BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

CDC ORDERS NATIONWIDE RESIDENTIAL EVICTION HALT

September 2, 2020

By: Jeffrey R. Margolis

Citing its regulatory authority derived from the Public Health Act that allows the CDC Director to "take such measure to prevent such spread of the diseases as he/she deems reasonably necessary" when the Director determines that state measures are insufficient, on September 1, 2020, the Centers for Disease Control (CDC) issued an agency order providing a Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 that seeks to block evictions until year-end 2020 for certain renters impacted by the pandemic. The CDC cites its regulatory authority (42 C.F.R. §70.2 [cmbs.informz.net]) derived from the Public Health Act. Given the unprecedented scope of the executive action, it is likely the order will be challenged in court.

The CDC order was pursuant to an Executive Order issued the same day by President Trump on the subject. Under the order, renters earning less than $99,000 a year ($198,000 for joint filers) may submit a declaration asserting their eligibly to their landlord in order to be protected from eviction. The order applies to all property leased for residential purposes, including single family, multifamily, and mobile homes.

Pursuant to the order, residential landlords cannot evict eligible tenants for nonpayment of rent. Violation of the order carries criminal penalties. Unlike the CARES Act, the property need not be federally related to qualify. The order is effective through December 31, 2020 and applies in all states unless a state has an eviction moratorium in place that provides the same or greater protections, in which case the states eviction moratorium supersedes the federal order.

While the order prevents eviction actions, it does not relieve a tenant from the obligation to pay rent or to comply with any other obligation a tenant has under a lease agreement. In addition, the order does not preclude charging fees, penalties or interest due for failure to pay rent on a timely basis. The order does not dictate a timeframe for repaying past-due rent after expiration of the moratorium.

In order to be eligible, a tenant must provide a declaration form to their landlord attesting to the following:

(1) The tenant has used best efforts to obtain all available government assistance for rent or housing;
(2) The tenant either (a) expects to earn no more than $99,000 a year ($198,000 for joint filers) for 2020, (b) is not required to report any income in 2019, or (c) received a CARES Act Economic Impact Payment;
(3) The tenant 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 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 individual's circumstances may permit, taking into account other nondiscretionary expenses; and
(5) Eviction 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 tenant has no other available housing options.

Related Practices

Real Estate

Related Practice Teams

Business, Finance & Tax

Related Team Member(s)

Jeffrey R. Margolis

Topics

Real Estate

COVID-19

Evictions