

## **CDC Eviction Moratorium and Eviction Prevention Legal Services in COVID-19**

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### **1. Intro**

- a. Legal Action of Wisconsin, EDP, and civil legal aid
- b. Check out LAW's fact sheets and videos at  
<https://www.legalaction.org/additional-resources/housing>

### **2. Evolving COVID Legal Landscape — Three different and overlapping moratoria.**

- a. **State Emergency Order 15 – [Temporary Ban on Evictions and Foreclosures.](#)**  
Emergency Order from Sec. Palm and Gov. Evers stopped all tenancy terminations and evictions except for those not related to non-payment of rent and accompanied by an affidavit stating that “the failure to proceed with eviction will result in an imminent threat to serious physical harm to another person.” Prevented most evictions statewide from March 27-May 26. Very few cases filed in Dane County during this moratorium period.
- b. **Federal CARES Act.** Applies to covered properties supported with federal assistance or with federally backed mortgages. Sec. 4024(b) Prohibited eviction filings for non-payment of rent from March 27-July 25.
  - i. **Parts of the CARES Act moratorium are still in effect.**
    - 1. Sec. 4024© housing providers must provide a 30-day notice to terminate tenancy following the expiration of the moratorium on July 25.
    - 2. Sec. 4023(d) and (e) prohibits multifamily properties with federally backed mortgages **that are in forbearance** from evicting tenants for nonpayment of rent and charging late fees during the forbearance period, and requires 30 day notice to vacate after forbearance period. Borrowers can request forbearance and extensions during the “covered period,” which is until December 31, 2020 or the end of the termination date of the national emergency, whichever is sooner (assuming no extension by Congress).

Actual forbearance period and associated eviction protections, depending on the type of loan (Fannie & Freddie and USDA offer up to 6 months, others are 3 months), could last until June, 2021.

- ii. **Main challenge to asserting protection is trying to figure out if your unit is in a covered property.** The best resource, however incomplete, is <https://nlihc.org/federal-moratoriums>. LAW has been seeking this information in formal discovery proceedings in eviction court.

c. **CDC Moratorium: Temporary Halt on Residential Evictions to Prevent the Spread of COVID-19**

- i. Issued by Centers of Disease Prevention and Control (CDC) under their federal statutory and regulatory powers to address communicable disease.
- ii. Effective when published in the federal register on September 4, 2020. Expires December 31, 2020.
- iii. Intended to address the expected surge in evictions — 30 to 40 million — following the end of the CARES Act moratorium, which provided more limited protection (only to properties with federal backing).
- iv. Intent is to stop the spread of COVID-19 in congregate shelter, unsheltered living, and when individuals and families “double up”. And to support state and local COVID response measures.
- v. Explicitly prohibits evictions of persons who have signed 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 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.

- vi. Does not cancel rent or stop late fees.

vii. Some evictions are still allowed.

- (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, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

viii. Violators subject to substantial criminal penalties

1. A person violating the order may be subject to a fine of up to \$100,000 if the violation does not result in a death or one year in jail, or both, or \$250,000 or one year in jail if the violation results in death or as otherwise provided by law .
2. Organizations violating the Order are subject to a fine up to \$250,000 per violation event or one year in jail or up to \$500,000 or a year in jail, or both, if the violation results in a death or as otherwise provided by law.

ix. Issues with obtaining protection

1. It is **not automatic**. Requires delivery of declaration and enforcement of rights in court if there's an eviction case in process.
2. Unaware of the Order or requirement to sign and deliver a declaration
3. Landlords ignoring the Order
4. Tenants pressured to enter into eviction stipulations, with eviction enforcement remedies, despite of CDC protection
5. Accessing the courts in the virtual age and services during the pandemic

x. Dane County practices

1. Filing of CDC Declaration has impact of halting the eviction at any stage of the process, prior to execution of the writ.
2. The Sheriff's office is looking for the court to decide that the CDC Order applies to protect the tenant.
3. Differing interpretations related to protection from non-renewal of leases and termination of month to month tenancies
4. Enforcement of stipulations executed before CDC Order.
5. Courts not proactive in inquiring as to CDC applicability.

**3. What happens January 1?**

- a. Many evictions cases have been postponed to January. Some which were already filed and some that have yet to be filed.
- b. Stout's model predictions for WI (based on rent survey from 9/30-10/12/2020)
  - i. 196,000 households at risk
  - ii. Rent shortfall of \$225M - \$249M
  - iii. Range of potential filings on Jan. 1, 2020 is 91,300 – 104,500 (compare to 28,000 in all of 2019)
  - iv. Rent shortfall Jan. 2021 \$346M - \$382M

**4. How does WI compare to other states regarding COVID-related housing policy?**

<https://evictionlab.org/covid-policy-scorecard/wi/> .5 out of 5, according to Eviction Lab