

## Memorandum

### Centers for Disease Control & Prevention - Temporary Halt on Certain Residential Evictions

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#### I. The CDC Order

On September 1, 2020, the Centers for Disease Control and Prevention (the “CDC”) issued a nationwide order (the “Order”) temporarily halting residential evictions resulting from the nonpayment of rent for certain tenants through December 31, 2020, in an effort to prevent the further spread of COVID-19. The following is a summary of the Order and our current interpretation of its applicability in New York State.

#### II. Summary of the Order

A. The Order does not relieve tenants of their obligation to pay rent or other charges that are owed under the lease, nor does it preclude landlords from charging fees, penalties, or interest as a result of the tenant’s failure to pay rent on a timely basis.

B. The Order does not preclude evictions for non-monetary defaults.

C. The Order defines “eviction” as “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. We believe this definition includes any steps a landlord may take to evict, including the service of a rent demand or commencement of a nonpayment proceeding, not just the actual physical eviction from the premises.

D. In order to qualify as a “covered person,” each tenant, lessee or resident residing in a leased premises must sign and deliver a Declaration to their landlord under penalty of perjury, indicating the following:

- i. Tenant has used best efforts to obtain all available government assistance for rent or housing;
- ii. Tenant either expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

- iii. Tenant is unable to pay his/her 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;
- iv. Tenant 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
- v. If evicted, Tenant 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 Tenant has no other available housing options;
- vi. Tenant understands that s/he must still pay rent or make a housing payment, and comply with other obligations that s/he may have under his/her tenancy, lease agreement, or similar contract. Tenant 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; and
- vii. Tenant further understands that at the end of this temporary halt on evictions on December 31, 2020, Tenant's housing provider/landlord may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make Tenant subject to eviction pursuant to State and local laws.

E. The Order states that Tenants do not need to substantiate the statements in the declaration with documentation. The Order does not contain any language requiring landlords to inform tenants of their right to submit this declaration or of their possible eligibility for these temporary protections.

F. The Order does not provide a process or procedure for landlords to either challenge or verify declarations.

### III. Interpretation and Current Applicability of Order to Landlords in New York City

A. Unless and until a completed, signed and notarized Declaration is received from a tenant, landlords may proceed as usual in initiating and prosecuting summary nonpayment evictions proceeding, including the service of rent demands and nonpayment petitions.

B. If a landlord receives a completed, signed and notarized Declaration, it should immediately notify its attorney and unless the Declaration fails to contain the required information, all action to evict the tenant for nonpayment of rent should cease.

C. In the event a landlord is found to have violated the Order, the penalties are as follows:

- i. An individual found to violate the Order would be subject to federal criminal prosecution with a fine of up to \$100,000 and/or a year in jail if the violation did not result in a death, or up to a \$250,000 fine and/or a year in jail if the violation did result in a death.
- ii. An organization found to violate the Order would be subject to a fine of up to \$200,000 per violation if the violation did not result in a death or \$500,000 if the violation did result in a death.

D. The Order does not apply in any State or local area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in the Order. Subject to further clarification and interpretation by the courts or other governmental authority, it is our opinion that this Order applies in New York City.

#### IV. Conclusion

It is likely that in the coming days and weeks, the CDC and the courts will issue further clarification and interpretation of this Order, which may affect what landlords can and cannot do. Thus, while we will report any new developments, it is important that you continue to consult with counsel during the eviction process.