](#) are needed to address the health and housing needs of America's lowest-income renters and people experiencing homelessness.

NLIHC is tracking state and local emergency rental assistance programs. Find a rental assistance program near you at: <https://nlihc.org/rental-assistance>.

For more information, contact Sarah Saadian, vice president of policy at NLIHC, at ssaadian@nlihc.org; Noelle Porter, director of government affairs at NHLP, at nporter@nhlp.org; or Kim Johnson, policy analyst at NLIHC, at kjohnson@nlihc.org.

DECLARATION OF _____

(Name of Tenant)

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the following facts are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2020 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;
- I am 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;
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on March 31, 2021, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Date: _____

Signature of Tenant