

Clients & Friends Memo

COVID-19 Update: CDC Order Temporarily Halts Residential Evictions Nationwide until December 31, 2020

September 4, 2020

In response to the coronavirus pandemic, the federal government, as well as many States, have enacted eviction and foreclosure moratoriums in an effort to keep homeowners and renters in their homes and slow the spread of Covid-19. One such moratorium was included by Congress in the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, which was enacted earlier this year. The CARES Act provided, among other things, for a 120-day eviction moratorium for tenants who participated in federal housing assistance programs or who lived in a property that was federally related or financed. The CARES Act eviction moratorium, which expired on July 24, 2020, prohibited landlords from commencing new evictions proceedings or charging late fees, penalties and/or other charges against eligible tenants for non-payment of rent during the moratorium period.

This week, citing concerns with the continued spread of Covid-19, the Center for Disease Control and Prevention (the "CDC") issued a new order temporarily halting residential evictions nationwide through December 31, 2020 (unless extended). The order would prohibit landlords, owners of residential properties, or any other person with the right to pursue an eviction action, from commencing eviction proceedings against any eligible non-paying tenant affected by the Covid-19 pandemic. The new CDC order does not, however, preclude evictions for reasons other than non-payment of rent or release qualifying tenants from their obligation to pay rent or to comply with the other terms of their rental agreement. In addition, the order does not preclude foreclosures of home mortgages.

Unlike the CARES Act, the protections provided in the CDC order are available to all qualifying residential tenants and not just those tenants who receive federal housing assistance or who lived in a federally related or financed property. In addition, the order does not prohibit landlords from imposing late fees, fines and/or from charging interest on unpaid rent while the moratorium is in effect.

In order to qualify, tenants must submit a "Declaration" to their landlord, the owner of the residential property, or any other person who has the right to commence an eviction action, claiming their eligibility under the new CDC order. The declaration must include the following statements from

each adult tenant listed on the rental agreement: (1) that the tenant has used his/her best efforts to obtain all available governmental rental or housing assistance; (2) that the tenant either (i) expects to earn no more than \$99,000 (or \$198,000 for joint filers) during the 2020 calendar year, (ii) was not required to file an income tax return with the IRS for the year 2019, or (iii) received an Economic Impact Payment under the CARES Act; (3) that the tenant is unable to make rental or housing payments when due as a result of a substantial loss of household income, loss of hours of work or wages, being lay-off or due to "extraordinary" out-of-pocket medical expenses; (4) that the tenant is using his/her best efforts to make partial rental payments, taking into account such tenant's other non-discretionary expenses; and (5) that the eviction of such tenant would likely result in such tenant being homeless or such tenant having to move into a "closed quarters" shared living space. Failure by any landlord to comply with the CDC order will result in criminal penalties.

The CDC order will only be applicable to those States, local, territorial, or tribal areas that do not already have an eviction moratorium in place that provides for the same or greater tenant protection than those provided in the CDC order.

We will continue to monitor these and other proposed legislation of interest and provide updates as needed.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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