

GUIDANCE ON CDC EVICTION MORATORIUM

The Center for Disease Control issued an Agency Order establishing a nationwide non-payment eviction moratorium. The Order shall be in effect as of September 4, 2020, and will end on December 31, 2020. The text of the Order and the required tenant Declaration can be found here:

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf>

1. Can you file eviction with the CDC Order in effect?

Yes. The CDC Order does not prevent you from filing evictions, unless the tenant provides you with a Declaration. The CDC Order only applies to **non-payment evictions**, where the tenant gives the landlord the required CDC Declaration. Evictions for other reasons, such as non-renewals, lease violations, squatters, etc. are not protected under the Order and may be processed as normal.

2. Can you file a non-payment eviction against tenants if they provide you with a Declaration prior to filing?

No. If you receive a Declaration before you file a non-payment eviction, then you cannot file.

3. Can you serve tenants with a non-payment notice if they provide you with a Declaration?

No. If you receive a Declaration before you serve a non-payment notice, then you cannot serve them with a non-payment notice. The CDC Order prohibits any action that would start an eviction proceeding against the tenants. However, you may send the tenant a letter of balance due.

4. What if the tenant provides the Declaration after an eviction has been filed?

If a tenant provides the Declaration after you have already filed for eviction, then the court would likely pause a non-payment eviction until the CDC Order expires. Some particularly tenant friendly judges may take a broader view of the CDC Order and dismiss the case.

You should immediately send your attorney the Declaration. Do not assume that the tenant will send a copy to your attorney or file it in Court.

5. What if the tenant never provides the Declaration?

If the tenant does not provide the Declaration, then they may not use the CDC Order as a defense to the eviction and the case would continue. However, the tenant may still be entitled to the protections of the Florida statewide moratorium, as discussed below.

6. What if the Declaration is not the CDC Declaration Form?

The CDC Order says its Declaration Form or a similar declaration under penalties of perjury can be used. Consult your attorney if you receive a “similar declaration”.

7. Do we need to provide a copy of the Declaration to tenants or inform them of the Declaration?

No. You are not obligated to tell the tenant about the Declaration, nor are you obligated to provide them a copy to sign.

8. Can you require documentation from the tenant to support the Declaration?

No. The CDC Order does not say that the tenant must prove that the Declaration is truthful or provide documentation that the Declaration is truthful.

9. How does CDC Order interact with the Florida statewide moratorium?

The CDC Order specifically states that it does not override statewide or local moratoriums, but adds additional protections for tenants to the statewide moratorium. This means that the tenant will receive the greatest protection under both the CDC Order or the statewide moratorium.

If the tenant does not provide the CDC Declaration before eviction filing, the statewide moratorium allows you to file an eviction against any tenant. However, the CDC Order prohibits filing a non-payment eviction once a Declaration is received. Thus, if the tenant provides you with a CDC Declaration prior to filing, you may not file a non-payment eviction, regardless of the statewide moratorium.

After the filing of a non-payment eviction, the tenant may either allege that they were adversely impacted by COVID-19 to be protected by the statewide moratorium or file a CDC Declaration to be protected by the CDC Order or do both.

10. Does the CDC Order change any notice requirements?

No. The CDC Order did not impose any new or additional notice requirements. Any notices served prior to the CDC Order remain valid.

If you have received a Declaration from the tenant, you may not serve a new non-payment notice. You may serve non-renewal notices and non-compliance notices, for example 7Day Cures.

11. Do you need to serve a 3Day or 30Day Notice for non-payment?

If you have received a Declaration from the tenant:
you may not serve a new non-payment notice.

If you have not received a Declaration from the tenant:
3Day Notices may be used if the property is not “covered” under the federal CARES Act. If the property is “covered” (either because it is directly federally subsidized, or has a federally backed mortgage, for example Fannie Mae/Freddie Mac), then a 30Day Notice must be used. You may include all unpaid rent that accrued during the moratorium through the date of the notice in your demand.

12. Can you charge late fees?

We advise against charging late fees at this time. Our expectation is that most judges will be more tenant friendly during and after the virus emergency. Judges will be less willing to enforce late fees charged during the virus emergency. Omitting them from the non-payment notice, while not legally required, will help avoid potential issues in court.

13. What landlords does the CDC Order apply to?

The CDC Order covers all residential landlords, renters and rented premises. Vacation rentals are excluded.

14. What tenants does the CDC Order apply to?

The only tenants, who are protected by the CDC Order, are the ones who provide the landlord with the Declaration specified in the Order. If there are multiple tenants, all need to provide a Declaration.

15. What if I know the tenant is lying on his Declaration?

The CDC Order says that the protected class of tenants are those who provide the Declaration. It does not say that the tenant must prove that the Declaration is truthful or provide documentation that the Declaration is truthful. Read literally, this means that tenants may be protected under the moratorium after providing the Declaration, even if they lie under oath on the Declaration. If you have tangible evidence that the tenant is lying, you should consult with an attorney regarding the risks of filing a case and possible fees and penalties you would face in filing.

16. Is the rent forgiven?

No. The CDC Order states that rent and other financial obligations under the lease are not forgiven and will accumulate.

17. Is the CDC Order legal?

Yes. You need to treat this as the applicable law until it is declared invalid by the Supreme Court of the United States or a federal court in Florida.

18. Are there penalties for violating the CDC Order?

Yes. The CDC Order states that violations are subject to criminal penalties and fines.

If you have any further questions regarding this guidance, please do not hesitate to contact us.

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