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**58 EVICTION MORATORIUMS –  
WHAT WE DO AND DO NOT KNOW**  
Real Property, Probate & Trust Law  
Section by Kasey A. Feltner



## EVICITION MORATORIUMS – WHAT WE DO AND DO NOT KNOW

Real Property, Probate & Trust Law Section

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**I**t should go without saying that within the last nine months we have seen an unprecedented amount of governmental actions to combat the effects of COVID-19. One such action seen across the United States are the eviction “moratoriums” implemented by both federal and state governments. Unfortunately (probably unsurprisingly), these

moratoriums have not been applied in a uniform manner, resulting in mass confusion as to the enforceability and implementation of such actions. This brief article will attempt to delineate: (1) the state of Florida’s implementation of eviction moratoriums; (2) the federal government’s implementation of eviction moratoriums; (3) the

current state of Florida’s implementation of eviction moratoriums; and (4) recommendations on advising clients on eviction moratorium issues.

On April 2, 2020, Florida Governor Ron DeSantis issued Executive Order 20-94<sup>1</sup> (the

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“Moratorium Order”). In the Moratorium Order, Governor DeSantis references the federal government’s implementation of orders to suspend foreclosures and evictions through the Federal Housing Finance Agency and Federal Housing Administration, and that COVID-19 “impacted the ability of many Floridians with residential tenancies to make their rent payments;” and that as a result, “temporary relief to Floridians with residential tenancies [was] in the best interest of the state.”<sup>2</sup> More specifically, the Governor found that “providing targeted, temporary relief to Floridians with residential tenancies is in the best interest of

the state.”<sup>3</sup> Accordingly, the Moratorium Order, under the Governor’s powers pursuant to Article IV, Section (1)(a) of the Florida Constitution and Chapter 252, Florida Statutes, “suspend[ed] and toll[ed] any statute providing for an eviction cause of action under Florida law solely as it relates to non-payment of rent by residential tenants due to the COVID-19 emergency for 45 days from the date of” the Moratorium Order.<sup>4</sup>

As the pandemic continued to affect the health and well-being of the United States, and the rest of the world, the Moratorium Order was extended by Governor DeSantis five times (*see* Executive Orders 2020-121, 2020-137, 2020-159, 2020-180, and 2020-211) with a final expiration date of October 1,

2020 at 12:01 a.m. Subsequent to the Governor’s last Executive Order extending the Moratorium Order, on September 4, 2020, the Center for Disease Control released its own federal agency order implementing an eviction moratorium that remains in effect until December 31, 2020 (the “CDC Order”).<sup>5</sup> Accordingly, on October 1, 2020, Governor DeSantis, citing the CDC Order, allowed the Moratorium Order to lapse and found that the CDC Order controlled.<sup>6</sup>

Similar to the Moratorium Order, the CDC Order temporarily halts residential evictions to prevent the further spread of COVID-19.<sup>7</sup> The CDC Order applies to any

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“landlord, owner of a residential property, or other person [which shall include corporations, companies, associations, firms, partnerships, societies, and joint stock companies] with a legal right to pursue eviction or possessory action.”<sup>8</sup>

While the CDC Order and Moratorium Order have very similar mandates, they differ in application. Mainly, the CDC Order makes clear that “[n]othing in [the CDC] Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or 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; or (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).”<sup>9</sup> Moreover, in order for a tenant to invoke the CDC Order for the non-payment of rent, any and all tenants or renters of the subject premises must submit a sworn declaration which states in part that: (1) the tenant(s) have used all available efforts to obtain government assistance to pay

rent; (2) the tenant meets certain economical earning and tax reporting standards; (3) the renter is unable to pay rent from loss of work; (4) the renter will make all best efforts to make partial rent payments when possible; and (5) eviction would likely lead to the tenant becoming homeless.<sup>10</sup> Therefore, the CDC Order does not preclude a landlord from beginning eviction proceedings for the non-payment of rent; rather, it states that the landlord (or equivalent) may not “evict” the tenant(s) for the non-payment of rent *after* the tenant(s) have supplied the landlord with the sworn CDC Declaration.

Lastly, it is extremely important to note that the application of the Moratorium Order and CDC Order is not uniform across the state of Florida. Rather, it is in the best interest of counsel to gather the following information before advising their clients in connection with any eviction related claims or issues: (1) whether the CDC Order is in effect at the time of the issue/claim arose and, if so, have there been any new Executive Orders issued by the Governor that impact same; (2) whether the Florida Supreme Court has issued any new guidance on evictions and foreclosures;<sup>11</sup> (3) whether the Circuit Court of the applicable county issued any guidance concerning evictions and moratoriums; and (4) whether the County Clerk and/or the sheriff’s

office in the county at issue has agreed to enforce writs of possessions. ■

<sup>1</sup> Fla. Exec. Order No. 2020-94 (Apr. 2, 2020), available at [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-94.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-94.pdf).

<sup>2</sup> *Id.* (emphasis added).

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 FR 55, 292 (Sept 4, 2020).

<sup>6</sup> Caroline Glenn, *DeSantis lets eviction moratorium expire, saying it’s no longer needed after CDC issued freeze*, Orlando Sentinel (Sept. 30, 2020), <https://www.orlandosentinel.com/business/os-ne-florida-eviction-order-expires-20200930-h5qwtxo7qzb5tj4tae3vzbzslze-story.html>.

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (noting that “[n]othing in [the CDC] Order precludes the charging or collecting of 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>10</sup> *Id.* The Declaration form for the CDC Order can be found at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

<sup>11</sup> See Fla. Supreme Ct. Admin. Order AOSC20-23 (May 4, 2020), *amended* Oct. 2, 2020.

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