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## FEDERAL FREEZE

# What the CDC Eviction Moratorium Means for Mass. Landlords and Tenants

Federal Ban Would Replace State's Freeze if Latter Expires

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SPECIAL TO BANKER & TRADESMAN



**O**n Sept. 4, the Center for Disease Control and Prevention took the unprecedented step of ordering a temporarily halt to residential evictions across the United States. The agency's order is broader in scope than the prior federal moratorium enacted by Congress in the CARES Act, which expired July 24.



While the CARES Act moratorium applied only to recipients of federal housing assistance and federally insured mortgage loans, the

CDC moratorium applies to any residential tenant who earns below \$99,000 (\$198,000 for families) and is unable to pay the full rent due to COVID-related impacts. The CDC considers the order, which is effective until Dec. 31, a public health measure intended to mitigate the spread of COVID-19 and support federal, state and local response efforts.

### Who Is Affected by the CDC Moratorium?

The CDC order, which prevents property owners from evicting qualifying tenants, affects all residential landlords and tenants. However, it

is not self-executing and requires tenants seeking protection to provide the landlord with a statement under oath declaring that:

1. The tenant used best efforts to obtain available government assistance for rent or housing;
2. The tenant expects to earn less than \$99,000 in calendar year 2020 (or less than \$198,000 if filing jointly), had no reportable taxable income in 2019 or received a stimulus check under the CARES Act;
3. The tenant is unable to pay the full rent due to substantial loss of household income, loss of work or wages, a lay-off or extraordinary out-of-pocket medical expenses;
4. The tenant is using best efforts to make timely partial payments that are as close to the full payment as the tenant's circumstances permit; and
5. Eviction would likely render the tenant homeless – or force the tenant to move into and live in close quarters in a congregate or shared living setting – because the tenant has no other available housing options.

The CDC order does not indicate how the statements made in the declaration would be confirmed.

Nothing in the order relieves the tenant from the obligation to pay rent or comply with other terms of the lease. Covered tenants may still be evicted for reasons other than failure to pay rent, including engaging in criminal activity on the premises, threatening the health or safety of other

residents, damaging or posing a significant risk of damaging property, violating any applicable ordinance or regulation relating to health and safety or violating any other contractual obligation.

### Is Massachusetts Covered?

The CDC order does not apply in any area with a moratorium on residential evictions that provides the same or greater level of protection. This would include Massachusetts, whose eviction moratorium is more comprehensive than the CDC's, as it prohibits landlords from imposing late fees, reporting missed rental payments to credit agencies, providing any notice terminating a tenancy and protects all tenants regardless of income or documented COVID-19 impacts.

The CDC order is thus inapplicable in Massachusetts, so long as the State moratorium remains in effect.

If Gov. Charlie Baker does not extend the moratorium, as he has hinted, it will expire on Oct. 17, in which case the CDC order would take its place through the end of the year. Additionally, the Massachusetts moratorium has been challenged in federal and state court, and, if struck down, would be immediately replaced by the CDC order.

### Will the Moratorium Survive and Work?

The CDC's authority to issue the eviction moratorium has already been challenged in some states and would likely be challenged in Massachusetts if it becomes applicable here.

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The order cites the Public Health Service Act for the CDC's authority to institute the moratorium. This act authorizes the CDC to adopt health-related measures to prevent the spread of communicable diseases if local controls prove inadequate. Those measures include inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles that are sources of dangerous infection and other measures necessary in the surgeon general's judgment.

Challengers argue the CDC's sweeping moratorium goes beyond the scope of this authority and fails to explain how a nationwide eviction

ban is reasonably necessary to stop the spread of COVID-19.

There is also the question of enforcement. The CDC order has not been applied uniformly in all jurisdictions. Some state courts have ruled that the order prevents landlords from initiating eviction proceedings, while others have permitted cases to proceed up to the point when the tenant would be removed from the residence. The New Hampshire Supreme Court issued an order requiring landlords to file affidavits certifying they are complying with the order before commencing eviction proceedings.

These varying responses to the CDC morato-

rium leave open the question of how Massachusetts courts will interpret and enforce the order when, and if, the time comes. As Gov. Baker considers allowing the state moratorium to lapse on Oct. 17, Massachusetts landlords, tenants and courts may soon have to face these issues. As in most everything about the pandemic, the future remains uncertain. ◀

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