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CDC updates eviction moratorium FAQs

By **Tatiana Gutierrez, Nathaniel Cushman, Harry Kelly, and Richard Price**

The Centers for Diseases Control and Prevention (CDC) issued [updated Frequently Asked Questions](#) (the “Update” or the FAQs) on April 14, regarding the CDC’s order to temporarily halt residential evictions to prevent the further spread of Covid-19, also referred to as the eviction moratorium or the Order. The FAQs are non-binding and are intended to share the views of the CDC and other agencies. The initial Order was issued on September 4, 2020, and was extended multiple times, the last being on March 29, 2021, which extension lasts until June 30, 2021.

Reversing the CDC’s prior position, the most significant change in the Update is new guidance that federal law may require landlords to make their tenants aware of the Order. Specifically, the Update explains that, although the Order itself does not contain a notice requirement, the Fair Debt Collection Practices Act (“FDCPA”) and the Federal Trade Commission Act (“FTCA”) may require landlords or their agents to make their tenants aware of the Order and that, under these statutes, evicting tenants in violation of the CDC, state, or local moratoria or evicting or threatening to evict without apprising a tenant of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices. The CDC further notes that the Consumer Financial Protection Bureau (the “CFPB”) and the Federal Trade Commission (“FTC”) issued a joint statement in March stating that evicting tenants in violation of the CDC, state, or local moratoria or evicting or threatening to evict tenants without apprising them of their legal rights under such moratoria may violate prohibitions against deceptive and unfair practices, including the FDCPA and the FTCA.

Furthermore, just yesterday, the CFPB issued an interim final rule, effective May 3, 2021, that would require “debt collectors” under the FDCPA, to notify tenants of the CDC moratorium or other applicable moratoria. Whether someone is a “debt collector” as defined under the FDCPA turns on whether the person or party seeking to collect the debt, or rent, is collecting the debt for a third party. There are many permutations of this fact pattern. “Debt collectors” include any company that regularly collects debt for another person or entity. From the plain language of the interim rule and the FDCPA it would seem a landlord owed rent would not be a debt collector, while an attorney or management company, could be a debt collector and subject to this additional notice requirement.

In any case, the CDC encourages landlords, in the Update, that even if not legally required, to tell their tenants about the Order. The Update also expands penalty guidance, emphasizing reporting violations to the local U.S. attorney's office or the National Center for Disaster Fraud for prosecution.

Other changes in the Update include:

- Replacing prior language with new, more direct language stating that a landlord violates the Order by executing a writ of eviction or possession that led to the actual physical removal of a covered person during the period of the Order.
- Clarifying that a person is likely to qualify as a “covered person” under the Order if they receive federal low-income benefits, such as Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), or Social Security Disability Insurance (SSDI).
- Clarifying that “covered persons” must provide a completed and signed copy of the required qualification declaration and may include not just the landlord but property managers, attorneys, or agents of the landlord/owner or any other person with a legal right to carry out the eviction.
- Expanding on past language that the Order applies, broadly, to any landlord, owner of a residential property, other person with a legal right to pursue an eviction or a possessory action against a residential tenant, lessee, or resident, including an agent or attorney acting on behalf of the landlord or the owner of the residential property
- Expanding on prior language that it does not supersede state and local laws that provide the same or greater protection, as determined by the applicable court, but does supersede all state or local orders to the extent state or local laws conflict.

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