

FAQs on the CDC Order Temporarily Halting Certain Evictions

On September 4, 2020, the Center for Disease Control and Prevention (“CDC”) issued a “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19.” On January 20, 2021, the CDC extended the moratorium until March 31, 2021.

What does the Order limit?

- A landlord, an owner of residential property or any other person with a legal right to pursue an eviction shall not evict any *covered person* from residential property through December 31, 2020 based on the non-payment of rent.

Who is a Covered Person?

- A tenant who resides in a residential property who executes and delivers to his/her landlord, under the penalty of perjury, a CDC Tenant Declaration.

Where Can I Locate a Sample CDC Tenant Declaration?

- A sample CDC Tenant Declaration form is attached to the Order. A courtesy copy can be located at www.mokslaw.com under the Forms tab in the Federal Executive Order Forms section.

What the Order does not do?

- The Order does not stop the eviction process - a landlord may proceed with business as usual (i.e. delivering notices of non-renewal, notices to vacate and filing eviction petitions, obtaining service, entering eviction judgments and requesting writs of restitution) unless and until it receives a signed CDC Tenant Declaration.
- Evictions for non-payment of rent can continue if the tenant does not provide the landlord with a signed CDC Tenant Declaration.
- The Order does not stop evictions based on tenants engaging in:
 - criminal activity;
 - threatening the health or safety of other residents;
 - damaging or posing an immediate and significant risk of damage to property;
 - violating any applicable building code, health ordinance, or similar regulating relating to health and safety; or
 - violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment.¹
- The Order does not excuse tenants from paying rent or other charges due under their lease.
- Landlords can continue to charge rent, utilities, late fees and/or other charges due for failure to timely pay rent.

Who is Protected?

¹ 85 FR 55292.

- To be protected a tenant must sign a CDC Tenant Declaration under the penalty of perjury indicating that:
 - He/she has used his/her best efforts to obtain governmental assistance.
 - He/she expects to either:
 - Earn no more than \$99,000 in annual income for the Calendar Year 2020 (\$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;
 - He/she is unable to pay the full rent due to substantial loss of household income, loss of hours at work, a lay-off or extraordinary out-of-pocket medical expenses.
 - He/she is using best efforts to make timely payments that are as close to the full amount as his/her circumstances may permit; and
 - An eviction would likely render him/her homeless or force him/her to move into and live in close quarters because he/she has no other housing options.
- Each adult listed on the lease is required to sign and deliver a CDC Tenant Declaration to his/her landlord.

What Landlords should do/know:

- If a landlord receives a signed CDC Tenant Declaration, the landlord should be aware that the eviction is effectively stayed until December 31, 2020.
- Nothing in the Order states that landlords need to disclose the Order or any of its provisions to its tenants.
- Numerous Courts (particularly in Kansas) are requiring a landlord to provide its tenant with a blank CDC Tenant Declaration form.

What are the penalties if the Order is violated?

- An individual found to violate the Order would be subject to federal criminal prosecution with a fine of up to \$100,000 and/or 1 year in jail if the violation did not result in death, or up to a \$250,000 fine and/or 1 year in jail if the violation results in the death of a tenant.
- An organization found to be in violation of the Order is 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 results in the death of a tenant.

DISCLAIMER: The Order is subject to additional analysis and interpretation.