

Dear Judges & Clerks,

As many of you may have heard, the Centers for Disease Control has issued an “agency order” under 42 U.C.S § 264 and 42 C.F.R. § 70.2 imposing a moratorium on evictions. The order may be found at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf>. It is scheduled to be published in the Federal Register on September 4, 2020.

42 U.S.C §264 authorizes the Surgeon General, with the approval of the Secretary of HHS, to issue and enforce regulations “as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.” 42 C.F.R. § 70.2 provides that “Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.”

The moratorium on evictions under the agency order extends until December 31, 2020. In relevant part, the order provides that to be eligible a renter(s) must establish:

- They are making best efforts to obtain any and all forms of government rental assistance.
- They are not expected to earn more than \$99,000 in 2020, or \$198,000 if married and filing a joint tax return, or they did not need to report any income to the federal government in 2019, or they received a stimulus check earlier this year.
- They are experiencing a substantial loss of household income, a layoff, or extraordinary out-of-pocket medical expenses (defined as exceeding 7.5% of adjusted gross income this year).
- They are making best efforts to make timely partial payments that are as close to the full amount due as circumstances may permit, taking into account other nondiscretionary expenses.
- An eviction would likely lead to either homelessness, having to move to a place that is more expensive, or being placed in environments making transmission of COVID-19 more likely, *e.g.*, shelters or other close quarter environment.

The order has a specific form that renters should fill out and file with the landlord or other covered party to get relief. The order does not extend to foreclosures on home mortgages. It does not prevent evictions on other grounds. It does not relieve the renter of future obligations to pay rent in full. There are substantial criminal penalties for non-compliance, enforceable by the USDOJ in federal court. *See*, 18 U.S.C. § 3231 (“The district courts of the United States shall

have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.”).

Sincerely,

Karl R. Hade  
Executive Secretary  
Supreme Court of Virginia  
804-786-6455