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CDC Moratorium on Residential Evictions: What are the Commercial Impacts?

September 2020 • [David Brewster](#)

On September 4th, the Centers for Disease Control and Prevention (the “CDC”) published an [Order](#) in the Federal Register instituting a temporary moratorium prohibiting landlords from evicting qualifying residential tenants. That moratorium will, for now, remain in effect until December 31, 2020.

[Notably](#), the CDC’s Order does not impact commercial evictions, and does not cover all residential evictions. Residential tenants seeking to avoid eviction proceedings under the Order must present an [affidavit](#) to their landlord certifying, among other things, that the tenant used its best efforts to obtain all available government assistance for rent or housing, that they anticipate making less than \$99,000 in annual income for Calendar Year 2020 (\$198,000 for couples filing jointly), that they are unable to pay rent and are paying as much in partial rent payments as they can, and that they will likely become homeless or need to move into a new residence shared by other people who live in close quarters if they are evicted. Although landlords may not initiate eviction proceedings against qualifying tenants, the Order specifies that rent under the relevant lease continues to accrue during any period in which the tenant qualifies for eviction relief.

Eviction procedures are largely governed by state law, and consistent with other federal laws and regulations, states may enact stricter laws, rules, or regulations than the CDC’s moratorium with respect to preventing eviction proceedings. In Colorado,

C.R.S. § 13-40-101 et seq. sets forth specific procedures for residential and commercial evictions, and a previous moratorium on certain residential evictions enacted by Governor Jared Polis lapsed in June.

The CDC's Order states that "[i]n the absence of State and local protections, as many as 30-40 million people in America could be at risk of eviction." One [study](#) by global advisory firm Stout Risius Ross predicts that more than 40% of renting households are at risk of eviction proceedings towards the end of 2020. For this reason, proponents of the moratorium argue that the Order, while a step in the right direction, does not go far enough.

Opponents largely contend that the CDC lacks authority to override local law and issue a nationwide eviction moratorium. As a basis of authority, the CDC asserts that the Order will prevent the spread of COVID-19. Notably, however, 42 U.S.C. § 264 (cited by the CDC as authority in the Order) only vests the CDC with authority to prevent interstate, rather than intrastate, spread of communicable diseases, and opponents argue that the Order is devoid of an explanation for how a moratorium on local residential evictions accomplishes that charge. The CDC may likely argue that many evicted residents will have no choice but to travel across state lines to seek more affordable housing opportunities or live with relatives in other states.

States are still evaluating how the CDC's moratorium will practically impact local eviction [law](#), and numerous [lawsuits](#) were filed throughout the country challenging the CDC's moratorium, in addition to the various state moratoria. While those lawsuits remain unresolved, questions still persist regarding how the CDC order will impact residential evictions in Colorado. Even where local orders and the CDC moratorium have avoided explicitly forestalling commercial evictions, assuming those actions survive judicial scrutiny, questions will also persist with respect to how current or future federal and local government action can impact commercial processes. It is not clear that any rationale supporting the CDC's residential eviction moratorium would be applicable to a similar commercial eviction moratorium. This firm will continue to monitor this situation and provide relevant updates as necessary.

Contact the attorneys at Otten Johnson if you have any questions about initiating eviction proceedings in Colorado.

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