

Summary
Ejectment

THE LAW AT THE MOMENT . . .




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“You are here. . .”



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YOU ARE HERE



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Four Main Areas of Concern	Remnants of Governor's EO 142
	Remnants of Cares Act Moratorium
	Continuing application of Cares Act/Forbearance re Mortgages
	Continuing application of CDC Order

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Governor's EO 142

Applied from May 30 – June 20 to both commercial and residential leases.

Prohibits assessment of late fees in relation to rent coming due during the relevant period.

Extends time to pay rent coming due during this relevant period for six months.

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Remnants of CARES Act Moratorium

Applied from March 27 – July 25.

Applies to *covered dwellings* (federally subsidized housing or involving federally-backed mortgages)

Prohibits LLs from charging late fees for defaults occurring during moratorium period

Requires minimum 30-day notice to vacate, regardless of lease provisions related to required notice, to be given no earlier than July 25.

Notice requirement probably applies only to rental default occurring during applicable period

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Continuing application of CARES Act related to mortgage forbearance

Currently in effect through December 31 or end of state of emergency.

Applies to rental properties designed for occupancy by five or more families which are secured by a "federally backed multifamily mortgage loan" as defined by the Act.

LL prohibited from evicting T for default in rent if mortgage is in forbearance.

If mortgage has been in forbearance, LL required to provide 30 days notice to vacate, given after forbearance terminates, before seeking eviction for default in rent.

Forbearance is typically for 30 days, subject to extension for two additional 30-day periods.

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What does the affidavit tell you?

3. The Premises IS IS NOT a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act. (A "covered dwelling" means: (1) occupied by a tenant pursuant to (i) a residential lease or (ii) without a lease or with a lease terminable under State law and (2) is on a covered property. A "covered property" means any property that: (1) participates in (i) a federal covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)) or (ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490); or (2) has a (i) federally backed mortgage loan or (ii) federally backed multifamily mortgage loan.)
4. If the premises is a covered dwelling under the CARES Act, is the mortgage loan currently in foreclosure? (See § 4023(d) of the Coronavirus Aid, Relief, and Economic Security Act.) Yes No
5. Does the subject property participate in (i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)) or (ii) a rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490)? (For example, this includes the Low-income Housing Tax Credit (LIHTC) or a Section 8 Voucher program.) Yes No
6. Does the subject property have (i) a federally backed mortgage loan or (ii) a federally backed multifamily mortgage loan? (For example, this includes mortgage loans owned or securitized by Fannie Mae or Freddie Mac and mortgages insured by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Department of Agriculture (USDA), or the Department of Housing and Urban Development (HUD).) Yes No
7. The information relied upon by me in making this attestation is (Please identify any database or other information that you have used to determine that the Premises does not have a federally-backed mortgage loan – for example, any Fannie Mae, Freddie Mac, USDA, VA, or HUD-backed mortgage loan, be specific):

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Last, but not least

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CDC Order

- Became effective September 4, expires December 31.
- Prohibits LL from "taking any action to remove or cause to be removed" a "covered person" for default in rent.
- A "covered person" is resident of rental premises who has delivered proper Declaration to landlord.
- T must attest to five specific statements in written Declaration executed under penalty of perjury.
- Provides that a LL is subject to fines and imprisonment for violation of Order.

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Required contents of Declaration

- I have used best efforts to obtain all available government assistance for rent or housing;
- 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 wages, lay-offs, or extraordinary 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.

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Questions on everyone's mind

- What if the tenant lies on the Declaration?
- What if the landlord refuses to accept the Declaration?
- What if the tenant signs the Declaration but it does not appear to have been executed under oath?
- What if the tenant claims to have delivered the Declaration but the landlord denies having received it?
- What if the tenant gives the landlord the Declaration for the first time at trial?
- What if the landlord wants to challenge the truth of allegations contained in the Declaration?

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Questions on everyone's mind, Part 2

- What if the tenant has served the landlord with the Declaration but does not appear at trial?
- What if a tenant delivers a Declaration to the landlord after judgment is entered?
- What if a landlord asks only for a money judgment?
- What if a landlord wants to evict for holding over?
- What should I say if the landlord asks how to charge the tenant with perjury?
- What is the enforcement mechanism for a landlord who violates the Order?
- If an action is filed in violation of the Order, what may/must the Court do?

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The problem is inconsistency.


National Center for State Courts
 Tiny Chats: Recipe for Responding to the CDC Order



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What should courts do?

As indicated in the Order, courts should take into account the Order's instruction not to evict a covered person from rental properties where the Order applies. The Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the Order. State and local courts may take judicial notice of the CDC Order, and the associated criminal penalties that may be imposed for non-compliance in making a formal judgment about any pending or future eviction action filed while this Order remains in effect.



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How does T obtain this protection?

A tenant, lessee, or resident of a residential property must provide a completed and signed copy of the declaration, as described above, 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. The declaration may be signed and transmitted either electronically or by hard copy. Each adult listed on the lease, rental agreement, or housing contract should complete the declaration. In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of other adult residents party to the lease, rental agreement, or housing contract at issue. The declaration can be downloaded here. For more information about the form, see below. Do not return your completed form to CDC.

All declarations, regardless of the form used, must be signed, and must include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration.

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What can a landlord do if a tenant has declared that they are a covered person under the CDC Order, but the landlord does not believe the tenant actually qualifies?

The Order does not preclude a landlord from challenging the truthfulness of a tenant's declaration in any state or municipal court. The protections of the Order apply to the tenant until the court decides the issue as long as the Order remains in effect.

What if individuals act in bad faith when completing and submitting the declaration?

Anyone who falsely claims to be a covered person under this Order by attesting to any material information which they do not believe to be true may be subject to criminal penalties under 18 U.S.C. § 1621 (perjury) or other applicable criminal law.

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More . . .

Any evictions for nonpayment of rent that may have been initiated prior to September 4, 2020, but have yet to be completed, will be subject to the Order. Any tenant who qualifies as a "Covered Person" and is still present in a rental unit is entitled to protections under the Order. Any eviction that occurred prior to September 4, 2020 is not subject to the Order.

No impact on T's obligation to pay rent.

US DOJ will prosecute violations of the Order.

Several laws (18 U.S.C. §§ 3559 and 3571, 42 U.S.C. § 271, and 42 C.F.R. § 70.18) say that a person who violates the Order may be subject to a fine of no more than \$100,000 or one year in jail, or both, if the violation does not result in death. A person violating the Order may be subject to a fine of no more than \$250,000 or one year in jail, or both, if the violation results in a death or as otherwise provided by law. An organization violating the 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. These are criminal penalties and are determined by a court of law.

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Final notes

Brown v. Azar filed in US District Court in Northern District of Georgia by several landlords and National Apartment Association, challenging the Order on a number of grounds. Motion for preliminary injunction pending.

Remember that this is new law and tenants providing Declarations at last minute after having just learned of law is not inherently suspicious behavior.

Emergency Directive 5: *When it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind to be filed in the General Court of Justice be verified, or that an oath be taken, it shall be sufficient if the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language: "I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true. (Signed)*

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