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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: October 30, 2020
SUBJECT: Execution of a Writ for Possession of Real Property ---
Executive Order No. 171

On October 28th, 2020, Governor Roy Cooper issued Executive Order No. 171. The Executive Order clarifies and specifically extends to North Carolina the application of the Centers for Disease Control (CDC) September 4, 2020 Order implementing a nationwide moratorium on certain evictions. **Executive Order No. 171 is effective October 30th, 2020 at 5:00 p.m. through December 31, 2020.** A copy of the Order is attached for your reference along with a frequently asked questions document.

The CDC Order does not halt all evictions, but rather allows tenants who meet certain criteria to avoid eviction. For a tenant to obtain the protection provided by the CDC Order, two things must occur: (1) the tenant must give a declaration to the landlord stating that the specific criteria are met and (2) a court must then make the final determination as to whether the tenant meets the Order's criteria and issue a ruling to that effect. The CDC Order does not change a sheriff's duty to execute a writ for possession of real property. For a more detailed analysis of the CDC Order, please refer to the Association's memorandum summarizing that Order, which is attached to this email.

Overview of Executive Order No. 171

Executive Order No. 171 applies to "actions" that are "pending on" or "commenced after" October 30, 2020, and specifies what may and may not occur once a tenant gives to the landlord a CDC declaration during this time. More specifically, the Executive Order implements restrictions on landlords and provides a process for them to challenge the tenant's declaration that the tenant meets the criteria of the CDC Order and is thereby entitled to its protection. The Executive Order provides that, during the effective period of the Order, landlords must certify to the court at the inception of the eviction action that they have provided tenants with a blank CDC declaration. Once the tenant provides to the landlord a CDC declaration, the landlord must notify the court within five days, and "must take no actions to request



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a writ of possession, and the landlord is not entitled to the writ” unless the court determines that a writ should be issued (emphasis added). If the landlord believes the tenant does not meet the requirements for protection under the CDC Order, he or she may submit a written response to the court explaining why the tenant is not entitled to protection. At that point, the court will conduct a hearing and determine whether the pending summary ejection action should proceed.

Executive Order No. 171 Does Not Change a Sheriff’s Duty to Execute a Writ For Possession of Real Property

The language of Executive Order No. 171 only applies to summary ejection actions pending before a court. By the time a sheriff receives a writ for possession of real property from the Clerk of Court, the summary ejection action is no longer pending before the court. A sheriff’s statutory duties and obligations begin upon the sheriff’s receipt of a writ for possession of real property. Executive Order No. 171 does not apply to writs for possession of real property that have been issued by a court.

As is the case with the CDC Order, Executive Order No. 171 does not impact the sheriff’s statutorily mandated duty to execute a writ for possession of real property once it has been issued by a court. Evictions may still proceed in a variety of circumstances even with the CDC Order and Executive Order No. 171 in effect. No authority exists for a sheriff to look beyond the face of a writ for possession of real property that otherwise appears valid and question the authority for its issuance. Moreover, the sheriff does not have the authority to determine the legal correctness of the basis for eviction, nor is the sheriff or the sheriff’s deputy “on the street” the proper forum for this determination to be made. The court, not the sheriff, must make the determination as to whether the tenant is protected by the CDC Order and whether to issue the writ for possession of real property.

In sum, the Executive Order: (1) only applies to actions taken before a writ for possession of real property is issued and thus does not change the duties of the Office of Sheriff; and (2) does not change a sheriff’s statutory obligation to execute a writ for possession of real property. **Therefore, pursuant to G.S. § 42-36.2(a), a sheriff who is in possession of or receives a writ for possession of real property before, on or after October 30, 2020 shall execute the writ “no more than five days from the sheriff’s receipt thereof” (emphasis added).**

To the extent there is any question regarding whether or not to execute a specific writ for possession of real property, you should consult with your own legal advisor prior to making a decision.

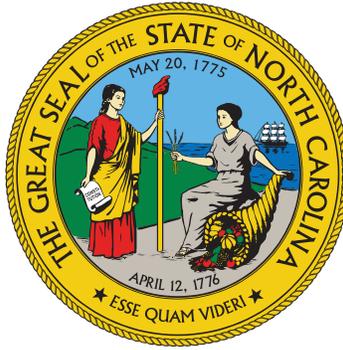
If you have any questions regarding the issues discussed above, do not hesitate to contact Brittany Birch, NCSA Associate General Counsel, at bbirch@ncsheriffs.net or at 919-459-8196.

Thanks...Eddie C.



Edmond W. (Eddie) Caldwell, Jr.
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North Carolina Sheriffs' Association
Proudly Serving the Sheriffs and Citizens of North Carolina since 1922



Frequently Asked Questions (“FAQ”) for Executive Order No. 171

October 28, 2020

This FAQ provides guidance for the implementation of Executive Order No. 171 (“Order”). The Order clarifies, ensures compliance, and extends protections under the Centers for Disease Control and Prevention (“CDC”) order temporarily halting certain residential evictions for nonpayment of rent (“CDC Order”). Below are frequently asked questions (“FAQs”) and their answers. In addition, individuals should check with local governments to determine whether additional restrictions have been imposed in their local jurisdictions to limit the spread of COVID-19.

This information is subject to change in light of new CDC guidance and additional Executive Orders or local government declarations.

General Information

When does this Order take effect?

This Order takes effect on October 30, 2020 at 5:00 p.m. It is effective until December 31, 2020 unless repealed, replaced, or rescinded.

How long is the CDC Order in effect?

The CDC Order went into effect on September 4, 2020 and prohibits residential landlords nationwide from evicting certain tenants through December 31, 2020.

Information for Residential Tenants

Which residential tenants does this Order protect?

This Order protects individuals who qualify under the CDC Order, including those who:

- Have used their best efforts to obtain government assistance for housing;
- Are unable to pay their full rent due to a substantial loss in income;
- Are making their best efforts to make timely partial payments of rent;
- Would become homeless or have to move into a shared living space if evicted; and
- Meet one of the following financial requirements:
 - Individuals who earns \$99,000 or less, or joint filers who earn \$198,000 or less,
 - Individuals who received a stimulus check, or

- An individual who was not required to report any income to the IRS in 2019.

Does the CDC Order cover all forms of rental housing?

The CDC Order applies to all standard rental housing. It does not cover individuals renting hotels, motels, or other temporary guest home rentals.

How are tenants protected?

The CDC Order stops evictions for nonpayment of rent as long as the tenant qualifies and gives his or her landlord a signed declaration form, attesting that they qualify. If an eviction action is filed, landlords are required to provide tenants with a blank copy of the CDC declaration form.

Information for Residential Landlords

What are the requirements for landlords under this Order?

This Order requires that in any eviction action filed on or after the Order's date, a landlord must certify (through an affidavit presented to the court) that they have provided the tenant with a blank copy of the CDC declaration form.

Where can landlords find the declaration form?

The CDC declaration form may be found here: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>. Tenants may also fill out an equivalent form that contains all of the required attestations.

Must each tenant under the same lease fill out a declaration form in order to avoid eviction?

No. A single declaration form from at least one tenant responsible for paying rent activates the protections of this Order for all tenants under that lease. This is different from the general nationwide procedure under the CDC Order.

If an eviction proceeding has begun and a tenant then presents a declaration form to the court or landlord, does this Order prevent them from being evicted?

For an action pending or initiated after the date of this Order, the landlord must immediately notify the court when he or she receives a declaration from the tenant and submit it to the court within 5 days. Unless the landlord submits a response contesting the declaration, the landlord may not request a writ of possession.

Can a landlord remove a tenant for other reasons besides nonpayment or late payment of rent?

Yes. Nothing in the Order precludes evictions for reasons other than nonpayment or late payment of rent and other fees. If a tenant submits a CDC Declaration, but the reason for eviction is something other than nonpayment or late payment, the landlord may file a response with the court identifying in writing why the landlord believes the

action should still proceed despite the protections of the CDC Order. If the court determines that the eviction should proceed and a judgment is ultimately entered against the tenant, the landlord may request a writ of possession.

I am a landlord and believe the information provided by a tenant on the declaration form is false, what do I do?

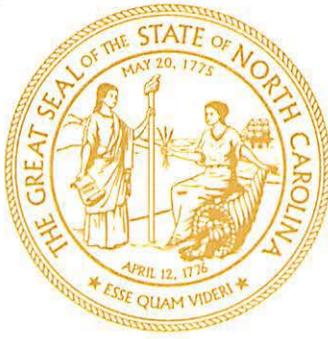
Landlords may challenge a tenant's Declaration by filing a response to the court identifying in writing why the landlord believes the eviction action should proceed. The court will hold a hearing to determine whether the eviction action should proceed. If the court determines that the eviction should proceed, the landlord may then request a writ of possession.

Are tenants still responsible for back rent accumulated during the moratorium?

Tenants are still responsible for unpaid rent balances that exist at the expiration of this moratorium.

What programs are available to assist tenants and provide landlords with income?

- HOPE Program- <https://nc211.org/hope/>.
- To learn about other resources available in your community, visit <https://nc211.org/> or call NC 2-1-1.



State of North Carolina

ROY COOPER
GOVERNOR

October 28, 2020

EXECUTIVE ORDER NO. 171

ASSISTING NORTH CAROLINIANS AT RISK OF EVICTION

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165 and 169-170; and

WHEREAS, more than two hundred sixty-six thousand (266,000) people in North Carolina have had COVID-19, and four thousand two hundred forty-five (4,245) people in North Carolina have died from the disease; and

WHEREAS, as of the date of this Executive Order, and relative to recent weeks, there has been a considerable increase in the COVID-19 daily case counts, an increase in the associated hospitalizations and emergency-department visits for COVID-19-like illnesses, and an increase in the percent of daily case counts that are positive, prompting, most recently, the undersigned to pause the state in Phase 3 of its reopening process; and

WHEREAS, these trends require the undersigned to implement certain measures in order to slow the spread of the virus across the state and protect the neediest North Carolinians from housing loss and housing insecurity; and

Residential Evictions in North Carolina

WHEREAS, in addition to its public health consequences, the economic effects of the COVID-19 pandemic have broadly impacted residential tenants across the state, many of whom have been unable to timely or fully make their rent payments, thereby facing the risk of eviction; and

WHEREAS, residential evictions remove people from their homes, where they are safest during the COVID-19 pandemic, which therefore increases the risk that such people will contract and spread COVID-19; and

WHEREAS, many residential evictions leave people homeless, where they are at heightened risk of contracting and spreading COVID-19 either through unsheltered living situations or through relocation to homeless shelters or other congregate living situations, where they face enhanced risk of contracting COVID-19; and

WHEREAS, because many people are now performing their jobs and receiving schooling from their homes, residential evictions during the COVID-19 pandemic also threaten people's ability to maintain their livelihood and receive education; and

WHEREAS, according to a September 25, 2020 report from the National Council of State Housing Agencies, there are currently an estimated 300,000 – 410,000 renter households in North Carolina unable to pay rent and at risk of eviction, and a projected estimated 240,000 eviction filings in North Carolina by January 2021; and

WHEREAS, the undersigned's administration recognizes that eviction moratoria are not only effective public health measures to control the spread of COVID-19, but that they can also have significant impacts on the economic and socioeconomic realities of many North Carolinians and;

WHEREAS, accordingly, the undersigned's administration has implemented various measures to-date to protect vulnerable populations from residential evictions during the COVID-19 pandemic, including through the issuance of Executive Order Nos. 124 and 142, which placed a temporary moratorium, through June 20, 2020, on residential evictions for reasons of late payment or nonpayment, and through the creation of the Housing Opportunities and Prevention of Evictions Program ("HOPE"), designed to provide financial relief to the neediest of North Carolina families; and

Centers for Disease Control and Prevention Order Temporarily Halting Residential Evictions

WHEREAS, the Centers for Disease Control and Prevention issued an order, pursuant to 42 U.S.C. § 264 of the Public Health Act and 42 C.F.R. § 70.2, and titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," temporarily halting certain residential evictions nationwide, from September 4, 2020 through December 31, 2020 (the "CDC Order"); and

WHEREAS, the CDC Order recognizes that COVID-19 poses a historically unprecedented threat to public health, and that a temporary halt to certain residential evictions "constitutes a reasonably necessary measure to prevent the further spread of COVID-19 throughout the United States"; and

WHEREAS, the CDC Order protects certain residential tenants from eviction for nonpayment of rent under certain conditions; and

WHEREAS, the CDC Order applies to North Carolina and, according to the Order's terms, shall be enforced by federal authorities and cooperating state and local authorities; and

WHEREAS, despite the application of the CDC Order to North Carolina, recent reports have made clear that the CDC Order has been enforced inaccurately and inconsistently in some

parts of North Carolina, thereby exposing some tenants to unwarranted eviction and unnecessary hardship; and

WHEREAS, many residential tenants who have been evicted from their homes lack adequate resources and legal representation to assist with any challenges to potentially inaccurate and inconsistent applications of the CDC Order to their particular circumstances; and

WHEREAS, in order to qualify for protection from eviction under the CDC Order, a residential tenant must complete a declaration form, under penalty of perjury, and provide it to his or her landlord, declaring, among other required criteria for eligibility, that the tenant has used best efforts to obtain all government assistance for rent or housing, that the tenant has used best efforts to make timely partial payments that are as close to the full payment as the tenant's circumstances may permit, and that the tenant or tenant's household is below a certain income threshold (the "Declaration"); and

WHEREAS, many residential tenants in North Carolina who would otherwise qualify for eviction protection under the terms of the CDC Order are unaware of the obligation to deliver a completed and signed Declaration to their landlord, and accordingly do not then receive the corresponding protection from eviction under that Order, resulting in unwarranted evictions and unnecessary hardship for many North Carolinians; and

WHEREAS, under the CDC Order, landlords are not required to inform their residential tenants at risk of eviction or in the process of eviction of the CDC Order of the tenants' obligation to provide the landlord with a completed and signed Declaration in order to receive the full scope of protection under the Order; and

WHEREAS, an affirmative obligation on the landlord to provide a residential tenant with a copy of the Declaration form in any action for eviction against that tenant under Article 3 of Chapter 42 of the North Carolina General Statutes will inform and educate residential tenants about their rights under the CDC Order, and may lessen the number of North Carolinians removed from their homes during the COVID-19 pandemic; and

WHEREAS, for the same reasons, a landlord must be required to inform the court if a tenant has provided the landlord with a copy of the Declaration, and any Declaration must be filed with the court; and

WHEREAS, to ensure the effective execution of the CDC Order, this Executive Order provides for the modification of residential leases to effectuate certain procedures in the event a tenant's Declaration is filed with the court, and in the event the landlord decides to contest that Declaration; and

WHEREAS, like the CDC Order, this Executive Order does not block evictions for reasons other than nonpayment of rent, interest, late fees, or penalties; and

WHEREAS, the restrictions on evictions under this Executive Order shall extend only during the term of this Executive Order; and

WHEREAS, the CDC Order does not relieve any residential tenant from the obligation to pay rent, make housing payments, or comply with any other obligation that the tenant may have under tenancy, lease or contract, and it does not protect tenants from eviction for reasons of criminal activity, threatening the health or safety of other tenants, or violating building codes or other ordinances; and

WHEREAS, in order to ensure accuracy and consistency in the application of the CDC Order to residential tenants in North Carolina, and to best protect the most vulnerable of North Carolina households during the COVID-19 pandemic, the undersigned desires to (i) clarify that the protections for qualifying residential tenants under the CDC Order shall apply to those qualifying residential tenants in North Carolina and (ii) implement other reasonable and necessary measures to clarify and extend the protections extended by the CDC Order; and

Residential Assistance Program in North Carolina

WHEREAS, the undersigned has established the HOPE program for rent and utility assistance, overseen and administered by the North Carolina Office of Recovery and Resiliency, and seeded with Coronavirus Aid, Relief and Economic Security Act (“CARES”) funding in excess of \$117 million dollars; and

WHEREAS, the HOPE program, which launched October 15, 2020, is aimed at those residential tenants who have a household median income at or below eighty percent of their area’s median income, occupy a rental property as their primary residence, and are behind on rent or utility bills when they apply for monetary assistance; and

WHEREAS, the HOPE program provides monetary assistance to those residential tenants who meet the program’s criteria, by way of rent payments made directly to the residential tenant’s landlord, for up to six months of rental assistance, and provides protection from eviction for qualifying tenants, provided their landlord executes an agreement not to evict the qualifying tenant for a specified duration of time, in exchange for receipt of funds through the HOPE program (the “HOPE Landlord-Tenant Agreement”); and

WHEREAS, since the HOPE program became effective, over 22,800 North Carolinians have applied for assistance through the program, underscoring the significant need for rental assistance and eviction protection across the state during the pandemic; and

WHEREAS, as of the date of this Executive Order, the vast majority of HOPE program applicants who have met the eligibility criteria for assistance under that program have not yet received protection from eviction, because their application has not yet advanced to the stage whereby the landlord must execute the required HOPE Landlord-Tenant Agreement; and

WHEREAS, the undersigned wishes to extend the protections of this Executive Order to those HOPE program applicants who have met the eligibility criteria for assistance under that program but who have not yet received protection from eviction under the HOPE Landlord-Tenant Agreement; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to “cooperate and coordinate” with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Governorially declared State of Emergency, the undersigned has the power to “give such directions to state and

local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) further authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Evictions Moratorium.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Protections Apply to all Residential Tenants Who Qualify under the CDC Order.

1. The protections of the CDC Order shall apply to all residential tenants in North Carolina who qualify for protection from eviction under the terms of that Order.
2. Nothing in this Executive Order precludes evictions of tenants for reasons other than nonpayment or late payment of rent (including nonpayment or late payment of fees, penalties or interest).
3. For avoidance of doubt, such protections apply to those qualifying residential tenants regardless of whether or not the rental property is federally subsidized.

Section 2. Landlords' Obligations in any Residential Eviction Action; Application of the CDC Order's Protections.

For the reasons and pursuant to the authority set forth above, the undersigned orders that all residential leases are modified to effectuate the following procedures. These procedures are required only during the effective period of this Executive Order.

- A. Obligation to Provide CDC Declaration Form to Residential Tenants in any Action for Eviction.** In any action for eviction to recover possession of residential property under Article 3 of Chapter 42 of the North Carolina General Statutes that is commenced on or after the effective date of this Executive Order and before the termination of this Executive Order, the landlord must execute an affidavit and present it to the court certifying that the landlord has provided the residential tenant with a blank copy of the Declaration form.

- B. One Declaration per Household. A single Declaration or a single equivalent declaration from a tenant responsible for paying rent under the lease is sufficient to activate the protections of this Executive Order. Notwithstanding any guidance from the CDC to the contrary, separate Declarations are not required from each person living in the home.
- C. Result of Filing a Declaration. In actions pending on or commenced after the date of this Executive Order, a landlord who has been provided with a tenant's Declaration pursuant to the CDC Order shall immediately notify the court that such Declaration has been received and shall submit a copy of the Declaration to the court within five (5) days of receipt.
- D. Purposes for which Eviction Actions May Proceed. In the event the landlord believes the action should still proceed despite the filing of the Declaration, the landlord shall submit to the court a response to the Declaration identifying in writing why the landlord believes the action should still proceed despite the protections of the CDC Order. For example, the landlord may respond by indicating that the eviction is for a reason other than nonpayment or late payment of rent. A hearing to determine whether the action should proceed shall be held according to the timeline for hearings for eviction proceedings, or as otherwise established by the court.
- E. Writs of Possession.
1. Upon receiving a Declaration, the landlord shall take no actions to request a writ of possession, and the landlord is not entitled to the writ, but the landlord may submit a response to the Declaration as stated above in Subsection D.
 2. If a court determines that the eviction should proceed under Subsection D, and ultimately enters a judgment against the tenant, nothing in this Executive Order prohibits a landlord from requesting a writ of possession, and the landlord shall be legally entitled to a writ of possession in those circumstances.

Section 3. Impact of Receipt of Monetary Assistance through the HOPE Program.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

The protections from eviction of this Executive Order shall extend to those residential tenants who have applied for the HOPE program and have been notified that they have met the eligibility criteria for participation in the HOPE program, even if those residential tenants would not qualify for protection from eviction under the CDC Order. Once the landlord has executed the HOPE Landlord-Tenant Agreement, the tenant shall be protected from eviction under the terms of that Agreement, and not under this Executive Order.

Section 4. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 5. Savings Clause and Interpretation.

- A. If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
- B. The protections stated in this Executive Order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal, rescission, amendment, or administrative interpretation of the CDC Order. If any court without jurisdiction over the State of North Carolina enjoins or otherwise blocks or modifies the CDC Order, in whole or in part,

this Executive Order shall continue to apply, and this Executive Order shall continue to provide the protections listed in the CDC Order.

Section 6. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

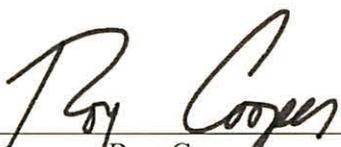
Section 7. Enforcement.

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 8. Effective Date.

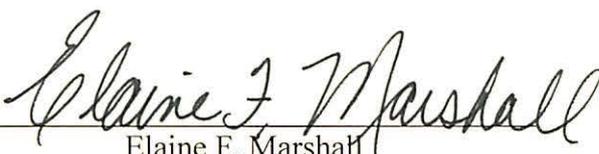
This Executive Order is effective October 30, 2020, at 5:00 pm. This Executive Order shall remain in effect until December 31, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28th day of October in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA

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and General Counsel
EDMOND W. CALDWELL, JR.

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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: September 4, 2020
SUBJECT: CDC Moratorium on Evictions --- September 4, 2020 through
December 31, 2020

Today, the Centers for Disease Control and Prevention ("CDC") issued an Order which implements a nationwide eviction moratorium, **effective immediately, beginning September 4, 2020 through December 31, 2020.** A copy of the Order is attached for your reference.

The CDC Order Does Not Have Any Impact on a Sheriff's Duty to Execute a Valid Court Order for the Possession of Real Property

For the reasons explained below, the CDC Order has no impact on the Office of Sheriff and does not impact the sheriff's duty to carry out valid court orders directed to the sheriff.

While the CDC Order does impact the circumstances under which a writ for possession of real property may be issued by a court, the Order does not prevent sheriffs from executing the writ once it has been signed by a judge or magistrate.

The CDC Order Does Not Apply to Sheriffs

The language contained in the CDC Order that places a moratorium on evictions does not include sheriffs or other law enforcement officials. Instead, the Order covers "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action" Those covered individuals that have the legal right to pursue eviction or a possessory action "includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

Based on the language of the CDC Order defining whom the Order covers, it is clear that the Order applies to entities or individuals who are property owners or who have legal authority over residential property and have legal authority to evict a person from that property. The CDC Order does NOT apply to sheriffs who are



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tasked with carrying out court orders relating to the possession of property after a judgment has been entered by a court.

The CDC Order Does Not Halt All Evictions --- A Sheriff has No Role in Questioning the Validity of a Court Order that Otherwise Appears Valid

Even with the CDC Order and moratorium, it is important to remember that some valid summary ejectment orders will continue to be issued. The CDC Order requires certain criteria to be met by the tenant to avoid eviction. The Order puts the burden on the tenant to provide a “declaration” [i.e. written and signed statement] to the landlord stating that **ALL** five of the following criteria are met:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- (3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- (4) the individual is 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; and
- (5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

As a result, there will be scenarios in which these criteria will not be met and eviction will be authorized, even under the CDC moratorium. The judge or magistrate must make the determination in each specific case whether the legally required declaration has been provided.

Once a lawful writ for possession of real property is issued, the sheriff should not look behind that order to question the court’s authority to issue the writ. The sheriff remains legally obligated to execute the valid writ for possession of real property in the same manner as carrying out other statutorily mandated duties.

In addition, the CDC Order also specifically states that the eviction moratorium does not apply to evictions due to: (1) engaging in criminal activity on the premises; (2) threatening the health or safety of other residents; (3) damaging the real property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment.

Therefore, it is clear that: (1) writs for possession of real property will legally continue to be issued even after the effective date of the CDC Order on September 4, 2020; and (2) sheriffs are not persons to whom the CDC Order applies based on the language of the Order.

Are Sheriffs Authorized to Execute Writs for Possession of Real Property that were issued BEFORE the CDC Order is Effective on September 4, 2020?

Yes, in the vast majority of cases the writ for possession of real property should be executed by the sheriff.

A potential exception to this general rule applies if: (1) the tenant provides to the deputy serving the writ of possession for real property the CDC declaration; (2) the CDC declaration is signed by the tenant; **AND** (3) the tenant advises the deputy that the CDC declaration has previously been provided by the tenant to the landlord. In this unlikely but possible scenario, the law is unclear as to whether or not the deputy should execute the writ for possession of real property that was issued by a court prior to the effective date of the CDC Order. In this event, the deputy should consult with their supervisor or sheriff. The sheriff should consult with their legal advisor prior to making a decision on whether or not to execute the writ for possession of real property in this limited circumstance.

If you have any questions regarding the issues discussed above, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks....Eddie C.



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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19.

DATES: This Order is effective September 4, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Nina Witkofsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, GA 30329; Telephone: 404-639-7000; Email: cdc.regulations@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.¹

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.² During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these best efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Applicability

Under this Order, a landlord, owner of a residential property, or other person³ with a legal right to pursue

eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order. This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Nor does this order apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Renter's or Homeowner's Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions to prevent the further spread of COVID-19 may use. To invoke the CDC's order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing

partnerships, societies, and joint stock companies, as well as individuals.

¹ CDC, *People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

² Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

³ For purposes of this Order, "person" includes corporations, companies, associations, firms,

payment. Executed declarations should not be returned to the Federal Government.

Centers for Disease Control and Prevention, Department of Health and Human Services

Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

Summary

Notice and Order; and subject to the limitations under "Applicability": Under 42 CFR 70.2, a landlord, owner of a residential property, or other person⁴ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

Definitions

"Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

"Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

"Covered person"⁵ means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or

other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),⁶ (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary⁷ out-of-pocket medical expenses;

(4) the individual is 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; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

"Evict" and "Eviction" means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage.

"Residential property" means 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 laws of the State, territorial, tribal, or local jurisdiction.

"State" shall have the same definition as under 42 CFR 70.1, meaning "any of the 50 states, plus the District of Columbia."

"U.S. territory" shall have the same definition as under 42 CFR 70.1, meaning "any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness;
- mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and
- supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.

Background

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

⁴ For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

⁵ This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., *Who gets evicted? Assessing individual, neighborhood, and network factors*, Social Science Research 62 (2017), 366–377, <http://dx.doi.org/10.1016/j.ssresearch.2016.08.017>. (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.

⁶ According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,621 annually). See National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

⁷ An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.⁸

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.⁹ During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

Applicability

This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more

restrictive than the requirements in this Order.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;¹⁰ (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, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Eviction and Risk of COVID-19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.¹¹ Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an

index case of COVID-19 than other close contacts.¹²

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.¹³ Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.¹⁴ The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.¹⁵

¹² Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study.* *Lancet Infect Dis* 2020. [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

¹³ See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

¹⁴ Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

¹⁵ See Congressional Research Service. *CARES Act Eviction Moratorium.* (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

⁸ CDC, *People with Certain Medical Conditions.* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

⁹ Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open.* 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

¹⁰ Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick*, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

¹¹ United States Census Bureau. *American Housing Survey, 2017.* <https://www.census.gov/programs-surveys/ahs.html>.

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.¹⁶

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30–40 million people in America could be at risk of eviction.¹⁷ A wave of evictions on that scale would be unprecedented in modern times.¹⁸ A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID-19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID-19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.¹⁹ Approximately 15% of moves are interstate.²⁰

Eviction, Homelessness, and Risk of Severe Disease From COVID-19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population.²¹ In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.²² Additionally,

some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.²³

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID-19 have been identified in homeless shelters.²⁴ In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.²⁵ In Boston, Massachusetts, universal COVID-19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.²⁶ COVID-19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).²⁷ Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.²⁸

CDC guidance recommends increasing physical distance between beds in homeless shelters.²⁹ To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to

individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID-19. Neither consequence is in the interest of the public health.

The risk of COVID-19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.³⁰ The unsheltered homeless are at higher risk for infection when there is community spread of COVID-19. The risks associated with sleeping and living outdoors or in an encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID-19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID-19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID-19.³¹ Also, the homeless

[uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf](https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html)

¹⁶ United States Department of Housing and Urban Development, *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2*. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>

¹⁷ Mosites E, et al, *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27–April 15, 2020*. *MMWR* 2020 May 1;69(17):521–522.

¹⁸ Tobolowsky FA, et al, *COVID-19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020*. *MMWR* 2020 May 1;69(17):523–526.

¹⁹ Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV-2 Infection in Residents of a Large Homeless Shelter in Boston*. *JAMA*. 2020 Apr 27;323(21):2191–2. Online ahead of print.

²⁰ Imbert E, et al. *Coronavirus Disease 2019 (COVID-19) Outbreak in a San Francisco Homeless Shelter*. *Clin Infect Dis*. 2020 Aug 3.

²¹ National Health Care for the Homeless Council and Centers for Disease Control and Prevention. *Universal Testing Data Dashboard*. Available at: <https://nhchc.org/cdc-covid-dashboard/>.

²² Centers for Disease Control and Prevention. *Interim Guidance for Homeless Service Providers to Plan and Respond to COVID-19*. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

³⁰ In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. See, Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

³¹ Hugo Vasquez-Vera, et al. *The threat of home eviction and its effects on health through the equity*

Continued

¹⁶ See HUD, *A Picture of Subsidized Households General Description of the Data and Bibliography*, available at: <https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html>.

¹⁷ See Emily Benfer, et al., *The COVID-19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk*, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

¹⁸ As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. *National Estimates: Eviction in America*. <https://evictionlab.org/national-estimates/>.

¹⁹ See U.S. Census Bureau, *CPS Historical Migration/Geographic Mobility Tables*, available at: <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html>.

²⁰ *Id.*

²¹ See CDC, *Coronavirus Disease 2019 (COVID-19), People Who Are at Increased Risk for Severe Illness*, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extro-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

²² Seattle-King County. *Point in Time Count*. <https://regionalhomelessystem.org/wp-content/>

often have underlying conditions that increase their risk of severe outcomes of COVID-19.³² Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.³³

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.³⁴ At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,³⁵ which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Findings and Action

Therefore, I have determined the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or U.S. territories that

do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.³⁶

Based on the convergence of COVID-19, seasonal influenza, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as fall and winter approach, I have determined that a temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the "Applicability" section, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID-19. Another potential consequence would be if evicted individuals become

homeless and unsheltered, and further contribute to the spread of COVID-19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid State and local authorities in the enforcement of their quarantine and

Jens: A systematic review. *Social Science and Medicine*. 175 (2017) 199e208.

³² Fazel S, Geddes JR, Kushol M. *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations*. *Lancet*. 2014;384(9953):1529–1540.

³³ Hsu HE, et al. *Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020*. *MMWR* 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

³⁴ See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

³⁵ Ly TDA, Edouard S, Badiaga S, et al. *Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys*. *Clin Microbiol Infect*. 2019; 25(2):249.e1–249.e6.

³⁶ In the United States, public health measures are implemented at all levels of government, including the Federal, State, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

other health regulations and to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this order to prevent eviction is effectuated to protect the public health, the States and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG—CV and ESG—CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, State and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy->

issues/cares/state-and-local-governments for more information.

Effective Date

This Order is effective upon publication in the **Federal Register** and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

Attachment

Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;³⁷
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 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

³⁷ "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

wages, lay-offs, or extraordinary³⁸ out-of-pocket medical expenses;

- 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.³⁹

- 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 December 31, 2020, 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.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant Date

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

Nina B. Witkofsky,

Acting Chief of Staff, Centers for Disease Control and Prevention.

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³⁸ An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

³⁹ "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.