



CITY OF IOWA CITY MEMORANDUM

Date: September 25, 2020
To: Iowa City Landlords and Rental Property Managers
From: Kristin Watson, Human Rights Investigator
Re: CDC Agency Order Enacting Eviction Moratorium through December 31, 2020

During the coronavirus pandemic, landlords and tenants may have questions regarding how fair housing standards apply. This memorandum is meant to provide general guidance regarding this subject. If you have questions regarding topics addressed in this memorandum or your rights and responsibilities in general, please call the office at 319-356-5015 or 319-356-5022.

How is the CDC concerned with housing—isn't that HUD?

It may seem strange for the Centers for Disease Control and Prevention to issue an order regarding eviction. Commonly known as the CDC, the agency is the nation's public health protection agency and usually does not issue orders related to housing. However, the CDC is concerned with insecure housing situations and homelessness as public health issues. The CDC notes that eviction often leads to people staying with friends or relatives, staying in shelters, or living without housing. All of these situations make people more vulnerable to infection with COVID-19 and contribute to people suffering more serious symptoms and long-term effects if they do become infected with the virus.

What is an agency order and how can the CDC issue orders related to housing?

Federal agencies like the CDC may issue orders that have the force of law. The CDC's eviction moratorium was issued under the Public Health Service Act (42 U.S.C. 264), which gives the CDC the power to control communicable diseases by various methods.¹ Usually, these methods involve quarantines, destruction of infected animals or contaminated products, and sanitation/fumigation, such as of ships arriving from international ports. However, the Act also provides for "other measures, as ... may be necessary." It is this provision that allowed the CDC to issue its eviction moratorium, under the theory that mass eviction caused by renters' economic problems due to COVID-19 would also exacerbate the COVID-19 pandemic. People would not only become insecurely housed or become unhoused altogether, they would also make interstate moves, potentially spreading the virus from high-risk areas to lower-risk areas. This order was issued without notice and public comment because it was issued as an "emergency action" under 42 CFR 70.2.

What does the order say?

The order provides for a moratorium on evictions through December 31, 2020, provided certain conditions are met. First, the moratorium applies only to failure to pay rent in full. Therefore, if a tenant breaks other terms of the lease, the tenant may be evicted. For example, a tenant convicted of manufacturing controlled substances in the rented unit could be evicted. Second, the order does not relieve the tenant of the obligation to eventually pay the rent. It merely places eviction for failure to do so on hold. Third, in order to invoke the protection of the moratorium,

¹ Close readers will note the Act refers to the Surgeon General issuing orders to control disease. The power was transferred to the Secretary of Health and Human Services (HHS), under whom the CDC operates, in 1966. In 2003, President Bush issued an Executive Order giving the Secretary of HHS the power to "determine whether a particular condition constitutes a communicable disease of the type specified" as covered under the Act.

tenants must complete a “declaration,” as published in the Federal Register,² and available here: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf> All adult residents of the unit must declare, under penalty of perjury, that they

- Have used their best efforts to obtain all available government assistance for rent or housing, and
- Expect to earn no more than \$99,000 if single or \$198,000 if filing a joint tax return; or were not required to report income to the IRS in 2019; or received a stimulus check under the CARES Act, and
- Are not able to pay the full rent/housing payment due to substantial loss of income, wages, or work hours; lay-off; or extraordinary out-of-pocket medical expenses, and
- Are making their best efforts to pay as much as possible under the circumstances, and
- Eviction would likely render the person homeless or force them to move into close quarters or a new shared living situation because they lack other options.

How does this order affect landlords and tenants?

The moratorium is problematic for both landlords and renters. Renters are not protected from failure to renew their leases. They are not relieved of the obligation to pay, which means that many will simply face a huge debt at the end of the moratorium. There is also no prohibition on fees, interest, or other charges. Therefore, renters may owe far more than the original amount of late rent at the end of the moratorium.

The moratorium also places landlords in a bind. Almost half (49.5%) of all rental units nationally are either single-family or 2-4 unit buildings, many owned by individuals or small businesses. This order functions as an unfunded mandate for landlords who may be exposed to financial hardship themselves without rent payments. Larger landlords may find themselves forced to lay off staff if enough tenants cannot pay rent, creating more people with economic hardship. Both small and large landlords may have to defer rehabbing or updating properties as planned, contributing to loss of income for contractors, lower property value for landlords, and less-desirable rentals for tenants. Landlords may also be unable to collect the unpaid rent in the future if tenants are bankrupted by their inability to catch up once the crisis ends, creating a domino effect.

A better solution would be federal funding directed to outright payment of rent for those who cannot make their payments, allowing both renters and landlords to survive the pandemic. However, for now, renters and landlords can plan their finances based upon the current situation. Many resources exist for loans and assistance through federal, state, local, and private programs. Contact Tracy Hightshoe, Neighborhood and Development Services Coordinator, for information about assistance programs available through the City. She can be reached at 319-356-5244 or via email at tracy-highshoe@iowa-city.org.

The Office of Equity and Human Rights provides educational memos to landlords on areas of discrimination to assist in providing good outcomes for both landlords and tenants. Please send fair housing topics you would like to receive guidance on to humanrights@iowa-city.org.

² See 85 FR 55292-97.