Eviction Moratoriums and COVID19 - What You Need to Know

November 9, 2020 - Whether you are a renter or a landlord, you may be trying to navigate the confusing world of eviction moratoriums that have been put in place due to COVID19. There is a pretty good chance that you are familiar with your local laws on this. But there are also federal laws and regulations that are currently in force that you may be unfamiliar with. Here is what you need to know.

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State and Local Level Moratoriums

Many state and local governments have implemented eviction moratoriums due to COVID19. Most of these regulations have similarities. They do not typically relieve renters of their financial obligations but do prevent landlords from evicting people due to their failure to pay rent under certain circumstances. In most cases, that means making a declaration that that states the renter has lost income due to the pandemic and is not currently in a position to make payment.

Some of these moratoriums also prevent utility shut offs during the same time period, but that is less common.

There are a wide variety of expiration dates for state and local moratoriums, and some of them have already expired. It is also worth noting that while some of the regulations currently in place require no action on the part of renters, others require some form of proof regarding the renter's financial circumstances. Without that proof, landlords may be able to continue eviction procedures.

Federal Moratoriums

There are currently moratoriums on evictions for property owners facing foreclosure with federally backed loans. Those begin to expire on December 31st and unless there is further federal action, will be completely gone by the end of next March. During the time they are in place, property owners can also request loan forbearance from their lenders. This doesn't eliminate the borrower's obligation to repay their loan but it can help protect their credit and provide some financial relief while they try to reestablish their income. Additionally, a loan in forbearance won't be the subject of a foreclosure.

It is important to note that while owners facing foreclosure may qualify to avoid eviction once a foreclosure takes place, that qualification will do nothing to stop the actual foreclosure.

In September, the CDC also issued a moratorium order for evictions to renters due to COVID19. That order is based on a

1948 law that allows the agency to act to stem the spread of communicable diseases. In the September order, the CDC theorized that evicting people who could become homeless could lead to the spread of COVID19. That order is currently being challenged for its constitutionality by landlords in federal court, but it remains in place for the time being.

The CDC's moratorium isn't automatic for renters. There are five criteria that renters have to meet in order to receive protection. They must fill out a sworn affidavit stating under penalty of perjury that they have lost income due to COVID19 and can't make their rent for this reason, that they have tried to make rent payments in part or in whole, that they have used their best efforts to secure government funding to assist with rent, that if evicted they would likely become homeless, and finally, that they expect to make less than $99,000 ($198,000 for couples) in 2020. Renters need to meet all five criteria to qualify.

It is up to renters to get the affidavit, fill it out and to provide it to their landlord, and landlords are under no obligation to tell renters about the order or the protections it may provide. Renters also need to know that landlords have the legal right to challenge the affidavit in court. In general, if you fill one out and then have a 75-inch television delivered to your apartment without making any attempt to pay your rent, there is a pretty good chance that you'll lose if your landlord chooses to go to court.

Renters need to understand that rental moratoriums are in place to prevent a housing crisis. They are not there to relieve anyone of their financial obligations. The same is true for property owners.

For anyone who is interested in more information on moratoriums currently in place, Nolo has prepared a good summary of state and federal programs, including their expiration dates. You can find it here. It has links to resources for renters, owners and landlords.
by Jim Malmberg
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