

CASE TO WATCH: CDC'S BROAD EVICTION MORATORIUM IS WITHOUT AUTHORITY

On May 5, 2021, the U.S. District Court for the District of Columbia determined the Centers for Disease Control and Prevention (CDC) did not have legal authority to impose the national eviction moratorium. Accordingly, the CDC Order prohibiting residential evictions nationwide was ordered vacated.

On March 13, 2020, then-President Trump declared a national emergency for COVID-19. Two weeks later, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed and included a 120-day eviction moratorium for rental properties subject to federally backed loan or federal assistance programs. On Aug. 8, 2020, President Trump issued an executive order directing the Secretary of the Department of Human and Health Services (HHS) and the Director of the CDC to determine if “temporarily halting residential eviction of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19”.

On Sept. 4, 2020, the CDC issued an Order (CDC Order) stating that residential evictions must temporarily stop to prevent the further spread of COVID-19. This CDC Order prohibited evictions of individuals who had provided their landlord a declaration stating they:

1. “used best efforts to obtain all available government assistance for rent or housing”;
2. expect to earn less than \$99,000 in annual income in 2020, were not required to report any income in 2019 or receive a stimulus check under the CARES Act;
3. are unable to pay full rent because loss of income, house of work or wages, layoff or extraordinary out-of-pocket medical bills;
4. are using their “best efforts to make timely partial payments”; and
5. believe an eviction would likely result in homelessness or shared living.

This CDC Order was more expansive than the CARES Act because it included all residential properties nationwide and was set to expire Dec. 31, 2020.

Additionally, any landlord who attempted to evict a protected individual was subject to criminal penalties including jail time and/or monetary fines. The CDC

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Order has been extended three times and currently expires June 30, 2021.

Shortly after the CDC Order was issued, real estate management companies brought a lawsuit against the HHS alleging the CDC Order exceeds the CDC's authority and raised other statutory and constitutional issues.

In determining that the CDC had no authority to impose a national eviction moratorium, the Court analyzed the CDC's statutory authority, specifically Section 361 of the Public Health Services Act, 42 U.S.C. § 264(a). Section 361 authorizes the Secretary of HHS to make and enforce regulations, in his judgment, that are necessary to prevent introduction, transmission or spread communicable diseases. The Secretary of HHS delegated this authority to the Director of the CDC. When the Director of the CDC determines measures taken by health authorities are insufficient to prevent the spread of communicable disease, "he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection."

The Court determined that the CDC Order and "any regulations enacted pursuant to § 264(a) must be directed toward "specific targets 'found' to be sources of infection." While the HHS argued this authorizes the Secretary of HHS to "'make and enforce' any regulations that, 'in his judgment are necessary to prevent the spread of disease'", the court determined the HHS's interpretation was overly broad. The Court stated, "[t]he Public Health Service Act authorizes the [CDC] to combat the spread of disease through a range of measures, but these measures plainly do not encompass the nationwide eviction moratorium set forth in the CDC [O]rder."

Accordingly, the Court set aside the CDC Order and the real estate management companies were granted expedited summary judgment on their claims. While the HHS has appealed this decision and as the nation awaits the CDC's deadline of June 30, 2021, this case and others across the country continue to define, and redefine, landlord-tenant remedies in the wake of COVID-19.