



# Fall Outlook for Hoosier Renters: What is the CDC Eviction Moratorium?

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# WELCOME



Jessica Love, Executive Director  
**PROSPERITY INDIANA**

- Founded in 1986 as the Indiana Association for Community Economic Development
- “Prosperity Indiana builds a better future for our communities by providing advocacy, leveraging resources, and engaging an empowered network of members to create inclusive opportunities that build assets and improve lives.”
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Chase Haller,  
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# Fall Outlook for Hoosier Renters: Emerging Housing Issues During the COVID-19 Pandemic

## October 7, 2020

Chase Haller, Staff Attorney  
Director of Housing and Consumer Justice  
Neighborhood Christian Legal Clinic

# Backdrop of a National Eviction Crisis

- ❑ A recent study by the National Council of State Housing Agencies estimates that U.S. renters will owe up to \$34 billion in past due rent by January, 2021
- ❑ The same report estimates up to 150,000 eviction filings in Indiana by January, 2021, with an estimated rent shortfall between \$376M-\$485M
- ❑ An Indianapolis Neighborhood Housing Partnership study revealed that 29,678 renter households, or 22% of all renters in Marion County, are at a heightened risk of eviction given the current economic circumstances (<https://www.inhp.org/wp-content/uploads/2020/06/Estimated-Scale-of-Covid-19-Disruption.pdf>)
- ❑ **Households of color are 38.4% more likely than white households to be at heightened risk of experiencing an impact from eviction.** 28.5% of all Hispanic households are at risk of experiencing an impact due to greater employment in industries experiencing high economic disruptions.

# Overview of the CDC Moratorium

- About the CDC Moratorium
  - ❑ On Sept. 1, 2020 the Centers for Disease Control and Prevention issued an order entitled “**Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19**” – see 85 Fed.Reg. 55292
  - ❑ The Order was made under the authority of the CDC Director pursuant to 42 C.F.R. § 70.2, “to take such measures to prevent the spread of the diseases as he/she deems reasonably necessary.”
  - ❑ The Order took effect September 4, 2020, and effectively created a nationwide eviction moratorium for qualified tenants until December 31, 2020.
  - ❑ **Scope** – this is a **nationwide moratorium** and applies in every U.S. state and territory with reported cases of COVID-19, except in areas where “a moratorium on residential evictions that provides the same or greater level of public health protection than the requirements listed in this Order.” 85 Fed.Reg. at 55294.

# What housing is covered?

- The CDC order prohibits “**any landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action**” from evicting a covered person “**from any residential property**” in a jurisdiction where the Order applies. *See* 85 Fed.Reg. at 55296.
- “Landlord” and “owner” are not further defined.
- “Residential property” is defined to include “**any property leased for residential purposes**” and goes on to specify that the term includes “**any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes.**”
- The definition does “not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant” as defined under state law.

# Which stages of eviction are blocked?

- The Order prohibits a landlord from “evict[ing] a covered person from residential rental property.
- “‘Evict’ and ‘eviction’ means 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.” See 85 Fed.Reg. at 55293. *emphasis added*
- The Order appears to reach all phases of the eviction process, including notices to vacate, filing an eviction action or notice of claim for possession, holding hearings, entering judgments for possession, and enforcing post-judgment possessory orders by execution of a writ.

# Landlord Penalties

- If a landlord disobeys the Order and unlawfully evicts a tenant, they may be fined up to \$100,000, spend a year in jail, or both if a tenant is evicted and contracts COVID-19.
- If a tenant is unlawfully evicted, contracts COVID 19, and dies, a landlord can be fined up to \$250,000, face a year in jail, or both.

# Overview of Tenant Eligibility

- To be a “covered person” under the CDC Order, a tenant must pass a five-part test:
  - ☐ Income eligibility;
  - ☐ Inability to pay full rent;
  - ☐ Tenant sought government rental assistance;
  - ☐ Tenant made best efforts made to make timely partial payments;
  - ☐ Eviction would cause health risks to the tenant because of rooming with others in emergency shelter or with family/friends

# Tenant Eligibility for Protection – 5-part test

- Criteria #1 - Income Eligibility

A tenant must:

1. Expect to have income less than \$99,000 in 2020 as an individual or \$198,000 as joint filers; OR
2. Have received a stimulus check under the CARES Act; OR
3. Not have been required to report income to the IRS in 2019 (i.e. someone who earns less than the amount required to report that income)

# Tenant Eligibility for Protection – 5-part test

- Criteria #2 - Inability to Pay Full Rent

A tenant must be unable to pay full rent due because of:

1. A loss of substantial household income, loss of compensable hours of work or wages, lay-offs; OR
2. Extraordinary medical bills (\*defined as any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year); OR

# Tenant Eligibility for Protection – 5-part test

- Criteria #3 - Have Sought Rental Assistance

A tenant must:

1. Have used best efforts to obtain governmental rent assistance.

\*Note that as of the drafting of this presentation, the Indiana state rental assistance program was closed with all money spent and the Indianapolis rental assistance program had many thousands waitlisted for assistance. **Tenants must apply, if they are able, in order to be able to answer this question truthfully.**

# Tenant Eligibility for Protection – 5-part test

- Criteria #4 - Best efforts to make payments

A tenant must:

1. Make 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

\*Note – if any eviction has been filed, a landlord cannot accept a partial payment or they have to re-file their case. That said, in order to ensure qualification, a tenant should make an effort to make some partial payment to the landlord if they are able. This definition accounts for circumstances where other nondiscretionary expenses take up an entire tenant's budget, leaving them unable to pay rent.

# Tenant Eligibility for Protection – 5-part test

- Criteria #5 - Eviction would cause health risks

A tenant must:

1. Show that being evicted would cause them to become homeless or they would have to move in with a friend or family member due to lack of other available housing options.

\*Note – tenants, particularly those facing an eviction filing, face the difficult choice of saving to move versus spending money on rental applications only to see consistent denials because of having a recent eviction show up on their rental background search

# Tenant Action to Receive Protection

- In order to obtain protection from eviction a tenant must:
  - ☐ Review and attest that they qualify under all five tests;
  - ☐ Each adult listed on the lease, rental agreement, or housing contract should complete the declaration;
  - ☐ Each adult tenant must **sign and submit** the declaration to their landlord, owner of the property, or the person who has the right to have you evicted or removed (i.e. property manager/attorney);
  - ☐ Tenants should use the official form declaration OMB Control No. 0920-1303 found here: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>
  - ☐ \*Note – the declaration can be filed in Court, otherwise a tenant should obtain proof of delivery (certified mail, email read receipt, etc.)

# Required attestation

- “I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment;
- Declarant must certify the truth and correctness of the contents “under penalty for perjury, pursuant to 28 U.S.C. 1746.

# Exceptions to Tenant Protection

- There are Five Exceptions listed in the CDC Order:
- “Nothing in this Order precludes evictions based on a tenant, lessee, or resident”:
  - ☐ (1) Engaging in criminal activity while on the premises;
  - ☐ (2) Threatening the health and safety of other residents;
  - ☐ (3) Damaging or posing an immediate and significant risk of damage to property;
  - ☐ (4) Violating any applicable building code, health ordinance, or similar regulation relating to health and safety;
  - ☐ (5) **Violating 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)**

# Frequently Asked Questions

- Does a tenant have to prove that their financial hardship is related to COVID-19?
  - No, unlike most rental assistance programs, the CDC order does not require the renter's financial hardship to be COVID-19 related.
- What if the tenant is already subject to an eviction order?
  - Unless the eviction is being conducted under one of the Order's exceptions, the Order blocks all phases of the eviction process. Eligible tenants going through an eviction should quickly provide their landlord with a signed declaration and file a motion to stay the execution of the possessory order. Indiana Legal Services and the Neighborhood Christian Legal Clinic can provide these *pro se* forms to tenants.
- Does the moratorium halt payments or late fees?
  - No, the moratorium simply halts eviction activity. All other aspects of the contract remain in full force and effect.

# Emerging Issues

- ☐ **(5) Violating 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)”**
- ☐ Landlords are abusing this “catch-all” provision

# Emerging Issues – nonpayment cases converted to holdover cases

1. Initial filing made in small claims court lists the reason for eviction as:

Indiana at a rent of \$550.00 per month and that on August 01, 2020, this tenancy expired because: NON PAYMENT OF RENT AND ALL OTHER CHARGES. Ever since August 01, 2020, the Plaintiff has been entitled to the possession of this premises. That the Defendant unlawfully hold over and retains possession of these premises from the Plaintiff and owes damages in the amount of TBD.

# Emerging Issues – nonpayment cases converted to holdover cases

1. Tenant then files:

WAYNE TOWNSHIP OF MARION COUNTY  
RENTER'S DECLARATION UNDER PENALTY OF PERJURY FOR THE CENTERS FOR DISEASE  
CONTROL AND PREVENTION'S TEMPORARY HALT IN EVICTIONS TO PREVENT FURTHER  
SPREAD OF COVID-19

# Emerging Issues – nonpayment cases converted to holdover cases

## 1. The Court says:

### **ORDER**

This matter is before the Court on the filing of the CDC Covid-19 Declaration by the Defendant. This makes Defendant a “covered person” under the CDC Order. Accordingly, pursuant to the CDC Order, the eviction is stayed until December 31, 2020; unless Plaintiff presents an alternative basis for an eviction, other than payment of rent. If Plaintiff believes that any part of the Declaration is not factually accurate, he may request a Hearing with the Court to challenge the Declaration.

# Emerging Issues – nonpayment cases converted to holdover cases

1. The landlord amends their notice of claim – oh did I say nonpayment of rent? I meant:

Indiana at a rent of \$550.00 per month and that on or before August 01, 2020, this tenancy expired because: HOLDOVER TENANCY. Ever since on or before August 01, 2020, the Plaintiff has been entitled to the possession of this premises. That the Defendant unlawfully hold over and retains possession of these premises from the Plaintiff and owes damages in the amount of TBD.

# Emerging Issues – nonpayment cases converted to holdover cases

- What is a **holdover tenancy**?
- In most circumstances, a holdover tenancy occurs when a tenant's lease has expired and they remain in the property.
- In some circumstances, the contract states that it automatically renews for a period of time, converts to a month-to-month tenancy subject to termination by written notice, or the tenant may have to vacate the property.

# Emerging Issues – nonpayment cases converted to holdover cases

- What is the problem with this interpretation?
- In a six month period, roughly half of all residential lease agreements would naturally expire according to their terms. If a tenant was in default when their lease expired, their landlord would not choose to renew their lease in nearly every circumstance.
- As a result, if every holdover case in which a lease has expired and the tenant has also gotten behind on rent results in an eviction, roughly half of the people entitled to protection under the CDC order would be subject to eviction over the course of the next 60 days.
- Landlord are then using this phrase to exact their evictions:  
**“Violating any other contractual obligation”**

# Emerging Issues – nonpayment cases converted to holdover cases

- Landlord are then using this phrase to exact their evictions:  
**“Violating any other contractual obligation”**
- Possible counterarguments:
  1. Any action that does not violate the lease or present a risk to the landlord or their property, is protected from eviction under the Order;
  2. A lease nonrenewal notice for a tenant delinquent in rent should raise a presumption that the eviction was filed for nonpayment and is therefore prohibited;
  3. The five enumerated grounds for eviction do not include lease expiration;
  4. If holdover tenancy is not a contractual violation, it is not covered
- We are litigating this issue and working with other legal aid orgs to advance strategies to protect tenants subject to these evictions

# Emerging Issues – nonpayment cases converted to holdover cases

- This next sixty day period is crucial – the health experts have suggested that the fall and winter will be crucial in keeping COVID-19 at bay.
- Tenants continue to await crucial aid, with Indiana's state renter assistance program closed and unfunded and the Indianapolis rental assistance program needing additional funding as well while keeping a waitlist of people in need of assistance.

# Questions?

- The Clinic has an FAQ and Self-help CDC Declaration Form available here:
  1. For Your Legal Information: [COVID-19 Eviction Protection Declaration](#)
  2. Declaration of COVID-19 Eviction Protection ([Fillable PDF](#))
- Indiana Legal Services operates a tenant help desk Thursdays from 10am-12pm at 317-973-1673.
- We are working on additional self-help tools in this area and hope to be able to make a public announcement regarding those efforts soon.
- You can reach me at:
  - [challer@nclegalclinic.org](mailto:challer@nclegalclinic.org)
  - 317-429-4156

# QUESTIONS?

# FEDERAL EVICTION MORATORIUM

## FROM SEPTEMBER 4 - DECEMBER 31, 2020

Ordered by the Centers for Disease Control and Prevention (CDC),  
Department of Health and Human Services (HHS)

### Am I Covered? Five Qualifications:

- You made “best efforts” to obtain government rent assistance;
- You don’t expect to earn more than \$99,000 in 2020 (or \$198,000 if married and filed a joint tax return), or didn’t need to report income to the federal government in 2019, or received an Economic Impact Payment (or “stimulus”) this year;
- You’ve been experiencing a “substantial” loss of household income because of a layoff or reduced work hours, or have “extraordinary” out-of-pocket medical expenses (defined as an unreimbursed medical expense that exceeds 7.5% of your adjusted gross income for the year);
- You’ve been making your best effort to make partial rent payments as close to the full amount due as possible; AND
- Being evicted would cause you to become homeless or you would have to move in with a friend or family member (live “doubled up”).

**To Invoke:** You must provide an executed copy of a Declaration form verifying you meet the qualifications above, or a similar declaration under penalty of perjury to your landlord. Be sure to keep a copy of the declaration for your records. View a [sample declaration](#) here.

### Responsible for Payment Post-Moratorium

- You must pay any back rent or fees and penalties accumulated during the moratorium. The moratorium provides immediate protection to renters, but it does not prevent evictions after 12/31/2020.
- The moratorium does NOT affect eviction cases filed before 9/4/2020.

### Resources



- If you get a Notice to Vacate or Notice that your lease will be terminated, call Indiana Legal Services , 1-844-243-8570
- View the NLIHC's "Overview of the National Eviction Moratorium": <https://tinyurl.com/yyv63pa4>
- View the NLIHC's "FAQ for Renters" including qualifications for renters: <https://tinyurl.com/y6k5ae8h>

Access our Federal Eviction Moratorium Flyer on the COVID-19 Hub or at the following link:

<https://tinyurl.com/yxau5rlb>

# PRESENTATION



Natalie James,  
Coalition Builder, Prosperity Indiana

# Evicted In Indiana

Between 248,000-313,000 Hoosier households are currently at risk of eviction due to COVID-19.

- **Webinar Dates (All are 1-2 PM ET)**

- October 26, 2020
- November 16, 2020
- December 7, 2020

- **Visit for more information:**

<https://housing4hoosiers.org/evicted-in-indiana/>



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