

## **New CFPB Rule:**

A new interim final rule issued by the Consumer Financial Protection Bureau ("CFPB"), which became effective May 3, 2021, classifies landlords attempting to collect unpaid rent from tenants as "debt collectors" and requires them to provide written notice to tenants of their rights under the U.S. Center for Disease Control's ("CDC") eviction moratorium. In its discussion of the rule, the CFPB states that the rule is based on its interpretation of the Fair Debt Collections Practice Act ("FDCPA") which prohibits a debt collector from using false, deceptive, or misleading representations or means to collect a debt and from using unfair or unconscionable means to collect a debt. Under the CFPB's final rule, landlords seeking to evict tenants for non-payment of rent must provide tenants who may have rights under the CDC order with clear and conspicuous written notice of those rights. The notice must be provided on the same date as the eviction notice. The notice must be provided in writing; phone calls or electronic notice such as text messages or emails are NOT sufficient. Failure to provide the required notice to tenants is a violation of the FDCPA. The FDCPA provides a private right of action against debt collectors, and violators can be held liable for actual damages, statutory damages, and attorney's fees. Additionally, class actions may be brought under the FDCPA. The CFPB has provided "sample" notice language:

***Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal law.***

***Learn the steps you should take now:***

- ***Visit [www.cfpb.gov/eviction](http://www.cfpb.gov/eviction)***
- ***Or call a housing counselor at 800-569-4287***

This new notice requirement is in effect as long as the CDC eviction moratorium is in effect. The CDC moratorium is set to expire June 30, 2021 but is expected to be extended again. [READ MORE HERE](#)

## **U.S. District Court Ruling:**

Last week, a U.S. District Court Judge held the CDC had exceeded its authority with the temporary ban [on evictions] in violation of the Public Health Service Act. ("Court's Order"). In its Memorandum Opinion, the Court held that *"the Public Health Service Act authorizes the Department to combat the spread of disease through a range of measures, but these measures plainly do not encompass the nationwide eviction moratorium set forth in the CDC Order"*. The Justice Department has already filed an emergency appeal in the case and the appellate court has already granted a stay of the Court's Order, which means the CDC eviction moratorium remains in place for now. The appellate Court commented that the stay was *not* issued based on the merits of the Justice Department's argument, but instead was issued to give the court time to consider the motion and any potential opposition. [READ THE COURT'S ORDER HERE](#)



It is worth noting that this ruling has no effect on New Mexico's eviction moratorium. The New Mexico moratorium on evictions stems from an Order issued by the New Mexico Supreme Court to all lower courts in New Mexico which prohibits lower courts from issuing Writs of Restitution pursuant to the New Mexico Uniform Owner Resident Relations Act if the tenant demonstrates to the court an inability to pay rent. Further, in a separate Order, the New Mexico Supreme Court prohibited lower courts from issuing Writs of Garnishment or Writs of Execution as they pertain to consumer debt collection cases. The federal case analyzed the power of the CDC to issue the eviction moratorium. It did *not* analyze the New Mexico's Supreme Court's authority to prohibit lower courts from issuing the above-type writs.

For Rental Assistance Information, visit the links below.

<https://www.nmdfa.state.nm.us/office-of-the-secretary/emergency-rental-assistance-program/>

<https://www.renthelpnm.org>

