

FAQs about the CDC Order

What does the CDC Order mandate?

The owner of residential property shall not evict any covered person from any residential property during the effective period of the order. The order is in effect from September 4, 2020 through December 31, 2020.

Are owners required to disclose this Order and its provisions to their residents?

No, there is no requirement for owners to disclose this Order or any of its provisions to their residents. Caution should be taken before requiring documentation (i.e. paystubs, layoff notice, rental assistance applications, etc.). Be careful not to appear to intimidate the resident or jeopardize the resident's ability or motivation to provide the declaration. Also, the resident is not required to use the form provided by the CDC.

What is considered an eviction under the CDC Order?

An eviction means any action by an owner to remove or cause the removal of a covered person from a residential property. The Order does not stop the eviction process—instead, it obligates residents to execute and deliver a declaration to trigger the Order's protections. Rental housing providers may proceed with their normal business operations, including delivering notices of non-renewal, notices to vacate and filing eviction petitions unless and until they receive a signed declaration from the resident and the declaration meets the criteria in the Order.

Who is a "covered person" in the CDC Order?

A covered person is a resident who provides to their landlord a declaration under penalty of perjury indicating all of the below:

- the individual has used best efforts to obtain all available government assistance for rent or housing;
- the individual either:
 - 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);
 - was not required to report any income in 2019 to the IRS; or
 - received an Economic Impact Payment (stimulus check) pursuant to the CARES Act;
- 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;
- 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
- 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.

Owners should stop where they are in the eviction process any time they receive a declaration to evaluate the declaration and determine whether it complies with the Order.

What are the requirements of the declaration?

- The five statements associated with a covered person.
- Additional statements of understanding:
 - The person understands that they must still pay rent and comply with other obligations that they have under their lease and that they understand that fees, penalties, or interest for not paying rent on time as required by their lease may still be charged or collected; and
 - The person understands that at the end of the temporary halt on evictions on December 31, 2020, the 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 the person subject to eviction pursuant to State and local laws.

If multiple adults reside in a unit, are all the residents covered if only one provides this information?

No, protections are on a per-resident basis. Each adult listed on the lease should complete and provide a declaration. Since the Order also states that “available government assistance” means any governmental rental or housing payment benefits available to the individual or any household member, all household members would need to show they applied for all government assistance available.

Does the Order excuse residents from paying rent or other charges due under their leases?

No, rent and other sums remain due and all late fees or other charges for failure to timely pay may be charged or collected.

Can late fees and other penalties accrue during the Order’s effective period?

Yes, late fees, penalties, and interest may accrue during the Order’s effective period (September 4, 2020 through December 31, 2020).

What if a resident doesn’t tell the truth on the declaration?

The declaration is required to be signed under penalty of perjury.

The form declaration attached to the order advises that the declaration is sworn testimony, meaning that the resident can be prosecuted, go to jail, or pay a fine if the resident lies, misleads, or omits important information.

What is the penalty for noncompliance with the Order?

- A person violating the Order may be subject to a fine not more than \$100,000 if the violation does not result in death or one year in jail or both.
- A person violating the Order may be subject to a fine not more than \$250,000 if the violation results in a death or one year in jail or both.
- An organization violating the Order may be subject to:
 - A fine not more than \$200,000 per event if the violation does not result in a death; or
 - A fine of not more than \$500,000 per event if the violation results in death.

Does the Order relieve the resident from the obligation to pay rent and other charges?

No, the Order does not relieve the obligation to pay rent or comply with any other obligation the resident has under the lease. Nothing in the order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent.

Can an owner still evict for a nonmonetary default?

Yes. Nothing in the Order precludes eviction based on:

- Engaging in criminal activity while on the premises;
- Threatening the health or safety of other residents;
- Damaging or posing an immediate and significant risk of damage to property;
- Violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- 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).

Is an owner prohibited from evicting before a resident gives a declaration?

No, the Order does not prohibit pursuing the eviction process before a proper declaration is provided.

Can a resident's declaration be challenged?

Nothing in the CDC Order discusses challenging the declaration.

However, the declaration is required to contain seven statements made under penalty of perjury. If the seven statements are not made under penalty of perjury, the declaration would not be proper under the Order. NAA is aware that some attorneys are seeking declaratory judgments from courts so they can contest the validity of the declaration.

How does this impact other state and local orders and ordinances?

The protections of this Order are in addition to, and do not replace, the protections provided by other valid state and local protections. The Order does not apply in any state or municipality with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Check with your local Court or on the Court's website for any rules your Court may have developed regarding implementation of this CDC Order.

This document only applies to the Order that was published by the Centers for Disease Control on September 4th, 2020. This document does not take into account other federal, state, and local laws and court orders that may also impact the eviction process. The Order from the CDC is subject to additional analysis and interpretation. Courts vary in their interpretation of this Order. This document was constructed with the knowledge and expertise shared by the National Apartment Association. It should not be construed as legal advice. For more guidance, consult an attorney.