



## Michigan Supreme Court

State Court Administrative Office  
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Thomas P. Boyd  
State Court Administrator

### MEMORANDUM

DATE: September 3, 2020

TO: District Court Judges  
District Court Administrators  
District Court Civil Clerks

FROM: Michele Muscat, Management Analyst  
Bobbi Morrow, Management Analyst

RE: Frequently Asked Questions (FAQs) Regarding CDC Order Halting Evictions

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On September 1, 2020, the Centers for Disease Control and Prevention (CDC) issued an [order temporarily halting residential evictions](#) to prevent the further spread of COVID-19. The State Court Administrative Office (SCAO) immediately sent a memorandum to courts attaching the 37-page order for their review. Since that time, we have received many questions from courts regarding how the CDC's order impacts the state court's landlord-tenant docket.

The following Frequently Asked Questions (FAQs) have been developed to address questions raised. While the responses provided by SCAO are an attempt to assist courts in understanding the provisions of the CDC's order, as noted below, some responses are ultimately a matter of judicial interpretation.

**Q1: When does this order go into effect?**

A1: By its terms, the order becomes effective on the "date of publication in the Federal Register." The preliminary copy of the order includes a notation that the publication date is expected to be September 4, 2020.<sup>1</sup> SCAO will monitor the Federal Register and notify you when the order is published.

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<sup>1</sup> See page 1 of the CDC's order.

**Q2: Does the CDC’s order halt all evictions?**

A2: The order states that “a landlord, owner of a residential property, or other person<sup>2</sup> with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.”<sup>3</sup> The Order further indicates that a tenant can still be evicted for:

- “[E]ngaging in criminal activity while on the premises;”
- “[T]hreatening the health or safety of other residents;”
- “[D]amaging or posing an immediate and significant risk of damage to property;”
- “[V]iolating any applicable building code, health ordinance, or similar regulation relating to health and safety;” or
- “[V]iolating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).”<sup>4</sup>

**Q3: Who is a “covered person” under the CDC order?**

A3: The order states that a covered person means “any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

- 1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- 2) The individual either (i) 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 return), [footnote omitted] (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- 3) [T]he individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a layoff, or extraordinary [footnote omitted] out-of-pocket medical expenses;
- 4) [T]he individual 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
- 5) [E]viction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.”<sup>5</sup>

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<sup>2</sup> “For purposes of this Order, ‘person’ includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

<sup>3</sup> See pages 7-8.

<sup>4</sup> See pages 15-16.

<sup>5</sup> See pages 8-10.

**Q4: What is the “declaration” in question 3?**

A4: The order states, “To invoke the CDC’s order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live.”<sup>6</sup> Michigan Legal Help is creating a sample declaration document and will make it available on their website as soon as it is completed.

**Q5: Can the court accept filings or can the landlord obtain a judgment to be executed when the moratorium lifts?**

A5: The order defines “evict” and “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.”<sup>7</sup> The language in the order — “any action . . . to remove or cause the removal of” — is a matter of judicial interpretation.

**Q6: Does the CDC’s order affect the contractual obligations of renters to pay rent?**

A6: The order states that it “has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.”<sup>8</sup>

**Q7: Does this apply to residential and/or commercial properties?**

A7: The order applies to residential properties. “Residential property” is defined as “any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.”<sup>9</sup>

**Q8: Does this order include foreclosure on a home mortgage?**

A8: The order “does not include foreclosure on a home mortgage.”<sup>10</sup>

**Q9: Does the CDC moratorium apply to Michigan?**

A9: The order “shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C 3559, 3571; 42 U.S.C 243, 268, 271; and 42 CFR 70.18.”<sup>11</sup>

**Q10: When does the CDC’s order expire?**

A10: The order states that it “will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.”<sup>12</sup>

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<sup>6</sup> See page 6.

<sup>7</sup> See page 10.

<sup>8</sup> See page 29.

<sup>9</sup> See pages 10-11.

<sup>10</sup> See page 10.

<sup>11</sup> See page 29.

<sup>12</sup> See page 33.

**Q11: Is there a penalty for violating the CDC's order?**

A11: The order states that “a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law.”<sup>13</sup>

**Q12: Who would prosecute for violations of this order?**

A12: “The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.”<sup>14</sup>

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<sup>13</sup> See pages 29-30.

<sup>14</sup> See page 30.