

CDC Eviction Moratorium Vacated and Stayed

Alabama Association of REALTORS®, Georgia Association of REALTORS®, *et al.* v. HHS, *et al.* (U.S. Dist. Ct. D.C., Case No. 1:20-cv-03377-DLF, filed November 20, 2020)

May 6, 2021

NAR has always maintained that the best solution for all parties was rental assistance to cover the rent, taxes, and utility bills for tenants struggling during the pandemic. This prevents two crises—one for tenants, and one for mom-and-pop housing providers who do not have a reprieve from their bills.

With rental assistance secured, the economy strengthening, and unemployment rates falling, there is no need to continue a blanket, nationwide eviction ban. Our focus now is on the swift and full implementation of rental assistance as we aim to regain stability and normalcy in America's housing market.

On May 5, 2021, the U.S. District Court for the District of Columbia [struck down](#) the Center for Disease Control's (CDC's) nationwide eviction moratorium set to expire at the end of June, concluding the moratorium exceeds the limits Congress placed on the CDC's authority.

The Department of Justice (DOJ) [filed a notice of appeal and an emergency stay](#) of the order pending the appeal.

In response, the D.C. District Court has issued a temporary administrative stay. This means the CDC eviction moratorium remains in place across the country pending another hearing on the DOJ's motion.

BACKGROUND:

The Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies filed the lawsuit this past November in defense of the millions of mom and pop housing providers across the country whose livelihoods have been in danger of financial ruin following months of lost income due to unpaid rent as a result of the moratorium. The rental payments go toward the mortgage on the properties, paying for services, taxes, and upkeep to maintain the properties' safety and livability. The lawsuit challenged the lawfulness of the eviction moratorium on a number of statutory and constitutional grounds.¹

In holding for the plaintiffs, the court decisively rejected the CDC's position that it has unlimited authority to regulate the nation's economy during a pandemic. The court held that Congress never granted the CDC such unlimited power and vacated the CDC order nationwide.

Housing providers want to *keep* tenants, not evict them, and hope that the rental assistance provided by Congress will help keep individuals in their homes, while preventing them from continuing to accumulate past due rent. The slow deployment of the rental assistance funding is a serious problem for housing providers that must be addressed in order to avoid instability in the rental housing market.

NEXT STEPS:

- **Housing providers should continue to monitor the case, as the CDC's eviction moratorium remains in effect nationwide based on the D.C. district court's temporary administrative stay.** The D.C. district court will issue a decision in the next two weeks on the DOJ's emergency motion

¹ The plaintiffs challenged how the CDC exceeded its authority under the *Public Health Services Act* and in violation of the *Administrative Procedures Act* and *Regulatory Flexibility Act*; how the Order constituted an unconstitutional taking under the Fifth Amendment, and; how the Order violated due process rights.



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for a stay pending appeal, and the temporary stay will remain in effect until that decision is issued. If the D.C. district court denies the DOJ's stay motion, the DOJ will move for an emergency stay pending appeal in the D.C. Circuit Court of Appeals.

- **Should an emergency stay be issued by the D.C. district court or the D.C. Circuit, it would allow the current moratorium to last until June 30th, as well as cover any extensions issued by the Administration during the pending appeal before the D.C. Circuit. The D.C. Circuit appeal could take several more months to resolve.**
 - It is also possible that the D.C. Circuit Court might stay the order *except with respect to the plaintiffs*, as the DOJ has requested. In that case, the CDC moratorium would remain in effect nationwide, including through any extensions issued by the Administration, except for the plaintiffs in this case.
 - Also remaining in effect during the temporary stay is the [CFPB's interim final rule](#), which requires debt collectors seeking eviction for nonpayment of rent to provide clear and conspicuous written notice to tenants of their rights under the CDC's eviction moratorium.
- **Housing providers should keep in mind that some state and local governments may still have their own eviction moratoria in place that are *not* affected by the D.C. court's rulings.** (See more [here](#).)
 - In addition, some state court systems adopted policies barring or disfavoring the filing of eviction proceedings in light of the CDC eviction moratorium, which may not be automatically lifted if the stay is lifted and the D.C. court's ruling is upheld.

NAR ADVOCACY:

NAR remains focused on ensuring the effective deployment of rental assistance to protect tenants and avoid the ongoing financial burdens unfairly placed on housing providers. NAR continues to work closely with the Administration and a large coalition of industry partners on these efforts so that tenants and housing providers alike can meet their financial obligations and the housing market is stabilized.

Stay tuned to [nar.realtor](https://www.nar.realtor) for the latest information.

ADDITIONAL RESOURCES:

[The U.S. District Court for D.C.'s Decision](#)

[State by State Eviction and Foreclosure Moratoriums](#)

[NAR's Coronavirus Housing Providers FAQs](#)

[Emergency Rental Assistance Program](#)

