Webinar Information

- All participants lines are muted.
- Use the questions feature in the GoToWebinar control panel to submit questions.
- This webinar will be posted to Ohio BoSoCoC's website.
- This webinar is being recorded.

Ohio Balance of State Continuum of Care

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Agenda

• CDC Eviction Moratorium
• Homelessness Prevention Program Overview
• Homelessness Prevention Program Eligibility During the Moratorium
• Permanent Housing Programs and Impact of the Moratorium

CDC Eviction Moratorium

• Source of Authority:
  • 42 U.S.C. 264 Section 36(C)
  • 42 CFR 70.2
• Effective:
  • 9/4/20-12/31/20

CDC Eviction Moratorium: Background

• Preventing spread of COVID-19 requires quarantine, isolation, and social distancing
• Housing stability helps protect public health
• Housing as a vaccine
**CDC Eviction Moratorium: Intent**

- Mitigate spread of COVID-19 within shared or congregate living settings or among unsheltered homeless
- Prevent spread across state lines

**CDC Eviction Moratorium: Applicability**

- States can have greater protections (like MA)
  - In states with greater protections, the CDC moratorium doesn't apply
  - For all other states (including OH): CDC Moratorium applies

**CDC Eviction Moratorium: Purpose**

- To stop evictions
  - Main purpose is to stop evictions for nonpayment of rent against people who are experiencing financial difficulties
  - Landlords can still evict for other reasons
    - 5 specific examples given where landlords can still evict:
      1. For criminal activity
      2. If the tenant threatens health or safety of others
      3. If the tenant damages or poses risk of significant damage
      4. If the tenant violates building codes regarding health and safety
      5. For violating other significant lease obligations, not including nonpayment

**Other Reasons for Eviction**

- Non-renewal?
- No-cause?
- Other reasons?
Rent

- Rent continues to accrue
- May also charge late fees and other charges

Definitions

Covered Person

- A tenant who provides declaration to landlord
- Lessee
- May be any adult on lease or in household
- Other adult members in household should all sign a declaration

Evict or Eviction

Any action by a landlord to remove or cause to remove a covered person from the property (does not include foreclosures)
- 3-day notice?
- File Forcible Entry & Detainer (FED)?
- Set out
- But see recent CDC FAQ, DOJ brief, and joint dismissal of Columbus case

Recent CDC FAQ

- Non-binding guidance document issued by the CDC
- States that the CDC Order:
  - Defines "eviction" as "any action by a landlord . . . To remove or cause the removal of a covered person."
  - But then, states that the Order "is not intended to prevent eviction proceedings, provided that the actual eviction (physical removal) of a covered person for nonpayment of rent does NOT take place during the period of the Order."
  - So not any action, then? Or at least, not the plain meaning of any action
  - "does not preclude a landlord from challenging the truthfulness of a tenant’s declaration in any state or municipal court."
  - Landlords are not obligated to inform tenants about the CDC Order
- Directs tenants to HUD’s website, CSBG’s website, and community action partnership website for government rental assistance
- Will tenants have to show that they followed up with these specific resources?
DOJ Brief

- From the DOJ brief in *Brown v. Azar* case in GA
- "Order does not prevent a landlord from filing an eviction action in state court."
- "Order does not prohibit a landlord from attempting to demonstrate that a tenant has wrongly claimed [the Order’s] protections."
- "Even where a tenant is entitled to its protections, the Order does not bar a landlord from commencing a state court eviction proceeding…"
- After this brief was filed, Columbus case was jointly dismissed
  - LL wanted right to continue eviction proceedings and cross examination

Declaration Statements

Tenant swears, under penalty of perjury, that they:

1. Are making **best efforts** to obtain all government assistance available for rent or housing
2. Earn less than $99,000/yr for an individual ($198,000 for a married couple), OR didn’t have to file tax return in 2019, OR received a stimulus check
3. Are unable to make full payment because of lost wages or medical expenses (medical expenses greater than 7.5% of average gross income)
4. Are making **best efforts** to pay as much as can to landlord towards rent
5. If evicted, would be homeless or forced to double up

Declaration Example

- Electronic version available at [OhioLegalHelp.org](http://OhioLegalHelp.org)
  - Great resource for renters with questions related to evictions
- One-time submission
  - But if circumstances change, may want to resubmit
- Check with local courts if they have a preferred version
- Return this to LL and LL’s attorney
  - If you have an eviction notice, also provide it for the court

"Best Efforts"

- What does it mean?
- Can landlords challenge it?
  - YES, per CDC and DOJ
  - NO, per Legal Aid Lawyers and Tenant Advocates
Criminal Penalties

- For landlord’s failure to comply:
  - Fine of $100,000, 1 year in jail or both if no death
  - Fine of $250,000, 1 year in jail or both if death occurs
  - Fine of $200,000 if landlord is organization

Legal Challenges

- Columbus, OH: KBW Investment Properties v. Azar
  - Voluntarily dismissed by LL and DOJ 10/9/20, after TRO denied
    - Citing (as DOJ representing CDC) in the GA stated that the order “does not prevent a landlord from filing an eviction action in state court” and also stipulated LL can have evidentiary hearings on veracity of declaration form.
  - Georgia: Brown v. Azar
    - LL arguing moratorium should be struck down because:
      - CDC exceeded its authority
      - Unlawful denial of access to court to evict delinquent tenant
      - Unconstitutional
      - Unlawful suspension of law
    - Still active; motion for preliminary injunction not yet ruled on

- Georgia:
  - Brown v. Azar
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      - Unconstitutional
      - Unlawful suspension of law
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- TN: Tiger Lily LLC v. HUD
  - LL arguing moratorium should be struck down for the same reasons as GA case
  - Expect legal challenges to CDC FAQ and DOJ position

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Homelessness Prevention Programs

- HP programs provide housing stabilization services and short/medium-term rental assistance, as necessary, to prevent entry into literal homelessness
Homelessness Prevention Programs

• Eligibility
  • Annual household income is less than 30% or 50% AMI
  • At-risk of homelessness

• Imminently Losing Housing (aka: imminently at-risk or Category 2 of Homeless Definition)
  1. The primary nighttime residence will be lost within 14 days of the date of application for assistance, AND
  2. No subsequent residence has been identified, AND
  3. The household lacks the resources or support networks needed to obtain other permanent housing

Homelessness Prevention Programs

• At-Risk of Homelessness
  1. Does not have sufficient resources or support networks immediately available to prevent them from moving into an emergency shelter or to become unsheltered, AND
  2. Meets one of the following conditions:
     1. Has moved b/c of economic reasons 2 or more times during the 60 days immediately preceding application for HP assistance
     2. Is living in the home of another b/c of economic hardship
     3. Has been notified in writing that their right to occupy their current housing or living situation will terminated within 21 days of the date of application for assistance
     4. Lives in a hotel and the cost is not by paid by a charitable org, or by local government programs for low-income individuals
     5. Lives in an SRO or efficiency unit in which there reside more than 2 persons, or lives in a larger housing unit in which reside more than 1.5 people per room, as defined by the US Census Bureau
     6. Is exiting a publicly funded institution or system of care

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**HP Eligibility During CDC Eviction Moratorium**

- Are households eligible for HP assistance during the CDC Moratorium?
  - **MAYBE**
    - Is household eligible to invoke the CDC order?
      - By eligible, we mean they can truthfully respond ‘yes’ to all 5 statements in the CDC eviction moratorium and are the leaseholder (i.e., they are a ‘covered person’).
      - Has the household provided the Declaration form to their landlord, and what is the status?
      - Does the landlord evict the tenant and what is the status?
      - Does household meet ‘imminently losing housing’ or ‘at risk of homelessness’ definition?
      - Is household income eligible for HP?

- Likely yes, in the following situations:
  - Household is doubled up with another household and unable to remain there. Income eligible, meets threshold score on Ohio BoSCoC HP Targeting Tool.
  - Household submitted the CDC Eviction Moratorium Declaration form but local court permitted eviction to proceed and household must be out of the unit within 21 days. Income eligible, meets threshold score on Ohio BoSCoC HP Targeting Tool.

- Likely no, in the following situations:
  - Household has invoked the order, is not being evicted while order is in effect or do not have to leave the unit until Jan. 1st, but has back rent accruing.

- No documentation requirements related to screening for CDC eviction moratorium eligibility.
HP Assistance and the CDC Moratorium

- Assisting households during the CDC moratorium
  
  • Scenario #1
    - Household is the leaseholder, seems eligible to invoke CDC Moratorium but hasn’t done so, and landlord has threatened eviction for non-payment of rent
  
  • Considerations and Possible Actions
    - Screen for eligibility for CDC eviction moratorium
    - Consider status of CDC eviction moratoriums in your city/county – has the court been supporting tenants or landlords when the Order is invoked?
    - Assist with Declaration form and provide to landlord
    - Provide contact info for CE Access Point in case needed later

- Scenario #2
  - Household is leaseholder, seems eligible to invoke CDC Moratorium, but hasn’t done so, local housing court has not been allowing evictions to proceed during moratorium, and landlord has provided written notice that the tenant will not be allowed to remain in the unit after the end of the month, which is within 21 days
  
  • Considerations and Possible Actions
    - Screen for eligibility for CDC eviction moratorium
    - Consider status of CDC eviction moratoriums in your city/county
    - Assist with Declaration form and provide to landlord
    - If landlord unwilling to abide by moratorium, consider enrolling in HP program if all other eligibility criteria met

- Scenario #3
  - Household is not the leaseholder and is living with another household, has been told by leaseholder that they have to leave the unit by the end of the month which is 14 days away
  
  • Considerations and Possible Actions
    - Screen for HP eligibility and consider enrolling in HP program if all criteria met

- Scenario #4
  - Household is leaseholder, landlord initiated an eviction that court has supported, but household does not have to physically leave the unit until Jan. 1, 2021
  
  • Considerations and Possible Actions
    - Screen for HP eligibility and consider enrolling in HP program if all criteria met
    - Actual enrollment may need to happen in December (to meet 21 days)
    - Consider asking if eviction could be canceled/revoked if HP project assisted with rental arrearages and/or next month’s rent
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**Permanent Housing Programs**

- Rapid Re-Housing programs provide time-limited rental assistance and services to help households move into and stabilize in permanent housing.
- Permanent Supportive Housing (PSH) programs provide affordable, non-time limited housing with intensive services to assist disabled households experiencing homelessness to move into and stabilize in permanent housing.

**Permanent Housing Programs and the CDC Moratorium**

- RRH and PSH landlords should not be evicting clients based on non-payment of rent

**Questions?**