CDC EVICTION MORATORIUM

LEGAL AID OF NORTH CAROLINA, 9/2/2020
On Sept. 1, 2020, the Centers for Disease Control and Prevention issued an order entitled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19.”

It declares a national moratorium of certain residential evictions for nonpayment (rent, fees, and other charges) under the authority of 42 C.F.R. § 70.2.


It takes effect September 4 and lasts until December 31.
WHAT DOES “EVICT” MEAN?

• “‘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 would appear to prohibit all phases of the eviction process
WHERE DOES IT APPLY?

• Potentially every state in the US and in all US territories (unless your state already has an equal or better moratorium)
• It applies in NC because we don’t have a moratorium right now
WHAT HOUSING IS COVERED?

• Any residential property (defined as “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”)
• The definition does “not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant” as defined under state law
WHAT TYPES OF EVICTIONS DOES IT COVER?

• Nonpayment of rent, lease expiration/no cause, and any other evictions not exempted
• Evictions based on the following things are exempted:
  1. Engaging in criminal activity while on the premises;
  2. Threatening the health or safety of other residents;
  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; and
  5. Violating any other contractual obligation, other than the timely payment of rent/other fees/interest
WHAT DOES A TENANT HAVE TO DO?

• The moratorium only helps “covered persons”
• To be a “covered person,” the tenant must sign a sworn affidavit and deliver it to the landlord
WHAT DOES THE AFFIDAVIT SAY?

• Tenants must say under penalty of perjury:
  • (i) their income is less than $99,000, they did not have to pay income tax in 2019, or they received a stimulus check;
  • (ii) they are unable to pay rent due to income loss or extraordinary out-of-pocket medical expenses;
  • (iii) they would become homeless or need to double-up if evicted;
  • (iv) they will still make partial payments ("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 non-discretionary expenses").
WHAT DOES A TENANT HAVE TO DO? (CONTINUED)

- Tenants with court dates already scheduled may have to go to court and show the magistrate/judge that they delivered the affidavit to the landlord
- If not, court could still enter eviction judgment
- Order can be fairly interpreted to stop writs from issuing/executing
- Tenants may have to file TROs to stop writs under Order
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