

Resources for Landlords

2020-2021

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Iowa Supreme Court Issues Supervisory Order Regarding CDC Eviction Order

March 12, 2021

Jodie Clark McDougal

As discussed in our January 25 blog post, Congress extended the September 4 [CDC Order](#), which temporarily halts certain residential nonpayment evictions, through **March 31, 2021**.

As anticipated, on March 11 the Iowa Supreme Court issued a Supervisory Order regarding the Iowa implementation of the extended CDC Order. The [Supervisory Order](#) makes no changes to the Court's prior October 2 Supervisory Order other than extending the effective date of such order through the eventual expiration date of the CDC Order, which is currently March 31.

The Iowa Supreme Court's supervisory orders generally prevail over the CDC's non-binding guidance in the state of Iowa.

Finally, the [March 11 Supervisory Order](#) (at paragraph 2) expressly confirms that the Iowa Supreme Court's prior requirement, mandating the filing of a [CARES Act Landlord Verification](#) in all nonpayment of rent evictions, is still in effect.

In recent months, some counties have gone away from this requirement. However, presumably based upon this Order, all counties will again require [CARES Act Landlord Verification](#) to be filed in all nonpayment evictions.

As a reminder, paragraph 38 of the May 22 Order mandating the CARES Act Verification provides as follows:

***"CARES Act verification.** Any plaintiff bringing an FED action under chapter 648 for nonpayment of rent after the date of this order shall submit a [CARES Act verification](#) in a form approved by this court"*

Landlords with questions about nonpaying renters or how to proceed in the midst of the various orders should contact an experienced landlord/tenant attorney to discuss their specific situation.

Department of Justice Appeals Texas Decision Striking Down CDC Eviction Order and Issues Statement

March 1, 2021

Jodie Clark McDougal

As discussed in a prior blog post, U.S. District Judge John Barker issued a February 25 [decision](#), ruling that the CDC's [Order](#) temporarily halting certain evictions was unconstitutional, as it exceeded the federal government's constitutional authority.

On Saturday, the Department of Justice and CDC filed its Notice of Appeal with the Texas-based U.S. Court of Appeals for the 5th Circuit.

The Department of Justice also made the following statement setting forth its view on the effect of the Texas decision on its enforcement of the CDC Order nationwide:

"The Department of Justice respectfully disagrees with the February 25 decision of the district court in *Terkel v. CDC* that the CDC's eviction moratorium exceeds Congress' powers under the Commerce Clause and the Necessary and Proper Clause, and the Department has appealed that decision," Brian M. Boynton, acting assistant attorney general for the department's civil division, said in a statement.

"The decision, however, does not extend beyond the particular plaintiffs in that case, and it does not prohibit the application of the CDC's eviction moratorium to other parties. For other landlords who rent to covered persons, the CDC's eviction moratorium remains in effect."

Per this statement, the Department of Justice and CDC will continue to enforce the CDC Order nationwide.

More information will be forthcoming, as there are still unanswered questions regarding how Iowa courts will react to this developing situation. However, at this point we know the federal government will continue to enforce the CDC Order on a nationwide basis, so the most conservative route for landlords is to continue to abide the CDC Order.

Texas Judge Rules CDC Eviction Moratorium Unconstitutional

February 26, 2021

Jodie Clark McDougal

In the [ruling](#), U.S. District Judge John Barker ruled in favor of the landlords and property managers who brought the lawsuit, ruling that the CDC's eviction moratorium exceeded the federal government's constitutional authority. Specifically, Judge Barker ruled that the CDC exceeded its authority under the interstate commerce clause of the U.S. Constitution, and Congress also lacked the constitutional authority to grant CDC the power to halt evictions nationwide.

"The court concludes that the federal government's Article I power to regulate interstate commerce and enact laws necessary and proper to that end does not include the power to impose the challenged eviction moratorium," Judge Barker wrote, "Although the COVID-19 pandemic persists, so does the Constitution."

In the opinion, Judge Barker said he expected the CDC to abide by his ruling and cease enforcement of the CDC's eviction moratorium order, noting "[s]o the court chooses not to issue an injunction at this time."

As of the writing of this blog, the U.S. Justice Department has declined to comment on the ruling, and there is no immediate word from the CDC as to whether it intends to continue to enforce the moratorium should the case be appealed. Many practitioners do expect the case to be appealed to the Texas-based U.S. Court of Appeals for the 5th Circuit.

There are several unanswered questions at this time, and more information regarding the implications of this court decision on Iowa landlords will be forthcoming within the next week.

Bill Relating to Source of Income Moves Through Iowa Legislature

February 22, 2021

Jodie Clark McDougal

On Wednesday, February 17, [SF252](#), a bill relating to how landlords treat sources of income in their tenant and applicant decisions, passed the Senate. The bill now moves on to the House.

In short, the bill provides that cities and counties shall **not** adopt or enforce any source of income ordinance or other ordinance to the extent such ordinance does not allow landlords the freedom of choice regarding whether they will accept or refuse federal housing vouchers. Notably, the bill would have a retroactive effect and would partially invalidate the previously passed source of income ordinances to the extent they require landlords to accept HUD/federal housing choice vouchers; source of income ordinances currently exist in Iowa City, Marion, and Des Moines, as discussed in my prior blog [post](#).

The current version of the bill is limited to landlords that fall within Chapter 562A (Iowa's Uniform Landlord Tenant Law) and does not include landlords that fall under Chapter 562B (Iowa's Manufactured Home Communities Law), but an amendment now or at a later time is possible.

The full text of the bill:

13. A city [or county] shall not adopt or enforce an ordinance or regulation that prohibits an owner, lessor, sublessor, managing agent, or other person having the right to lease, sublease, or rent out a dwelling unit from refusing to lease or rent out the dwelling unit to a person because of the person's use of a federal housing choice voucher issued by the United States department of housing and urban development. Such an ordinance or regulation adopted prior to the effective date of this Act is void and unenforceable on and after the effective date of this Act. For purposes of this subsection, "dwelling unit" means the same as defined in section 562A.6.

Landlords with questions about contacting legislators or concerns should contact an attorney.

Federal Rental Assistance Funds Should Soon Be Available to Landlords

February 12, 2021

Jodie Clark McDougal

As discussed in a prior blog post, federal rental assistance funds should soon be available to both landlords and tenants. Below is the latest information we have in this regard.

Recap

[Section 501](#) of the Congress's Coronavirus Response and Relief Supplemental Appropriations Act 2021 provides \$25 billion in additional rental assistance funds as part of the Emergency Rental Assistance Program (ERAP). The Act contains guidelines regarding the distribution of funds. The rental assistance funds are being provided by U.S. Treasury and will be distributed to states, as well as cities and counties with populations greater than 200,000, in varying amounts for each state/city's use within the Act's parameters. Each state shall receive no less than \$200 million.

Use of funds for back-due rent since March 2020

Importantly, rental assistance funds from the ERAP will be able to be used for back-due rent that accrued after March 13, 2020, the date of the COVID-19 emergency declaration, which is great news for landlords and tenants. Specifically, the Treasury Department has confirmed this point in an [FAQ on the rental assistance](#) published in January. (See Question 11).

Landlord application process

Notably, landlords are going to be able to apply directly to obtain funds under the ERAP. Landlords must apply to and through their state or local government – not the federal government – for rental assistance funds according to statements from the [Department of Treasury](#) and the [Consumer Financial Protection Bureau](#).

Thus, the application process will vary slightly from state to state, and perhaps city to city.

When to apply

States have not yet received rental funds from the federal government for the program, and, to our knowledge, states are not yet accepting applications for the funds.

State-level program in Iowa

As of now, Iowa landlords cannot yet apply for ERAP funds. According to the Iowa Finance Authority, which [will administer the program](#) from a state level, the agency has not created an application process because the agency is still waiting for the federal government to publish rules for the application process. The rules for accepting applications are expected to be distributed to states and local governments in the very near future, and funds are expected to arrive by mid- or late-February.

Local agencies will also assist in the administration of the ERAP. For example, [IMPACT Community Action Partnership](#) will be administering the ERAP for Polk County, including Des Moines.

Moving forward

When additional information is released on the distribution of the funds to states and how the Iowa Finance Authority will administer the program, we will post an update.

Bill Negatively Impacting Manufactured Home Community Landlords Introduced in the Iowa House

February 10, 2021

Jodie Clark McDougal

On February 9, 2021, [HF442](#) was introduced in the Iowa House. This bill would negatively impact landlords of manufactured housing communities by adding numerous prejudicial changes for landlords into Iowa law. Many of the provisions in this bill were also contained in bills from the last legislative session; those bills did not pass.

The bill would make several substantial changes to Iowa Code Chapter 562B, Iowa's Manufactured Housing Community law. Many landlords fear that similar amendments may be proposed in the future for all Iowa landlords under Iowa Code Chapter 562A (Iowa's Uniform Residential Landlord-Tenant law).

Some of the more controversial and objectionable portions of the bill are listed below. The full text of the bill can be found [on the legislature website](#).

- Substantial changes to a landlord's current right to choose whether to renew a tenancy through implementation of various restrictions on the reasons for which a landlord can terminate (i.e., not renew) a tenancy and enlargement of the notice period for non-renewal from 60 to 90 days
- Increase of the notice period for rent changes from 60 days to 120 days
- Restriction that rent could only be increased once a year
- Imposition of a 90-day prior notification requirement to residents when a manufactured home community is be sold
- Mandate that all landlord violations of Iowa Code Chapter 562B are considered consumer fraud
- Restrictions on a landlord's right to impose utility charges and increase such charges
- Restrictions on a landlord's right to deny applicants
- Additional restrictions on allowable provisions within rental agreements
- Changing the retaliation provision within 562B to enlarge the presumption period from 6 months to one year, matching the time element used in 562A
- Eliminating the current parameters of the Manufactured Housing Revolving Loan Fund, which would allow the fund to be used for real estate, not exclusively for manufactured homes in leased communities. Manufactured housing, converted to real property, is already eligible for all housing programs.

The [Iowa Manufactured Housing Association](#), including its executive director-lobbyist, Joe Kelly; general counsel [Jodie McDougal](#); lobbying team, [Tim Coonan](#) and [Sydney Gangestad](#); and the Association Board, have been diligently working on these legislative matters since before session began and will continue to do so, as the Association expresses their opposition to this bill.

HF442 has been assigned to the House Judiciary Committee. All landlords and companies affected by this bill should make their opinions known by contacting the [House Judiciary Committee members](#).

President Biden Extends CDC Eviction Order through March 31

January 25, 2021

Jodie Clark McDougal

Within hours of being inaugurated on January 20, President Joe Biden signed several executive orders, including one which directs the Centers for Disease Control and Prevention (CDC) **to extend** the September 4 [CDC Order](#), which temporarily halted certain residential nonpayment evictions, through **March 31, 2021**. It was previously set to expire on January 31. President Biden also asked Congress to approve a COVID relief bill that would provide an additional \$35 billion in rent, utilities, and homeless relief.

Shortly thereafter, CDC Director Rochelle Walensky formally [announced](#) that the CDC Order was extended until at least March 31, stating:

“As a protective public health measure, I will extend the current order temporarily halting residential evictions until at least March 31, 2021. The COVID-19 pandemic has presented a historic threat to our nation’s health. It has also triggered a housing affordability crisis that disproportionately affects some communities.”

Details on the CDC’s Order, the CDC’s subsequent non-binding guidance in the form of a [series of FAQs](#), and previous extensions of the CDC Order are listed below.

As a reminder, the CDC Order, now extended through March 31, is *not* an automatic stay of all evictions and does *not* relieve any tenant of paying rent. Instead, the CDC Order allows certain tenants to invoke the protections of the CDC Order in regard to nonpayment evictions if they properly submit a CDC Hardship Declaration. When the Order’s protections are properly invoked by a covered tenant, the tenant cannot be evicted and removed from their leased premises until after the expiration of the CDC Order, which is now March 31, 2021.

Importantly, the Iowa Supreme Court previously entered an Implementation Order setting forth how Iowa courts should implement the CDC Order and such state Implementation Order generally prevails over the CDC’s non-binding guidance in the state of Iowa. More details are covered in prior blog posts from [October 5](#) and [December 30](#).

Landlords with questions about nonpaying renters or how to proceed in the midst of numerous federal and state programs and guidelines should contact an experienced landlord/tenant attorney to discuss their specific situation.

Iowa Supreme Court Issues Supervisory Order Regarding CDC Eviction Order

December 30, 2020

Jodie Clark McDougal

As discussed in our December 29 blog post, Congress recently extended the September 4 [CDC Order](#), which temporarily halts certain residential nonpayment evictions, through **January 31, 2021**.

As anticipated, this afternoon, the Iowa Supreme Court issued a Supervisory Order regarding implementation of the extended CDC Order by Iowa courts. The [new Supervisory Order](#) makes no changes to the Court’s prior October 2 order regarding the CDC Order other than extending the effective date through January 31, 2021.

The Iowa Supreme Court's supervisory orders generally prevail over the CDC's non-binding guidance in the state of Iowa. More details are in our October 5 blog post.

Landlords with questions about nonpaying renters or how to proceed in the midst of numerous federal and state programs and guidelines should contact an experienced landlord/tenant attorney to discuss their specific situation.

Congress Extends CDC Eviction Order and Provides Additional Rental Assistance

December 29, 2020

Jodie Clark McDougal

Signed into law by President Trump on December 27, Congress's Coronavirus Response and Relief Supplemental Appropriations Act 2021 has several provisions affecting Iowa landlords.

CDC Eviction Order Extended Through January 31, 2021

Importantly, [Section 502](#) of the Act **extends** the September 4 [CDC Order](#), which temporarily halted certain residential nonpayment evictions, through **January 31, 2021**.

Details on the CDC Order and the CDC's subsequent non-binding guidance in the form of a series of FAQs are shown in the below list of resources. As a reminder, the CDC Order, now extended through January 31, is *not* an automatic stay of all evictions and does *not* relieve any tenant of paying rent. Instead, the CDC Order allows certain tenants to invoke the protections of the CDC Order in regard to nonpayment evictions if they properly submit a CDC Hardship Declaration. When the Order's protections are properly invoked by a covered tenant, the tenant cannot be evicted and removed from their leased premises until after the expiration of the CDC Order, which is now January 31, 2021.

Importantly, the Iowa Supreme Court previously entered an Implementation Order setting forth how Iowa courts should implement the CDC Order, and such state Implementation Order generally prevails over the CDC's non-binding guidance in the state of Iowa. More details on this topic are in a prior [October 5 blog post](#). The Iowa Supreme Court will likely issue an updated Implementation Order in the near future, as soon as later this week. If and when one is issued, you will receive an update.

Additional Federal Rental Assistance Relief

Section 501 of the Act, "Emergency Rental Assistance," provides \$25 billion in additional rental assistance funds. The Act contains various guidelines regarding the distribution of funds, but in short, the rental assistance funds are being provided by U.S. Treasury and will be distributed to states in varying amounts for each state's use within the parameters set forth in the Act. Each state shall receive no less than \$200 million.

Local jurisdictions with a population greater than 200,000 may also apply directly to the Treasury for funds under the Act; any amounts granted to local jurisdictions shall be reduced from the amount granted to the state in which that jurisdiction is located.

In general, the Act directs that states should provide applicable funds directly to landlords (and/or utility service providers) after approval of an eligible tenant's application for funds.

The Emergency Rental Assistance program and its parameters are detailed below, and we will provide an update once Governor Reynolds details her plans for use of these additional funds.

Details of the Emergency Rental Assistance

The Emergency Rental Assistance section provides \$25 billion through the U.S. Treasury to states, U.S. territories, and large cities in order to provide assistance to struggling renters. Details of this program are provided below, courtesy of Dentons's COVID-19 All Bill Summary.

While this is a new program, the formula distribution is modeled after the concept established in the Coronavirus Relief Fund (CRF) enacted in the CARES Act. Of the \$25 billion, \$800 million is reserved for tribes and/or tribal designated housing entities, \$400 million is reserved for U.S. territories, and each state (as well as the District of Columbia) shall receive no less than \$200 million.

Grantees shall use funds to provide direct financial assistance or housing stability services to eligible households. No less than 90 percent of funds shall be used for direct financial assistance, including rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other expenses related to housing. No more than 10 percent of funds shall be used for housing stability services, including case management and other services intended to keep households stably housed. Grantees may use up to 10 percent of funds received to cover administrative costs.

Eligible households may receive up to 12 months of assistance, plus an additional 3 months if necessary to ensure housing stability. Grantees can only commit to assistance in 3-month increments, after which an eligible household must re-apply for funds. Grantees may not make commitments for prospective rent payments to an eligible household unless assistance has also been provided to reduce that household's rental arrears.

An application for rental assistance may be made directly to a grantee by either an eligible household or by a landlord on behalf of that eligible household. In general, grantees will provide funds directly to landlords and/or utility service providers. If a landlord does not wish to participate, the grantee may provide funds directly to the eligible household.

Grantees shall prioritize consideration of applications for eligible households that are at or below 50 percent of the area median income, or where one or more members of the household have been unemployed for 90 days or longer. Grantees have the flexibility to devise additional eligibility criteria.

An "eligible household" is defined as a renter household that meets all of the following criteria:

1. Qualifies for unemployment or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship related to COVID-19
2. Demonstrates a risk of experiencing homelessness or housing instability
3. Has a household income at or below 80 percent of the area median

In determining a household's income for purposes of this section, grantees shall consider either the household's total income for the calendar year 2020 or the household's monthly income at the time of application for assistance. For household incomes determined using the latter method, grantees must redetermine income eligibility every 3 months. A household receiving other forms of federal housing assistance shall not be eligible to receive assistance under this section.

Funds provided to an eligible grantee expire on December 31, 2021. Starting on September 30, 2021, Treasury shall begin to recapture unspent funds from grantees and shall reallocate such funds to grantees who have obligated at least 65 percent of their original allocation. Grantees receiving a reallocation may be approved for a 90-day extension on the expiration date (through March 31, 2022) at the discretion of the Secretary.

The Treasury Office of Inspector General (OIG) shall conduct oversight of the program and may recoup funds from any grantee that fails to comply with the use of funds rules. The Department of the Treasury must meet quarterly and program-length reporting requirements to Congress.

The Big Picture

Landlords with questions about nonpaying renters or how to proceed in the midst of numerous federal and state programs and guidelines should contact an experienced landlord/tenant attorney to discuss their specific situation.

Further Details Regarding Iowa's Newest Rental Assistance Program for Low-Income Iowans

December 11, 2020

Jodie Clark McDougal & Spencer M Willems

With newly available federal money, the State of Iowa rolled out another program to provide rental assistance to Iowans and otherwise prevent homelessness by preventing imminent eviction. This newest program is targeted to low-income Iowans.

Program Overview

On December 4, Gov. Kim Reynolds announced nearly \$9 million in supplemental CARES Act money will now flow through the Iowa Finance Authority and its local partnering agencies to provide (1) rental payment assistance to low-income Iowans facing eviction and (2) assistance to transition homeless Iowans back to housing. Specifically, 35 agencies were awarded a total of \$8.8 million in Emergency Solutions Grant Program funds. The full list of awards is available [here](#).

The new program, called the Emergency Solutions Grant program, went live on Monday, December 7. The rental assistance provided under this program will be available to applicants through September 2022 or until the funds are fully exhausted.

Tenants do not apply directly to the Iowa Finance Authority. Instead, tenants should locate the applicable partner agency(ies) in their area covered by the Emergency Solutions Grant program by entering their county within the [County Finder Tool](#) on the program's website and then call the local agencies.

Different from Prior Iowa Eviction and Foreclosure Prevention Program

This program is separate and distinct from other similar state initiatives providing rental assistance, including the Iowa Eviction and Foreclosure Prevention Program (EFP), and there is some confusion among Iowans regarding this newest program.

Earlier this year, the EFP provided over \$20 million to more than 13,000 Iowans struggling to meet rent or mortgage payments. That program effectively ended on December 4, as the state is no longer accepting applications. As noted, the new Emergency Solutions Grant program will be available to applicants through September 2022 or until the funds are fully exhausted.

Tenant Qualification and Application Process

To qualify for rental assistance under the Emergency Solutions Grant program, a tenant must meet the following criteria:

- Household income at or below the 50% mark for the median income for their county (county-by-county 50% Area Median Income figure can be found [here](#))
- Demonstrate that he or she was "economically impacted" by COVID-19
- Provide a copy of their written lease with their landlord, as well as a notice of eviction
 - Application for these funds should occur immediately after the tenant has received a notice of nonpayment from his or her landlord
- First be screened in by the regional partner agencies

Program Benefits Both Tenants and Landlords

The Governor's announcement of supplemental funding for rental assistance is a critical resource for both tenants and landlords. Importantly, much of the rental assistance monies granted to tenants under the Emergency Solutions Grant program are paid directly to the landlord.

Landlords and property managers with tenants struggling to make rent should alert their tenants to this program and encourage them to apply and take advantage of this opportunity.

As noted, tenants should locate and call the applicable partner agency(ies) in their area covered by the Emergency Solutions Grant program. Tenants can also find further information on the [Emergency Solutions Grant Website](#) and get their general questions answered by calling [1-833-739-0065](tel:1-833-739-0065).

The Big Picture

Landlords with questions about nonpaying renters or how to proceed in the midst of numerous federal and state programs and guidelines should contact an experienced landlord/tenant attorney.

Rental Assistance for Low-Income Iowans Announced by Governor Reynolds

December 4, 2020

Jodie Clark McDougal

On Friday, December 4, Governor Reynolds announced financial assistance for low-income Iowans who are at imminent risk of eviction and individuals who have lost housing. The Governor's press release is below.

We will provide more details for Iowa landlords next week.

DES MOINES— Governor Reynolds today announced that a total of nearly \$9 million in assistance is available to assist eligible low-income Iowans who are at imminent risk of eviction and individuals who have lost housing to quickly regain housing stability. The funding will also provide support for homeless shelter operations. The funds are made available through a supplemental appropriation to the Emergency Solutions Grant program through the federal CARES Act.

"Throughout the pandemic, our focus has always been on protecting the lives and livelihoods of Iowans," said Gov. Reynolds. "The funds announced today will assist those at risk of eviction while also providing support to homeless shelters supporting Iowa's homeless population at this critical time. I appreciate the continued collaboration with our federal partners in support of the state's pandemic response."

"Providing housing assistance for Iowans in need remains a top priority," said Iowa Finance Authority Executive Director Debi Durham. "The ability for Iowans to thrive and prosper begins with a safe, stable place to call home and the program announced today will be essential in helping Iowans get back on their feet."

The Emergency Solutions Grant program will help to prevent households from becoming homeless due to eviction, assist Iowans who have lost their home to eviction regain rental housing as well as provide homeless shelters with financial support to assist with operations and outreach as they work to serve Iowans in need and mitigate the spread of COVID-19.

To be eligible for eviction prevention assistance to avoid homelessness, Iowans must have an income of 50% of the area median income or less and be at imminent risk of eviction in addition to meeting other eligibility criteria. To be eligible for assistance in rapidly regaining housing, Iowans must be currently experiencing homelessness.

Examples of assistance available to eligible individuals include rent and utility payments, including in arrears, legal assistance, application fees, security and utility deposits, moving costs, case management and credit repair. All financial assistance is paid directly to landlords and service providers.

Individuals in need of assistance must apply through the Coordinated Entry help line in their area, which is available along with additional eligibility and program information at iowahousingrecovery.com.

Thirty-five agencies were awarded a total of \$8.8 million in Emergency Solutions Grant Program funds. The full list of awards is available [here](#). The assistance will remain available until all funds are exhausted or September 30, 2022.

The Emergency Solutions Grant program is administered by the U.S. Department of Housing and Urban Development and the Iowa Finance Authority in partnership with participating Iowa service agencies.

Eviction Order FAQs from the CDC

October 16, 2020

Jodie Clark McDougal

Recently, the Centers for Disease Control and related agencies (HHS/HUD/DOJ) issued certain non-binding guidance, in the form of a series of FAQs, regarding the CDC Order temporarily halting certain residential nonpayment evictions.

It is important to remember that this is *non-binding* guidance and that the Iowa Supreme Court's [Implementation Order](#) is still in effect and must be followed by Iowa landlords. If, in light of this CDC guidance, the Iowa Supreme Court issues an updated Implementation Order, I will provide an update.

Commercial Leases in Light of COVID-19

October 14, 2020

Jodie Clark McDougal, Joel M. Aschbrenner, and Ryan L. Haaland

While the COVID-19 pandemic has created headwinds for the commercial real estate market, straining both landlords and tenants, commercial leasing activity persists. New buildings continue to open, landlords who lost occupancy due to the pandemic are seeking new tenants, and in many cases, landlords and tenants are renegotiating leases.

The pandemic has underscored the need for careful contracting, particularly when entering a commercial lease. Many tenants have found they are required to continue paying rent despite government action forcing their businesses to close. Many landlords, meanwhile, have lost revenue as tenants argue that their leases excuse them from making rental payments due to the pandemic.

Whether renegotiating or entering a new lease altogether, there are several contractual provisions commercial landlords and tenants should consider in light of the COVID-19 pandemic.

Force Majeure

A “force majeure” provision may suspend a party’s duty to perform upon the occurrence of an unforeseeable event outside the parties’ control, and which prevents performance by the party. Like with any contractual provision, the precise wording of a force majeure clause is critical. Some provide limited and specific occurrences that qualify under the force majeure provision, while others may be more open-ended.

Force majeure clauses typically cover acts such as extreme weather events, strikes, and terrorist attacks, and many drafted before COVID-19 did not expressly cover pandemics or viral outbreaks, or governmental shutdowns due to pandemics. Additionally, some force majeure clauses may allow for delayed performance while the event is ongoing. Others may excuse performance altogether, although excuse of performance is not usual.

It is important to remember that courts interpret force majeure clauses narrowly, meaning they only cover the specific events named in the clause, though some include catch-all provisions that provide broader protection.

Moving forward, commercial landlords and tenants should work with an attorney to ensure they negotiate a force majeure clause that protects their rights and interests in case of an extraordinary event, including additional outbreaks or complications from the current COVID-19 pandemic.

Business Interruption Insurance

When entering into or renegotiating a commercial lease, landlords and tenants should consider whether the lease should require either or both parties to carry business interruption insurance. Business interruption insurance generally covers financial loss, including missed rental payments, due to a covered event such as fire, extreme weather, or other significant property damage.

Two important questions face landlords and tenants regarding business interruption insurance:

1. Does the business interruption policy cover losses created by the pandemic? Many policies require physical damage, and thus would not cover pandemic-related losses. Landlords and tenants should engage an attorney to review their policy to ensure it covers losses potentially suffered as a result of COVID-19 or other infectious disease outbreaks.
2. Who should pay for the business interruption insurance? Some landlords may carry business interruption insurance, others may require tenants to carry such insurance, and some commercial leases may split the costs between landlord and tenant. To ensure a business interruption policy provides adequate protection against losses created by the pandemic, landlords and tenants should consult with their attorney.

Interruption in Services

Commercial landlords and tenants should also consider how an interruption in services provision could allocate risk during a pandemic. Generally, an interruption in services clause abates a tenant's duty to pay rent if the landlord has failed to provide an essential service (e.g. water or electricity) or if the property is deemed untenable. While interruption in services clauses are often limited to situations caused by the landlord's actions or negligence, a broadly drafted interruption in service clause could impose significant risk on a landlord. For example, if a local ordinance closes restaurants, a broadly drafted interruption in services provision could relieve a restaurant tenant of the duty to pay rent.

Responsibilities for Common Areas

The outbreak of COVID-19 has underscored the health and safety challenges posed by common areas such as elevators, lobbies, and cafeterias. When renegotiating or entering into a new lease, landlords and tenants should consider how the responsibility for keeping common areas clean and safe is allocated.

Tenants may seek to include provisions requiring the landlord to perform sanitizing services. Landlords, meanwhile, may wish to include provisions requiring tenants — particularly in multi-tenant buildings — to adhere to safety protocols such as temperature screenings, avoiding crowded elevators, and wearing masks in common areas.

If you have any questions regarding commercial leases in light of COVID-19, please consult your attorney.

Implications for Iowa Landlords on the Recent Iowa Supreme Court Order

October 5, 2020

12 • Resources for Landlords

Jodie Clark McDougal

On Friday, the Iowa Supreme Court issued an order (Iowa Order) implementing the previously issued [Centers for Disease Control \(CDC\) order](#) temporarily halting certain nationwide residential nonpayment evictions when tenants invoke the protections of the CDC Order.

Signed on October 2, the Iowa Order provides procedures regarding the implementation of the CDC's order, as well as an Evictions Declaration form with instructions.

Key Takeaways for Landlords

While landlords should carefully review the entire text of the Iowa Order, below is a list of the key implications and takeaways for Iowa landlords.

Confirms the CDC Order is Not an Automatic Stay

The Iowa Order makes it clear that a nonpayment eviction should only be continued or otherwise stayed by the courts if the court determines that a signed declaration has been provided to the landlord. In Iowa, we have seen multiple instances of courts believing the CDC Order was an automatic stay of all evictions even where there have been no submitted declarations, so the Iowa Order should eliminate that type of judicial error.

Landlords Cannot Question the Veracity of Declarations

State courts have differed in their interpretation of the CDC Order over the last thirty days since the CDC Order was entered. Like several other states, the Iowa Supreme Court has decided to take the more cautious approach, to the detriment of Iowa landlords.

Per the Iowa Supreme Court's interpretation of the CDC Order, landlords do not have the right to challenge the veracity of a declaration submitted by a tenant. For example, with the issuance of the Iowa Order, local magistrates will presumably not allow a landlord to ask the tenant questions at the eviction hearing regarding whether he/she has actually used their best efforts to obtain governmental rental assistance or pay partial rent, and will not otherwise allow a landlord to ask the tenant to provide support for the truthfulness of the assertions in the submitted declaration.

Instead, the court will simply continue the eviction hearing until the start of 2021, and landlords will now have to take all submitted declarations at face value. Specifically, the Iowa Order provides that, once the court determines the signed Declaration has been provided by the tenant(s) to the landlord, the court must continue the hearing on the eviction action until after December 31, 2020 (or dismiss it "if necessary").

Confirms All Tenants Must Submit Declaration to Invoke CDC Order Protections

The Iowa Order expressly provides "[a]ll adults listed on the lease, rental agreement, or housing contract for the property must complete and sign an Evictions Declaration." Landlords and property managers need to keep this in mind.

Confirms the CDC Order Only Applies to Nonpayment Actions

The Iowa Order confirms that the CDC Order can only be invoked in an eviction based upon nonpayment of rent or failure to make a housing payment. In Iowa, we have seen multiple local magistrates believe the CDC Order applies to all residential evictions. The Iowa Order should eliminate that type of judicial error and is welcomed guidance for both the courts and the public at large.

The pertinent language of the Iowa Supreme Court order is below:

"This order does not prevent the eviction of a tenant, lessee, or resident for a reason other than the nonpayment of rent, including grounds set forth in Iowa Code sections 648.1(1), (3), (4), and (6). This order also does not prevent evictions pursuant to section 648.1 (2) where the lease was terminated for a reason other than the nonpayment of rent."

Post-Judgment Enforcement Proceedings Affected by Iowa Order

The Iowa Order provides that “if the judgment has already been entered, enforcement of the judgment shall be stayed through December 31, 2020.” Accordingly, if a landlord has already obtained an eviction order and then receives a declaration, the landlord should immediately consult counsel for further instructions.

Provides Guidance Regarding 30-Day Peaceable Possession Bar

Finally, the Iowa Order contains language that should be helpful to landlords recovering past due rent come January, when the CDC Order expires, regarding tenants who may try to raise a defense based upon Iowa’s 30-day peaceable possession bar. The Iowa Order reiterates the Court’s May 22 Order by providing that the 30-day peaceable possession bar does not apply when there is a state or federal moratorium. Specifically, the Iowa Order provides as follows:

“5. Paragraphs 37, 39, and 40 of the court's May 22, 2020, supervisory order shall apply to proceedings covered by this supervisory order. Paragraph 40 of the May 22 order provides: "Peaceable possession. Although Iowa Code section 648.18 provides that '[t]hirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding,' the court clarifies that the section 648.18 bar does not apply where the plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium."

Questions Raised by Landlords

As some landlords have asked, now that they are unable to challenge declarations, what is the recourse for a tenant who submits a declaration even when the statements contained therein are false? Unfortunately, landlords have virtually no recourse in Iowa. While the declaration expressly states that each tenant certifies the truthfulness of the matters therein pursuant to penalty of perjury under federal law and the penalty for perjury is a fine and/or imprisonment of up to five years, the federal perjury statute does not provide for a civil right of action, and presumably, the appropriate federal authorities have neither the time nor desire to prosecute tenants for committing perjury in this regard.

Finally, many are still asking - did the CDC overstep its authority and is its order even legal? Multiple lawsuits have now been filed by landlords challenging the CDC Order. More to come on this front, but as of now, the CDC Order has not been struck down by any court.

Iowa Supreme Court Issues Order on Federal CDC Eviction Order

October 2, 2020

[Jodie Clark McDougal](#)

This afternoon, the Iowa Supreme Court issued an order implementing the previously issued Centers for Disease Control (CDC) order temporarily halting certain nationwide residential nonpayment evictions when tenants invoke the protections of the CDC Order.

Signed today, the order provides procedures regarding the implementation of the CDC’s order, as well as an Evictions Declaration form with instructions.

Below are a few highlights from the order. Early next week, we will provide a detailed analysis and the implications for Iowa landlords.

- Through December 31, 2020, if the court determines in a forcible entry and detainer (FED) action that a signed Evictions Declaration has been provided to the landlord or owner by the tenant(s), lessee(s), or resident(s) of a property covered by the CDC Order, and that the FED action is based on nonpayment of rent or failure to make a housing payment, the court shall continue the FED action to a date after December 31, 2020, or if necessary, dismiss it without prejudice. If the judgment has already been entered, enforcement of the judgment shall be stayed/paused through December 31, 2020.
- All adults listed on the lease, rental agreement, or housing contract for the property must complete and sign an Evictions Declaration form.

- This order does not prevent the eviction of a tenant, lessee, or resident for a reason other than the nonpayment of rent and does not prevent evictions where the lease was terminated for a reason other than the nonpayment of rent.
- This order does not prevent someone from challenging the validity of the CDC order.

Lawsuit Filed Challenging CDC Eviction Moratorium

September 17, 2020

Jodie Clark McDougal

The order halting certain evictions for nonpayment of rent published by the Centers for Disease Control on September 4 is seeing its first legal challenge in court.

CDC Order

As we discussed previously, the CDC has ordered a moratorium on nonpayment of rent evictions of qualifying tenants who invoke the protections of the CDC order in response to concerns about the spread of COVID-19.

Order Challenged in Federal Court

From the first announcement of the order, the legality of the CDC's order was questioned, and on September 8, a Virginia landlord filed suit against the CDC. The suit was filed in U.S. District Court for the Northern District of Georgia where the CDC is headquartered. The landlord claims "CDC's actions are not authorized by statute or regulation...and are an affront to core constitutional limits on federal power."

Moving Forward

The landlord has requested that the court immediately suspend enforcement of the CDC order while the case proceeds to a final trial. A decision from the court could come as early as a few weeks or as long as a few months. Unless and until the court grants this request for a temporary injunction order, the CDC order remains in effect. Landlords should continue following the order as it stands, as discussed in our prior [blog](#).

Iowa Supreme Court Issues Announcement Regarding CDC Eviction Moratorium Order

September 11, 2020

Ryan L Haaland & Jodie Clark McDougal

As reported in our September 4 [blog post](#), the Centers for Disease Control (CDC) formally published its order to temporarily halt residential evictions nationwide for nonpayment of rent of qualifying tenants in response to the CDC's stated concerns about the spread of COVID-19.

Many people have questioned whether the CDC has overstepped its authority, and legal challenges to the CDC's order have already been filed as of the writing of this post, including in [Georgia](#).

Iowa Supreme Court's Response

After the federal CARES Act was passed, the Iowa Supreme Court issued a supervisory order providing guidance as to how certain CARES Act issues should be addressed by small claims courts. In this case, however, the Court opted, at least at this time, to issue an announcement simply announcing the September 4 CDC order and stating that, "[t]he State Court Administrator has communicated with all judicial officers to make them specifically aware of the CDC order, providing links to the order and to the [hardship declaration] form developed by the CDC for use by tenants."

The announcement also noted that the Iowa Supreme Court is “continuing to monitor the situation and may take further action as needed.” That does not mean that an implementation order from the Supreme Court might not be forthcoming, but as of this writing, no such order has been issued.

What this means for Iowa landlords:

- **Not an automatic stay:** Landlords should *not* be proactively dismissing or continuing pending nonpayment of rent evictions, as the CDC Order is *not* an automatic stay on pending cases. Instead, tenants must affirmatively invoke the protections of the CDC Order by submitting the Hardship Declaration to the landlord. Unless and until a landlord receives a declaration, the landlord should proceed as it normally would in eviction matters.
- **Options once a declaration is received:** If a landlord receives a declaration from a tenant, ***the landlord needs to consult counsel to determine the appropriate response***, remembering that there are serious federal criminal penalties for violation of the CDC order. Our advice to landlords will be specific to each situation and will depend upon any current orders from the Iowa Supreme Court and our knowledge as to how each county’s magistrates are interpreting and implementing the CDC order. ***Landlords who have received a declaration from a tenant should not proceed with and appear at an eviction hearing without counsel.***

Note that the CDC order does not only apply to pending eviction actions but also likely prohibits a landlord from taking any action related to the eviction of a tenant if the tenant has properly invoked the protections of the CDC order. This is due to the broad definition under the CDC order of evict/eviction, which is defined as “*any action . . . to remove or cause the removal of a covered person from a residential property.*”

For example, if after receiving a declaration from a tenant, a landlord issues a normal three-day notice of nonpayment of rent to such tenant, the landlord may be violating the order for sending out the three-day notice. Additionally, the order may apply even where an eviction order has already been entered but the tenant has not yet been removed. As such, any time a landlord receives a declaration the landlord should be contacting legal counsel.

- **Unpaid rent by tenants who have invoked CDC order’s protections:** This is a reminder notice regarding delinquent rent that landlords can and should use if the landlord is prohibited from proceeding with an eviction against a tenant under the CDC order due to the tenant submitting the Hardship Declaration. This reminder notice, *which should be used instead of the standard three-day notice of nonpayment*, reminds the tenant that he or she still owes rent and expressly notes that the landlord is not waiving any rights regarding the unpaid rent. Using this reminder notice will ensure the landlord is not potentially in violation of the CDC’s order.
- **Proactively providing information to tenants:** Landlords should be aware that there are numerous county and city programs, as well as the state program, that provide rental assistance to tenants. Further information on the state program can be found in our prior blog posts - [Iowa Unveils COVID-10 Rental Assistance Program](#) and [State and Federal Developments for Iowa Landlords](#).

Unaffected Eviction Actions

The order prohibits only evictions based on nonpayment of rent or other housing payments. The order expressly provides that landlords may evict tenants for engaging in criminal activity, damaging the property, violating lease and other contractual obligations unrelated to the payment of rent, violating building codes or health ordinances, or threatening the health or safety of other residents. Tenants are still obligated to pay rent and landlords are still permitted to charge any and all applicable late fees, penalties, and interest associated with missed rental payments during the eviction moratorium period.

Residential landlords with pending eviction actions should contact their attorney. All other landlords should look for guidance on how to proceed with future actions.

CDC Publishes Eviction Moratorium Order

September 4, 2020

Joel M Aschbrenner and Jodie Clark McDougal

After making a proposal earlier this week, on September 4, the Centers for Disease Control (CDC) formally published its order to temporarily halt residential evictions nationwide for nonpayment of rent of qualifying tenants in response to concerns about the spread of COVID-19. Unlike the CARES Act, which imposed an eviction moratorium only on properties receiving federal or federal-related assistance or financing, the CDC order applies to *all* residential landlords. Landlords, property managers, and professionals have said this has created significant uncertainty in the housing industry.

The order is effective immediately through December 31, 2020. It was published after President Trump directed the CDC to address residential evictions amid the pandemic.

We previously detailed the requirements and applicability of the CDC order. The final order is substantially the same as the CDC's earlier proposal.

Generally, residential landlords are prevented from evicting tenants for nonpayment of rent or other housing payments who have submitted a declaration form declaring under penalty of perjury that they have faced certain hardships due to the pandemic that have resulted in their inability to pay full rent. Specifically, a tenant must declare that he or she:

1. Meets certain income requirements
2. Cannot pay rent due to loss of work or wages or extraordinary medical expenses
3. Has made best efforts to obtain all available government assistance for rent or housing
4. Has made best efforts to make partial rental payments
5. Will likely experience homelessness or be forced to move into close quarters with others if evicted

Notably, the order prohibits only those evictions based on nonpayment of rent or other housing payment. The order expressly provides that landlords may evict tenants for engaging in criminal activity, damaging the property, violating lease and other contractual obligations unrelated to the payment of rent, violating building codes or health ordinances, or threatening the health or safety of other residents.

Tenants are still obligated to pay rent and landlords are still permitted to charge any and all applicable late fees, penalties, and interest associated with missed rental payments during the eviction moratorium period.

The order imposes severe criminal and monetary penalties on landlords, allowing fines from \$100,000-\$500,000. The order is silent regarding what, if any, recourse landlords may have if a tenant abuses the process by providing untruthful information when declaring a hardship.

Implementation uncertainty persists

Numerous questions remain unanswered regarding how the order will take effect.

1. Can landlords file money judgment actions during the moratorium? The order is silent in this regard, so most experts believe landlords can still do so.
2. Can landlords report missed payments to credit reporting agencies? Again, the order is silent in this regard.
3. Can a landlord challenge the validity of a tenant's hardship declaration if the landlord has reason to believe the tenant did not complete the form truthfully? If so, how?
4. How will Iowa courts administratively implement the CDC's order?

Iowans may see some guidance from courts or the judicial branch in the upcoming weeks.

Discussions of a legal challenge to the order

While the CDC has broad authority to take certain actions to prevent the spread of communicable diseases within the nation, this type of eviction ban order is unprecedented; many people are questioning whether the CDC has overstepped its authority. A judicial challenge appears likely in the coming weeks. It will then be up to the court to determine whether the order is a legal and enforceable use of the CDC's authority.

As reported by [The Washington Post](#), “the National Association of Home Builders (NAHB), which represents developers, contractors and others in the industry, became one of the first to tease potential legal action. It said Wednesday its members already had asked the trade group’s leadership to consider filing a lawsuit, prompting the organization to convene its lawyers to study whether and how they can bring such a case.” Similar discussions are also occurring within landlord associations.

Landlords with pending eviction actions should contact their attorney for clarification soon. All other landlords should look for guidance on how to proceed with future actions.

CDC Announces Eviction Moratorium as Questions Swirl

September 2, 2020

Jodie Clark McDougal, Joel M. Aschbrenner, and Ryan L. Haaland

On September 1, 2020, the Centers for Disease Control (CDC) announced it would issue an order to temporarily stop residential evictions nationwide for nonpayment of rent of qualifying tenants in response to concerns about the spread of COVID-19. This action comes after a previous executive order from President Trump directing the CDC to take this action, as [we covered previously](#).

The CDC released a draft version of its [order](#) on September 1, 2020, and announced the order **is scheduled to be published and take effect on September 4**. The order will remain in effect through December 31, 2020. The CDC’s action poses numerous legal and financial questions for landlords. Initial details are set out below, and a follow-up blog post will be published after the CDC’s final order is published in the coming days.

What landlord actions are affected and prohibited by the CDC’s order?

Unlike the CARES Act, which imposed an eviction moratorium only on properties receiving federal or federal-related assistance or financing, the CDC order applies to *all* residential landlords.

The order prohibits landlords from evicting tenants for *nonpayment of rent* if the tenant submits a declaration certifying they have, in sum, faced hardship in paying rent due to the COVID-19 pandemic. Specifically, to qualify for the protections, each adult listed on the lease or rental agreement must complete and submit to the landlord [the CDC-provided Hardship Declaration Form](#) showing they meet the following five requirements:

1. Income requirements:

The tenant must verify that he or she either

(i) expects to earn no more than \$99,000 in annual income for the calendar year 2020 (or no more than \$198,000 if filing a joint tax return)

(ii) was not required to report any income in 2019 to the IRS

or

(iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act

2. Cause of inability to pay:

The tenant must verify that he or she cannot pay full rent “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.”

3. Government assistance:

The tenant must verify that he or she has used “best efforts to obtain all available government assistance for rent or housing.”

4. Effort to make partial rent payments:

The tenant must verify that he or she 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.”

5. Result of eviction:

Finally, the tenant must verify that he or she will likely experience homelessness or be forced to move into close quarters with others if evicted because no other housing is available.

The CDC’s exact language defining these five elements can be found in the form Declaration.

The penalties for violation of the order are severe. Fines for landlords who violate the order range from \$100,000-\$500,000, including up to one year in prison.

What actions are unaffected by the CDC’s order?

Evictions based upon nonpayment of rent are the only evictions affected by the order. Tenants may still be evicted for violations not related to the timely payment of rent, such as engaging in criminal activity, damaging the property, violating lease and other contractual obligations unrelated to the payment of rent, violating building codes or health ordinances, or threatening the health or safety of other residents. The order clarifies that those who may have COVID-19 should not be evicted for threatening the health and safety of others so long as they take reasonable precautions to prevent spreading the disease.

In addition, the order expressly states that it does not apply to foreclosures on home mortgages.

What can landlords do about missed rent payments?

Per the order, tenants are still obligated to pay rent, and landlords are still permitted to charge any and all applicable late fees, penalties, and interest associated with missed rental payments.

The order is silent regarding the issue of filing money judgment actions for unpaid rent during the moratorium and is also silent as to a landlord’s ability to report missed payments to credit reporting agencies.

What questions have been raised in response to the order?

There are countless questions already swirling around the CDC’s announcement.

Assuming the order is formally published later this week by the CDC, the order will have been passed merely by executive order and without Congressional action. Many housing providers and legal practitioners are raising questions about the validity of the CDC’s action, and a legal challenge to this order seems likely.

Further, it is unclear whether and/or how states will implement the order and whether and how local eviction courts will enforce the order.

Importantly, the order does not indicate whether or how a landlord may challenge the validity of a tenant’s hardship declaration if the landlord has reason to believe the tenant did not complete the form truthfully.

Particularly, in Iowa and other states, there are numerous financial resources available to tenants. Among others, Iowa recently expanded its eviction rental assistance program and has broadened unemployment benefits for those who have lost their jobs during the pandemic. We expect questions from landlords regarding whether a tenant has truly used his or her best efforts to obtain all available government assistance for their rental payments and is truly unable to pay rent due to a COVID-19 job loss or other loss of income. However, landlords appear to be in a no-win situation, considering the severe penalties for violation of the order.

The Big Picture

Landlords have faced significant difficulties over the last seven months and that difficulty continues. Analysis of these questions is ongoing, and landlords concerned about their legal liability and potential remedies in light of the CDC order should seek legal counsel.

State and Federal Developments for Iowa Landlords

August 10, 2020

Jodie Clark McDougal

FEDERAL NEWS: Executive Order Issued Regarding Evictions

As I reviewed earlier, the federal eviction moratorium expired on July 25, allowing landlords in *covered properties* to begin the process of evicting nonpaying tenants. Since then, Congress has discussed a possible renewal of the federal eviction moratorium, but as of this writing, Congress has **not** renewed or extended the CARES Act federal eviction moratorium.

Presidential Executive Order

In response to the lack of congressional action, on Saturday, August 8, 2020, President Trump issued a [series of executive orders](#), one of which was aimed at extending protections for tenants against evictions. In the order, President Trump makes several sweeping statements:

“Unlike the Congress, I cannot sit idly and refuse to assist vulnerable Americans in need.... Accordingly, my Administration, to the extent reasonably necessary to prevent the further spread of COVID-19, will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships caused by COVID-19.... The Secretary of Health and Human Services and the Director of CDC shall consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.... The Secretary of Housing and Urban Development shall take action, as appropriate and consistent with applicable law, to promote the ability of renters and homeowners to avoid eviction or foreclosure resulting from financial hardships caused by COVID-19. Such action may include encouraging and providing assistance to public housing authorities, affordable housing owners, landlords, and recipients of Federal grant funds in minimizing evictions and foreclosures.... In consultation with the Secretary of the Treasury, the Director of FHFA shall review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.”

Importantly, however, the text of Trump’s order does **not** actually renew or extend the eviction moratorium, nor does it provide money for rental assistance. Thus, as of today’s writing, the CARES Act federal moratorium has **not** been extended, but there is likely more to come in this regard, either by way of additional executive orders or congressional action.

What does it mean for Iowa landlords?

As of today’s writing, there is no federal (or state) eviction moratorium in place. However, there is still the additional 30-day notice to vacate required for landlords of covered properties, so landlords wanting to commence nonpayment eviction actions have to wait out this 30-day period, and it’s anyone’s guess as to if the federal eviction moratorium will be renewed.

If by executive order or congressional action, the moratorium is renewed, we will communicate how it impacts landlords. The precise wording of the order or legislation will determine what actions landlords can or should take.

IOWA NEWS: Rental Assistance Program Expanded - Direct Payments to Landlords

On August 4, the Iowa Finance Authority (IFA) announced that more Iowans will be eligible to receive assistance with their rent and mortgage payments through the COVID-19 Iowa Eviction and Foreclosure Prevention program. I reviewed the program's benefits and eligibility [in an earlier blog post](#). As noted, the program is welcome news for tenants and landlords because, for tenants approved under the program, the state issues payments *directly to the landlord*.

IFA expanded the program's eligibility criteria to allow Iowans who had been receiving federal unemployment stimulus benefit payments checks to apply for assistance through the program. Under IFA's previous criteria, such Iowans were not eligible for the program, but now they are. More information can be found [in the announcement](#).

Landlords are encouraged to direct renters struggling to pay rent to the Eviction and Foreclosure Prevention [program website](#) for more details and to apply.

Conflict over Emotional Support Animals - What are landlords to do?

July 17, 2020

Sean M Raisch & Jodie Clark McDougal

On June 30, 2020, the Iowa Supreme Court rendered a decision in [Karen Cohen v. David Clark and 2800-1 LLC](#), an emotional support animal (ESA) case, involving one tenant in need of an ESA and another tenant with severe pet allergies. While the Court's decision in the Cohen matter is factually specific, it nonetheless provides welcome guidance to landlords in these difficult situations.

Conflicting Interests Between Tenants

This case involved a tenant, plaintiff, Karen Cohen, who had a severe allergy to pet dander. Importantly, Cohen had a medically documented severe allergy to pet dander that caused her severe symptoms, even requiring her to carry an EpiPen. Cohen had specifically chosen to move into the apartment complex at issue due to the complex's no-pets policy.

Sometime thereafter, the second tenant involved in this case, David Clark, moved into the same complex. Several months after moving in, Clark requested an ESA. Clark's request for an ESA amounted to a request that the landlord, 2800-1 LLC, waive the no-pets policy as a disability-related accommodation.

After receipt of the ESA request, verified by Clark's psychiatrist, the landlord inquired as to whether any tenants in the building had animal allergies. Cohen responded to the inquiry by informing the landlord of her severe, documented pet allergies.

Landlord Caught Between a Rock and a Hard Place

Generally, federal and Iowa fair housing law require a landlord to waive its no pet policy in response to a valid ESA request and as a reasonable accommodation for the tenant's disability. Importantly, however, a landlord can lawfully deny an accommodation request if the specific assistance animal in question poses a direct threat to the health or safety of others, if such threat cannot be reduced or eliminated by another reasonable accommodation.

Having two disabled tenants with conflicting interests, the landlord was caught between a rock and a hard place. The landlord, apparently without counsel, opted to contact the Iowa Civil Rights Commission (ICRC) and request informal advice. During the telephone conversation, the landlord explained the situation and that it had additional apartments in other buildings and could accommodate the request by moving Clark to a different apartment unit. The ICRC responded that moving Clark would not be a reasonable accommodation and informed the landlord that it had to try to reasonably accommodate both Cohen's allergies and Clark's ESA rather than deny Clark's request.

The landlord ultimately decided to allow the ESA on the premises, while also trying to mitigate the effect upon Cohen's health, by providing Cohen with an air purifier and telling the two tenants to use different stairways.

Tenant Commences Litigation

Despite the landlord's mitigation efforts, Cohen suffered allergy attacks with the ESA on the premises. Cohen filed suit against the landlord based upon her claims that the landlord had breached both the (1) no-pets provision of the lease agreement, and (2) implied covenant of quiet enjoyment of her apartment that all tenants enjoy.

Cohen also sued Clark, claiming that he had violated her quiet enjoyment of the unit. The landlord defended the lawsuit, claiming that its no-pets policy waiver was a reasonable accommodation under the Iowa Civil Rights Act, it had no choice but to grant the ESA request, and it had a good faith defense because it followed ICRC staff's advice.

The small claims court initially dismissed Cohen's claims, which she appealed.

The Supreme Court Decision

After years of litigation and appeal proceedings, the Iowa Supreme Court ultimately reversed, and found in favor of Cohen. While the Iowa Supreme Court was careful to limit its ruling to the specific facts of the case stating, "[o]ur balancing in this case is not a one-size-fits-all test that will create the same result under different circumstances," there are nonetheless takeaways landlords can glean from the decision.

The Court's Conclusions and Takeaways for Landlords

1. The Court held that where the physical or mental well-being of tenants conflict with one another due to an ESA, a priority in time test is applied as one factor (but not the only or a dispositive factor) in the analysis as to the reasonableness of the accommodation.

- Cohen had signed her lease first in reliance on the landlord's no-pets provision and only after that did Clark move into his unit and submit his ESA request. The Court reasoned that, because Cohen's tenancy was prior in time to Clark's tenancy and his ESA request and the ESA posed a direct threat to Cohen's health, the landlord's decision to allow Clark's ESA was not a reasonable accommodation that should have been granted.
- The Court noted that the first-in-time factor "tipped the balance" in Cohen's favor. The Court also explained that the first-in-time factor aligned with those of other courts that have rejected requested changes to a residential complex's contract when those changes interfere with the rights of third parties.
- **Takeaway: Landlords can and should consider this first-in-time principle in their analysis of accommodation requests where the well-being of two tenants conflict with one another. Though, landlords must remember the first-in-time principle is only one factor in their analysis.**

2. The Court concluded that the ESA posed a direct threat to the health of this tenant, confirming that other tenants' rights are properly considered in the balancing of needs in the reasonable accommodation analysis.

- That said, landlords must keep in mind that, in this case, Cohen's allergy to pet dander was a severe, medically documented allergy, constituting a disability. In other words, both tenants had disabilities.
- That is not always the case. In published guidance from the U.S. Department of Justice ("DOJ") in 2010 with regard to the Americans with Disabilities Act and service animals, the DOJ stated that general "allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals."
- **Takeaway: Landlords can and should consider the effects of ESAs (or other requested accommodations) on neighboring tenants but must be careful in considering any asserted effects and balancing the competing needs of their tenants. Landlords should seek counsel to help in such analysis. For example, a landlord may want to survey current tenants about any animal allergies when considering another tenant's ESA request in a no-pets building. However, landlords should seek counsel before doing so, and must remember that tenants have a right to privacy regarding their health information.**

3. In regard to the landlord's good faith defense, the Court found that the advice received from the ICRC via telephone call was not binding, and that good faith was not a defense absent a defense made under Iowa Code section 562A.21, which the landlord had not properly raised.

- The Court explained that contractual liability is essentially strict liability, and a breach of a contract is a breach, whether committed in good faith or not.

- However, the Court also explained that Iowa Code section 562A.21(2) gives the landlord a defense to a breach of lease claim if the landlord “exercised due diligence and effort to remedy any noncompliance” and “any failure by the landlord to remedy any noncompliance was due to circumstances beyond the control of the landlord.” Unfortunately, the Landlord did not raise this defense, and the Court concluded it was waived.
- **Takeaways:**
 - **Landlords should seek counsel in defending these claims to ensure all defenses are properly raised, including the aforementioned defense.**
 - **While conversations with the ICRC can be helpful, landlords should remember that this type of informal advice is not binding and does not provide them with an absolute defense if sued.**

4. While the Court ultimately ruled against the landlord in this matter, the decision does provide good guidance and support to landlords in certain situations. In particular, the Court explained:

“In this case, the tenant asked to bring the ESA onto the premises approximately one month after his tenancy began. It appears the tenant could have been provided an apartment in a different building that did not have a “no pets” policy or that already had one or more ESAs. Indeed, if the tenant had broached the ESA with the landlord before moving in, the parties might have adopted this solution and this litigation might not have arisen. Notably, other courts have indicated that it is a reasonable accommodation for a landlord to offer a tenant an apartment in another building when the tenant’s need for an accommodation conflicts with the rights of another tenant.”

- **Takeaway: Landlords can and should use this decision in their analysis of accommodation situations of competing interests between tenants and specifically can use this decision in support of a landlord’s offer of another unit to one tenant as a solution to this type of situation.**

5. The Court expressly noted that the decision would not apply in situations involving service animals.

- The Court noted that its conclusion resulted from the fact-specific balancing the law required it to undertake in reasonable accommodation determinations, but noted:

“[We] are not holding that a visually disabled person with a service dog should be denied access to a “no pets” apartment building whenever a tenant with dog allergies is already living in that building and would suffer allergy attacks from the presence of the dog. That situation is not before us today. That both service animals and ESAs are types of reasonable accommodations under both the ICRA and the FHA does not mean, however, that the balancing test we describe in this opinion will necessarily end up with the same result when the animal is a service animal. For example, once a service animal has learned an apartment and an apartment building, there is a burden on requiring the tenant and the service animal to relocate to another apartment or building that might not exist for an ESA.”

- **Takeaway: Every accommodation request requires a fact-specific analysis by landlords and their attorneys.**

Final Thoughts

While this landlord seemed to try its best navigating the waters of fair housing law and conflicting tenant interests, such efforts were not sufficient.

Hindsight is always 20/20, but perhaps this landlord should have continued to work through the interactive process with both tenants to find a goal that was acceptable to both tenants, should have informed Clark of the option of moving to another building, could have tried to obtain a formal opinion ruling from the ICRC, and/or should have sought counsel earlier in the process.

Ultimately, it is generally best if a mutually agreeable resolution can be worked out by all affected tenants and landlords, and this decision can be used as guidance in these types of situations in the future.

Federal Eviction Moratorium to Expire: Landlords Must Proceed with Caution

July 23, 2020

Jodie Clark McDougal

With contributions by Ryan Haaland.

As referenced in our prior blog posts, the federal CARES Act (see pp 561-564 for relevant provisions) implemented a moratorium of evictions for nonpayment of rent in covered properties. The Federal Moratorium is set to expire **July 25, 2020**. Beginning July 26, landlords of covered properties will be permitted to proceed for possession against nonpaying tenants. Our May 28, 2020 post defines covered properties. However, landlords must proceed with caution against nonpayment tenants because the CARES Act continues to impose two main restrictions on landlords even after the expiration of the prohibition against nonpayment evictions.

Restriction on a Landlord's Ability to Charge Late Fees on Unpaid Rent

Under the CARES Act, a landlord of a covered property cannot charge “fees, penalties, or other charges” to the tenant related to any nonpayment of rent that occurs during the 120-day moratorium period. This prohibition continues after the expiration of the moratorium period, meaning that a landlord can never apply any type of late fee, interest, or other penalty for rent that was due and went unpaid during the 120-day Federal Moratorium period from March 27-July 25, 2020.

For example, if on July 26, a landlord sends a notice of nonpayment of rent to a tenant who failed to pay rent due on July 1, the notice cannot contain any type of late fee. Likewise, this tenant should not be incurring late fees, including within the landlord's internal accounting system, for such unpaid rent.

30-Day Notice to Vacate Additional Requirement on a Landlord's Ability to Evict

The CARES Act adds what is effectively a 30-day tail on to the moratorium period. Once the moratorium period expires on July 25, a landlord may not “require a tenant to vacate the unit [due to nonpayment of rent]” until 30 days after the landlord has provided the tenant with notice to vacate, and such notice may not be provided any sooner than July 25, 2020. Thus, residential landlords are essentially prohibited from evicting a tenant for nonpayment of rent until August 26, 2020, and otherwise until after they have given a tenant an additional 30-day period to vacate the premises. Accordingly, when dealing with nonpaying tenants, landlords of covered properties must provide a new 30-day Notice to Vacate, in addition to the standard Iowa 3-day Notice of Nonpayment of Rent, before commencement of an eviction action. To assist, we drafted a new Notice of Non-Payment of Rent for use with CARES Act Properties, which should be used for all covered properties as of July 26 and going forward, in lieu of the standard Iowa Notice of Nonpayment of Rent. This new notice contains the normal 3-day notice to cure language and also contains the additional 30-day notice to vacate requirement under the CARES Act.

As set forth within the notice, Iowa tenants will still only have the normal 3 days from the date of the notice (or 7 days if the notice is served via mail/posting) to cure their default in rent, but if tenants do not cure, they have a total of 30 days (or 34 days if the notice is served via mail/posting) during which they can remain in the premises before the lease terminates and the landlord can commence an eviction action.

Undecided Questions under State and Federal Law

One question Iowa landlords need to answer is whether they will include in the Notice of Nonpayment of Rent one month's worth of rent, as is typical, or rent for all months that was not paid during the moratorium period. Consult your attorney to discuss the specifics of your situation.

In light of Iowa's 30-day peaceable possession statutory bar, the safest approach is to include only the current month's rent in the notice. However, other landlords, after speaking to legal counsel, may decide they are comfortable with the notice including rent for all months unpaid during the moratorium period, particularly in light of recent Iowa case law, including *Des Moines RHF Hous., Inc. v. Spencer*, and the Iowa Supreme Court's May Order: In the Matter of Ongoing

Provisions for COVID-19 Impact on Court Services. Paragraph 40 of the Iowa Supreme Court order states “the section 648.5(18) bar does *not* apply where the plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium.”

However, it is currently unclear what county magistrates will do when faced with this question, and, as noted, landlords should consult with their attorney to evaluate their particular situation.

In addition, landlords of covered properties nationwide face the unanswered question of when the 30-day notice to vacate requirement sunsets under the CARES Act. There is no sunset date written into the CARES Act, so landlords of covered properties will be required to give tenants this extra 30 days to vacate until congressional action is taken.

Other Considerations for Iowa Landlords

There are several other considerations for landlords to take note of and be familiar with relating to the Iowa Supreme Court’s recent order, including the following:

- Going forward, for all evictions *based upon nonpayment of rent*, landlords must complete and file the new CARES Act Landlord Verification, which was discussed in our prior blog post.
- Landlords should also take note of the Court’s provided information regarding the scheduling of eviction hearings, hearing requirements, the 30-day peaceable possession bar, and the duty to advise the court of COVID-19 risks. These topics were discussed in detail in our prior blog post as well.

Landlords with tenants who have not paid rent in months are thankful that the moratorium is coming to an end but should still take note of the requirements before proceeding with eviction. Landlords are encouraged to consult an attorney to discuss the specifics of their situation to ensure their status as a covered property and the right next steps.

Iowa Legislature Passes Law to Help Protect Businesses Against COVID-19 Lawsuits

June 19, 2020

Katelynn T McCollough & Jodie Clark McDougal

The Iowa Legislature and Governor Kim Reynolds wasted no time enacting new legislation that offers broad protections to businesses, landlords, employers, and medical providers, among others, in the face of expected litigation stemming from COVID-19.

The new law, [SF2338](#), the COVID-19 Response and Back-to-Business Limited Liability Act, creates a higher bar for individuals bringing civil actions alleging either exposure or potential exposure to COVID-19. It also contains other provisions aimed at protecting businesses and individuals against COVID-19 lawsuits.

Heightened “Actual Injury” Requirement for Plaintiffs

Under the law, to bring or maintain a COVID-19 lawsuit alleging exposure or potential exposure to COVID-19, a plaintiff must, among other things, demonstrate one of the following three requirements, which is referred to in the law as the “actual injury” requirement.

1. The individual-plaintiff was either hospitalized due to or died from COVID-19
2. The defendant acted with the intent to cause the plaintiff harm
3. The defendant acted with actual malice

Regarding the third basis, actual malice means conduct that is done with ill-will, hatred, or the desire to do the other party harm.

If a party cannot establish one of the three elements above, the party will be unable to maintain an action in an Iowa court.

This new “actual injury” requirement creates a higher bar for any plaintiff seeking to pursue litigation, which should substantially limit the number of lawsuits based on COVID-19 exposure.

Safe Harbor Defense for Defendants Complying with COVID-19 Guidance and Regulations

The law also provides a safe harbor defense for businesses and individuals against whom lawsuits are filed. The law states that a business or person shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if their conduct was in substantial compliance or was consistent with federal or state regulations, executive orders, or public health guidance related to COVID-19 applicable at the time the alleged exposure occurred.

Such guidance and regulations can come from the CDC, the Centers for Medicare and Medicaid Services, OSHA, the office of the governor, or other state agencies, including the Iowa Department of Public Health.

There is no limit as to the types of defendants this section applies to, as the definition includes individuals, corporations, limited liability companies, governments and their subdivisions or agencies, business trusts, estates, partnerships, associations, and other legal entities.

This safe harbor defense emphasizes the importance of businesses understanding and following governmental guidance on COVID-19. Specifically, based on this section, landlords, employers, businesses, and other individuals and entities can most easily protect themselves from liability by consistently checking and following COVID-19 guidance from the above noted governmental authorities.

If allegations of COVID-19 exposure were to arise, it will be important to demonstrate what public health guidance was being followed and in what ways. Continuous documentation and recordkeeping of these efforts is suggested.

Seek legal counsel to discuss these risk management topics in more detail.

Protection for Property Owners, Landlords, and Other Businesses in Possession of Real Property

The law provides that a business or person who possesses or is in control of real property (including commercial, residential, and public businesses, residences, and other real property) is protected from liability related to exposure to COVID-19 *unless* the plaintiff can prove that the business or person possessing or in control of the property:

1. Recklessly disregarded a substantial and unnecessary risk that others would be exposed to COVID-19
2. Exposed an individual to COVID-19 through conduct constituting actual malice
3. Intentionally exposed an individual to COVID-19

Individuals who are “in control” of property include tenants and occupants, not just the outright property owner. Therefore, this section applies broadly and would include employers in control of their premises, no matter whether they own, rent, or simply occupy the property. This portion of the law should also help substantially limit lawsuits based on COVID-19 exposure.

As with the above safe harbor provision, this portion of the law emphasizes the importance of businesses understanding COVID-19 risks and governmental guidance on COVID-19. Seek legal counsel if you have any questions.

Additional Provisions Applicable to Health Care Providers

The law sets forth several additional provisions limiting the liability of health care providers. A separate post focusing on this portion of the law will be published soon.

Big Picture

As the COVID-19 pandemic continues to threaten our communities, it is important to continue to consult with public health experts and legal counsel to determine the right steps to protect yourself and your organization. Keeping records of the guidance and the steps you’ve taken to abide by this guidance may reduce your risk of future lawsuits.

State of Iowa Unveils COVID-19 Rental Assistance Program

June 1, 2020

Jodie Clark McDougal

On May 28, the State of Iowa announced an [Eviction and Foreclosure Prevention \(EFP\) Program](#) to provide short-term relief to income-eligible renters. The program is administered through the Iowa Finance Authority and was made possible through Governor Reynolds' allocation of federal CARES Act funds.

The program is welcome news for tenants and landlords, both of whom are focused on available options for tenants during these unprecedented times. The EFP program is also applicable to some home loans, *excluding* manufactured home loans and contract sales, however, the scope of this blog post is limited to rental assistance.

Applications will be accepted on an ongoing basis and assistance will be provided to eligible applicants on a first-come, first-ready to proceed basis until the funds are exhausted.

Before a tenant's application for eviction prevention assistance can be approved, the tenant's landlord must complete the required certification and agree to the terms of assistance within 10 days of the tenant's application. Once an application is approved and the landlord verification is received, a single, one-time payment will be issued directly to the landlord.

Below is a summary of the EFP Program. Landlords and tenants are directed to the [EFP Program website](#), which contains a detailed explanation of the program, FAQs, and other helpful resources.

Program Benefits at a Glance:

- Rental assistance is available for up to four months, which can include up to two months in arrears, beginning with April 1 rent payment.
- \$3,200 is the maximum relief available to tenants.
- The EFP Program is available to rental payments for single-family houses, apartment units, manufactured/mobile homes, and manufactured/mobile home sites/lots.

Program Eligibility at a Glance:

- Current Iowa renters who have had a COVID-19-related job loss or loss of income on or after March 17, 2020, and are at risk of eviction.
- Household income may not exceed 80% Median Family Income at the time of application (IFA's website has [a table of income limits](#)).
- Renters may not be currently receiving the \$600 additional federal CARES Act stimulus unemployment benefits.

Important Notes for Landlords:

- Tenants who apply for EFP program assistance will be required to enter their **landlord's email address**. *Landlords should ensure tenants who may need assistance have the correct email address for the landlord.*
- Landlords are required to complete the landlord verification that is sent to their email address **within 10 days** in order for the application to be approved.
- Payments for approved applications will be issued electronically and directly to the landlord.

Landlords and tenants should review the following additional resources from the Iowa Finance Authority:

- [Tenant Pre-Application Screening/Checklist](#)
- [EFP Program Overview](#)
- [EFP Income Limits](#)
- [EFP Landlord Information](#)

Landlords with questions about their obligations in this program or about evictions should consult counsel.

Iowa Evictions Resume but Landlords Have More Considerations Than Ever Before

May 28, 2020

Jodie Clark McDougal

As of today, May 28, evictions are resuming in the state of Iowa, but landlords are now facing additional legal considerations, as well as a federal moratorium that still prevents some landlords from filing evictions. Below is a list of the major questions landlords should ask.

Does the CARES Act/federal moratorium apply to my rental property?

Numerous categories of rental properties are covered by the CARES Act. Our prior blog, as well as the new CARES Act Landlord Verification and instructions from the Iowa Supreme Court, set forth the analysis for determining the applicability of the CARES Act. Below are the covered property categories:

- (1) Tenancy is/was subject to either a Section 8 or USDA Housing Choice voucher.
- (2) Rental property is subject to a federal program, including but not limited to, one of the following (see question 3 of the CARES Act Landlord Verification for a complete list):
 - Public housing
 - Project Based Section 8 housing
 - Section 202 elderly housing
 - Section 811 housing for people with disabilities
 - Section 236 multifamily rental housing
 - Low-Income Housing Tax Credit (LIHTC) Program
 - Other federal housing program
- (3) Rental property is secured by a mortgage issued or guaranteed by one of the following:
 - Fannie Mae or Freddie Mac
 - Federal Housing Administration (FHA)
 - Veterans Administration (VA)
 - United States Department of Agriculture (USDA) direct loan
 - USDA guaranteed loan
- (4) The landlord received a mortgage forbearance for the rental property from 3/27/2020 to 12/31/2020.

If the property is covered by the CARES Act, what does that mean for me?

If the rental property is a covered property under the CARES Act/federal moratorium, then during the 120-day moratorium period that expires on July 25, 2020, the landlord is prohibited from initiating any formal legal action for recovery of possession of the dwelling because of the tenant's nonpayment of rent or other fees or charges. The landlord also continues to be prohibited from charging late fees, charges, or penalties for nonpayment of rent.

Conversely, the landlord may proceed with other types of eviction actions, including actions based upon a tenant's noncompliance with the lease or rules. For further details, see our prior post.

If the property is not covered by the CARES Act, what does that mean for me?

If the rental property is not a covered property under the CARES Act, then all evictions, regardless of the grounds supporting the eviction, can be initiated as of May 28.

For newly commenced eviction actions, what pre-action notices are required?

All notices normally required under Iowa law to be provided to a tenant prior to commencement of an eviction action, are still required. This includes nonpayment notices, material breach notices, notices to quit, and other notices.

One question landlords need to answer is whether they will include in the Notice of Nonpayment of Rent and Termination of Tenancy one month's worth of rent, as is typical, or rent for all months in which rent was not paid during Iowa's eviction moratorium period (March 20, 2020 - May 27, 2020). Consult your attorney to discuss the specifics of your situation and the proper content of your Notice of Nonpayment of Rent and Termination of Tenancy.

When are courts setting hearings on newly filed evictions?

Most new eviction actions (except for clear and present danger evictions and other exceptions) will likely be set for hearing no earlier than July 13. Though, some counties may choose to recommence their eviction hearings prior to that date. See our prior blog for further details.

Do I need to file my eviction actions any differently?

Yes. Pursuant to the Iowa Supreme Court's Order: In the Matter of Ongoing Provisions for COVID-19 Impact on Court Services, for all evictions based upon nonpayment of rent filed going forward, landlords must complete and file the new CARES Act Landlord Verification.

The Verification contains a list of Yes/No questions that a landlord must answer to verify that the CARES Act's moratorium for nonpayment of rent evictions does not apply to the property and eviction at issue. The Court also provided helpful instructions to landlords regarding how to fill out the CARES Act Landlord Verification. Please consult your attorney for further information.

What other considerations should landlords keep in mind with newly commenced evictions?

Landlords should be knowledgeable of the language within the Supreme Court's Order: In the Matter of Ongoing Provisions for COVID-19 Impact on Court Services relating to the scheduling of eviction hearings, hearing requirements (Iowa Code § 648.5); and 30-day peaceable possession bar (Iowa Code § 648.18). These topics were discussed in detail in our blog post earlier this week.

Iowa Supreme Court Enters Order Affecting Residential Evictions, as State Moratorium Set to Expire

May 26, 2020

Jodie Clark McDougal

On Friday, May 22, the Iowa Supreme Court issued an Order: In the Matter of Ongoing Provisions for COVID-19 Impact on Court Services ("Order") affecting residential evictions, with the state eviction moratorium expiring as of 11:59 p.m. on May 27. (See paras. 1-2, 7-9, and 37-40 of the Order.) This Order replaces all previous supervisory orders relating to COVID-19, sets new parameters for the scheduling of eviction hearings, and addresses the below three eviction-related topics.

1. hearing requirements (Iowa Code § 648.5)
2. 30-day peaceable possession bar (Iowa Code § 648.18)
3. new filing requirement for evictions for nonpayment of rent--a CARES Act Landlord Verification

Eviction Filings to Recommence on May 28, with Hearings Likely Set or Reset after July 13

The Court addressed the general scheduling of FED/eviction hearings both for new actions to be filed after the state moratorium expires, as well as pending eviction actions.

First, the state eviction moratorium will expire at 11:59 p.m. on May 27 per Governor Reynolds' announcement in today's press conference. Thus, *if and only if* the CARES Act/federal moratorium does *not* apply to you (see prior blog post regarding the applicability of the CARES Act/federal moratorium), then you may recommence your filing of evictions actions on **May 28**.

Second, per the Order, the recommencement of hearings for pending and new eviction actions is generally pushed back another 30 days from prior orders. Per this new Order, eviction actions (except for the below noted exceptions), shall be set and/or reset to a date no earlier than **July 13**. Though, counties that have their new courthouse safety protocols in place and are ready to reopen their courthouses and hear cases *prior to* July 13 may choose to recommence their non-jury/bench trial hearings prior to that date. (See paras. 6 and 37 of the Order.)

In other words, it is likely that landlords who have pending actions with hearings set in June or otherwise prior to July 13 will unfortunately see those hearings continued again until sometime after July 13, and landlords filing new actions after May 28 will also likely have those hearings scheduled sometime after July 13. But, again, if counties are ready to hear cases prior to July 13, they may choose to set those hearings earlier - in June or early July. The Iowa Supreme Court has also encouraged all courts and parties to conduct civil matters via videoconference or telephone when feasible. (See paras. 8-9 of the Order.)

Finally, the Court reiterated that clear and present danger evictions are "emergency and essential" matters that may be heard by courts immediately. (see paras. 2, 8, and 9 of the Order.)

Scheduling of FED Hearings (Iowa Code § 648.5)

Due to the backlog of pending eviction cases, the backlog of previously continued eviction hearings, and the likelihood of a large number of new eviction cases being filed after the expiration of state or federal moratoria, there will undoubtedly be numerous instances in which the § 648.5(1) requirement for hearings to be set within 8 or 15 days from the filing date will not be met. Accordingly, in its Order, the Iowa Supreme Court clarified, in paragraph 39 of the Order, that the § 648.5(1) is *not* jurisdictional and will *not* bar any later scheduled eviction hearing.

Practice Pointer: If a small claims magistrate, or tenant, argues that your action should be barred due to § 648.5(1) or otherwise because the hearing was set outside of the 15-day period, you should direct the court to the specific language of the Order, providing as follows:

Although Iowa Code section 648.5(1) requires the date of hearing to be set no later than eight or, in certain circumstances, fifteen days from the filing date, the court recognizes that a number of factors may result in the scheduling of FED hearings beyond that fifteen-day time period. . . . Accordingly, the court clarifies that the requirement of a hearing within fifteen days is not jurisdictional, and that it is not a bar to a FED action being heard if the court, for scheduling reasons or to comply with the state and federal moratoria, is unable to hear the action by the deadline established in section 648.5(1). (Paragraph 39 of Order.)

30-Day Peaceable Possession Bar (Iowa Code § 648.18)

Many landlords are well aware of the 30-day peaceable possession doctrine under Iowa Code § 648.18, providing that "[t]hirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding." Many of the newly filed eviction cases will be filed outside of the 30-day window of the tenant's

nonpayment of rent or breach of the lease. Accordingly, in its order, the Iowa Supreme Court clarified, in paragraph 40 of the Order, that the § 648.5(18) bar “does *not* apply where the plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium.” This provision of the Order will be important to landlords with eviction actions arising from events that occurred more than 30 days prior to the filing of the eviction.

Practice Pointer: If a small claims magistrate, or tenant, argues that your action should be barred due to the 30-day peaceable possession doctrine, you should direct the court to the following language of the Order:

[T]he section 648.5(18) bar does *not* apply where the plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium. (Paragraph 40 of Order.)

New Mandatory Filing for Nonpayment of Rent Evictions

The Iowa Supreme Court has mandated that landlords filing an eviction action for nonpayment of rent **must complete and file a new court-approved CARES Act Landlord Verification**. (See para. 37 of the Order.) A handful of other states have implemented a similar requirement. The Verification contains a list of Yes/No questions that a landlord must answer to verify that the CARES Act’s moratorium for nonpayment of rent evictions does *not* apply to the property and eviction at issue. The Court also provided helpful instructions to landlords regarding how to fill out the CARES Act Landlord Verification.

Notably, the Order states that the CARES Act Verification is not a jurisdictional requirement, which is favorable language for landlords. This means that if a landlord makes a mistake in completing and filing the CARES Act Verification at the time of the original eviction filing, the landlord should be able to correct any technical errors with testimony given at the hearing.

To reiterate, for evictions *based upon nonpayment of rent* filed after the state moratorium is lifted, landlords must complete and file the new **CARES Act Landlord Verification**. Please consult your attorney for further information.

Practice Pointer: If you have a small claims magistrate or court who mistakenly believes the CARES Act Landlord Verification must be filed for *all* evictions, you should direct the court to the specific language of the Order, which makes it clear that such verification is only needed for nonpayment of rent evictions:

Any plaintiff bringing a FED action under chapter 648 *for nonpayment of rent* after the date of this order shall submit a CARES Act Verification in a form approved by this court. (Paragraph 37 of Order)

Duties to Notify Court and Opposing Counsel of COVID-19 Risk

In the Order, the Court also imposed affirmative duties upon attorneys and parties participating in in-person business with any court to notify the court and opposing counsel regarding any elevated COVID-19 transmission risks and imposes additional duties upon attorneys to inquire of their clients and witnesses as to any elevated COVID-19 risk. (see para. 3-5 of the Order.)

Fraught Situation

Between the Governor’s proclamations, Iowa Supreme Court’s Order, and the continued federal moratorium, there are numerous spots where landlords may get tripped up. To avoid a situation where you are unable to carry out an eviction for nonpayment of rent or other reasons, landlords are encouraged to consult counsel to create a procedure to minimize risk.

Federal Moratorium Effect for Residential Landlords and Property Managers

May 7, 2020

Ryan L. Haaland

With contributions from Jodie Clark McDougal.

As is by now well known, the United States Congress passed what is commonly referred to as the CARES Act (see pp 561-564 for relevant provisions) in response to the ongoing COVID-19 pandemic. As referenced in our prior blog post, part of the CARES Act institutes a moratorium (“Federal Moratorium”) of certain residential evictions in covered properties, until at least July 25, 2020. This post contains a more detailed analysis on the Federal Moratorium and other restrictions.

Does the CARES Act apply to my rental properties?

The Federal Moratorium and CARES Act applies only to federally backed properties. However, that definition covers a wide swath of properties, including any property with a federally backed mortgage loan. A federally backed mortgage loan, to which the Federal Moratorium applies, includes loans that are:

1. “made in whole or in part, insured, guaranteed, supplemented, or assisted in any way,” by any HUD program, or
2. “purchased or securitized,” by Fannie Mae or Freddie Mac.

As such, the prohibitions instituted by the CARES Act potentially impact a wide variety of multifamily properties. This means landlords should check with their lenders, and property managers should inquire with their landlords, to determine whether each rental property (e.g., an apartment complex, manufactured home community, or other rental property) is in any way part of, assisted by, or insured by a HUD program, or has a loan that was backed by, or purchased (i.e., on the secondary market) by Fannie Mae or Freddie Mac. If so, the Federal Moratorium and CARES Act applies.

What types of evictions are suspended by the Federal Moratorium under the CARES Act?

Under Section 4024 of the CARES Act, during the 120-day moratorium period that expires on July 25, 2020, a landlord of a covered dwelling is prohibited from initiating any formal legal action for recovery of possession of the dwelling because of the tenant’s nonpayment of rent or other fees or charges. Other types of eviction actions, including actions based upon a tenant’s noncompliance with the lease or rules, are not affected by the CARES Act. However, the Iowa Moratorium, which is still in place, has suspended evictions based upon noncompliance with the lease and other evictions, as described in our prior post.

Does the CARES Act affect a landlord’s ability to charge late fees on unpaid rent?

Yes. A landlord of a covered dwelling cannot charge “fees, penalties, or other charges to the tenant related to such nonpayment of rent” during the 120-day moratorium period. In short, the landlord of a covered dwelling may neither charge late fees nor evict a tenant for nonpayment of rent during the 120-day moratorium period.

Does the CARES Act impose restrictions on landlords once the Federal Moratorium is over?

Yes. The CARES Act adds what is effectively a 30-day tail on to the moratorium period. Once the moratorium period expires on July 25, a landlord may not “require a tenant to vacate the unit [due to nonpayment of rent]” until 30 days after the landlord has provided the tenant with notice to vacate, and such notice may not be provided any sooner than July 25, 2020. The result is residential landlords are essentially prohibited from evicting a tenant for nonpayment of rent until August 26, 2020. This guidance is based on our interpretation of the general intent of the relevant portions of the CARES Act--specifically that Congress intended the 30-day tail (set forth in Section 4024(c)) to only apply to tenants being evicted due to nonpayment of rent (as set forth under Section 4024(b)). Any alternative reading would mean residential landlords could not require any tenant to vacate until August 26, no matter what the situation - such as an expired lease, clear and present danger, or any other eviction beyond nonpayment of rent. Such a result could not have reasonably been Congress’s intent. There may be a future update on this topic.

What limiting factors should landlords remember regarding the CARES Act?

Although the CARES Act provides for prolonged protection to tenants who are delinquent on rent payments, there are several mitigating or limiting factors that residential landlords should be aware of. First, as noted above, the prohibitions in the CARES Act apply only to evictions for nonpayment of rent. Thus, if a tenant holds over after the expiration of the

lease or is otherwise in material noncompliance with the lease agreement, the CARES Act is not a bar to initiation of an action for recovery of possession, even before July 25, 2020. Second, the 30-day tail period is not a grace period or extension of opportunity to cure. After the expiration of the Federal Moratorium, a landlord may serve a notice of nonpayment of rent upon the tenant and provide the standard three-day cure period. If the tenant fails to cure within the three-day period, the landlord may terminate the lease after the cure period but importantly may not require the tenant to *vacate* the premises until 30 days of the cure notice. Accordingly, landlords will need to tailor their standard notices to comply with this portion of the CARES Act. There may be further updates from us in this regard. Third, and perhaps most importantly, the federal legislation should not provide an affirmative defense to a tenant in state small claims court. Meaning, state small claims courts should not generally be dismissing eviction cases due to potential noncompliance by the landlord with the CARES Act, but certain small claims magistrates may still choose to allow this basis as a defense to an eviction. As such, landlords should be prepared to address this possible defense to be raised by tenants. Accordingly, residential landlords and property managers should take care to determine whether their properties are covered by the CARES Act and, if covered, comply with the CARES Act. And, once the Federal Moratorium period has expired, it is important for residential landlords and property managers to pay attention to the various timing requirements in the statute, to ensure compliance with federal law.

Navigating the Fair Housing Act and Iowa Landlord-Tenant Law during COVID-19

May 1, 2020

Jodie Clark McDougal

With contributions from Tara Hall and Jonathon Schroeder

In light of COVID-19, landlords, property managers, homeowners' associations, and others in the business of renting or selling residential properties are in uncharted territory. Landlords are asking what can and should be done in response to various questions that implicate privacy concerns for tenants/applicants, a landlord's duty to protect its employees and tenants, and Fair Housing laws. Answers to common questions are listed below, but you should consult an attorney regarding your specific circumstances.

Does the Fair Housing Act or Iowa law cover individuals who have or had COVID-19?

There is no clear answer to this question, but COVID-19 and/or associated illnesses could be deemed a disability under the Fair Housing Act (FHA).

The FHA defines a disability to include an individual with a physical or mental impairment that substantially limits a major life activity. The FHA's protections also extend to those who have a record of having a disability/impairment or who are regarded or perceived as having a disability/impairment.

Generally, COVID-19 is a temporary ailment, meaning it would fall outside of the purview of the FHA. On the other hand, individuals suffering from long-term effects of COVID-19 may be deemed a person with a disability. Moreover, individuals with COVID-19 may have other associated conditions such as diabetes or COPD, which are disabilities under the Fair Housing Act. Further, an individual with COVID-19 may have limitations in their ability to care for themselves or their mobility and/or may be regarded/perceived as having a disability, both of which could result in the individual receiving protection under the FHA.

Based on these factors, an individual who has or had COVID-19 could argue that the FHA and its protections apply. Landlords should therefore keep the FHA and its protections in mind when making housing decisions.

An approved applicant just told me he has COVID-19. Can I deny the applicant on that basis?

Generally speaking, a landlord should *not* deny an applicant because of a COVID-19 diagnosis and/or should not do so without first seeking counsel and obtaining a legal opinion that it would be proper to deny the applicant.

Note that while a landlord is permitted to deny an applicant who constitutes a direct threat to the health or safety of others, additional considerations exist. As noted above, COVID-19, or any associated health problem (e.g., COPD, diabetes, etc.), may qualify as a disability under the FHA, and if that is the case, then a landlord's denial on such basis would be illegal discrimination.

I own a rental near a plant experiencing a COVID-19 outbreak. Can I ask applicants/tenants who work at that plant, or all applicants and tenants, if they have COVID-19?

While a landlord can *ask* applicants/tenants whether they have COVID-19, a landlord cannot *demand* that people answer that question. However, even though landlords *can* ask the question, it is often advisable for landlords **not** to ask applicants and/or tenants the question because: (1) the applicant/tenant may deem the question to be a demand, not a request; (2) such a policy may open a landlord up to a potential Fair Housing/disability discrimination claim; and (3) the obtained information generally cannot be used as a basis to deny an applicant or evict a tenant. Before implementing any policy of asking all applicants/tenants questions about COVID-19, landlords should first seek legal counsel.

Can I refuse to show a leased premise to an applicant who currently has COVID-19?

You should not outright refuse to show the unit, but you can and should ask the applicant if a virtual showing is acceptable, and, if not, tell the applicant that the showing will need to be postponed an appropriate amount of time, per the CDC's recommendations for self-quarantining of people with COVID-19.

Are there any situations in which you do advise landlords to ask a tenant/applicant whether they have COVID-19?

Yes, there are a few situations. First, if an applicant has demanded an in-person showing of the unit instead of a virtual tour, then the landlord can and should ask the applicant appropriate COVID-19 screening questions. Second, if a tenant asks for a repair to be made within his or her unit, then a landlord can and should ask the tenant appropriate COVID-19 screening questions. Seek legal counsel for specifics on screening questions.

In both situations, the applicant or tenant is coming into direct contact with the landlord and/or its staff, so the screening questions are based upon the landlord's general duty to keep its employees safe.

What proactive steps should landlords take to help slow the spread of COVID-19?

Iowa landlords should, among other things:

- Have all non-essential common areas closed off to all residents, including playgrounds, pools, recreational areas, community centers, and the like
- Frequently clean and sanitize common areas that cannot be closed, such as stairways, elevators, and laundry rooms
- Close their community offices to the residents/public
- Should only have in-person contact with residents by appointment and should screen their employees and residents/visitors before any in-person meetings

Finally, landlords may also want to keep their tenants up to date regarding recommendations from the CDC and the State of Iowa regarding recommended changes in daily living due to the COVID-19 pandemic. These actions can help mitigate the spread of COVID-19 in your communities.

I just found out that one of my tenants living within a community has COVID-19. Can I, as the landlord, mandate that the tenant and his family members quarantine themselves for 14 days?

In an ideal situation, the ill resident and family would voluntarily engage in a 14-day quarantine as recommended by the CDC. However, if that is not the case, the landlord should contact counsel before considering any landlord-imposed quarantine, as any landlord-imposed quarantine is likely **not** permissible.

I observed an ill tenant with COVID-19 not following the CDC-recommended 14-day quarantine; instead, the tenant is out and about and using common areas. What should I do?

First and foremost, under no circumstance should the landlord release the name of the ill tenant to others within the community. That said, under certain circumstances, a landlord may be able to properly send out a general notification to all tenants notifying them that a tenant within the community has tested positive for COVID-19, however, seek counsel before doing so.

Second, landlords should be taking all reasonable precautions to help mitigate the spread of COVID-19 in their communities, as described above.

Third, under certain circumstances, a landlord may choose to report that tenant to IDPH or other authorities but seek counsel before doing so.

What should I do if a tenant requests an accommodation or modification due to COVID-19?

While it is unclear whether COVID-19 alone would constitute a disability, a tenant may have a related or independent condition that is considered a disability under the FHA. Further, treating such a request as a request for a reasonable accommodation or modification under the FHA may lessen the exposure of the landlord to a potential Fair Housing/disability discrimination claim. Seek guidance from your attorney regarding any specific request, and now more than ever it is important for landlords to have well-written reasonable accommodation and modification policies.

Governor Extends Eviction Moratorium into May

April 28, 2020

Jodie Clark McDougal & Ryan L Haaland

On April 27, [in her Proclamation](#), Governor Reynolds extended into May her previously issued moratorium on residential evictions and lease terminations, which was previously set to expire April 30. The Governor did not set a specific end date for the moratorium, but stated that she does not intend to extend the moratorium again after May 27, 2020. Thus, as of now, Iowa residential landlords should assume that the Iowa moratorium will continue until **May 27, 2020**. If that changes, we will let you know.

What is covered in the Iowa moratorium

Per her prior proclamations, Governor Reynolds implemented a moratorium on residential evictions (with some limited exceptions) and also suspended the termination of residential leases for nonpayment of rent, material non-compliance with the lease/rules, or otherwise under Iowa Code §§ 562A.27 or 562B.25 during the time the proclamations remain in effect and Iowa remains under the declared state of emergency (Iowa Moratorium Period).

Please review our previous post (now updated with the new extension) for our detailed analysis of all current Iowa and federal orders covering Iowa residential landlords, as well as an overview of the options that Iowa residential landlords have for non-paying tenants in April and May.

Reports of nonpayment

Understanding your options is important, as landlords nationwide have seen significant dips in rent payments during the COVID-19 crisis, with [one nationwide survey](#) reporting that as many as 25% of tenants paid no or only partial rent in April. Another survey, this of Midwest manufactured housing communities, shows a lower number of non-paying tenants at 13%, with collections for April 2020 rent in such communities reported at 87%.

After the moratorium ends

With the Governor indicating that the eviction moratorium will continue in force until May 27, 2020, landlords should think ahead to May 28. Many landlords have been proactive in offering rent deferment programs or were otherwise working with their tenants even prior to the original eviction moratorium proclamation. However, with the expiration of

the eviction suspension now within viewing distance, landlords should consider what steps they will take and have that plan ready to implement upon the expiration of the Iowa Moratorium Period.

Landlords should determine whether they will immediately move to evict delinquent tenants or whether they will continue to work with tenants during this time. In either case, there will be issues landlords need to have a firm grasp on, including the following:

- If a landlord wishes to enforce a nonpayment of rent, when and how will the case be heard? The Iowa Supreme Court's prior administrative order delays most civil hearings until at least June 15, 2020, two weeks following the end of the Iowa Moratorium. Additionally, during the ongoing crisis, will the various counties permit telephonic hearings, or will the landlord's employees be required to attend the hearings in person?
- If a landlord wishes to work with delinquent tenants, on the other hand, it is now more important than ever that landlords have a well-drafted enforceable forbearance or deferment agreement.
- Finally, landlords still need to be mindful that the federal moratorium continues to prohibit evictions for nonpayment of rent for residential tenants in federally covered properties until July 25, 2020; we reviewed the Federal Moratorium and its implications in a previous post.

While there is some enforcement relief on the way for Iowa residential landlords at the end of May, there remains a myriad of questions as well. Having a plan is important. Your real estate attorney can assist you in evaluating your options, review your agreements with tenants, and develop a sustainable plan for your community's future.

Updated April 28: Iowa Residential Landlords Need to Understand Their Limited Options for Non-Paying Tenants in Light of State and Federal COVID-19 Orders

April 1, 2020

Jodie Clark McDougal

UPDATE: *This article has been updated in light of [Governor Reynolds' April 27, 2020 Proclamation](#) (sections 103-104).*

The various state and federal COVID-19 orders and legislation enacted within the last week have resulted in a more complicated analysis of the implications for Iowa residential landlords, which is detailed herein.

Iowa Orders

The latest *state* proclamation substantively affecting landlords is [Governor Reynolds' March 26, 2020 Proclamation](#), which, in short, suspended all service of process in regard to the previously suspended evictions. The legal and practical implications for Iowa residential landlords based upon all of the *state* orders, including Governor Reynolds and the Iowa Supreme Court's respective Proclamations and Orders (collectively, "Iowa Moratorium") is set forth below and will remain valid throughout the time the Proclamations remain in effect and Iowa remains under the declared state of emergency ("Iowa Moratorium Period"). The Iowa Moratorium Period was set to expire on April 30, per Governor Reynolds' [April 2 Proclamation](#) (section 32), however, the [April 27 Proclamation](#) extends the moratorium. Rather than extending the eviction suspension to a definite date, the Governor extended the Iowa Moratorium Period for the time being and stated she does not intend to extend the Iowa Moratorium Period again after May 27, 2020. Thus, as of now, landlords should assume the Iowa Moratorium Period will continue until **May 27, 2020**. If that changes, we will let you know.

Also, per the [Iowa Supreme Court's April 2 Order](#), the Court has now extended the prior May 4 date, mandating that all evictions/FEDs and small claims hearings (excluding the two exceptions noted below) will be continued until on or after **June 15, 2020**.

Federal Legislation

In addition, further analysis of the recently implemented *federal* legislation (“Federal Moratorium”) has revealed the broad application of such legislation, as **“covered properties” under the federal legislation is a broadly defined term that includes rental properties with a federally-backed mortgage, which in turn is defined to include, among others, rental properties with mortgages secured or purchased by Freddie Mac and Fannie Mae.**

Landlords should know that the same type of suspension of evictions by landlords as seen under the Iowa Moratorium appears as part of the Federal Moratorium, but with the Federal Moratorium lasting **until July 25**. In addition, the Federal Moratorium includes the following additional restrictions:

(a) prohibits landlords from charging, now or in the future, any type of late fee or penalty for any rent unpaid during the 120-day time period of the Federal Moratorium (“Federal Moratorium Period”) and

(b) requires that landlords may not require a tenant to vacate a leased premise once the Federal Moratorium Period has expired until after the landlord has served a 30-day Notice to Vacate and given tenant another 30 days to vacate.

For further information, see the language on pages 561-564 of the federal CARES Act and this memorandum from the National Housing Law Project. Seek counsel for further information and analysis if you own or manage a “covered property,” as the analysis of the Federal Moratorium continues as of the writing of this blog.

Specific Implications for Iowa Residential Landlords under the Iowa Moratorium and Federal Moratorium

1. Termination of Leases for Breach NOT Permitted: Under the Iowa Moratorium, residential leases cannot be terminated for nonpayment of rent, material non-compliance with the lease/rules, or otherwise under Iowa Code §§ 562A.27 or 562B.25 during the Iowa Moratorium Period.

Practical Advice:

- Landlords should **not** send the standard notices of non-payment of rent/noncompliance, as those notices mandate termination of the lease if the default is not cured, which is prohibited under the Iowa Moratorium.
- Instead, for tenants who fail to pay rent in April or May, or otherwise during Iowa Moratorium Period, we recommend landlords send a reminder notice, a non-legal Notice of Delinquent Rent merely reminding the tenant of his or her obligation to pay rent and expressly noting that the landlord is confirming all rights to later evict based upon such default.
- Instead, for tenants who fail to pay rent in April or May, or otherwise during Iowa Moratorium Period, we recommend landlords send a reminder notice. This is a non-legal Notice of Delinquent Rent merely reminding the tenant of his or her obligation to pay rent and expressly noting that the landlord is confirming all rights to later evict based upon such default.

2. Eviction/FED Actions CANNOT be Commenced/Filed: With the Governor’s most recent Proclamations, Iowa landlords are no longer permitted to commence eviction/FED actions under the Iowa Moratorium. A similar suspension of evictions by landlords for nonpayment of rent is part of the Federal Moratorium, but with the Federal Moratorium lasting **until July 25**. To reiterate, while the prior Iowa Supreme Court Orders had allowed for the commencement of FED/eviction actions with hearings being scheduled after June 15, those Orders have been superseded by the Governor’s Proclamations, such that eviction/FED actions can no longer be filed or served upon tenants. Landlords should also remember that self-help evictions have never been allowed under Iowa law.

Two Exceptions for Evictions are still PERMITTED under the Iowa Moratorium:

- Clear and present danger/emergency evictions
- Evictions for “squatters” and others under Iowa Code section 648.1(1)

These two types of FED/eviction actions may still be commenced, but note that county practices appear to vary, with some counties scheduling immediate telephonic hearings and other counties scheduling these hearings to occur on or after June 15.

3. Non-Renewal of Leases still PERMITTED: Most practitioners view the Iowa Moratorium and Federal Moratorium to still allow landlords freedom of contract regarding non-renewal of residential leases, particularly when a non-renewal notice is **not** used to circumvent the suspension against termination based upon non-payment of rent. However, tenants may argue otherwise, and, most importantly, an eviction action based upon a holdover tenant after a non-renewal/cancellation of a lease is **not** permitted to be filed until after the Iowa Moratorium Period, as described in section (2).

Moreover, if a landlord chooses not to renew a lease and then necessarily allows a tenant to holdover and remain in possession (based upon the current suspension of evictions), the result could be a disadvantageous scenario for landlords after the moratorium is lifted. This may be especially true for landlords of manufactured housing communities, due to the statutory presumption of verbal lease agreements being for a term of one year.

4. Landlord's Permissible Options for Dealing with Nonpaying Tenants:

- **Landlord Options for Now:**
 - Ask nonpaying tenants to sign a rent deferment agreement or rent payment plan. Seek counsel for further assistance regarding such agreements.
 - File a money judgment action for the unpaid rent. Such actions can be filed, with the hearing on such actions being scheduled on or after June 15. However, such actions should only be pursued in very limited circumstances after a thorough review of your lease agreement and the fact scenario involving the tenant, and upon advice of counsel.
- **Landlord Options for Later:**
 - **Notice and Eviction After the Iowa Moratorium Period Expires:** Most practitioners, including myself, believe that after the Proclamation Period has ended, landlords will have the right to send out a formal 3-day Notice of Non-Payment of Rent for all past due rent that has accrued during the Proclamation Period—including a Notice that would include *multiple* months' worth of past due rent—and file an eviction action if the tenant does not timely cure the default after receipt of the 3-day Notice of Non-Payment of Rent. In particular, because landlords do not have the right to terminate or otherwise invoke its rights during the Proclamation Period, landlords should have a strong argument to rebut any tenant's claimed argument based upon the 30-day peaceable possession and/or waiver for past due rent that is greater than 30 days old.
 - **Notice and Eviction After the Federal Moratorium Period Expires for Covered Properties:** The Federal Moratorium provides that a landlord (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' prior notice—which may not be given until after the Federal Moratorium Period. For landlords of covered properties, further analysis will be required as to the interplay of the Federal Moratorium and Iowa's 30-day peaceable possession statute and waiver doctrine, after the Federal Moratorium Period expires.
 - **Money Judgment Action for Unpaid Rent:** Now or at a later time, landlords can file a money judgment action for the unpaid rent, with those hearings being scheduled on or after June 15.
- **Options for Landlords with Pre-Proclamation Period Eviction Orders and Writs of Removal**
 - County magistrate and sheriff department practices have varied regarding whether writs of removal for *pre*-Proclamation Period Eviction/FED Orders may still be issued by the court or served by the sheriff. Seek counsel for further assistance.

The full language of the pertinent section of Governor Reynolds' Proclamation is below. Finally, Iowa Legal Aid has put out an [Eviction Flowchart](#) to assist practitioners with the interplay between the various state and federal orders pertaining to evictions.

As this is a situation that continues to change, please contact your attorney before you take any action involving notices or evictions. She may be able to provide you with a sample reminder notice of delinquent rent.

Iowa Real Estate Transactions and COVID-19

March 23, 2020

Jodie Clark McDougal, Gary M Myers, and Sean M Raisch

Below is the latest information regarding the effect that the COVID-19 pandemic is having on real estate transactions in Iowa.

Foreclosures: All residential, commercial, and agricultural foreclosure and forfeiture proceedings have been suspended

Pursuant to Governor Reynolds's [March 22, 2020 Proclamation](#), a statewide suspension has been imposed on the commencement of, or prosecution of ongoing, foreclosure and forfeiture proceedings on residential, commercial, and agricultural real estate located in Iowa. This foreclosure suspension shall apply during the duration of Iowa's State Public Health Emergency, as well as any future extensions. The proclamation expressly states that it does not relieve any individual of their obligation to make mortgage payments, or to comply with any other obligation that may arise under the mortgage. Thus, upon expiration of the Proclamation, foreclosure and forfeiture proceedings may commence or proceed as usual, including foreclosure or forfeiture proceedings for which events of default occurred during the COVID-19 pandemic.

GAP Coverage/Title Exceptions: Iowa Title Guaranty issues new directives and guidance

Iowa Title Guaranty ("ITG") has imposed the following new directives:

Recorder's Office Closure

In the event of a complete recorder's office closure, that is, a closure in which the recorder's office is closed entirely and not processing any filings (including e-filings, mail, and drop boxes), ITG has imposed the following directives:

(1) CPL or GAP: If a closing protection letter ("CPL") or GAP Coverage Endorsement ("GAP") has been or will be issued, **the closer may not close** unless and until the recorder's office has reopened for business and is accepting timely filed documents.

(2) No CPL or GAP: If no CPL or GAP has or will be issued, **ITG will permit closing**. However, the final certificate shall not be issued unless and until the abstractor has performed the proper final searches good through the date of the mortgage filing and the examining attorney has confirmed proper title, vesting, clear title, and desired lien priority in a final title opinion. In this instance, **THE CLOSER WILL ASSUME ANY AND ALL LIABILITY FOR MATTERS REVEALED IN THE GAP.**

New ITG Exception

Additionally, effective immediately, the following requirement will appear as a record requirement in Section 4 of Schedule B, Part I on all ITG Commitments:

"COVID-19 REQUIREMENT: Confirmation that the county recorder and courthouse are processing filings and permitting abstractor access to perform necessary final title searches through the date of the vesting deed and/or guaranteed mortgage filing. If the county recorder or courthouse are not processing filings or permitting abstractor access to public records, Iowa Title Guaranty reserves the right to raise exceptions or requirements or determine that a certificate may not be issued due to any changes, disruptions or delays in recording and abstractor title search capabilities resulting from COVID-19 outbreak and global pandemic and/or the implementation of Iowa's State Disaster Emergency Plan in response thereof."

Electronic Documents and Payments

All applications for division-issued commitments and certificates must now be issued electronically. Finally, all ITG premiums must be paid via e-payment.

Local Abstractors and County Office Operations

On March 21, 2020, Governor Reynolds sent a [letter](#) to all Iowa county auditors, recorders and treasurers encouraging them to keep their offices open, reasoning that failure to have their offices open in some manner would significantly impact ITG's ability to provide title insurance coverage to consumers and lenders.

We have been advised by some abstractors that as of last week they had been unable to perform complete searches of county records due to restrictions on access that have been instigated in some counties. Whether county offices that had previously restricted access will change those restrictions following the Governor's letter is unknown.

Conversely, many other county offices, while closed to the public, have implemented various operational changes in an effort to maintain as close to normal operations as possible in regard to real estate sales/purchases, construction permits, construction inspections, and the like. Check with your local county office or your attorney for specifics.

As the Governor indicated, amidst the COVID-19 pandemic, closed county offices would substantially affect any real estate closing, resulting in potential delays until the end of the pandemic. Accordingly, we highly recommend including language in real estate purchase agreements regarding the COVID-19 pandemic and any related delays and otherwise speaking to your real estate attorney about all transactions.

Governor's Proclamation Affects Iowa Residential Landlords

March 20, 2020

Jodie Clark McDougal

On Friday, March 20, 2020, [Governor Reynolds issued a Proclamation](#) implementing various regulatory changes and further restrictions in light of the COVID-19 pandemic. The Proclamation contains the below quoted language pertaining to residential tenancies and evictions. In short, the Proclamation provides for a statewide suspension of the below cited regulatory/statutory provisions allowing for the termination of leases and evictions of residential tenants in Iowa, with two exceptions: (1) clear and present danger/emergency evictions and (2) evictions for "squatters" and others under Iowa Code section 648.1(1). Currently, there is not a consensus on how local magistrates are interpreting this Proclamation in regard to evictions. As of now, some counties are continuing to allow for the filing/commencing of eviction actions (per my March 19 post) and then scheduling all hearings on or after May 4. Conversely, other counties are likely to dismiss any eviction actions filed after the issuance of the Proclamation.

Suspension of Certain Evictions

SECTION TWO. Pursuant to Iowa Code §§ 29C.6(6) and 135.144(3), and in conjunction with the Iowa Department of Public Health, I temporarily suspend the regulatory provisions of Iowa Code §§ 562A.27, 562B.25, and 648.1(2)–(6), allowing for the termination of a rental agreement by a landlord and the eviction of a tenant under the Iowa Uniform Residential Landlord and Tenant Act or the Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Act in certain circumstances. This suspension does not apply to actions for forcible entry and detainer where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property and detains the same, or any other emergency circumstances allowed by law. Suspension of these provisions shall apply during the duration of this Proclamation or any future extension of this suspension.

While filing an eviction action for a tenant's current non-compliance (with the hearing scheduled on or after May 4) may be the only way for a landlord to 100% preserve all rights, such actions could certainly be dismissed and may have negative consequences from a PR or non-legal perspective, and, importantly, most practitioners believe landlords who choose not to commence actions will not waive any rights in light of the current global pandemic. That said, landlords

should consider additional ways to ensure their rights are preserved, including having non-paying tenants sign rent deferment agreements and modifying the language of any non-payment notices to account for this current situation. Contact me or your attorney for specific advice.

Finally, landlords would be prudent to affirmatively provide information to their tenants regarding the resources available to them to assist with income replacement and other assistance stemming from COVID-19 hardships, including the following resources.

State Unemployment Benefits

Iowa has implemented an expanded unemployment benefits program, with loosened restrictions, for all qualifying individuals affected by COVID-19, with benefits provided for up to 26 weeks and with checks expected to be issued within 7-10 days after the claim has been filed. More information for tenants can be found at the below two websites:

<https://www.iowaworkforcedevelopment.gov/updates-and-resources-about-covid-19>

https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/content-files/Updated%20-UI%20Worker_COVID-19%20QA.pdf.

Families First Coronavirus Response Act

New benefits are available as part of the Families First Coronavirus Response Act, effective April 2, which provides extended FMLA and paid leave benefits. More information for tenants can be found at:

<https://www.dol.gov/agencies/whd/fmla/pandemic>

Additional Resources

Finally, there may be additional benefits, possibly in the form of checks mailed directly to certain Americans, to be implemented by the U.S. Government in the future, and there are further resources available regarding how families can protect themselves from the financial impact of COVID-19. More information for tenants can be found at the below two websites:

<https://www.usa.gov/coronavirus>

<https://www.consumerfinance.gov/about-us/blog/protect-yourself-financially-from-impact-of-coronavirus/>

HUD to Suspend all Evictions Nationwide Until the End of April

March 18, 2020

Jodie Clark McDougal

Per today's daily briefing by President Trump, HUD will be temporarily suspending all foreclosures and evictions amid the coronavirus crisis until the end of April. As the President explained,

"Today, I'm also announcing that the Department of Housing and Urban Development is providing immediate relief to renters and homeowners by suspending all foreclosures and evictions until the end of April...we're working very closely with Dr. Ben Carson and everybody from HUD."

As of now, and per the [Iowa Supreme Court's most recent supervisory order](#), Iowa landlords are still permitted to file/commence eviction actions. Local magistrates have the option of either setting a telephonic eviction hearing or continuing the eviction hearing until May 4. Most county magistrates are electing to continue all hearings until May 4, in lieu of setting telephonic hearings. Per the Order, clear and present danger evictions may proceed when possible through a telephonic or videoconference hearing. These state orders and practices are subject to change, including as HUD and other federal orders regarding evictions are issued.

COVID-19 Update for Landlord Industry

March 18, 2020

Jodie Clark McDougal

Below is our latest update regarding the COVID-19 situation. Please contact your attorney for answers to your specific questions.

This information is accurate as of March 17, 2020.

Employer Implementation of CDC Recommendations and Operational Changes

Employers/businesses in non-critical infrastructure industries should begin the process of implementing the [03-16-20 CDC Recommendations](#) as soon as possible and as much as practical, along with implementation of various other best practices operational changes, including the following:

- All employees who can work remotely, should work remotely.
- For remaining employees in the office, social distancing of 6 feet (or a minimum of 3 feet) between employees should be observed.
- In-person meetings of any size, even when abiding by the above noted social distancing protocols, should be avoided whenever possible, and, per the CDC recommendations, in-person meetings of 10 or more people should **not occur**.
- Employee and visitor/client screening for those in the office should be strongly considered by employers. Contact your attorney for specific advice on screening policies.
- Any employee (or visitor or client) in the office who is or appears sick, has had contact with a person who is sick, or has traveled outside of the state to a region with an increased incidence of COVID-19 should be (1) sent home immediately, or otherwise assessed by the designated person, and (2) kept outside of the office for a mandatory 14 days. See our prior post with our COVID-19 travel policy recommendation.
- Employers should develop an infectious disease preparedness and response plan. Contact your attorney for specific advice on this topic.

OSHA has issued the following written [Guidance for Preparing Workplaces for COVID-19](#).

Likewise, CDC has issued this [Interim Guidance for Businesses and Employers RE COVID-19](#).

Further Landlord Industry Specific Best Practices

Landlords and housing providers necessarily continue their operations and are attempting to operate as close to normal during these times, but should do so under the above noted parameters. Below is further guidance and information for landlords:

- Suspend all non-emergency interior maintenance and repair work for a period of 30 days or other period of time. For work that must be performed, follow the above noted protocols when performing such work.
 - In addition, employees and crew people performing the work [may ask screening questions of the tenant-homeowner before entering the property including](#), whether any person in the home/property has tested positive for COVID-19, has flu-like symptoms, is under a 14-day mandatory or voluntary quarantine, or otherwise has an increased risk of exposure to COVID-19.
- Close local property offices to in-person tenant traffic unless absolutely necessary.
- Close indoor common areas unless absolutely necessary (e.g., laundry rooms), such as community centers. Maintain strict cleaning of laundry rooms and the like.
- Consider closing/prohibiting traffic into exterior common areas such as playgrounds, or as reasonable, allow such areas to remain open for limited traffic and maintain strict cleaning/disinfecting of those areas.
- Change in-person meetings with tenants and unit/home walk throughs to telephonic or virtual meetings whenever possible or reschedule for a later date. When that is not possible:
 1. Meetings should be strictly limited to essential people only (and in no circumstance, should include 10 or more people per the CDC recommendation).
 2. Maintain social distancing of 6 feet (or a minimum of 3 feet) in those meetings and walk throughs.

3. Ask screening questions/perform screening of the tenants/prospective tenants prior to those meetings as noted above, and cancel/reschedule meeting as necessary.

Many landlords are currently considering business decisions regarding possible moratoriums on eviction actions, allowing rental payment plans for tenants affected by COVID-10 layoffs and wage decreases, waiving late fees, and the like. Contact your attorney for specific advice on these topics, and in all situations, comply with fair housing laws and ensure all similarly situated tenants are treated the same.

Iowa Court Proceedings and Real Estate Filings

As of March 17, eviction actions **may** proceed through the Iowa courts, while other matters are being continued, but this is subject to change in the future. Per the [03-14-20 Iowa Supreme Court Order](#):

- Civil *jury* trials scheduled to commence between March 13-May 4 will be continued to a future date.
- All small claims trials/hearings scheduled to commence between March 13-May 4 will be continued to a future date **with the exception of FED/eviction actions and small claims appeals.**
- FED/eviction actions will continue on for the time being. Courts are allowing attorneys and parties to appear telephonically for hearings.
- Civil *nonjury* trials and hearings may go forward as scheduled. However, motions to continue shall be freely granted where they would not result in unfair prejudice to a party.

The above information may change in the future. Notably, other localities have [suspended all evictions](#), including the cities of San Francisco and Seattle and states like New York.

Mechanic's lien filings and real estate filings/recordings are proceeding normally for the time being.

Unemployment Benefits and Other Employee Leave and Pay Questions

On Tuesday, March 17, Iowa Workforce Development hosted a webinar for employers to review IWD's new changes to unemployment benefits due to COVID-19. Per the new changes, unemployment benefits are now available for a maximum of 26 weeks due to COVID-19 related absence from work, such as due employer shutdown (including temporary layoffs), self-quarantine, loss of child-care, school closures, COVID-19 illness, caring for a family member with COVID-19 exposure/illness.

Employers will not be charged for benefits relating to COVID-19

Jo Ellen Whitney compiled a detailed summary. Further resources on these matters are available on the [IWD website](#). Contact your attorney with specific questions.

The U.S. Congress has pending a bill to widely expand FMLA to those affected by COVID-19 issues. More details to come in the next 24 to 48 hours.

This situation is rapidly changing, as is the guidance from the CDC, public health officials, and regulators. We encourage you to contact your attorney if you have any questions or need assistance developing your policies, procedures, communication pieces, and action plans to address Coronavirus/COVID-19.

Iowa Legislative Update for Construction and Landlord Industries

February 21, 2020

Jodie Clark McDougal

The first "funnel" is now over for the 2020 legislative session. This means if a House bill did not advance out of a full House committee, or a Senate bill did not advance out of a full Senate committee, by the first funnel date, the bill dies. The Davis Brown Government Relations Team provides a good overview of the funnel process.

Here is where we are after the first funnel for some of the more significant bills affecting the landlord-tenant and construction industries.

Landlord-Tenant Legislation

2020 Manufactured Housing Community Legislation: [HF 2351](#) and [SF 2238](#) - NOT ADVANCING: This 27-page bill, as summarized in my [prior blog](#) and which would have negatively impacted landlords of manufactured housing communities, did *not* make it through the first funnel and are considered dead. Specifically, SF 2238 was not scheduled for any subcommittee or committee, and HF 2351 passed through subcommittee but did not advance through to a full House committee. This is great news for the industry and is the result of the hard work and efforts of the various members of the industry and the Iowa Manufactured Housing Association.

2019 Manufactured Housing Community Legislation: [HF 638](#) - STILL ALIVE: This bill is still alive from the 2019 session. This bill had originally started as a pro-landlord bill but was amended in the final days of the 2019 legislative session with major pro-tenant amendments applicable to the manufactured housing community industry, including the below two provisions. This bill is still alive and could be placed on the House debate calendar in the future. If that happens, a further update will be provided.

- A 180-day mandatory notice period prior to rent increase; and
- Removal of the 60-day no cause non-renewal provision and providing that only good cause terminations of tenancies by landlords are allowed.

Possession of Firearms in Leased Premises: [SF 2245](#) - NOT ADVANCING: This bill, for an act relating to the possession and storage, of firearms by a tenant of a dwelling unit or mobile home space and making penalties applicable, did not make it through and is considered dead.

Source of Income Prohibition: [HSB 690](#) and [SSB 3178](#) - ADVANCING: This bill is beneficial to landlords as it would prohibit cities/counties from implementing Source of Income ordinances, such as the ordinances already in place in Iowa City and Des Moines. This bill made it through first funnel and is advancing.

New Federal Guidance on Assistance Animals - HUD memo: On January 28, 2020, the US Department of Housing and Urban Development (HUD) released a new memorandum providing further guidance on assistance animals-[Notice FHEO-2020-01](#). Among other things, this memorandum contains a description of best practices for landlords when assessing a person's request to have an assistance animal, as well as guidance on documenting a tenant's need for an assistance animal in housing.

In the future, you will receive a detailed overview of this memorandum, but in short, the new guidance is generally what practitioners would have expected to hear from HUD. Though, there are a few specific topics in the memorandum that HUD has now directly discussed that were murky. For example, HUD specifically prohibits landlords from requiring medical professionals to notarize their letter/doctor's note under penalty of perjury. More details to come.

Construction Industry Legislation

Homestead Sales/Mechanics Liens (Pro-Contractor Bill) [SF458](#) - ADVANCING: This pro-industry bill, as [summarized in my prior blog](#), provides that a contractor's entire mechanic's lien, including all principal, interest, attorney fees, and costs, applies to a homestead such that the homestead may be sold to satisfy the entire mechanic's lien. This bill would supersede the recent Supreme Court decision providing that attorney's fees are not recoverable as part of a mechanic's lien against a homestead, as described in [my prior blog](#) from earlier this year. This pro-industry bill *did* make it through the first funnel. Further updates will be provided.

Alternative Project Delivery: [HSB 674](#) and [SSB 3153](#) - ADVANCING: This bill would allow for use of a Construction Manager at-risk (CMaR) for all public owners with the exception of the Iowa Department of Transportation. This would be a significant change for public projects.

Radon Systems in All New Homes: [HSB590](#) - **NOT ADVANCING**: This bill would have required the installation of an active radon system in all new homes, it did *not* make it through the funnel and is considered dead.

Professional Licensing Qualifications: [HF 2470](#) and [SSB 3122](#) - **ADVANCING**: This bill is a part of the Governor's Future Ready Iowa program and aims to attract a skilled workforce to Iowa by allowing workers with licenses from other states to work in Iowa without being required to go through Iowa's licensing process. This bill made it through the first funnel and will advance.

Bills Negatively Impacting Landlords within Manufactured Housing Communities Introduced in the Iowa House and Senate

February 13, 2020

Jodie Clark McDougal

On February 12, 2020, Iowa lawmakers introduced bills in both the Iowa House and Senate ([HF 2351](#) and [SF 2238](#)) that would negatively impact landlords of manufactured housing communities. The content of the two bills is the same-- proposing numerous highly prejudicial changes for landlords under Iowa law.

Many of the proposed amendments would dramatically change the law for manufactured housing communities. Further, while the bill would only amend Iowa Code Chapter 562B (Iowa's Manufactured Housing Community Law), many landlords fear that similar amendments may be proposed in the future for all landlords in Iowa under Iowa Code Chapter 562A (Iowa's Uniform Residential Landlord-Tenant Law).

Some of the more controversial and objectionable portions of the bill include:

- Rent control provision.
- Elimination of a landlord's right to choose whether to renew a tenancy. Instead, a landlord could terminate (i.e., not renew) a tenancy *for good cause only*.
- Increase of the notice period for rent changes from 60 days to 180 days.
- A provision that all landlord violations of Iowa Code Chapter 562B are considered consumer fraud.
- Restrictions on a landlord's right to impose utility charges.
- Restrictions on a landlord's right to deny applicants.
- Additional restrictions on allowable provisions within rental agreements.

We have prepared a more detailed summary of the bill for landlords to review.

The [Iowa Manufactured Housing Association](#), including its executive director-lobbyist, Joe Kelly; general counsel [Jodie McDougal](#); lobbying team, [Tim Coonan](#) and [Sydney Gangestad](#); and the Association Board, have been diligently working on these legislative matters since before session began and will continue to do so, as the Association expresses their opposition to these bills.

Making Changes to Your Rules and Regulations in a Manufactured Housing Community

January 28, 2020

Jodie Clark McDougal

Landlords who want to make changes to the rules and regulations in their manufactured housing communities need to be aware of the notice rules in Iowa Code § 562B.19.

General Notice Period for Rule Changes

Generally speaking, Iowa law provides that notice of rule changes may be implemented for all mobile home residents 30 days before they become effective.

Longer Notice Period for Substantial Modifications

However, there is an exception if the rule change “would work a substantial modification to the rental agreement,” (Iowa Code § 562B.19). These substantial modification changes must be implemented with the same notice period as if you were raising the rent or changing the terms of the lease - only after the current lease term has expired and upon 60 days prior notice.

Any change in the rules that would add an additional fee equates to a substantial modification and has a different notice period. For example, if you wanted to add a \$10/dog/month fee, or if you wanted to stop allowing dogs, as part of a rule change, those rule changes equate to a substantial modification to the rental agreement.

Lease Term and the Notice Period

Lease terms play a big part in implementing rule changes.

If all leases within your community are month-to-month, this type of rule change can be implemented with a 60-day notice. Conversely, if your community has some 6-month and 1-year leases, then the implementation of this type of new rule would not take effect for those residents with longer leases until after their 6-month or 1-year tenancy term has ended.

Service Method for the Notice of Rule Change

You can notify residents via posting **or** via mailing U.S. Mail and Certified Mail. You do not need to do both for this type of rule change.

If you are making changes to the Rules and Regulations in your community, it is recommended that you speak with an attorney to confirm whether the change would be considered a “substantial modification” under the law and, thus, require the longer notice period.

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of Ongoing Provisions)
for Coronavirus/COVID-19 Impact) December 30, 2020
on Court Services

This order supplements previous forcible-and-detainer-related (FED-related) supervisory orders relating to the spread of the novel coronavirus/COVID-19. On September 4, 2020, the federal Centers for Disease Control and Prevention (CDC) promulgated a moratorium on certain residential evictions (CDC Evictions Order). The CDC Evictions Order originally had a December 31, 2020 expiration date. On October 2, 2020, this Court issued a supervisory order relating to the CDC Evictions Order. This order also had a December 31, 2020 expiration date. However, on December 27, 2020, the President signed the Consolidated Appropriations Act of 2021. Section 502 of Subtitle A of Title V of Division N of the Act extends the CDC Evictions Order through January 31, 2021.

Accordingly, the supreme court directs as follows:

1. The Court extends the duration of its October 2, 2020 supervisory order through January 31, 2021.
2. Additionally, on May 22, 2020, the Court issued a supervisory order that included a paragraph (paragraph 38) and an accompanying form to be used in FED actions. That order and accompanying form with instructions are available at: <https://www.iowacourts.gov/iowa-courts/supreme-court/orders/>. The Court hereby clarifies that paragraph 38 of that May 22 supervisory order and the accompanying form continue in effect through March 31, 2021.
3. Today's order does not affect any other provisions of the Court's prior supervisory orders.

THE IOWA SUPREME COURT

By 
Susan Larson Christensen, Chief Justice

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State Court Administrator
State Public Defender
The Iowa State Bar Association
Thomson Reuters (Westlaw)
University of Iowa College of Law

HHS/CDC TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19

FREQUENTLY ASKED QUESTIONS

Introduction

This non-binding guidance document shares the views of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS), U.S. Department of Housing and Urban Development (HUD), and U.S. Department of Justice (DOJ) on frequently asked questions about the CDC Order entitled [*Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 \(Sept. 4, 2020\)*](#). This guidance document does not create or impose any obligations on any member of the public or any entity beyond those established by the Order. This guidance document is not a comprehensive summary of the duties and obligations under the Order. Individuals should seek the assistance of a legal aid program or private legal counsel (as applicable)¹ for questions relating to the application of the Order to their individual circumstances.

What does the Order do?

The Order temporarily halts residential evictions of covered persons for nonpayment of rent during September 4, 2020, through December 31, 2020. This means that a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action cannot evict for nonpayment of rent any covered person from any residential property in any U.S. state or U.S. territory where the Order applies. We explain where the Order applies and who is covered later in this document.

What does CDC mean by “eviction”?

“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. State and local laws with respect to tenant-landlord relations vary, as do the eviction processes used to implement those laws. The judicial process will be carried out according to state and local laws and rules. Eviction does not include foreclosure on a home mortgage.

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.

¹ For more information on legal aid programs, see the following: Legal Services Corporation (<https://www.lsc.gov/what-legal-aid/find-legal-aid>) and the ACL Elder Care Locator (<https://eldercare.acl.gov/Public/Index.aspx>).

Who is a “covered person” for purposes of this Order?

A “covered person” is any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury that:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- (2) The individual either (i) 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), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- (3) 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 expenses²;
- (4) 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
- (5) 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.

Frequently Asked Questions

How does someone use 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.**

² An "extraordinary out-of-pocket medical expense" is defined in the Order as any unreimbursed medical expense that is likely to exceed 7.5% of one's adjusted gross income for the year.

Has CDC provided a declaration form that eligible individuals can complete and submit to their landlord?

Yes. CDC has issued a declaration form that is compliant with the Order. CDC recommends that eligible persons use this declaration form. The declaration form is available on the CDC website: See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

Individuals are not obligated to use the CDC form. Any written document that an eligible individual presents to their landlord will comply with the Order, as long as it contains the same information as the CDC declaration form.

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.

In addition, people are allowed to use a form translated into other languages. Even though declarations with other languages may satisfy the requirement that a covered person must submit a declaration, CDC cannot guarantee that they in fact do satisfy the requirement. However, declarations in languages other than English are compliant if they contain the information required to be in a declaration, are signed, and 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.

To seek the protections of the Order, each adult listed on the lease, rental agreement, or housing contract should complete and sign a declaration and provide it to the landlord where they live. Individuals should not submit completed and signed declarations to the CDC or any other federal agency. 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.

I have already been evicted. Does this Order apply to me?

The effective date of the CDC Order is September 4, 2020. That means that 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.

If I am a covered person, do I still owe rent to my landlord?

Yes. Covered people still owe rent to their landlords. The Order halts residential evictions only temporarily. Covered persons still must fulfill their obligation to pay rent and follow all the other terms of their lease and rules of the place where they live. (See question below regarding evictions for reasons other than paying rent). Covered persons must use best efforts to make timely partial payments that are as close to the full payment as their individual circumstances permit, considering other nondiscretionary expenses. When the Order expires, consistent with the applicable landlord-tenant or real-property laws, a covered person will owe their landlord any unpaid rent and any fees, penalties, or interest as a result of their failure to pay rent or make a timely housing payment during the period of the Order.

How can CDC help me from being evicted?

CDC has issued this Order to temporarily halt residential evictions of covered persons for nonpayment of rent from September 4, 2020 through December 31, 2020. CDC is not able to help individual tenants or landlords in eviction actions. Individuals should seek the assistance of a legal aid program or private legal counsel (see footnote #1). Please see question below regarding enforcement of the Order.

Who do I contact to appeal an eviction decision made against me?

The Order does not establish an administrative appeal process. Individuals who need legal assistance with appeals for eviction actions taken that they believe are in violation of this Order should consult with a private attorney or legal aid program (see footnote #1).

Is CDC providing rental assistance?

No. But information about federal and state assistance programs is described below.

Where does the Order apply?

The Order applies only in states (including the District of Columbia), localities, territories, or tribal areas that do not have in place a moratorium on residential evictions that provides the same or greater level of public-health protection than the CDC's Order. Relevant courts deciding these matters should make the decision about whether a state order or legislation provides the same or greater level of public health protection. The Order does not apply in American Samoa, which has reported no cases of COVID-19. Should COVID-19 cases be reported in American Samoa, the Order would then be applicable to American Samoa.

CDC is aware of the following websites for more information on state-by-state eviction moratoriums:

- <https://www.nolo.com/legal-encyclopedia/emergency-bans-on-evictions-and-other-tenant-protections-related-to-coronavirus.html>
- <https://evictionlab.org/covid-policy-scorecard/#scorecard-intro>
- <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>
- <https://www.rhls.org/evictionmoratoriums/>

CDC is providing these links for your awareness only. CDC has not evaluated and does not endorse these websites.

Can I still be evicted for reasons other than not paying full rent?

Yes, you may still be evicted for reasons other than not paying full rent or making a full housing payment. The Order does not prevent you from being evicted for

- (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; or

(5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).

Individuals who are confirmed to have, have been exposed to, or might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. Individuals who might have COVID-19 are advised to self-isolate except to get medical care. See What to Do If You Are Sick, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

You may have additional protections against evictions under laws in your state.

How can people find government rental assistance?

The US Department of Housing and Urban Development (HUD) has coronavirus-related resources for renters available on its [website](#).

In addition, there are state and local resources available for renters and landlords. HUD has allocated and made available \$4 billion in Emergency Solutions Grants and \$5 billion in Community Development Block Grants, including \$2 billion in grants focusing on areas with increased eviction risk. State and local authorities are able to use these funds for rental assistance. Tenants and landlords are encouraged to connect with local and state authorities to find out how to access these funds. Contact information for many of these authorities can be found on the [HUD website](#).

HUD has also released guidance on rent repayment plans for [tenants and landlords](#), though that guidance is not specific to requesting protection from eviction under this order.

In addition, the HHS Administration for Children and Families administers the Community Services Block Grant (CSBG) program. The CSBG funds States, territories, tribes, and local nonprofit Community Action Agencies (CAAs) that provide a variety of services for low-income families and individuals. Based on needs identified within the community, CSBG funds flexible support that territories, tribes, CAAs and other eligible entities can use to meet the unique needs of children, youth, and families, including housing-related needs. To access these resources, individuals and families may wish to contact their state and local authorities:

- <https://communityactionpartnership.com/find-a-cap/>
- <https://www.acf.hhs.gov/ocs/resource/state-officials-and-program-contacts>

What types of residential properties are covered by the CDC's order?

The Order applies to 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 Order does not apply to hotel rooms, motel rooms, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

What is CDC's legal authority for issuing this Order?

CDC issued this Order under the authority of section 361 of the Public Health Service Act (42 U.S.C. § 264) and federal regulations codified at 42 C.F.R. § 70.2. Under 42 U.S.C. § 264, the HHS Secretary is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between U.S. states and U.S. territories. The authority for carrying out these functions has been delegated to the CDC Director. Under long-standing legal authority found at 42 C.F.R. § 70.2, the CDC Director can take public health measures to prevent the interstate spread of communicable diseases in the event of inadequate local control.

Why did CDC issue this Order?

CDC issued this Order because evictions threaten to increase the spread of COVID-19. During a pandemic, calling a temporary halt to evictions can be an effective public health measure to prevent the spread of disease. A temporary halt of evictions can help people who get sick or who are at risk for severe illness from COVID-19 protect themselves and others by staying in one place to quarantine. These orders also allow state and local authorities to more easily implement stay-at-home and social distancing measures to lessen the community spread of COVID-19. Housing stability helps protect public health because homelessness increases the likelihood that people may move into close quarters in homeless shelters or other settings. These crowded places put people at higher risk of getting COVID-19. People who are homeless and not in a shelter also have increased risk of severe illness from COVID-19.

Do landlords have to make their tenants aware of the CDC order and Declaration?

No, landlords are not required to make their tenants aware of the Order and Declaration. But landlords must otherwise comply with all requirements of the Order.

What does it mean when a tenant has declared themselves to be a covered person under the CDC Order?

Covered persons located in jurisdictions in which this Order applies may not be evicted for non-payment of rent solely on the basis of the failure to pay rent or similar charges at any time during the effective period of the Order. You may continue to charge rent and accept partial payments from your tenant during this time. If local laws permit, you may also agree to a repayment schedule with your tenant for back rent payments that have accumulated during this time. Tenants retain all existing rights and protections against eviction under applicable state law.

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.

If a landlord initiated an eviction for nonpayment of rent before September 4 (the effective date of the CDC Order) but has not completed the eviction, does the CDC Order provide eviction protections for the tenant?

Yes. The effective date of the CDC Order is September 4, 2020. That means that any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and 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 before September 4, 2020, is not subject to the Order.

What are the penalties for a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action violating this 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. CDC has no involvement in these penalties.

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.

How does the federal government intend to enforce this Order?

The U.S. Department of Justice prosecutes violations of this Order.

In the Iowa Supreme Court

In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services)))	October 2, 2020 Order
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This order supplements previous supervisory orders relating to the spread of the novel coronavirus/COVID-19. On September 4, 2020, the federal Centers for Disease Control and Prevention (CDC) issued an order entitled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” (CDC Order). The CDC Order is available at <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>.

To implement the CDC Order, the supreme court directs as follows:

1. The accompanying “Evictions Declaration,” including instructions, is hereby approved by the court to implement the CDC Order. The Evictions Declaration is available on the Iowa Judicial Branch website. Persons may also use the declaration form available on the CDC website at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

2. Through December 31, 2020, if the court determines in a forcible entry and detainer (FED) action that a signed Evictions Declaration has been provided to the landlord or owner by the tenant(s), lessee(s), or resident(s) of a property covered by the CDC Order, and that the FED action is based on nonpayment of rent or failure to make a housing payment, the court shall continue the FED action to a date after December 31, 2020, or if necessary, dismiss it without prejudice. If judgment has already been entered, enforcement of the judgment shall be stayed through December 31, 2020.

3. All adults listed on the lease, rental agreement, or housing contract for the property must complete and sign an Evictions Declaration.

4. This order does not prevent the eviction of a tenant, lessee, or resident for a reason other than the nonpayment of rent, including grounds set forth in Iowa Code sections 648.1(1), (3), (4), and (6). This order also does not prevent evictions pursuant to section 648.1(2) where the lease was terminated for a reason other than the nonpayment of rent.

5. Paragraphs 37, 39, and 40 of the court's May 22, 2020 supervisory order shall apply to proceedings covered by this supervisory order. Paragraph 40 of the May 22 order provides: "**Peaceable possession.** Although Iowa Code section 648.18 provides that '[t]hirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding,' the court clarifies that the section 648.18 bar does not apply where the plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium."

6. This supervisory order does not preclude a party from challenging the validity of the CDC Order.

Dated this 2nd day of October, 2020.

The Iowa Supreme Court

By 

Susan Larson Christensen, Chief Justice

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Iowa Defense Counsel Association
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Iowa Judges Association
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Iowa Judicial Branch - Director of Governmental Affairs
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Iowa Juvenile Court Services Association
Iowa League of Cities & Iowa Municipal Attorneys Association
Iowa Legal Aid
Iowa Magistrates Association
Iowa Organization of Women Attorneys
Iowa Police Chiefs Association
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Public Defenders Association of Iowa
State Court Administrator

State Public Defender
The Iowa State Bar Association
Thomson Reuters (Westlaw)
University of Iowa College of Law

Evictions Declaration

CLERK SUPREME COURT

Please read and follow these instructions.

- This Evictions Declaration is for tenants, lessees, or residents of residential properties who are covered by the federal Centers for Disease Control and Prevention's (CDC) 9/4/20 order temporarily halting residential evictions of tenants for not paying rent or making a housing payment to prevent the further spread of COVID-19.
- This temporary protection does not apply to foreclosures on home mortgages.
- You may still be evicted for reasons other than not paying rent or making a housing payment.
- You must provide a signed and completed copy of this Declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live.
- Each adult listed on the lease, rental agreement, or housing contract should complete and sign this Declaration and provide it to the landlord or owner.
- Provide this Declaration to the landlord or owner the same way as you would provide other notices. Be sure to retain proof that you provided this Declaration to the landlord.
- Providing this signed declaration can prevent you from being evicted until December 31, 2020.
- You are still required to pay rent, make housing payments, and follow all the other terms of your lease, contract, or rules of the place where you live. This Declaration also does not prevent you from being charged fees, penalties, or interest as a result of the failure to pay for your housing under the terms of your agreement.
- You can only use this Declaration if all of the statements in the Declaration are true.

If you do not understand how to use this form, or if you are unsure whether you should use this form, talk to an attorney, go to www.iowalegalaid.org, or contact a local legal services organization.

Declaration

CLERK SUPREME COURT

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the following are true and correct:

1. I have used best efforts to obtain all available government assistance for rental or housing payment benefits available to me or any member of my household.
2. I either:
 - (a) expect to earn no more than \$99,000 in annual income in 2020 (or no more than \$198,000 if filing a joint tax return);
 - (b) was not required to report any income in 2019 to the U.S. Internal Revenue Service; or
 - (c) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
3. I am unable to pay 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 totaling more than 7.5% of my yearly adjusted gross income.
4. I am using my best efforts to make timely partial payments as close to the full payment owed as my circumstances may permit, taking into account other nondiscretionary expenses.
5. If evicted I would likely become homeless, move into a homeless shelter, or move into another residence with people living in close quarters, because I have no other available residential housing options that are unoccupied, that would not violate federal, state, or local occupancy standards, or that are not more expensive than my current housing.
6. I must still pay rent or make a housing payment and follow other terms and obligations that I have under my tenancy, lease agreement, or other housing contract. Any fees, penalties, or interest for not paying rent or making a housing payment under my tenancy, lease agreement, or housing contract may still be charged or collected.
7. I further understand that at the end of this temporary halt on evictions on December 31, 2020, my 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 me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Your signature

Date

Your printed name

Address (including apartment or unit number if any)



This document is scheduled to be published in the Federal Register on 09/04/2020 and available online at [federalregister.gov/d/2020-19654](https://www.federalregister.gov/d/2020-19654), and on [govinfo.gov](https://www.govinfo.gov)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19.

DATES: This Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Nina Witkofsky, Acting Chief of Staff, Centers for Disease Control and Prevention,

1600 Clifton Road, N.E., MS H21-10, Atlanta, GA 30329;
Telephone: 404-639-7000; Email: cdcregulations@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care,

or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.¹

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.² During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these best efforts, COVID-19 continues to spread and further action is needed.

¹ CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

² Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Applicability

Under this Order, a landlord, owner of a residential property, or other person³ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order. This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Nor does this order apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make

³ For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Renter's or Homeowner's Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions to prevent the further spread of COVID-19 may use. To invoke the CDC's order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) 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. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and

rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing payment. Executed declarations should not be returned to the Federal Government.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ORDER UNDER SECTION 361

OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264)

AND 42 CFR 70.2

TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO

PREVENT THE FURTHER SPREAD OF COVID-19

SUMMARY:

Notice and Order; and subject to the limitations under "Applicability": Under 42 CFR 70.2, a landlord, owner of a residential property, or other person⁴ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any

⁴ For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

jurisdiction to which this Order applies during the effective period of the Order.

DEFINITIONS:

"Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

"Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

"Covered person"⁵ means any tenant, lessee, or resident of a residential property who provides to their landlord, the

⁵ This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., *Who gets evicted? Assessing individual, neighborhood, and network factors*, Social Science Research 62 (2017), 366-377, <http://dx.doi.org/10.1016/j.ssresearch.2016.08.017>, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.

owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

- 1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- 2) The individual either (i) 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),⁶ (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- 3) 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

⁶ According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,621 annually). See National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

wages, a lay-off, or extraordinary⁷ out-of-pocket medical expenses;

4) 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

5) 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.

"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 does not include foreclosure on a home mortgage.

"Residential property" means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling

⁷ An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

"State" shall have the same definition as under 42 CFR 70.1, meaning "any of the 50 states, plus the District of Columbia."

"U.S. territory" shall have the same definition as under 42 CFR 70.1, meaning "any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

STATEMENT OF INTENT:

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness;

- mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and
- supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.

BACKGROUND:

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may

be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.⁸

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.⁹ During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions,

⁸ CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

⁹ Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

APPLICABILITY:

This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions

that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) engaging in criminal

activity while on the premises; (2) threatening the health or safety of other residents;¹⁰ (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; or (5) 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).

Eviction and Risk of COVID-19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household

¹⁰ Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick*, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

members and potentially increase household crowding.¹¹ Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts.¹²

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for

¹¹ United States Census Bureau. American Housing Survey, 2017. <https://www.census.gov/programs-surveys/ahs.html>

¹² Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study*. *Lancet Infect Dis* 2020, [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

medical evaluations as needed depending on symptoms.¹³

Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.¹⁴ The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

¹³ See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>

¹⁴ Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.¹⁵ Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.¹⁶

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30-40 million people in America could be at risk of eviction.¹⁷ A wave of evictions on that scale would be unprecedented in modern times.¹⁸ A large portion of those who are evicted may move into close quarters in shared

¹⁵ See Congressional Research Service, *CARES Act Eviction Moratorium*, (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/IN/IN11320>

¹⁶ See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: <https://www.huduser.gov/portal/datasets/assthsg/statedata98/descript.html>

¹⁷ See Emily Benfer, et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk*, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

¹⁸ As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. <https://evictionlab.org/national-estimates/>

housing or, as discussed below, become homeless, thus contributing to the spread of COVID-19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID-19.

Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.¹⁹ Approximately 15% of moves are interstate.²⁰

Eviction, Homelessness, and Risk of Severe Disease from COVID-19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population.²¹ In Seattle-King County, 5-15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for

¹⁹ See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html>

²⁰ *Id.*

²¹ See CDC, Coronavirus Disease 2019 (COVID-19), People Who Are at Increased Risk for Severe Illness, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

becoming homeless.²² Additionally, some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.²³

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID-19 have been identified in homeless shelters.²⁴ In Seattle, Washington, a network of three related homeless shelters experienced an outbreak

²² Seattle-King County. Point in Time Count. https://regionalhomelesssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf

²³ United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>

²⁴ Mosites E, et al, *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters - Four U.S. Cities, March 27-April 15, 2020*. MMWR 2020 May 1;69(17):521-522.

that led to 43 cases among residents and staff members.²⁵ In Boston, Massachusetts, universal COVID-19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.²⁶ COVID-19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).²⁷ Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.²⁸

CDC guidance recommends increasing physical distance between beds in homeless shelters.²⁹ To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The

²⁵ Tobolowsky FA, et al. *COVID-19 Outbreak Among Three Affiliated Homeless Service Sites - King County, Washington, 2020*. MMWR 2020 May 1;69(17):523-526.

²⁶ Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV-2 Infection in Residents of a Large Homeless Shelter in Boston*. JAMA. 2020 Apr 27;323(21):2191-2. Online ahead of print.

²⁷ Imbert E, et al. *Coronavirus Disease 2019 (COVID-19) Outbreak in a San Francisco Homeless Shelter*. Clin Infect Dis. 2020 Aug 3.

²⁸ National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: <https://nhchc.org/cdc-covid-dashboard/>

²⁹ Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>

challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID-19. Neither consequence is in the interest of the public health.

The risk of COVID-19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.³⁰ The unsheltered homeless are at higher risk for infection when there is community spread of COVID-19. The risks associated with sleeping and living outdoors or in an

³⁰ In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. *See*, Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>

encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID-19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID-19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID-19.³¹ Also, the homeless often have underlying conditions that increase their risk of severe outcomes of COVID-19.³² Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.³³

³¹ Hugo Vasquez-Vera, et al. *The threat of home eviction and its effects on health through the equity lens: A systematic review*. *Social Science and Medicine*. 175 (2017) 199e208.

³² Fazel S, Geddes JR, Kushel M. *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations*. *Lancet*. 2014;384(9953):1529-1540.

³³ Hsu HE, et al. *Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center - Boston, Massachusetts, 2020*. *MMWR* 2020 Jul 10;69(27):864-869. Historically, African Americans and Hispanic Americans are

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.³⁴ At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,³⁵ which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control

disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

³⁴ See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

³⁵ Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015-2017: cross sectional 1-day surveys. *Clin Microbiol Infect.* 2019; 25(2):249.e1-249.e6.

measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

FINDINGS AND ACTION:

Therefore, I have determined the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or U.S. territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.³⁶

Based on the convergence of COVID-19, seasonal influenza, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as fall and winter approach, I have determined that a

³⁶ In the United States, public health measures are implemented at all levels of government, including the Federal, State, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the "Applicability" section, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by

extension the public interest, to delay the issuance and effective date of this Order.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID-19. Another potential consequence would be if evicted individuals become homeless and unsheltered, and further contribute to the spread of COVID-19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under

the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

CRIMINAL PENALTIES:

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a

fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this 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. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

NOTICE TO COOPERATING STATE AND LOCAL OFFICIALS:

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations and to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

NOTICE OF AVAILABLE FEDERAL RESOURCES

While this order to prevent eviction is effectuated to protect the public health, the States and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG-CV and ESG-CV funds provided by the CARES Act, all communities should assess what resources have already been

allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity.

Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, State and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to

housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> for more information.

EFFECTIVE DATE:

This Order is effective upon publication in the Federal Register and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

ATTACHMENT

DECLARATION UNDER PENALTY OF PERJURY FOR

THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY

HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the

residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;³⁷
- 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

³⁷ “Available government assistance” means any governmental rental or housing payment benefits available to the individual or any household member.

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 extraordinary³⁸ 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.³⁹

³⁸ An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

³⁹ "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.

- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my 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 me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

Nina B. Witkofsky,

Acting Chief of Staff,

Centers for Disease Control and Prevention

[FR Doc. 2020-19654 Filed: 9/1/2020 4:15 pm; Publication Date: 9/4/2020]

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of Ongoing Provisions)	
For Coronavirus/COVID-19 Impact)	May 22, 2020 Order
On Court Services)	

This order replaces all previous supervisory orders relating to the spread of the novel coronavirus/COVID-19 in their entirety except for the April 6, 2020 order (Ongoing Provisions for Coronavirus/COVID-19 Impact on Child Welfare and Juvenile Justice Youth and Families).¹ The Iowa Judicial Branch continues to carefully monitor the public health situation, balancing the need to take measures to reduce the spread of the virus with its commitment to conducting business as necessary. Accordingly, the supreme court directs as follows pursuant to its available legal authority, including Article III, section 1 and Article V, section 1 of the Iowa Constitution.

The judicial branch gratefully acknowledges the information and feedback provided by the Iowa State Association of Counties, University of Iowa College of Public Health, Iowa State Bar Association, the Jumpstart Jury Task Force, the Criminal Rules Revision Task Force, the Iowa Department of Human Services, the Iowa Department of Public Health, the dedicated employees of the judicial branch, and all the other attorneys and Iowans who have contributed their thoughts and suggestions.

This supervisory order is intended to provide an up-to-date list of the measures now in effect because of the COVID-19 outbreak and their expected duration. It is also designed to provide a timetable for the resumption of more normal court operations.

¹ The April 6, 2020 supervisory order remains in effect according to its terms until June 1, 2020.

For the convenience of the reader, paragraphs that are substantively identical to provisions in prior supervisory orders are marked with a single asterisk *. Paragraphs substantively identical except for new dates/deadlines are marked with a double asterisk **.

EMERGENCY/ESSENTIAL MATTERS

1. **Emergency proceedings.*** District courts shall continue to conduct the following in-person business:
 - Criminal matters that cannot be continued or conducted by videoconference or telephone (pursuant to this order or otherwise); and
 - Emergency matters that cannot be conducted by videoconference or telephone.
2. **Emergency and essential services.*** Emergency and essential services include the following:
 - The protection of vulnerable people, such as the elderly, children, and persons with disabilities;
 - Initial appearances, preliminary hearings, bail hearings, and arraignment for criminal defendants;
 - Hearings related to quarantine orders and other public-health related matters;
 - Protection orders for individuals who fear for their safety; and
 - Search warrants and other law enforcement actions.

For example, emergency matters may include substance abuse treatment proceedings pursuant to Iowa Code chapter 125, hospitalization proceedings pursuant to chapter 229, removal proceedings pursuant to chapter 232, elder abuse proceedings pursuant to chapter 235B, dependent adult abuse proceedings pursuant to chapter 235F, protective orders pursuant to Iowa Code chapter 236 or 236A, motions to quash

garnishments pursuant to chapter 642, and forcible entry and detainer proceedings pursuant to chapter 648 where the tenancy poses a clear and present danger. **This list is not intended to be exclusive and judicial officers shall determine what constitutes an emergency within the meaning of this paragraph.** Judicial officers may direct that an emergency matter be conducted by videoconference or telephone.

3. **Duty to notify as to COVID-19 risk.*** An attorney or party participating in in-person business must promptly notify opposing counsel and the respective Clerk of Court's Office if they reasonably suspect that a participant in any scheduled hearing, trial, conference, deposition, or other proceeding may have an elevated risk of transmitting the novel coronavirus that causes COVID-19. Guidance on who is considered to have an elevated risk can be found on the websites for the Centers for Disease Control and Prevention (<https://www.cdc.gov/>), the Iowa Department of Public Health (<https://idph.iowa.gov/>), and the Iowa Judicial Branch (www.iowacourts.gov).
4. **Duty to inquire as to risk.*** To the extent possible, counsel must affirmatively inquire of their clients and witnesses participating in in-person business whether they have an elevated risk of transmitting the novel coronavirus that causes COVID-19.
5. **No attendance by persons at risk of transmitting COVID-19.*** No person who has an elevated risk of transmitting the novel coronavirus that causes COVID-19 may personally attend any clerk of court's office, hearing, trial, conference, deposition, or other proceeding without prior authorization from the court.

TRIALS AND HEARINGS (CRIMINAL AND CIVIL)

6. **Nonjury trials.** Any nonjury trial that is scheduled to begin before July 13, 2020, shall be continued and reset to a date no earlier than July 13,

2020. Notwithstanding the foregoing, nonjury trials may commence before July 13, 2020 in specific counties if the county courthouse is open to the public and the court operations in that county meet recommended COVID-19 safety protocols as established by state court administration. Trials shall be scheduled in accordance with case priorities in the separate supervisory order issued May 22, 2020 (In the Matter of Prioritization of Cases and Duties).

7. **Resumption of nonemergency in-person hearings.** Nonemergency in-person hearings, including evidentiary hearings such as hearings on motions to suppress, shall resume according to the same schedule set forth for nonjury trials in paragraph 6.
8. **Strong encouragement to conduct civil court business other than jury trials using videoconference or telephone.** Prior to July 13, 2020, and continuing thereafter, courts, parties, and attorneys are strongly encouraged to conduct civil court business when feasible using videoconference or telephone.
9. **Trial court discretion to conduct nonjury trials or accept specific testimony by videoconference or telephone.** District courts may conduct civil nonjury trials by videoconference or telephone with the parties' consent. District courts may accept testimony by videoconference or telephone with the parties' consent or when otherwise authorized by law.
10. **Jury trials.** Any jury trial that is scheduled to begin before September 14, 2020 shall be continued and reset to a date no earlier than September 14, 2020. Prior to September 14, 2020, the Jumpstart Jury Task Force will be recommending temporary policies and procedures for the resumption of jury trials. Trials shall be scheduled in accordance with

case priorities in the separate supervisory order issued May 22, 2020 (In the Matter of Prioritization of Cases and Duties).

11. **Traffic-related proceedings.** All traffic-related proceedings are subject to the same nonjury trial and jury trial dates set forth above in paragraphs 6 and 10.
12. **Scheduling.** Judicial districts shall schedule in-person hearings and trials so as to comply with safety protocols established by state court administration, e.g., required social distancing. For example, this may necessitate limits on the number of hearings scheduled in a given time period or the allocation of specific time slots.

OTHER CRIMINAL PROVISIONS

13. **Criminal trial postponements.**** As before, the court finds the COVID-19 outbreak constitutes good cause within the meaning of Iowa R. Crim. P. 2.33 for any trial postponements. In addition, because significant logistical issues – including a backlog of cases - are expected even when trials restart, the court finds good cause to extend the speedy trial deadline in rule 2.33(2)(b) beyond ninety days. Accordingly, for any case in which an indictment or information has been or is filed prior to September 14, 2020, the ninety-day deadline in rule 2.33(2)(b) and rule 2.33(2)(c) shall be expanded to 120 days, and shall be restarted with September 14, 2020 as Day 1. For any case in which an indictment or information has been or is filed prior to September 14, 2020, the one-year deadline in rule 2.33(2)(c) shall commence from June 22, 2020 or the date of filing, whichever is later.
14. **Grand jury proceedings.**** All grand jury proceedings shall be suspended until September 14, 2020.
15. **Initial appearances.**** Through December 31, 2020, magistrates and other judicial officers may conduct initial appearances by

videoconference or telephone. As before, the defendant may waive initial appearance by executing a written waiver that provides the information that the defendant is entitled to receive at the initial appearance. See Iowa R. Crim. P. 2.2(1)-(4)(a). Through December 31, 2020, written waivers of initial appearance need not be under oath.

16. **Preliminary hearing.**** Through December 31, 2020, defendant may waive the preliminary hearing over the telephone with the court, and the waiver need not be electronically recorded or reported, so long as the court indicates in the court file that the hearing has been waived.
17. **Speedy indictment deadline.*** Commencing March 17, 2020, for any defendant who is arrested and makes an initial appearance on or before August 3, 2020, the 45-day speedy indictment deadline in Iowa R. Crim. P. 2.33(2)(a) is extended to 60 days.
18. **Arraignment.**** Through December 31, 2020, written waivers of arraignment need not be under oath.
19. **Written arraignment by defense counsel.**** Through December 31, 2020, with the consent of the district court, defense counsel may execute a written arraignment pursuant to rule 2.8(1) on the defendant's behalf, provided that defense counsel have previously reviewed all terms of the arraignment form with the defendant and obtained the defendant's authority to execute the form on the defendant's behalf.
20. **Waiver of personal appearance.**** Through December 31, 2020, for a proceeding other than trial and sentencing in which the defendant's personal appearance is required under normal circumstances, the defendant may execute a written waiver of appearance, with the consent of the district court.
21. **Additional accommodation as to written waiver of personal appearance.**** Through December 31, 2020, with the consent of the

district court, defense counsel may execute a written waiver of appearance on defendant's behalf under paragraph 20 above provided that defense counsel has previously reviewed defendant's right to be present with the defendant and obtained the defendant's authority to execute the waiver on the defendant's behalf.

22. **Pretrial release.*** Judicial officers are encouraged to consider pretrial release options available under Iowa Code chapter 811.
23. **Bond reviews.**** Through December 31, 2020, magistrates and other judicial officers may conduct bond reviews by videoconference or telephone. Attorneys may waive the defendant's presence on the defendant's behalf and allow the court to make a bond determination on written submissions or affidavits.
24. **Extension of deadline for filing pretrial motions.**** Unless otherwise ordered by the court, for any case in which the defendant has been arraigned before July 13, 2020, the deadline for filing motions shall be 30 days before trial.
25. **Pretrial motion hearings may be continued.**** The supreme court clarifies that if the defendant does not waive personal appearance, the district court has authority to continue any hearing on pretrial motions (including a hearing on a motion to suppress) until a date July 13, 2020, or later that allows a reasonable time for determination of motions before the trial date.
26. **Written guilty pleas.**** Through December 31, 2020, district courts may accept written guilty pleas in felony cases in the same manner as in serious and aggravated misdemeanor cases. See Iowa R. Crim. P. 2.8(2)(b) (last paragraph).
27. **Additional accommodation as to written guilty pleas.*** Through August 3, 2020, defense counsel may execute a written guilty plea on

defendant's behalf under Iowa R. Crim. P. 2.8(2)(b) by complying with the following steps: (a) defense counsel shall provide the entire guilty plea form to the defendant by electronic communication (e.g., email, text, or fax) and explain the terms of the plea by videoconference or telephone; (b) the defendant shall provide an electronic communication to defense counsel confirming that the defendant has reviewed the entire guilty plea form and agrees and acknowledges in all places where the defendant's agreement and acknowledgment are requested and, further, authorizes defense counsel to execute the guilty plea on defendant's behalf; (c) defense counsel shall execute the guilty plea form on defendant's behalf in all places where the defendant's agreement and acknowledgment are requested; and (d) defense counsel shall submit to the district court (i) the completed form, (ii) a copy of the defendant's electronic communication, and (iii) a written certification that defense counsel has explained the terms of the plea to the defendant. The district court has discretion whether to accept a plea pursuant to this paragraph and may, among other things, require defense counsel and/or the defendant to appear by videoconference or telephone before deciding whether to accept the plea. The availability of this procedure is limited to misdemeanors and class D felonies.

28. **Presentence investigation reports.**** To facilitate sentencing without the personal presence of the defendant in the courtroom, through December 31, 2020, notwithstanding Iowa Code section 901.4, presentence investigation reports may be shared with defendants in advance of sentencing subject to reasonable safeguards.

29. **Sentencing procedures by remote appearance.**** For felony or misdemeanor sentencing hearings through December 31, 2020, district courts may allow any party (the prosecutor, defense counsel, defendant,

victims and witnesses) to appear by videoconference or telephone with that party's consent. To appear by videoconference or telephone, the defendant shall either (a) execute a written waiver or (b) make a waiver on the record. Other parties need not execute a waiver.

30. **Sentencing in felony matters by written agreement with court approval.**** Through December 31, 2020, where the prosecutor and the defendant have reached an agreement as to sentence, and the agreement is accepted by the court, the court has the discretion to pronounce judgment and sentence by written order without the parties appearing by videoconference or telephone, provided the following conditions are met: (a) the defendant and defense counsel each must waive in writing the defendant's presence and right of allocution (the defendant may of course submit a written statement), (b) the prosecutor must submit a written statement waiving presence and verifying that there are no victims who want to be heard in person, and (c) the agreement as to sentence must be signed by the defendant and both the agreement and the court's approval must be made a part of the court file.
31. **Sentencing may be continued.*** The supreme court clarifies that through August 3, 2020, if the defendant does not waive personal appearance, the district court has authority to continue sentencing until a later date.

OTHER CIVIL PROVISIONS

32. **Original notices.**** For all original notices to be served in accordance with Iowa Rules of Civil Procedure 1.302, 1.305, or 1.306, and if the deadline for the original notice falls between March 23, 2020, and July 13, 2020, the serving party is granted through July 13, 2020, to complete service.

33. **Iowa Rule of Civil Procedure 1.944.*** In accordance with Iowa Rule of Civil Procedure 1.944(1), the court recognizes that the COVID-19 pandemic and its effect on judicial branch services constitute an “unusual circumstance.” Consequently, all cases currently subject to dismissal under rule 1.944(2) if not tried before January 1, 2021 are provided a one-time, one-year automatic extension of the deadline for commencement of trial through December 31, 2021. Rule 1.944(2) notices will not be issued this year for such cases and parties to such cases are not required to file an application for removal from the operation of rule 1.944(2). In 2021, the judicial branch will resume issuing rule 1.944(2) notices in accordance with the normal operation of the rule for all cases that have been pending over one year as of July 15, 2021.

34. **Mediation.**** Any mediation set to occur at a courthouse location before July 13, 2020 shall be continued or directed to occur by videoconference or telephone, at the discretion of the district court. Notwithstanding the foregoing, a mediation set to occur at a courthouse may commence before July 13, 2020 in specific counties if the county courthouse is open to the public and the court operations in that county meet recommended COVID-19 safety protocols as established by state court administration. This paragraph does not apply to mediations at other locations.

35. **Iowa Rule of Probate Procedure 7.6.**** The court suspends the operation of Iowa Rule of Probate Procedure 7.6 concerning the delinquency of final reports and attorney discipline in delays to estate closures through December 31, 2020.

36. **Signature on civil court documents—Iowa Rule of Electronic Procedure 16.305(3).**** The court temporarily modifies rule 16.305(3) of the Iowa Rules of Electronic Procedure to allow a person to sign a civil

court document electronically with “/s/” followed by the person’s typed full name or with “/person’s name/” through December 31, 2020. If the document is a civil court form that includes the signature block of identifying information, including the person’s address, telephone number, and email address, that information must be provided with the electronic signature. See Comment to Iowa Ct. R. 16.305(4).

Attorneys are permitted through December 31, 2020 to sign civil court documents for their clients with “/s/” if the attorney has received oral verification from the client that (a) the client desires to sign the document, (b) the client authorizes the attorney to sign on the client’s behalf, and (c) the client understands that the signature will bind the client as if the client signed the document personally. This temporary permission also applies to notices of appeal in termination-of-parental-rights and child-in-need-of-assistance cases. See Iowa Ct. R. 6.102(1)(a).

A notary public signature cannot be electronic “/s/” or “/person’s name/.” Notaries public are encouraged to follow the Iowa Secretary of State’s March 25, 2020 media release and any updated releases since that date. This temporary amendment of rule 16.305(3) is limited to civil matters only, including notice of appeal filings brought under chapter 232.

FORCIBLE ENTRY AND DETAINER PROVISIONS

37. **Forcible entry and detainer proceedings.** Forcible entry and detainer (“FED”) proceedings, other than emergency matters covered by paragraphs 1 and 2 above, are subject to the same nonjury trial dates set forth above in paragraph 6 or shall be conducted by videoconference or telephone, at the discretion of the magistrate or other judicial officer. The small claims division shall retain jurisdiction for all proceedings continued as a result of the court’s supervisory orders.

38. **CARES Act verification.** Any plaintiff bringing an FED action under chapter 648 for nonpayment of rent after the date of this order shall submit a CARES Act verification in a form approved by this court. This requirement shall continue in effect until further order of this court. The information provided in the CARES Act verification shall be for the purpose of assisting the court in regard to whether the CARES Act applies to the matter before the court; however, the CARES Act verification is not a jurisdictional requirement and any defect with such verification shall not divest the court of subject matter jurisdiction over the matter.

39. **Timing of FED hearing.** Although Iowa Code section 648.5(1) requires the date of hearing to be set no later than eight or, in certain circumstances, fifteen days from the filing date, the court recognizes that a number of factors may result in the scheduling of FED hearings beyond that fifteen-day time period. These factors include hearings that are continued to a later date in compliance with a state or federal moratorium, a backlog of cases accumulated due to the postponement of in-person hearings, the possibility of a large volume of cases being filed after the expiration of state or federal moratoria, and the need to schedule hearings to comply with COVID-related safety protocols established by state court administration. Accordingly, the court clarifies that the requirement of a hearing within fifteen days is not jurisdictional, and that it is not a bar to an FED action being heard if the court, for scheduling reasons or to comply with the state and federal moratoria, is unable to hear the action by the deadline established in section 648.5(1).

40. **Peaceable possession.** Although Iowa Code section 648.18 provides that “[t]hirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding,” the court clarifies that the section 648.18 bar does not apply where the

plaintiff could not have initiated proceedings under chapter 648 due to a state or federal moratorium.

JUVENILE JUSTICE PROVISIONS²

41. **Non-delinquency matters.**** Non-delinquency juvenile matters set to commence before July 13, 2020 shall be either continued to a date no earlier than July 13, 2020 or conducted with the parties and/or participants appearing remotely using videoconference or telephone at the discretion of the court. Notwithstanding the foregoing, non-delinquency juvenile matters may commence in-person hearings before July 13, 2020 in specific counties if the county courthouse is open to the public and the court operations in that county meet recommended COVID-19 safety protocols as established by state court administration.
42. **Delinquency matters.*** Juvenile delinquency proceedings shall be subject to any of the foregoing criminal proceeding directives that by their nature would apply to juvenile delinquency cases.

PROBLEM SOLVING COURTS

43. **Use of technology encouraged.*** The problem-solving court should conduct conferences and hearings using videoconference or telephone when it believes it would be practical and efficient to do so and justice permits. Notwithstanding the foregoing, problem-solving court conferences and hearings may commence in-person before July 13, 2020 in specific counties if the county courthouse is open to the public and the court operations in that county meet recommended COVID-19 safety protocols as established by state court administration.

APPELLATE ORAL ARGUMENTS

44. **Appellate oral arguments.** In-person oral arguments before the appellate courts shall resume no earlier than July 13, 2020. At the court's

² For other juvenile justice provisions, see the April 6, 2020 supervisory order.

discretion, oral arguments may be conducted using videoconference or telephone through December 31, 2020. Additionally, at the court's discretion, cases previously scheduled for oral argument may be submitted nonorally. See Iowa R. App. P. 6.908(2).

STATUTE OF LIMITATIONS

45. **Tolling.*** Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17, 2020 to June 1, 2020 (76 days). Tolling means that amount of time to the statute of limitations or similar deadline. The 76 days of tolling will apply if the deadline for commencing the action would otherwise expire *any time from March 17, 2020 to December 31, 2020*. In other words, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31, 2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2021 (the 76th day of 2021), inclusive, that deadline would become March 17, 2021, and thereafter there would be no tolling at all.

FAMILY LAW

46. **Online courses.**** District courts may approve attendance at an online course for purposes of compliance with Iowa Code section 598.15 (required course for cases involving child custody or visitation) through December 31, 2020.
47. **Child custody, care, or visitation.*** For purposes of determining a parent's right of physical custody, care, or visitation to a child under a previously entered court order, any custody, visitation or care schedule that is related to a school schedule shall be uniformly interpreted to refer to the school schedule for the school where the child attends that was in place prior to any school closure or suspension caused by the COVID-19

virus. Custody, care, or visitation of a child shall follow a schedule as if school is in session and shall not be impacted or modified by the school closure. A school closure caused by the COVID-19 virus does not extend or modify a parent's custody, care, or visitation beyond any period designated in a prior court order. A school closure caused by the COVID-19 virus does not amount to an extension of spring break or the beginning of summer break. A parent currently exercising custody, care, or visitation of a child in violation of a court order should immediately return the child to the original court ordered schedule.

Nothing contained in this order prevents both parents of a minor child from mutually agreeing to modify a previous court order. Nothing contained in this order prevents a court from altering, amending, modifying, clarifying, or enforcing court orders within its sound discretion and consistent with the law of this State. Further, this order does not limit the ability of the court to hear and address emergency matters on a case-by-case basis in the discretion of the court.

48. **Family Law Task Force.** The Jumpstart Family Law Task Force will be recommending temporary policies and procedures for family law matters as Iowa courts work toward the resumption of normal operations.

OFFICE OF PROFESSIONAL REGULATION

49. **Unmoderated CLE cap.*** The six-hour cap on unmoderated CLE set forth in Rule 41.3(3) is hereby temporarily lifted for the 2020-21 reporting period.
50. **Remote meetings.**** Meetings of the Board of Law Examiners, Attorney Disciplinary Board, Commission on Continuing Legal Education, Client Security Commission, Lawyers Trust Account Commission, Commission on the Unauthorized Practice of Law, and the Board of

Examiners of Shorthand Reporters, may be held by videoconference or telephone through December 31, 2020.

51. **Electronic complaint submissions.*** Complaints against attorneys pursuant to Rule 35.2, claims of the unauthorized practice of law pursuant to Rule 38.5, and claims for reimbursement from the Client Security Commission pursuant to Rules 39.9 and Chapter 40, may be made through December 31, 2020 using an electronic submission form, which will be available on the court's website.
52. **Remote hearings.**** Hearings set forth in Chapters 31, 34, 35, 36, 42, 46, and 47 shall be held through December 31, 2020 by videoconference or telephone. This includes hearings that are currently scheduled. However, upon request of the respondent, Chapter 36 hearings shall be held in person but no earlier than July 13, 2020. Notwithstanding the foregoing, in-person Chapter 36 hearings may commence before July 13, 2020 if the hearing locale meets recommended COVID-19 safety protocols as established by state court administration.
53. **Electronic filing.**** All parties to Grievance Commission proceedings shall participate in the electronic filing option set forth in Rule 36.6 through December 31, 2020. This includes matters that are currently in litigation.
54. **Client Security Commission.**** The Client Security Commission is hereby authorized through December 31, 2020 to be appointed as a trustee under Rule 34.17 and Rule 34.18 without need for supreme court confirmation. Upon termination of a Rule 34.17 or Rule 34.18 trusteeship or upon the request of the Client Security Commission, all remaining attorney files may be ordered immediately destroyed.
55. **Annual attorney report late fees.**** The attorney annual report late fees set forth Rule 39.8(1) (Client Security report) and Rule 41.4(4) (CLE

report) shall remain at \$100 per report *until June 11, 2020*. After that date late fees for both reports shall return to the amount set forth in the rules, i.e., \$250 per report as of June 12, 2020. *Attorneys who have not yet filed their required annual reports are highly encouraged to do so before the higher late fees are reinstated and suspension proceedings begin.*

GENERAL

56. **Temporary authorization of filing by email for certain nonregistered self-represented and exempt persons.**** Through December 31, 2020, the court temporarily authorizes filing by email (a) for all self-represented persons who have not already registered for EDMS and (b) for all persons excused from the EDMS registration and electronic filing requirements pursuant to rule 16.302(3) who have not already registered for EDMS filing. Persons who are already registered EDMS filers must continue to file all court documents through the EDMS system as usual. To file by email, the self-represented or exempt person must first contact the appropriate clerk of court to get the appropriate email address to receive the filing. The self-represented or exempt person must then email the filing to the clerk in PDF format, who will then file the document.

The document should not be considered filed until the self-represented or exempt person receives a confirmatory email from the clerk that the filing has been made. The clerk's acceptance of such emailed documents does not waive the filer's obligation to comply with court rules regarding appropriate redaction and service of the emailed documents. Notwithstanding any provision of chapter 16 of the Iowa Court Rules, small claims actions may be filed in paper (not only EDMS) through December 13, 2020.

57. **Travel.**** The court suspends any requirement that judges and court reporters travel together to and from court hearings through December 31, 2020.
58. **Contrary provisions suspended.*** The court temporarily suspends the operation of any Iowa Court Rule or statute to the extent that it is contrary to any provisions of this order.
59. **Ongoing monitoring.*** The court will continue to monitor circumstances and update this order as necessary.

THE SUPREME COURT OF IOWA

By 

Susan Larson Christensen, Chief Justice

Copies to:
Iowa Supreme Court
Iowa Court of Appeals
Chief Judges
Senior Judges
District Court Judges
District Associate Judges
Magistrates
State Court Administrator
District Court Administrators
Supreme Court Clerk
District Court Clerks
Chief Juvenile Court Officers
The Iowa State Bar Association
Polk County Bar Association
The Iowa State Association of Counties
The Iowa State Sheriffs' and Deputies' Association
Iowa Attorney General
Iowa State Public Defender
Iowa League of Cities
Iowa State Police Association
Iowa Peace Officers Association
Iowa Department of Public Safety
Iowa Association for Justice

Iowa Defense Counsel Association
Iowa Academy of Trial Layers
Iowa Court Reporters Association
Iowa Clerks Association
Association of Corporate Counsel-Iowa Chapter
Iowa Organization of Women Attorneys
Thomson Reuters (Westlaw)
Mead Data Central, Inc. (Lexis)
Legislative Services Agency

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of
 Prioritization of
 Cases and Duties

)
)
)

Supervisory Order

The supreme court approves the following list of cases and duties to which judges, magistrates, clerks and other employees should afford priority and those to which they should not afford any priority for purposes of scheduling, hearing and handling cases and performing other duties.¹

GENERAL PRIORITIES

1. Emergency Matters. The highest priority shall be given to emergency matters in case types such as substance abuse commitments (chapter 125), waiver of parental notification of abortion (chapter 135L), mental health commitments (chapter 229), dependent adult abuse (chapter 235B), elder abuse (chapter 235F), relief from sexual assault (236A), emergency removal orders in juvenile cases (chapters 232 and 232B), relief from domestic abuse (chapter 236), injunctive relief involving an imminent threat of serious harm to health or safety, and criminal warrants.

2. Priority Cases.

a. Criminal Cases. The next priority are cases involving criminal charges. The highest priority criminal cases are those cases in which the defendant is in custody and has not waived the right to speedy trial.

b. Other Cases. The next priority shall be given to the following list of priority cases. Within these cases, judges, magistrates and staff should exercise their judgment and give primacy based on the facts and circumstances of each case.

- Civil commitment cases under chapters 125 and 229

¹This supervisory order replaces those entered on December 1, 2009 and February 4, 2010 in their entirety.

- Actions to obtain protective orders under chapters 236, 236A and 235F
- Dependent adult abuse cases under chapter 235B
- Juvenile cases under chapter 232 and 232B, including child in need of assistance, termination of parental rights, and juvenile delinquency
- Cases involving child custody, physical care, visitation, and child support
- Guardianship cases, including public guardians under chapter 231E and minor guardianships under chapter 232D
- Motions to quash garnishment under chapter 642
- Forcible entry and detainer proceedings under chapter 562A where the tenant poses a clear and present danger
- Orders to vacate the homestead under chapter 598.33
- Proceedings regarding violations of protective orders or no-contact orders under chapter 664A
- Civil injunctions to restrain harassment or intimidation of victims or witnesses under chapter 915
- Other cases involving a threat of serious harm to health or safety, or the restriction of an individual's liberty

3. Cases Not Given Priority. Within the list of cases that are not given priority, judges, magistrates, and staff should exercise their judgment and give primacy based on the facts and circumstances of each case.

- Dissolution of marriage not involving children
- Foreclosure actions
- Civil actions for recovery of money damages
- Small claims
- Administrative appeals under chapter 17A
- Probate other than guardianships
- Other law and equity cases

MAGISTRATE PRIORITIES

(Matters are listed in descending order of priority.)

This list shall apply to district judges and district associate judges when exercising jurisdiction of magistrates. Magistrates should ensure continuous

accessibility to clerks, law enforcement, court personnel, mental health personnel and lawyers. See Iowa Code § 602.6105(3). These “on-call” duties range from high priority cases down to very routine matters of the lowest priority. Magistrates should attempt to comply with all statutory and rule-based timelines to the extent reasonably feasible. However, these timelines may give way to pending matters of greater priority.

- Emergency hospitalizations or detentions. See Iowa Code §§ 229.22 and 125.91 (requiring immediate attention when contacted).
- Arrest and search warrant applications. See Iowa Code §§ 804.1 and 808.3.
- Initial appearances. See Iowa R. Crim. P. 2.2(1) (requiring initial appearance without unnecessary delay after arrest); Iowa R. Crim. P. 2.1(2)(d) (defining unnecessary delay as unexcused delay longer than 24 hours).
- Noncompliance hearings for sobriety and drug monitoring program. See Iowa Code § 901D.9 (requiring hearing within 24 hours if in custody).
- Involuntary hospitalization and commitment hearings. See Iowa Code §§ 229.11 and 125.81 (requiring hearing within 5 days if immediate custody is ordered).
- Hearings regarding alleged violations of protective orders or approved consent agreements. See Iowa Code §§ 236.11 and 236A.12 (requiring appearance not less than 5 days nor more than 15 days after the initial appearance).
- Elder abuse hearings. See Iowa Code § 235F.5 (requiring hearings not less than 5 days nor more than 15 days after commencement of proceedings).
- FED hearings. See Iowa Code § 648.5 (requiring hearing within 8 days of petition or within 15 days if plaintiff consents).
- Preliminary hearing. See Iowa R. Crim. P. 2.2(4)(a) (requiring hearing within 10 days of initial appearance if in custody).
- Preliminary hearing. See Iowa R. Crim. P. 2.2(4)(a) (requiring hearing within 20 days of initial appearance if not in custody).

- Mental health and substance abuse hearings without immediate custody.
- Simple misdemeanor and traffic trials. See Iowa R. Crim. P. 2.64 (requiring trial at least 15 days after plea is entered).
- Small claims hearings. See Iowa Code § 631.5 (requiring hearing not less than 5 days nor more than 20 days after the latest timely appearance).
- Entry of small claims defaults and rulings.
- Routine matters including issuance of citations and periodic involuntary hospitalization reports if no change in placement required.

CLERK OF THE IOWA DISTRICT COURT PRIORITIES

(Matters are listed in descending order of priority.)

Clerks should attempt to comply with all statutory and rule-based timelines to the extent reasonably feasible. However, these timelines may give way to pending matters of greater priority.

- Emergency matters.² This category includes the mandated and practical urgent processing of applications/petitions and subsequent orders and warrants on matters which maintain the immediate health, welfare, and safety of the public.
- Accounting and depositing of receipts
- Criminal—felony and indictable misdemeanor
- Mental health and substance abuse commitments
- Juvenile
- Equity—child custody only
- Child support, including cases filed by CSRU
- Adoption, conservatorship, guardianship
- Criminal—simple misdemeanor excluding scheduled violations and non-scheduled traffic
- Equity—other than child custody
- Law cases
- Small claims

²“Emergency Matters” is defined in paragraph 1.

- Criminal—simple misdemeanor, scheduled violations and non-scheduled traffic
- Probate
- Seized property
- Name change
- Check monthly “filings” statistical reports

THE SUPREME COURT OF IOWA

By  _____
 Susan Larson Christensen, Chief Justice

Copies to:
 Iowa Supreme Court
 Iowa Court of Appeals
 Chief Judges
 Senior Judges
 District Court Judges
 District Associate Judges
 Judicial Magistrates
 State Court Administrator
 District Court Administrators
 Supreme Court Clerk
 Clerks of Court
 Chief Juvenile Court Officers
 The Iowa State Bar Association
 The Iowa State Association of Counties
 The Iowa State Sheriffs’ and Deputies’ Association
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 Iowa State Police Association
 Iowa Peace Officers Association
 Iowa Department of Public Safety
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Association of Corporate Counsel-Iowa Chapter
Iowa Organization of Women Attorneys
Thomson Reuters (Westlaw)
Mead Data Central, Inc. (Lexis)
Legislative Services Agency

CARES Act Landlord Verification

Instructions:

- This verification provides the court information related to additional temporary requirements imposed by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 U.S.C. section 9058, on certain eviction actions for nonpayment of rent.
- This verification **must be completed and filed** in any eviction action filed from March 27, 2020 until further order of the Iowa Supreme Court.

If you do not understand how to use this form, or if you are unsure whether you should use this form, talk to an attorney.

In the Iowa District Court for _____ County <i>County where the case is filed</i>	
<hr/> Plaintiff <i>Full name of Plaintiff: first, middle, last</i> vs. <hr/> Defendant <i>Full name of Defendant: first, middle, last</i>	Case no. _____ CARES Act Landlord Verification If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.

I certify the following: *Read, complete, and check each item that applies.*

1. This eviction is based on a landlord–tenant relationship: Yes No
2. The current tenancy is now or has in the past been subject to either a Section 8 or USDA Housing Choice voucher: Yes No Not applicable
3. The property involved in this matter is subject to the following federal programs:
Check each that applies if any.
 - A. Public housing
 - B. Project Based Section 8 housing
 - C. Section 202 elderly housing
 - D. Section 811 housing for people with disabilities
 - E. Section 236 multifamily rental housing
 - F. Section 221 Below Market Rate (BMR) housing
 - G. HOME Investment Partnership Program
 - H. Housing Opportunities for Persons with AIDS (HOPWA) Program
 - I. McKinney-Vento Act housing
 - J. Section 515 United States Department of Agriculture (USDA) rural housing
 - K. Section 514/516 USDA farm labor housing
 - L. Section 533 USDA housing preservation
 - M. Section 538 USDA multifamily housing
 - N. Low-Income Housing Tax Credit (LIHTC) Program

4. The property involved in this matter was subject to a mortgage issued or guaranteed by the following federally connected entities:

Check each that applies if any.

- A. Federal Housing Administration (FHA)
- B. Veterans Administration (VA)
- C. United States Department of Agriculture (USDA) direct loan
- D. USDA guaranteed loan
- E. Fannie Mae
- F. Freddie Mac

5. I received a mortgage forbearance on the property involved in this matter between March 27, 2020 and December 31, 2020:

Complete this section only if you checked a box or boxes in section 4 above.

Yes No Not applicable

6. I received a mortgage forbearance on the property involved in this matter between the following dates:

Complete this section only if you checked "Yes" in section 5 above.

7. Additional information:

Additional information may also be provided to the court at the time of the hearing.

Attorney Help *Check one*

A. An attorney did not help me prepare or fill in this form.

B. An attorney helped me prepare or fill in this form.

If you check B, you must fill in the following information:

Name of attorney or organization, if any

Business address of attorney or organization

City

State

ZIP code

(____)_____
Phone number

Fax number – optional

Email address

Additional email address, if applicable

Oath and signature

I, _____, have read this Verification, and I certify under
Print your name

penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this Verification is true and correct.

_____, 20_____
*Month Day Year Signature**

Mailing address

City State ZIP code

(_____) _____
Phone number

Email address Additional email address, if applicable

**Handwrite your signature on this form. Scan the form after signing it and file it electronically.*

Instructions for CARES Act Landlord Verification form

Some forcible entry and detainer actions (evictions) for nonpayment of rent may be temporarily subject to federal law, specifically the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act (15 U.S.C. §§ 9507 & 9508). Landlords must complete this verification to ensure that the court has the information it needs to determine whether and how the CARES Act applies. The verification should be filed, if possible, at the time the petition is filed. However, keep in mind that you will have the opportunity to provide additional information to the court at the eviction hearing itself.

- **In General**

- The “property involved in this matter” means the property for which you seek possession.
- You must complete sections 1 and 2.
- You must complete sections 3–6 if any apply to the property at issue.
- You may choose to provide additional information in section 7 if you wish.
- If an attorney helped you fill out this form, you must complete the “Attorney Help” section.
- You must sign the Oath at the bottom of the form. Your signature certifies that the information you provide in the CARES Act Landlord Verification is true and correct under penalty of perjury.
- If you have any questions about how to complete this verification or how the CARES Act may apply to your situation, you should contact an attorney.

- **Section 1:**

- Sometimes evictions are filed in situations that do not involve a “landlord–tenant” relationship, *e.g.*, a land contract forfeiture or tax deed.

- **Section 2:**

- A “Section 8 or USDA Housing Choice Voucher” is a type of federal benefit that involves payment of part or all of a tenant’s rent by a public housing authority. It involves a three way contractual relationship between a tenant, landlord, and public housing authority.
- If a case does not involve a landlord–tenant relationship, you can choose “not applicable.”

- **Section 3:**

- This section addresses whether the property involved in this matter is connected to one of fourteen federal programs.
- Generally, if your property is covered by one of these programs, you would know this because of contractual relationships with HUD or other federal agencies, or because of tax and other reporting requirements.

- You may also check this free online resource, the [National Housing Preservation Database](#) map site to search for the property to determine whether it is subject to these programs.
- **Section 4:**
 - This section is to indicate whether the property involved in this matter is subject to a “federally connected mortgage.” This includes both primary and subordinate mortgages (e.g., a second mortgage or down payment assistance loan).
 - If you do not know whether the property involved in this matter includes a federally connected mortgage, you can call your lending institution. Otherwise, here is where you might check to make sure:
 - i. **FHA or VA.** Check the note, mortgage, or closing documents for the property. If they are covered by either of these agencies, the documents should reference the FHA or VA.
 - ii. **USDA direct loans.** These loans are paid directly to the federal government (USDA), so you probably have this kind of loan if you pay your monthly mortgage payment to USDA.
 - iii. **USDA guaranteed loans.** You can find this information on the HUD-1 Settlement Statement that you were given at the closing of the home. If the box labeled “FmHA” is checked, your mortgage loan may be a USDA guaranteed loan.
 - iv. **Fannie Mae.** You can check this free online look-up tool: <https://www.knowyouroptions.com/loanlookup>
 - v. **Freddie Mac.** You can check this free online look-up tool: <https://ww3.freddie.mac.com/loanlookup/>
- **Sections 5 & 6:**
 - These sections are to indicate whether you received a mortgage forbearance (e.g., your mortgage company allowed you to not make your mortgage payment for a period of time for this property), and if so, when.
- **Section 7:**
 - This space is to add any other relevant information you want the judge to know. Remember, you will have the opportunity to provide additional information to the court at the eviction hearing.

Instructions for CARES Act Landlord Verification form

Some forcible entry and detainer actions (evictions) for nonpayment of rent may be temporarily subject to federal law, specifically the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act (15 U.S.C. §§ 9507 & 9508). Landlords must complete this verification to ensure that the court has the information it needs to determine whether and how the CARES Act applies. The verification should be filed, if possible, at the time the petition is filed. However, keep in mind that you will have the opportunity to provide additional information to the court at the eviction hearing itself.

- **In General**

- The “property involved in this matter” means the property for which you seek possession.
- You must complete sections 1 and 2.
- You must complete sections 3–6 if any apply to the property at issue.
- You may choose to provide additional information in section 7 if you wish.
- If an attorney helped you fill out this form, you must complete the “Attorney Help” section.
- You must sign the Oath at the bottom of the form. Your signature certifies that the information you provide in the CARES Act Landlord Verification is true and correct under penalty of perjury.
- If you have any questions about how to complete this verification or how the CARES Act may apply to your situation, you should contact an attorney.

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- Sometimes evictions are filed in situations that do not involve a “landlord–tenant” relationship, *e.g.*, a land contract forfeiture or tax deed.

- **Section 2:**

- A “Section 8 or USDA Housing Choice Voucher” is a type of federal benefit that involves payment of part or all of a tenant’s rent by a public housing authority. It involves a three way contractual relationship between a tenant, landlord, and public housing authority.
- If a case does not involve a landlord–tenant relationship, you can choose “not applicable.”

- **Section 3:**

- This section addresses whether the property involved in this matter is connected to one of fourteen federal programs.
- Generally, if your property is covered by one of these programs, you would know this because of contractual relationships with HUD or other federal agencies, or because of tax and other reporting requirements.

- You may also check this free online resource, the [National Housing Preservation Database](#) map site to search for the property to determine whether it is subject to these programs.
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 - If you do not know whether the property involved in this matter includes a federally connected mortgage, you can call your lending institution. Otherwise, here is where you might check to make sure:
 - i. **FHA or VA.** Check the note, mortgage, or closing documents for the property. If they are covered by either of these agencies, the documents should reference the FHA or VA.
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 - iii. **USDA guaranteed loans.** You can find this information on the HUD-1 Settlement Statement that you were given at the closing of the home. If the box labeled “FmHA” is checked, your mortgage loan may be a USDA guaranteed loan.
 - iv. **Fannie Mae.** You can check this free online look-up tool: <https://www.knowyouroptions.com/loanlookup>
 - v. **Freddie Mac.** You can check this free online look-up tool: <https://ww3.freddiemac.com/loanlookup/>
- **Sections 5 & 6:**
 - These sections are to indicate whether you received a mortgage forbearance (e.g., your mortgage company allowed you to not make your mortgage payment for a period of time for this property), and if so, when.
- **Section 7:**
 - This space is to add any other relevant information you want the judge to know. Remember, you will have the opportunity to provide additional information to the court at the eviction hearing.

CARES Act Landlord Verification

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- This verification **must be completed and filed** in any eviction action filed from March 27, 2020 until further order of the Iowa Supreme Court.

If you do not understand how to use this form, or if you are unsure whether you should use this form, talk to an attorney.

In the Iowa District Court for _____ County <i>County where the case is filed</i>	
<hr/> Plaintiff <i>Full name of Plaintiff: first, middle, last</i> vs. <hr/> Defendant <i>Full name of Defendant: first, middle, last</i>	Case no. _____ CARES Act Landlord Verification If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.

I certify the following: *Read, complete, and check each item that applies.*

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3. The property involved in this matter is subject to the following federal programs:
Check each that applies if any.
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 - B. Project Based Section 8 housing
 - C. Section 202 elderly housing
 - D. Section 811 housing for people with disabilities
 - E. Section 236 multifamily rental housing
 - F. Section 221 Below Market Rate (BMR) housing
 - G. HOME Investment Partnership Program
 - H. Housing Opportunities for Persons with AIDS (HOPWA) Program
 - I. McKinney-Vento Act housing
 - J. Section 515 United States Department of Agriculture (USDA) rural housing
 - K. Section 514/516 USDA farm labor housing
 - L. Section 533 USDA housing preservation
 - M. Section 538 USDA multifamily housing
 - N. Low-Income Housing Tax Credit (LIHTC) Program

4. The property involved in this matter was subject to a mortgage issued or guaranteed by the following federally connected entities:

Check each that applies if any.

- A. Federal Housing Administration (FHA)
- B. Veterans Administration (VA)
- C. United States Department of Agriculture (USDA) direct loan
- D. USDA guaranteed loan
- E. Fannie Mae
- F. Freddie Mac

5. I received a mortgage forbearance on the property involved in this matter between March 27, 2020 and December 31, 2020:

Complete this section only if you checked a box or boxes in section 4 above.

Yes No Not applicable

6. I received a mortgage forbearance on the property involved in this matter between the following dates:

Complete this section only if you checked "Yes" in section 5 above.

7. Additional information:

Additional information may also be provided to the court at the time of the hearing.

Attorney Help *Check one*

A. An attorney did not help me prepare or fill in this form.

B. An attorney helped me prepare or fill in this form.

If you check B, you must fill in the following information:

Name of attorney or organization, if any

Business address of attorney or organization

City

State

ZIP code

(____)_____
Phone number

Fax number – optional

Email address

Additional email address, if applicable

Oath and signature

I, _____, have read this Verification, and I certify under
Print your name

penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this Verification is true and correct.

_____, 20_____
*Month Day Year Signature**

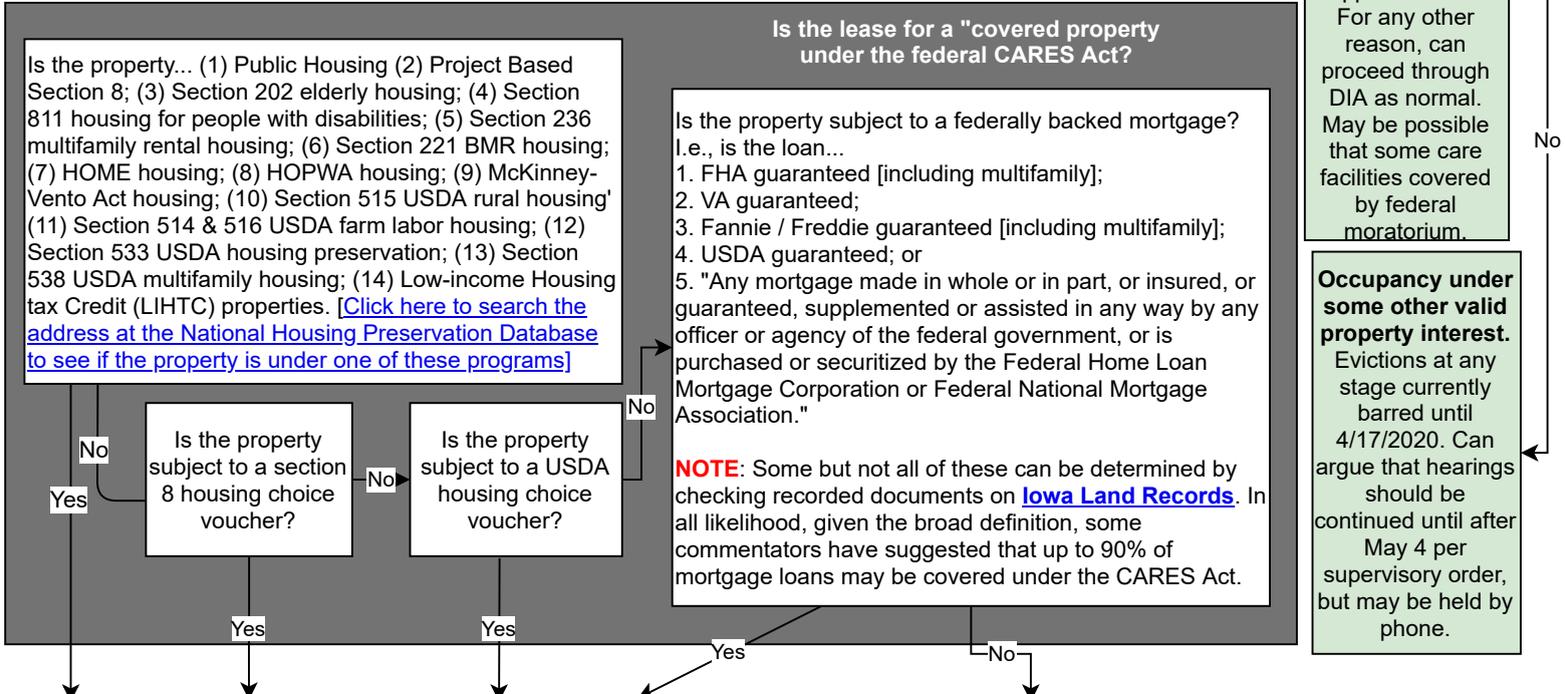
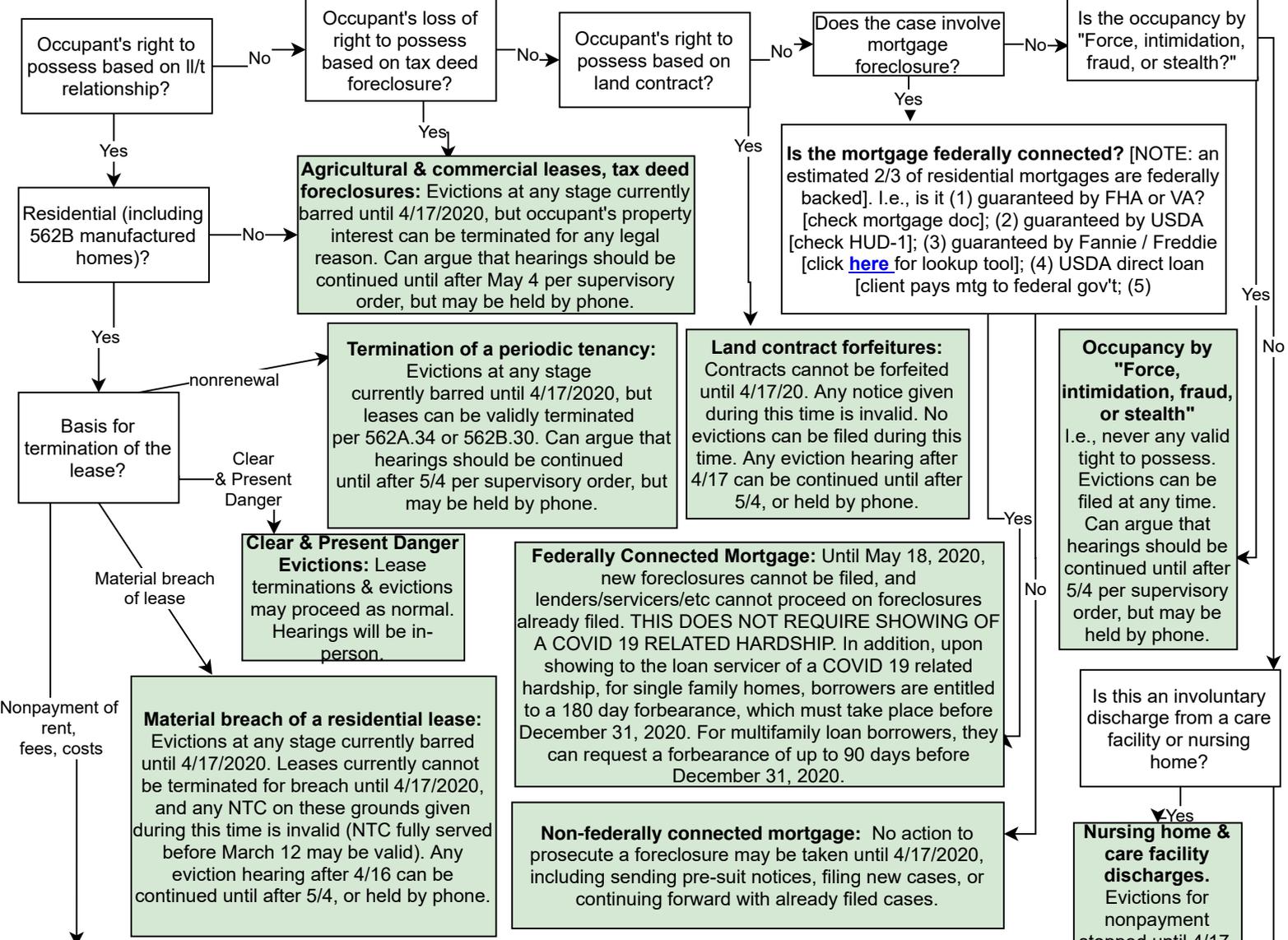
Mailing address

City State ZIP code

(_____) _____
Phone number

Email address Additional email address, if applicable

**Handwrite your signature on this form. Scan the form after signing it and file it electronically.*



FEDERALLY CONNECTED LEASE: Nonpayment cases subject to both federal and state eviction moratorium
 Previously filed evictions on hold until 4/17/2020, and no new eviction filings until 7/25/2020. Any NTC fully served before 3/16 is probably valid, but any NTC served after this time is invalid.
 After July 25, tenants are entitled to a 30 day notice for nonpayment. Evictions currently on file must be stayed until at least 4/16. Can argue that hearings should be continued until after May 4 per supervisory order, but may be held by phone.

NOT FEDERALLY CONNECTED: Nonpayment cases subject to only the state eviction moratorium
 Evictions at any stage currently barred until 4/17/2020. Leases currently cannot be terminated for nonpayment until 4/17/2020, and any NTC on these grounds given before this date is invalid. Any NTC fully served before 3/16 is probably valid. Can argue that hearings should be continued until after May 4 per supervisory order, but may be held by phone.





March 28, 2020

Summary and Analysis of Federal CARES Act Eviction Moratorium

On March 27, 2020, the president signed the [Coronavirus Aid, Relief, and Economic Security Act \(“CARES Act”\)](#) into law. The law includes important, immediate protections for tenants and homeowners. The federal eviction moratorium for tenants living in certain types of housing is summarized below. NHLP is working on a separate analysis regarding the provisions for homeowners.

I. What does the federal eviction moratorium do?

The eviction moratorium operates by restricting lessors of *covered properties* (discussed in more detail below) from *filing* new eviction actions for non-payment of rent, and also prohibits “charg[ing] fees, penalties, or other charges to the tenant related to such nonpayment of rent.” Sec. 4024(b). The federal moratorium also provides that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days’ notice—which may not be given until after the moratorium period. *See* Sec. 4024(c).

The federal eviction moratorium does not affect cases:

- a) that were filed before the moratorium took effect or that are filed after it sunsets
- b) that involve non-covered tenancies (see below), or
- c) where the eviction is based on another reason besides nonpayment of rent or nonpayment of other fees or charges.

The moratorium does not explicitly state whether evictions “for nonpayment of rent or other fees or charges” includes evictions motivated by a tenant’s nonpayment of rent (or other fees or charges) but formally based on a “no-cause” lease termination notice or refusal to renew a term tenancy. Sec. 4024(b)(1). However, advocates should assert that the moratorium bars the filing of *any eviction case* that is motivated (wholly or in part) by a tenant’s nonpayment of rent or other fees or charges, whether or not the action is formally based on such non-payment. Allowing landlords to skirt the moratorium by using “no cause” eviction cases for delinquent rent or fees would frustrate the purpose of the statute. And, such a reading would lead to an absurd result, because a landlord could more quickly and easily evict a tenant without cause during the moratorium period than after the moratorium expires (at which point a 30-day notice would be required).

For cases that are not barred (or not clearly barred) by the federal moratorium, advocates should next check to see whether any state or local eviction moratorium protects the client. Advocates should also check to see if any state or local moratorium provides more expansive protections than provided by the federal moratorium.

II. What types of housing are covered by the federal eviction moratorium?

The eviction moratorium applies to “covered dwellings,” which includes those dwellings on or in “covered properties.” Sec. 4024(a). The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan. *See* Sec. 4024(a)(2).

More discussion about each of these categories follows.

A. VAWA Covered Housing Programs

The eviction moratorium extends to federal housing rental programs covered by VAWA (34 U.S.C. § 12491(a)). The moratorium itself does not impact VAWA housing protections, but referencing the VAWA statute was presumably a quick way to extend coverage to most federally assisted rental housing programs. VAWA-covered housing programs include the following¹:

Department of Housing and Urban Development (HUD)²

- Public housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
- Section 8 project-based housing (42 U.S.C. § 1437f)
- Section 202 housing for the elderly (12 U.S.C. § 1701q)³
- Section 811 housing for people with disabilities (42 U.S.C. § 8013)
- Section 236 multifamily rental housing (12 U.S.C. § 1715z–1)
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 1715l(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)⁴

¹ Each program includes its corresponding statutory cite for the reader’s convenience when reading 34 U.S.C. § 12491(a).

² Note that the Housing Trust Fund (HTF) is not covered by the VAWA statute, even though HUD did extend its VAWA rulemaking authority to cover HTF. *See e.g.*, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, Final Rule, 81 Fed. Reg. 80,724, 80,732 (Nov. 16, 2016).

³ Note that, under HUD’s interpretation, Section 202 Direct Loan properties without Section 8 contracts are not covered by VAWA housing protections. *See e.g.*, 81 Fed. Reg. at 80,732-33.

⁴ Due to what is presumably a drafting error in the VAWA 2013 statute, the VAWA statutory text at 34 U.S.C. § 12491(a)(3)(D) does not refer to a specific program, as there is no program at “subtitle A of title IV of the

Department of Agriculture

- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 multifamily rental housing (42 U.S.C. § 1490p-2)

Department of Treasury

- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

For programs that fund units (rather than tenant-based subsidies), advocates can use resources such as the [National Housing Preservation Database](#) to determine what type of housing a client is living in.

B. Rural Housing Voucher Program

The evictions moratorium also extends to “the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r).” Sec. 4024(a)(2)(A)(ii). The separate inclusion of this program was necessary because the Rural Housing Voucher Program was omitted from the covered housing programs in the 2013 VAWA reauthorization statute.

C. Properties with federally backed mortgage loans (1-4 units)

Federally backed mortgage loans are defined to include loans secured by any lien on residential properties having 1-4 units and that are “made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by [HUD] or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.” Sec. 4024(a)(4). Note that there is a differently worded definition of the term “federally backed mortgage loan” in Sec. 4022(a)(2) of the Act where the term is defined in terms of a finite list of federal agencies and loan programs⁵ in contrast to the more sweeping language here. It is not entirely clear if these two definitions of the same term are intended to cover the same set of loans, but the definition of “federally backed mortgage loan” in the eviction moratorium provisions is arguably much broader, so advocates should assert that a tenant is protected by the moratorium even if the landlord's mortgage is not known to be a HUD, VA, USDA or Fannie Mae or Freddie Mac loan.

McKinney-Vento Homeless Assistance Act.” However, HUD concluded in 2013 that “it was Congress’s intent to include the programs found elsewhere in title IV, which include the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Assistance Stability program.” The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, Notice, 78 Fed. Reg. 47,717, 47,719 n.4 (Aug. 6, 2013).

⁵ The definition in Sec. 4022(a)(2) -- which applies to the provisions in the Act regarding payment relief and a foreclosure moratorium for homeowners -- includes all loans that are owned, insured or guaranteed by one of the following entities: HUD (including Federal Housing Administration loans, reverse mortgages and certain loans under programs for Native Americans and Native Hawaiians); the Department of Veterans Affairs, the Department of Agriculture and Fannie Mae or Freddie Mac.

Landlords should know or have access to the information necessary to determine whether their properties have federally backed mortgage loans. Such resources include the note or mortgage instruments themselves, other closing documents, servicing notices, account statements, or other correspondence, as well as loan look-up websites for both Fannie Mae and Freddie Mac. Since tenants will often not have access to that information, advocates should assert that a landlord who files an eviction suit (for nonpayment of rent) during the federal moratorium period must plead and prove that the property is *not* subject to a federally backed mortgage loan.

If necessary, an advocate might be able to determine if a property has a federally-backed mortgage loan by reviewing the contents of any mortgages, deeds of trust, or other instruments recorded for a property. However, not all federally-related loans will have a public filing that identifies the loan as federally-backed. In many communities, only some—if any—land records may be available on line, and records offices may be closed to the public for reasons related to the pandemic. Even if available to the public, such records may not be up-to-date.

D. Properties with federally backed multifamily mortgage loans (5+ units)

A federally backed multifamily mortgage loan has the same definition as “federally-backed mortgage loan,” but is secured by a property with five or more dwelling units. *See* Sec. 4024(a)(5).

III. How long is the federal eviction moratorium in effect?

The federal eviction moratorium took effect on March 27, 2020 and extends for 120 days. *See* Sec. 4024(b). Landlords that receive forbearances of federally backed multifamily mortgage loans must respect identical renter protections for the duration of the forbearance. *See* Sec. 4023(d).

For more resources and any updates to this memo, please visit NHLP’s COVID-19 [Resources Webpage](#).

In the Iowa Supreme Court

In the Matter of Ongoing Provisions)
For Coronavirus/COVID-19 Impact)
On Court Services) **March 17, 2020 Order**

The Iowa Judicial Branch previously issued supervisory orders relating to the spread of the novel coronavirus/COVID-19 on March 12, 2020 and March 14, 2020. Since then, the Governor of Iowa has declared a State of Public Health Disaster Emergency. The Governor’s order includes a prohibition on gatherings in excess of 10 persons. Routinely, more than 10 people gather in courtrooms and court hallways throughout Iowa. To keep abreast of this directive and other events, the Iowa Judicial Branch is today instituting additional procedures to keep the courts open to the fullest possible extent while protecting public safety by mitigating the impact of coronavirus/COVID-19. The Iowa Judicial Branch remains committed to conducting business as necessary during this time of crisis.

Accordingly, the supreme court directs as follows pursuant to its available legal authority, including Article III, section 1 and Article V, section 1 of the Iowa Constitution. Except to the extent superseded herein, the provisions of the March 12 and March 14 orders continue to apply.

CRIMINAL CASES

1. Any criminal trial that is not already in progress and that is scheduled to begin before April 20, 2020 shall be continued and reset to a date no earlier than April 20. This includes nonjury trials.
2. As before, the court finds the COVID-19 outbreak constitutes good cause within the meaning of Iowa R. Crim. P. 2.33 for any trial postponements. To clarify, if a trial is reset because of the COVID-19 outbreak where speedy trial has not been waived, the ninety-day deadline and the one-

year deadline in rule 2.33(2)(b) and rule 2.33(2)(c) shall be restarted with April 20, 2020 as Day 1.

3. For felony or misdemeanor sentencing hearings through April 20, district courts may allow any party (the prosecutor, defense counsel, defendant, victims and witnesses) to appear by videoconference or telephone with that party's consent. To appear by videoconference or telephone, the defendant shall either (a) execute a written waiver or (b) make a waiver on the record. Other parties need not execute a waiver.
4. Through April 20, magistrates and other judicial officers may conduct initial appearances by videoconference or telephone. As before, the defendant may waive initial appearance by executing a written waiver that provides the information that the defendant is entitled to receive at the initial appearance. See Iowa R. Crim. P. 2.2(1)-(4)(a).
5. Through April 20, written waivers of initial appearance or arraignment need not be under oath.
6. Through April 20, magistrates and other judicial officers may conduct bond reviews by video conference or telephone. Attorneys may elect to waive the defendant's presence on the defendant's behalf and allow the court to make a bond determination on written submissions or affidavits.
7. Through April 20, district courts in their discretion may cancel any pretrial conferences.
8. To facilitate sentencing without the personal presence of the defendant in the courtroom, through April 20, notwithstanding Iowa Code section 901.4, presentence investigation reports may be shared with defendants in advance of sentencing subject to reasonable safeguards.
9. The 45-day speedy indictment deadline in Iowa R. Crim. P. 2.33(2)(a) is extended to 60 days as of today pending further order of this court. This

means that for any case where the speedy indictment deadline has not run, fifteen days are added to the time period.

10. Judicial officers are encouraged to consider pretrial release options available under Iowa Code chapter 811.
11. All traffic-related proceedings set to commence before April 17 shall be rescheduled to a date no earlier than April 20.

CIVIL CASES

12. Subject to paragraph 19 herein, all civil nonjury trials and other hearings set to commence before May 4 shall be either continued to a date no earlier than May 4 or conducted by telephone, at the discretion of the district court.
13. Any mediation set to occur at a courthouse location before May 4 shall be continued or directed to occur by videoconference or telephone, at the discretion of the district court.
14. Subject to paragraph 19 herein, all forcible entry and detainer proceedings set to commence before May 4 shall be either continued to a date no earlier than May 4 or conducted by telephone, at the direction of the magistrate or other judicial officer. The small claims division shall retain jurisdiction for all proceedings continued pursuant to this paragraph.
15. Notwithstanding any provision of chapter 16 of the Iowa Court Rules, small claims actions may be filed in paper (not only EDMS) through May 4.
16. District courts may approve attendance at an on-line course for purposes of compliance with Iowa Code section 598.15 (required course for cases involving child custody or visitation).

JUVENILE CASES

17. Non-delinquency juvenile matters set to commence before May 4 shall be either continued to a date no earlier than May 4 or conducted with the parties and/or participants appearing remotely using video or phone conferencing, at the discretion of the court.
18. Juvenile delinquency proceedings shall be subject to any of the foregoing criminal proceeding directives that by their nature would apply to juvenile delinquency cases.

EMERGENCY MATTERS

19. District courts shall continue to conduct the following in-person business: (a) trials and hearings already in progress; (b) criminal matters that cannot be continued or conducted by videoconference or telephone (pursuant to this order or otherwise); and (c) emergency matters that cannot be conducted by videoconference or telephone. Emergency matters may include substance abuse treatment proceedings pursuant to Iowa Code chapter 125, hospitalization proceedings pursuant to chapter 229, removal proceedings pursuant to chapter 232, elder abuse proceedings pursuant to chapter 235B, dependent adult abuse proceedings pursuant to chapter 235F, protective orders pursuant to Iowa Code chapter 236 or 236A, motions to quash garnishments pursuant to chapter 642, and forcible entry and detainer proceedings pursuant to chapter 648 where the tenancy poses a clear and present danger. This list is not intended to be exclusive and judicial officers shall determine what constitutes an emergency within the meaning of this paragraph. Judicial officers may direct that an emergency matter be conducted by videoconference or telephone.

STATUTE OF LIMITATIONS

20. Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17 to May 4 (48 days).

GENERAL

21. The Iowa Judicial Branch Building at 1111 East Court Ave., Des Moines 50319 shall be closed to the public effective March 18. Provisions will be made for the acceptance of permissible nonelectronic filings at the building entrance.
22. The court temporarily suspends any requirement that judges and court reporters travel together to and from court hearings.
23. The court temporarily suspends the operation of any Iowa Court Rules and statutes to the extent they are contrary to any provisions of this order.
24. The court will monitor circumstances and update this order as necessary.

THE SUPREME COURT OF IOWA

By



Susan Larson Christensen, Chief Justice

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Iowa Defense Counsel Association
Iowa Academy of Trial Layers
Iowa Court Reporters Association
Iowa Clerks Association
Association of Corporate Counsel-Iowa Chapter
Iowa Organization of Women Attorneys

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of Ongoing)	
Provisions for)	Order
Coronavirus/COVID-19 Impact)	
on Court Services)	

This order supplements previous forcible entry and detainer (FED) related supervisory orders relating to the spread of the novel coronavirus/COVID-19. On September 4, 2020, the federal Centers for Disease Control and Prevention (CDC) promulgated a moratorium on certain residential evictions (CDC Evictions Order). The CDC Evictions Order originally had a December 31, 2020 expiration date. On October 2, 2020, this court issued a supervisory order relating to the CDC Evictions Order. Thereafter, on December 27, 2020, section 502 of Subtitle A of Title V of Division N of the Consolidated Appropriations Act of 2021 extended the CDC Evictions Order through January 31, 2021. Accordingly, on December 30, 2020, this court extended its supervisory order. Finally, on January 29, 2021, the CDC extended its CDC Evictions Order through March 31, 2021.

Accordingly, the supreme court directs as follows:

1. The court extends the duration of its October 2, 2020 supervisory order so it will automatically remain in effect through the expiration date of the CDC Evictions Order. Currently, that expiration date is March 31, 2021, but if the CDC Evictions Order is extended to a new date, the October 2, 2020 supervisory order shall be automatically extended to the same date, unless the court orders otherwise.

2. Additionally, on May 22, 2020, the court issued a supervisory order that included a paragraph (paragraph 38) and an accompanying form to be used in FED actions. The court hereby clarifies that paragraph 38 of that May 22 supervisory order and the accompanying

form continue in effect until further order of this court.

3. Today's order does not affect any other provisions of the court's prior supervisory orders.

Dated this 11th day of March, 2021.

The Iowa Supreme Court

By: 

Susan Larson Christensen, Chief Justice

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Office of Professional Regulation
Polk County Bar Association
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State Court Administrator
State Public Defender
The Iowa State Bar Association
Thomson Reuters (Westlaw)
University of Iowa College of Law

BILLS IMPACTING MHC LANDLORDS

[House File 2351](#) and [Senate File 2238](#) would negatively impact landlords of manufactured housing communities. Below is a brief summary landlords can use to familiarize themselves with the proposed provisions.

Division I - Grounds for Termination

Eliminates a landlord's right to choose whether to renew a tenancy. Instead, a landlord could terminate (i.e., not renew) a tenancy **for good cause only**. Thus, the 60-day "no-cause" non-renewal right previously provided under Chapter 562B would be extinguished by this proposal.

Division II - Retaliation

Amends the law by providing a 1-year, not a 6-month, time period during which landlord actions are presumed retaliatory. With this proposal, section 562B.32(2) would mirror Chapter 562A.

Division III - Consumer Fraud

Any instance of a landlord's violation of Chapter 562B would be considered consumer fraud under Iowa Code section 714.16.

Division IV(a) - Rent Increase Notice

Increases the required notice period for rent increases from 60 days to 180 days, and permits only one rental increase per year.

Division IV(b) - Rent Control Provision

This rent control section of the bill imposes restrictions and requirements as to when and how landlords can increase rent.

In sum, each time a landlord desires to increase rent within a community in an amount higher than the "average annual increase of the CPI for all urban consumers in the Midwest region for the most recently available preceding 36 month period," which is **1.76% as of January 2020**, the landlord would be required to notify all residents (and presumably must be ready to prove) that the rent increase is statutorily allowed because the increase is "directly related to operating, maintaining, or improving" the community and "justified by one or more of the following [statutory] factors."

- The completion and costs of capital improvements, **not** including "ordinary repair, replacement, and maintenance"
- Increase in property taxes
- Increase in utility expenses
- Increase in insurance or financing costs
- Increase in "reasonable operating and maintenance expenses relating to the community"
- Increase in market rent, defined as "rent which would result from market forces absent an unequal bargaining position between the landlord and tenants. In determining market rent, relevant considerations include rents charged to recent new tenants of the manufactured home community, or rents charged by comparable manufactured home communities," meaning "within the same competitive area and offering similar facilities, services, amenities, and management."

The landlord's notice to residents must set forth the basis for the rent increase.

Division V - Landlord Remedies

This section contains many of the Iowa Manufactured Housing Association's proposed amendments to Chapter 562B from last year.



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IOWA CODE

CHAPTER 562A

IOWA'S UNIFORM RESIDENTIAL
LANDLORD-TENANT LAW

CHAPTER 562B

IOWA'S MANUFACTURING HOUSING
COMMUNITY LAW

Division VI - Manufactured Housing Program Fund

Amends the program fund to remove the mandate that the program fund is designed exclusively for manufactured homes located on leased land.

Division VII - Tenant Counterclaims for Landlord Noncompliance

Amends the law by adding a new section allowing tenant counterclaims. With this proposal, Chapter 562B would mirror Chapter 562A (section 562A.24).

Division VIII - Utility Charges

Adds the following restrictions regarding a landlord's right to impose utility charges:

1. Landlords cannot charge tenants for a utility in an amount in excess of the "actual cost" of the utility provided or the amount specified in the Utility Disclosure Statement. Provided however that landlords may charge a total monthly administration fee (for the administration of all utilities) of up to \$5 per month. "Actual cost" is **not** defined.
2. Failure of a tenant to pay utility charges that exceed the actual cost shall not be deemed a breach/non-compliance.

Division IX - Unlawful Ouster

Expands resident remedies for a landlord's unlawful ouster, exclusion, or diminution of services regarding a resident. With this proposal, Chapter 562B would mirror Chapter 562A (section 562A.26).

Division X - Wrongful Failure to Provide Essential Services

Expands resident remedies for a landlord's failure to provide essential services. With this proposal, Chapter 562B would mirror Chapter 562A (section 562A.23).

Division XI - Tenant Correcting Deficiencies

Changes the law to permit a tenant to correct alleged deficiencies him or herself, after prior notice to the landlord, and then to deduct the amount spent to do so from his or her unpaid/owed rent. With this proposal, Chapter 562B would mirror Chapter 562A (section 562A.27).

Division XII - Denial of Rental or Refusal of Sale

Imposes the following new requirements upon a landlord's right to deny an applicant:

1. A landlord's denial of an applicant must "conform to recognized principles, rules, and standards generally accepted by the professional manufactured home community or park industry to ensure the commercially reasonable safety and financial security of comparable manufactured home communities or parks." The landlord must notify the applicant in writing of the basis for any denial.
2. A landlord's decision to not approve a prospective purchaser of an existing home owned by a resident in the community must be based on a "legitimate business reason" as articulated in the prior section, and the landlord must notify the applicant in writing of the basis for denial.

Division XIII - Prohibited Rental Agreement Provision-Home Equipment

Provides that a landlord must not require tenants, in a lease or otherwise, to "modify the physical characteristic or equipment of [the home] if the modification impairs the ability [to] move the home from the [lot] unless otherwise required by federal or state law or local ordinance."

Division XIV(a) - Prohibited Rental Agreement Terms

Adds the following new categories of prohibited lease provisions:

1. "Imposition of fines, penalties, or fees solely as a punishment or in amounts in excess of actual damages or costs incurred."
2. Confessions of judgment by a resident.
3. Any provision that "authorizes prohibitions, limitations, additional deposits, or other restrictive policies that are not based on ordinary wear and tear [or] community safety standards."

Division XIV(b) - Remedies for Prohibited Rental Agreement Terms

Expands resident remedies for a landlord's use of prohibited lease provisions. With this proposal, Chapter 562B would mirror Chapter 562A.

Division XV - Rental Deposits

Changes the definition of "rental deposit" and amends the law by providing that a landlord may only retain interest earned on a rental deposit during the first five years of tenancy. With this proposal, Chapter 562B would mirror Chapter 562A.

Division XVI - Landlord Sales of Mobile Homes

Imposes additional requirements upon landlords when a landlord sells a manufactured or mobile home:

1. A written purchase agreement must be used.
2. The written purchase agreement must state the basic terms of the sale, including purchase price, finance charges, APR, and each installment payment.
3. A current certificate of title must be presented and signed over to the resident-buyer.

This section also provides that if a landlord violates the foregoing requirements, the sale may be voided by the buyer and the buyer may recover damages incurred, amounts paid as a rental deposit in excess of two months' rent, and reasonable attorney fees.

Division XVII - Nonjudicial Foreclosures of Homes Prohibited

Eliminates the ability of lenders to utilize nonjudicial foreclosure regarding manufactured/mobile homes under Section 654.18 ("Alternative Nonjudicial Voluntary Foreclosure Procedure") or Chapter 655A ("Nonjudicial foreclosure of Nonagricultural Mortgages").