

SUPREME COURT ALLOWS EVICTION MORATORIUM TO RUN ITS COURSE

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U.S. Litigation and Dispute Resolution Alert

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On 29 June 2021, the Court by a 5-4 vote, denied an emergency request by a group of rental property managers and trade associations to lift the stay imposed by the D.C. Circuit regarding the constitutionality of the Centers for Disease Control and Prevention's (CDC) federal eviction moratorium. (CDC Order). By denying the request, the Supreme Court is leaving the CDC Order in place through its 31 July 2021 expiration.

Justice Kavanaugh, in a concurring opinion, confirmed that while he believed the CDC exceeded its authority, voted to allow the program to expire on its own "because those few weeks will allow for additional and more orderly distribution" of the funds that Congress appropriated to provide rental assistance to those in need due to the pandemic. This ruling means the almost-certain end of the eviction moratorium. With restrictions set to expire, states are scrambling to establish programs to utilize more than US\$21.5 billion in Emergency Rental Assistance Funds (ERA). Absent state or local restrictions, tenants and landlords should be prepared for evictions to begin on 1 August 2021, while continuing to closely monitor federal, state, and local guidance.

CDC EVICTION MORATORIUM

This eviction moratorium began as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹ signed into law in March 2020 as a 120-day eviction moratorium for rental properties that are part of federal assistance programs or are subject to federally backed loans. Some, but not all, states adopted their own temporary eviction moratoria as well. The CARES Act eviction moratorium expired in July 2020. The CDC then imposed its own eviction moratorium halting residential evictions.² Congress temporarily extended the CDC order once, and then the CDC extended it several more times to 30 June 2021.³

With the looming 30 June 2021 expiration, and strong pushes from federal and state lawmakers to maintain the eviction moratorium, the CDC extended the nationwide eviction moratorium (CDC Order) through July 2021.⁴ The most recent CDC Order made clear that "this Order further extends the prior Eviction Moratoria for what *is currently intended to be a final 30-day period*, until 31 July 2021."⁵ President Biden supported the extension for one "final" month.⁶

ALABAMA ASSOCIATION OF REALTORS

Landlords and realtors challenged the CDC Order throughout the country, including, most notably in a case brought by a group of rental property managers and trade associations in the D.C. District Court claiming that the CDC exceeded its authority in issuing the eviction moratorium.

As detailed in recent alerts ([here](#) and [here](#)), plaintiffs – rental property managers and trade associations - challenged the lawfulness of the CDC Order on statutory and constitutional grounds, asserting that in issuing the eviction moratorium, the CDC exceeded its statutory authority.

Joining the majority of courts addressing this issue, the District Court ruled that “the plain language of the Public Health Service Act (PSHA) unambiguously forecloses the nationwide eviction moratorium,” and ruled that the PSHA did not grant the CDC the legal authority to impose a nationwide eviction moratorium.⁷ The Court stayed its order pending appeal. On 2 June 2021, the D.C. Circuit preserved the stay finding that the government made a sufficient showing that it is likely to succeed on the merits.⁸ Plaintiffs petitioned the U.S. Supreme Court to lift the stay imposed by the District Court.⁹ Attorneys General for 22 states filed an amici brief with the Supreme Court urging the Court to uphold the moratorium.

SUPREME COURT DECISION

Chief Justice Roberts referred the case to the entire Court for review. The Court ruled 5-4 denying the landlords and realtors request to lift the stay. The Chief Justice, along with Justices Kavanaugh, Breyer, Sotomayor, and Kagan sided against the application to vacate the stay, while Justices Thomas, Alito, Gorsuch and Barrett voted to grant the application lifting the stay thus ending the eviction moratorium.¹⁰ In a short concurrence, Justice Kavanaugh “agree[d] with the District Court and the applicants that the [CDC] exceeded its existing statutory authority by issuing a nationwide eviction moratorium[,]” but voted to deny the application to lift the stay in light of the final extension of the moratorium. Justice Kavanaugh reasoned that denying this application will provide those affected by the moratorium with additional time and allow for a “more orderly distribution of the congressionally appropriated rental assistance funds.”¹¹ Justice Kavanaugh expressed his view that the CDC will need “clear and specific” congressional authorization if they attempt to extend the moratorium past 31 July 2021.¹²

NEXT STEPS

Although the Supreme Court did not provide immediate relief, landlords generally view the decision and Justice Kavanaugh's concurrence as a victory by acknowledging an overstep by the CDC. In the short term, federal, state, and local governments will have the next few weeks to appropriate rental assistance funds to those in need before the moratorium expires.

The Biden Administration has also proposed actions to stabilize homeownership and the housing market. These actions include providing guidance, allocating, and accelerating the delivery of resources for more than US\$21.5 billion in ERA funds; urging state and local courts to participate in eviction diversion efforts; and convening a White House summit for immediate eviction prevention plans.¹³ Landlords, tenants, and servicers should monitor the rapidly changing state level requirements and guidelines to ensure compliance.

FOOTNOTES

¹ Pub. L. No. 116-136, § 134 Stat. 281 (2020).

² 85 Fed. Reg. 55,292 (Sept. 4, 2020).

³ *Id.*

⁴ Rochelle P. Walensky, CDC, [Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19](#) (June 24, 2021).

⁵ *Id.*

⁶ Press Release, White House, ["FACT SHEET: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures."](#) (June 24, 2021). available at

⁷ Memorandum and Order on Plaintiffs' Motion for Expedited Summary Judgment, Defendants' Motion for Summary Judgment and Partial Motion to Dismiss, Ala. Ass'n of Realtors v. U.S. Dep't of Health & Human Serv., 1:20-cv-03377 (D.D.C. May 5, 2021).

⁸ Order, Ala. Ass'n of Realtors v. U.S. Dep't of Health & Human Serv., No. 21-5093 (D.C. Cir. June 2, 2021).

⁹ Application (20A169) to vacate stay, Ala. Ass'n of Realtors v. U.S. Dep't of Health & Human Serv., No. 20A-____ (U.S. June 3, 2021).

¹⁰ Ala. Ass'n of Realtors v. U.S. Dep't of Health & Human Serv., 594 U.S. ____ (June 29, 2021).

¹¹ *Id.*

¹² *Id.*

¹³ Press Release, White House, ["FACT SHEET: Biden-Harris Administration Announces Initiatives to Promote Housing Stability By Supporting Vulnerable Tenants and Preventing Foreclosures."](#) (June 24, 2021).

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