



Tip of the Month September 2020

The CDC Moratorium and How it Affects Evictions in Minnesota

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On September 1, 2020, the Centers for Disease Control (CDC) issued a [new, nationwide eviction moratorium](#) pursuant to its authority under 42 U.S.C. § 264 and 42 CFR § 70.2. This tip will briefly discuss this new CDC order and review Minnesota's continuing eviction moratorium. This tip will conclude with a brief discussion about why the CDC order is likely to have little effect in Minnesota unless the Minnesota moratorium is not renewed.

The Federal CDC Eviction Moratorium:

The CDC order went into effect on September 4, 2020 and protects tenants from being evicted for nonpayment of rent through **December 31, 2020**. The CDC order specifically states that it does not apply to evictions for: "(1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation."¹

Nothing in the CDC order relieves tenants of their duty to pay rent. Additionally, unlike the previous federal eviction moratorium which was part of the [CARES Act](#) and has expired,² nothing in the CDC order prohibits landlords from charging fees, penalties or interest as a result of failure to pay rent.

In order to receive protection from eviction when rent is overdue under the CDC order, every tenant listed on the lease must sign a declaration under penalty of perjury and give it to the landlord. Specifically, [the declaration must affirm that the tenant:](#)

1. Meets the income requirements (less than \$99,000 in 2020 or \$198,000 if filing jointly, received a stimulus check or did not report income to IRS in 2019),
2. Is unable to pay rent due to a loss of income or extraordinary medical bills,
3. Has used their "best efforts" to obtain government rental assistance,
4. Is likely to become homeless or live in "close quarters" with others if evicted, and
5. Promises to make "timely partial payments that are as close to the full payment as the individual's circumstances may permit."

The required text of the declaration is provided by the CDC in an [attachment to the order](#).

The declaration contains several points of note:

¹ There is ambiguity as to whether the CDC order would apply to lease expiration/no cause and other evictions unrelated to lease violations. See [National Housing Law Project, CDC Eviction Moratorium – Initial Analysis](#).

² One provision of the original CARES Act Eviction moratorium issued this spring has not expired, and that is the need for "covered properties" to provide 30-day notice prior to filing an eviction. For information on determining what properties are considered "covered properties" see: [Larry McDonough, Eviction Prevention Training for Lawyers Under Pandemic Order and Laws, slide 42](#).

- There is no specifically stated requirement that the loss of income or medical bills are due to COVID-19.
- Some of the language in the required declaration is quite subjective. “Best efforts” and “as close to full payment as the individual’s circumstances may permit” appear to leave room for individual circumstances while at the same time having a lack of clarity which may lead to challenges by a landlord. It is an open question as to how statements in the declaration may be checked or challenged in the eviction process
- The time at which a tenant must sign and provide this declaration to a landlord is not specified under the order. It is unclear if a declaration must be given before an eviction action is commenced or if a declaration given any time prior to the issuance or execution of a writ must be considered by the court. The CDC order authorizes the U.S. Dept. of Justice to seek criminal penalties, including substantial fines and possible jail time, for violations of the order. The CDC order lacks clarity as to whether enforcement is only against landlords or if it could be against tenants too.

Minnesota’s State Eviction Moratorium:

Governor Walz, through [Executive Order 20-79](#), has issued an eviction moratorium that is in effect in Minnesota at least until October 11, 2020.

Minnesota’s eviction moratorium is tied to the peacetime emergency declaration. The peacetime emergency must be renewed every 30 days, and each time it is renewed [the legislature can overturn the emergency powers](#). This means that tenants and landlords in Minnesota are carefully watching to see what happens every 30 days.

Minnesota’s moratorium is much broader than the CDC moratorium. It prohibits landlords from filing evictions in most situations, including for non-payment of rent, holding over, breach of lease, or after the termination of the redemption period in a residential foreclosure. It also prohibits lease terminations and non-renewals. Minnesota’s moratorium does permit evictions that fall within several narrowly tailored exceptions, including: (1) certain unlawful behaviors as defined Minn. Stat. 504B.171, subd. 1, (2) seriously endangering the safety of others on the premises, (3) causing significant property damage on the premises, or (4) when the property owner or one of their family members will move into the property within 7 days of the tenant vacating.

Minnesota’s moratorium also does not relieve tenants of the requirement to pay rent and does not waive any late payment fees or penalties. It is also important to remember that EO 20-79 requires a 7-day written notice, or longer if required by the lease, prior to filing an eviction for any of the grounds permitted under EO 20-79.

Finally, EO-20-79 directs the Minnesota Attorney General’s office to actively enforce the moratorium and provides criminal penalties for landlords who do not comply. Complaints of violations of EO 20-79 can be directed to the AG’s office via their website [complaint form](#).

The Status of Evictions in Minnesota:

The CDC order [explicitly says](#) that it does not apply in states with residential eviction moratoria that provide “the same or greater level of public health protection” as the CDC order. It is unclear, however, how this determination will be made. According to the [National Housing Law Project](#), one way to make this determination would be to look at the levels of public health protected by each separate moratorium and use the moratorium which provides greater benefits. This, however, would be a difficult and time-consuming project. An [alternative view](#) would be that the CDC order establishes a floor such that “local eviction moratoria [that are] able to afford equal or greater protection against eviction [are enforceable] but [are] irrelevant if they afford less protection.”

Because Minnesota's moratorium provides protection not only for non-payment of rent evictions, but also for non-renewal, breach of lease and after termination of the redemption period in residential foreclosure, under either method of determination, it's likely that courts will interpret Minnesota's moratorium as continuing to be the controlling moratorium in Minnesota. However, it is possible when using the CDC moratorium as a "floor" analysis, certain areas of Minnesota's moratorium may be open to challenge, such as the exception for a landlord who wants to move their family into a unit.

If the Minnesota moratorium is not renewed sometime prior to December 31, 2020 and no other eviction moratorium is set up to replace it in Minnesota, the CDC order would then become the controlling eviction moratorium in Minnesota. At that time, tenants who are late on rental payments would need to start signing declarations and providing them to landlords to avoid eviction. As long as Minnesota's moratorium continues, however, such declarations are not necessary.

So while the CDC order is not immediately controlling in Minnesota, it does provide a certain level of security to tenants who are behind on their rent, because even if the Minnesota moratorium were not renewed at some point this fall, the protections of the CDC order would come into play until at least the end of the year.