

Insights

U.S. COVID-19: EVICTION AND FORECLOSURE LIMITATIONS ACROSS THE COUNTRY

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As COVID-19 exerts a significant drag on the economy, there is a growing trend of governmental action to provide temporary protections of possession and tenancies at the national, state and local level. The government actions vary in form, duration and scope, but will generally delay the course of foreclosure or eviction.

The sources of eviction and foreclosure moratoriums include various executive orders of federal agencies, governors, mayors, judges, and even de facto moratorium by county sheriff departments that cease to process service of summonses and notices. While the eviction limitations are generally characterized as a response to COVID-19 and related government closings, the orders issued tend to apply to any eviction in the first instance. At least one exception is California, where the executive order attempts to authorize local suspension of only evictions that are related to COVID-19. While the orders typically suspend present court actions and do not prohibit notices given by a landlord, a present exception is found in Seattle, WA, where the mayor's emergency order also prohibits issuance of a notice of termination.

Due to state and local variances, any suspension of eviction proceedings, the mechanisms of any suspension, application of suspension to residential and/or commercial tenancies, and duration of the moratorium will require examination on a case-by-case basis for the applicable state and city.

However, despite variance in the detail of each locality, it should be noted that many state and federal courthouses are effectively slowed or shut down at present due to COVID-19 generally, such that landlord relief in a current or newly-filed eviction proceeding might well be delayed with or without a state or local suspension specific to eviction actions.

NATIONAL TRENDS

- On March 18, 2020, the federal agency overseeing Fannie Mae and Freddie Mac, the giant government-run finance firms that back the mortgages of 28 million homeowners, ordered a suspension of foreclosures and foreclosure-related evictions for at least two months.

- On March 18, 2020, President Trump directed the Department of Housing and Urban Development (HUD) to suspend evictions and foreclosures through April related to the fallout of the coronavirus. “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,” Trump said at a White House press briefing. The moratorium will apply only to homeowners with mortgages insured by the Federal Housing Administration, a HUD agency that backs affordable home loans issued through private firms.
- As of March 23, 2020, various levels of statewide eviction and/or foreclosure controls or moratoriums were reported including for Alabama, Alaska, California, Colorado, Delaware, District of Columbia, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, South Carolina and Washington. Similar action has been taken by many cities including Atlanta GA, Miami-Dade County FL, Orlando FL, Charleston SC, Detroit MI, Philadelphia PA, Cleveland OH, San Antonio TX, Austin TX, Santa Fe NM, and Seattle WA.

CALIFORNIA

- California Governor Gavin Newsom issued Executive Order N-28-20 on March 4, 2020, suspending the power to evict tenants unable to pay their rent or mortgages because of a substantial decrease in household or business income or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic or by local, state or federal government response to COVID-19. The executive order is set to remain in place until May 31, 2020, and renters are still required to pay what they owe their landlords. The order states, “Nothing in this Order shall relieve a tenant of the obligation to pay rent, nor restrict a landlord’s ability to recover rent due.”
- Newsom’s executive order allows local governments to ban landlords from trying to evict tenants who are suffering from a loss of income related to COVID-19, but his directive and many local moratoriums do not extend protection to other reasons for eviction, such as a landlord alleging a nuisance or other lease violation. A Los Angeles tenant-rights attorney said there’s nothing stopping landlords from taking legal action against their tenants. There’s just not much they can do until the Los Angeles Superior Court reopens for regular business, which has been delayed until April 16.

- In Los Angeles, on March 15, 2020, the Mayor issued a Public Order that states:

[N]o landlord shall evict a residential tenant in the City of Los Angeles during this local emergency period if the tenant is able to show an inability to pay rent due to circumstances related to the COVID-19 pandemic. These circumstances include loss of income due to a COVID-19 related workplace closure, child care expenditures due to school closures, health care expenses related to being ill with COVID-19 or caring for a member of the tenant’s household who is ill with COVID-19, or reasonable expenditures that stem from

government-ordered emergency measures. Nothing in this subsection shall be construed to mean that the tenant will not still be obligated to pay lawfully charged rent. Tenants will have up to six months following the expiration of the local emergency period to repay any back due rent. Tenants may use the protections afforded in this subsection as an affirmative defense in an unlawful detainer action. This subsection shall remain in effect during the pendency of the local emergency period.

- Many California cities and counties have either issued a ban on evicting renters facing economic hardships due to the novel coronavirus outbreak or are considering doing so:
 - Los Angeles (City and County), San Francisco (City and County), Alameda (City and County), San Luis Obispo County, Sacramento, Pasadena, San Jose, San Diego, Culver City, Fresno, Berkley and Burbank have adopted orders forbidding eviction of tenants who can't pay their rent due to COVID-19.
 - Long Beach, Santa Cruz and Santa Ana are considering similar bans, according to CAA and a Santa Ana news release.
 - Elsewhere in California, bans are being considered by the cities of Hayward, Oakland, and San Mateo County.

NEW YORK

- Beginning the evening of March 16, 2020, eviction proceedings and pending orders will be suspended statewide until further notice as health officials work to curb the spread of COVID-19, as directed by Chief Administrative Judge Lawrence Marks in a memorandum to court employees. Hundreds of new cases were filed citywide last week, according to a recent email from New York City Housing Court Judge Jean Schneider to attorneys. Those new cases will be postponed for “about 45 days,” Schneider wrote. Now, attorneys worry that some confused tenants may show up to the courts, fearing that if they do not respond—especially for nonpayment cases that typically require tenants to appear within 10 days—they could face consequences. (The courts have also suspended default judgements, meaning a tenant who fails to appear in court will not be penalized.) It is anticipated that New York will implement a 90-day moratorium on evictions for residential and commercial tenants.
- The Department of Financial Services has issued a new directive to New York State mortgage servicers to provide 90-day mortgage relief to mortgage borrowers impacted by the novel coronavirus. The directive includes:
 - Waiving mortgage payments based on financial hardship;
 - No negative reporting to credit bureaus;
 - Grace period for loan modification;

- No late payment fees or online payment fees; and
- Postponing or suspending foreclosures.

LOCAL JUDICIAL ACTIONS

- On March 13, 2020, Illinois Cook County Circuit Court entered an order suspending most case activity and including a provision that no eviction or foreclosure orders would be entered. The following day, Cook County Sheriff Tom Dart announced that all jail visits and court-ordered evictions will be put on hold after sheriff's deputies encountered a person showing symptoms of COVID-19 while serving an eviction.
- On March 19, 2020, pursuant to local court orders, eviction proceedings in court have been temporarily suspended in Jackson County, Missouri, and also halted any forcible removal of tenants from their homes.

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MEET THE TEAM



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