



Guidance on CDC Order Temporarily Halting Certain Evictions

Updated February 3, 2021

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) issued [an Order to temporarily halt certain residential evictions](#). Subsequently, on October 9, 2020, the CDC along with HHS, HUD, and the DOJ released [updated guidance](#) in the form of a Frequently Asked Questions (FAQ). Below are the major provisions of the Order and FAQ. [On January 29, 2021, CDC Director Dr. Rochelle Walensky signed an Order](#) extending the CDC's September 4, 2020 Order to temporarily halt certain residential evictions. The new Order went into effect on January 31, 2021 and will remain in effect, unless extended, modified, or rescinded, through March 31, 2021. This FAQ has been updated accordingly.

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 March 31, 2021 for the non-payment of rent.

The Order does NOT stop the eviction process—instead, it obligates residents to execute and deliver a Declaration to trigger the Order's protections.

Even if a resident provides such a Declaration, only the actual eviction of the tenant is stayed by the Order through March 31, 2021.

Who does the order apply to?

This order applies 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.

It does not apply to commercial properties, hotels, 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;
- 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 **available housing options**;
- the person understands that they must still pay rent and comply with other obligations that they have under their lease and that they understand that fees,

penalties, or interest for not paying rent on time as required by their lease may still be charged or collected; and

- the person understands that at the end of the temporary halt on evictions on March 31, 2021, the 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 the person subject to eviction pursuant to state and local laws.

(Bolded terms above are defined in the Order and explained below.)

Even if a resident has provided a declaration to the landlord, the Order does not prevent the landlord from seeking a hearing, if authorized by State or local law and in accordance with State or local court procedure, to challenge the truthfulness of your declaration.

By signing a declaration form, the tenant must further understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Additionally, 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. Each resident/signatory on a lease must sign a Declaration.

If a resident gives an owner a declaration form with this information, is the owner prohibited from evicting the resident?

The CDC's guidance makes clear that a landlord may review the Declaration to evaluate the content and truthfulness of the Declaration provided. If the Declaration does not contain all of the required statements under penalty of perjury, or if any required statements are untrue, it may be contested.

In addition to this FAQ, TAA has developed revised FAQs related to the CDC Order and Supreme Court of Texas orders, and has [updated its Eviction Petition](#) to comply. The revised form is available on the TAA website and in REDBOOK Online and will be updated in TAA Click & Lease as soon as possible. We've also [developed a form members can use](#) to challenge declarations under the CDC Order and have addressed that in the FAQs, as well.

If the resident meets the criteria and provides a valid Declaration, the CDC order provides that the resident may not be "evicted."

What does CDC mean by “evicted” or “eviction”?

“Eviction” means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property.

Further, the CDC’s FAQs includes the following in the answer to this question: *“The Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of 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, each 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 must qualify for the Order’s protections and must likewise complete and provide a valid 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, a resident who provides a declaration under the penalty of perjury is saying he or she applied for all government assistance available.
- **“available housing”** means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to you. Thus, a resident who provides a Declaration under the penalty of perjury is saying that if evicted, he or she would likely become homeless, need to move into a homeless shelter or to a new residence shared by other people who live in close quarters because he or she has no other available housing options.

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 March 31, 2021).

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 an owner receives a valid Declaration, the eviction process may still proceed as long as the **actual eviction** of the tenant from the property does not take place until after March 31, 2021 (subject to other state and local law). Also, 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 state or 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. To learn more about other applicable federal, state or local requirements, we highly suggest you seek the advice of counsel or [contact](#) your local NAA affiliate. Also, you will find basic information about relevant laws and emergency orders on the [NAA website](#).

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 CDC's Order now applies to American Samoa. At the time of publication of the September 4, 2020 Order, no cases had been reported in American Samoa. Cases have now been reported there.

DISCLAIMER: This guide was developed by Texas Apartment Association and the National Apartment Association. The 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 the Order. We continue to monitor the developments surrounding Coronavirus (COVID-19) and update our members in due course.