

## CDC Eviction Moratorium and FAQs

The CDC issued an [Order](#), effective on September 4, 2020, pursuant to [42 USCS Section 264](#) of the Public Health Service Act and [42 CFR 70.2](#) to temporarily halt certain residential evictions to prevent the spread of COVID-19. This order is in effect until January 31, 2021, as extended by Section 502 of the federal Consolidated Appropriations Act, 2021 – [HR 133](#), Page 897. The CDC [extended its order](#), effective February 3, 2021 through March 31, 2021, and again [extended its order](#) effective April 1, 2021 through June, 30, 2021. On June 28, 2021, another [extension](#) was issued through July 31, 2021. On August 3, 2021, the CDC issued a [new order](#) effective that day providing for a temporary halt of certain evictions in counties where the CDC reports substantial and high COVID-19 transmission rates. This new order is effective through October 3, 2021.

The CDC also published FAQs on October 9, 2020, which are no longer online. There are additional [FAQs](#) specific to public housing and [FAQs](#) for multifamily housing programs.

It is important to read the full order to know how it applies in your specific situation. The frequently asked questions listed below may also be helpful. If you do not find the answer to your question or need more information, please contact an attorney or other resource for additional guidance.

### General Questions:

- Does the CDC order apply in Indiana?

Yes, this applies in counties in the State of Indiana that experience substantial or high transmission levels of COVID-19 cases as [defined by the CDC](#).

- If not already identified at the substantial or high level as of August 3<sup>rd</sup>, counties will fall under this moratorium beginning on the date the county is listed at substantial or high transmission levels.
- If counties are already covered on August 3<sup>rd</sup>, they will lose the coverage of this moratorium when the county no longer experiences substantial or high levels of transmission for 14 consecutive days.
- Counties can be subject to this moratorium again in the future if the levels of transmission reach these designated levels.

- Does the CDC order prevent all evictions?

No, the moratorium only covers claims solely for non-payment of financial obligations (rent, fees, etc.).

If there are other breaches of the rental agreement (i.e. engaging in criminal activity while on premises, threatening health or safety of other residents, damaging or posing

an immediate and significant risk of damage to property, other violations of the rental contract, etc.), an eviction may still take place.

The order provides a covered person may not be evicted solely for the allegation of committing criminal trespass (or similar state-law offense) where the underlying activity is the covered person remaining in the property despite nonpayment of rent.

- What types of property does the CDC order cover?

The order covers residential property, which is defined as any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the law.

- What tenants are covered by the CDC order?

- Covered tenants include those who have submitted or completed a [declaration form](#) (or written document including the same information) asserting (declaring/stating) the statements contained in the declaration are true and accurate under the penalties of perjury. The declaration must include the statements listed below:
- I have used best efforts to obtain all available government assistance for rent or housing; *(Available government assistance means any governmental rental or housing payment benefits available to the individual or any household member.)*
- I either:
  - expect to earn no more than \$99,000 in annual income for Calendar Year 2020-2021 (or no more than \$198,000 if filing a joint tax return), or
  - was not required to report any income in 2019/2020 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; *(Extraordinary medical expenses are any unreimbursed medical expense likely to exceed 7.5% of the person's adjusted gross income.)*

- 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. *(Available housing means any available, unoccupied residential property or other space for occupancy in any season or temporary housing, that would not violate Federal, State or local occupancy standards and that would not result in an overall increase of housing costs to you.)*
- 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 June 30, 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.

Each covered tenant must provide the signed declaration form to the landlord or property owner to be covered by this order. Each tenant should also keep a copy of the completed declaration for their own records and note the date it was provided and how it was delivered to the landlord or property owner.

The order acknowledges that there are circumstances in which one member of the residence can provide the executed declaration on behalf of the other adult residents (i.e. individuals filing a joint tax return, etc.)

- How do I know if my tenants are covered by the CDC order?

To qualify, tenants must supply the completed [declaration form \(or written document including these same information\)](#) to the landlord, property owner, or any other person with a legal right to pursue eviction or a possessory action. Also, landlords or property owners can certainly talk to tenants about whether this order applies to individual situations.

The order acknowledges that there are circumstances in which one member of the residence can provide the executed declaration on behalf of the other adult residents (i.e. individuals filing a joint tax return, etc.)

- What happens if the CDC order is not followed?

The order does contain penalties for violating these provisions.

Any person violating this order can be subject to fines up to \$100,000, one year in jail, or both if the violation does not result in a death. If the violation results in a death the fine amount can be up to \$250,000.

An organization violating this order can receive a fine up to \$200,000 per event if the violation does not result in a death. If the violation results in a death, the fine amount can be up to \$500,000 per event.

Penalties are enforceable by the U.S. Department of Justice. The U.S. Department of Health and Human Services is authorized to accept State and local assistance in the enforcement of this order.

In addition, tenants can be subject to the penalties for perjury (i.e. fine, jail time, or both) if they provide false or misleading declaration form.

- For tenants covered by the CDC order, do they still have to pay rent? What about fees, penalties, and interest?

Yes. The order specifically provides that tenants are still required to pay rent and applicable fees, penalties, and interest even under the moratorium. The completed declaration form also acknowledges this as well as a failure to pay the full amounts due after the order no longer applies, can lead to an eviction pursuant to law.

#### Implementation questions:

*Notes: The following information is based on the premise that the eviction case/order was based solely on the issue of non-payment of rent, since other basis for evictions are still available. In this document, references to landlord or property owner also includes any other person with a legal right to pursue eviction or a possessory action.*

- If a person completes the declaration, what happens to a pending court case? Dismissed? Stayed? Continue until after the order no longer applies or continue generally?

The best practice is to continue the case and reset it for a hearing date after the moratorium is lifted. This helps the courts with managing their dockets once cases can proceed and keeps cases in a priority order until the hearing can be held. In scheduling cases in this fashion, courts may wish to implement a [case status update form](#) similar to the one recommended in the Landlord Tenant Task Force report to receive updated information closer to the actual hearing dates after the moratorium is lifted.

Keep in mind that the courts can still communicate opportunities for the parties to participate in [facilitated settlement conferences](#) or other dispute resolution opportunities to arrive at payment plans, etc. during this time period.

- Does the landlord or property owner have to re-serve the tenant with notice per trial rules?

The Trial Rules only require successful service with the initial filing. Notice of any continued hearing date must still be provided to all parties.

- How does this impact an existing court order of eviction with a scheduled move out date that was entered prior to August 3, 2021?
- Any eviction that was completed before issuance of this Order including from August 1 through August 3, 2021, is not subject to this Order, as it does not operate retroactively. What happens if the declaration is provided to landlord or property owner after the eviction hearing? Can the Sheriff still enforce move out date?

If the order of eviction was issued prior to the commencement of the CDC moratorium, it is still a valid, enforceable order for eviction. Any eviction that was completed before issuance of this Order including from August 1 through August 3, 2021 is not subject to this Order, as it does not operate retroactively.

If the parties wish to go back to court after the initial eviction hearing for any reason, then a motion requesting a hearing date needs to be filed with the court and a hearing scheduled.

- Is the fact a declaration is complete and provided to the landlord or property owner sufficient to halt the eviction or is a hearing required?

The CDC order only requires the declaration to be signed, under penalties of perjury, and provided to the landlord or property owner to be effective to halt the eviction for that tenant. The completed declaration should, on its face, demonstrate the tenant is covered by this order. Supporting documentation is not required to be provided along with the declaration form. If there is a dispute about the declaration form, either party can request a hearing by the court.

The declaration form clearly states that the order does not prevent a landlord from requesting a hearing to challenge the truthfulness of the declaration.

Any evidentiary hearings should be reserved for disputes that arise regarding whether the declaration was properly completed, accurate and truthful, and provided to the landlord or property owner, or whether the landlord or property owner accepted or rejected the completed declaration form.

- Does the court have an obligation to inform the parties in a pending court case of this order during the next court session?

Yes, this moratorium should be treated in a similar fashion as courts would for exempt property in a garnishment setting. The court should be sure unrepresented parties are aware of this order and provide time for the parties to assess the applicability to the individual situation. This avoids outcomes contrary to the order.

Also, the court can ask the necessary questions during the hearing to determine if the order applies to the specific case and if it does, the court should provide the opportunity for the tenant to complete and provide the declaration form to the landlord or property owner and the court.

It is best practice to post the CDC order on your local web page and at the clerk's office.

- How will the court know if or when a declaration has been presented? Can the court request a copy of a completed declaration be filed within a pending case? Can the court request a copy of a completed declaration be filed with a new notice of claim? Should the court include the declaration form in the packet served with the initial filing documents?

The CDC order only requires the declaration to be signed, under penalties of perjury, and provided to the landlord or property owner to be effective to halt the eviction for that tenant. The court may inquire regarding whether the declaration form has been provided to the landlord or property owner during the hearing or may request it be provided to the court with the notice of claim. The court can also include the form in the packet served with the initial filing documents to put parties on notice that this order may apply to their case.

- Does the court have an affirmative duty to know what resources are available? Do we need actual written confirmation of denial? What about proof of change in income?

There is no duty for the court to know all the resources. The CDC order defines available government assistance as any governmental rental or housing payment benefits available to the individual or any household member. The Landlord Tenant Task Force report, Appendix A has a list of some of the main governmental resources.

Any detailed or specific information would only be necessary if the court must have an evidentiary hearing regarding a dispute that arises regarding whether the declaration was properly completed and provided to the landlord or property owner, or whether the landlord or property owner accepted or rejected the completed declaration form.

- What if the landlord or property owner refuses to accept the declaration?

Either party can request a hearing before the court. This issue may come before the court by way of testimony or other evidence in the eviction proceeding. The court can receive more information at the hearing on the basis for the refusal and act accordingly.

- What if the landlord or property owner believed the declaration to be falsely made?

The declaration form clearly states that the order does not prevent a landlord from requesting a hearing to challenge the truthfulness of the declaration.

Either party can request a hearing before the court. This issue may come before the court by way of testimony or other evidence in the eviction proceeding. The court may use this [checklist](#) to review the details necessary for making an evidentiary finding.

- If bank forecloses on a property that is used as rental property, can the bank then evict the tenants?

Keep in mind that FHA Single Family mortgages are covered by a separate directive from [HUD](#) through September 30, 2021.

If the property is not otherwise covered by the HUD directive and the bank forecloses, the bank is the “owner” of the property. The CDC order provides that “a landlord, owner of a residential property, or other person with legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property.” The order in footnote 4 provides: person includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

The CDC order specifically provides it does not prevent a mortgage foreclosure proceeding.