

CDC Extends Eviction Moratorium Until June 30, 2021
(March 29, 2021)

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On March 28, 2021, the CDC director, Rochelle P. Walensky, issued an Order extending the temporary halt in residential evictions to June 30, 2021.

On September 4, 2020, the CDC issued its initial Order temporarily halting evictions. That Order was set to expire December 31, 2020. Through the Consolidated Appropriations Act, 2021, Congress extended the Order until January 31, 2021. On January 29, 2021, the CDC director renewed the Order until March 31, 2021. This Order further extends and modifies the prior eviction moratorium until June 30, 2021.

Although the main take away from the extended and modified Order is that the CDC Order and all its trappings will continue at least through June 30, 2021, the Order provides some glimpse into what the CDC is thinking with respect to the eviction moratorium.

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There has been an eviction moratorium for several months, is it still necessary to extend the Order further?

In the Order, the CDC says...

- Although transmission has decreased since a peak in January 2021, the current number of cases per day remains almost twice as high as the initial peak in April 2020 and transmission rates are similar to the second peak in July 2020.
- Although transmission levels have decreased since January, between February 25 and March 25, 2021, the daily incidence of COVID-19 remained comparable to the summer peak of transmission in July 2020, which is higher than the daily incidence when the Order initially took effect in September 2020.
- Two-dose COVID-19 vaccination became available in December 2020 and as of March 27, 2021 over 50 million people in the U.S. have been fully immunized. CDC continues to update guidance for COVID-19 precautions among individuals who have been fully vaccinated; however, currently there are no recommended changes to COVID-19 prevention recommendations related to activities in public, such as avoiding crowded and poorly ventilated places. It is important to note that despite high rates of vaccine coverage, the simultaneous roll-back of community mitigation efforts may continue to expose vulnerable populations.
- In recent months, new variants of the disease have also emerged globally. The current substantial levels of transmission and the emergence of variants highlight the persistent and dynamic nature of the pandemic and the need for continued protections.

- Ten months after the initial wave of closures due to COVID-19, over 16% of the hospitality and leisure sector’s labor force was unemployed. The persistent spread of COVID-19 continues to necessitate preventive action.
- Eviction threatens to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing setting with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase.

My CDC declaration states that it expires March 31, 2021. Is it extended by this Order?

Yes. A signed declaration submitted under a previous order remains valid notwithstanding the issuance of this extended and modified Order, and covered persons do not need to submit a new declaration under this Order.

Can I evict someone who is holding over?

The CDC Order does not address “holding over” beyond the end of a lease term. However, this CDC Order does state that, while the Order does not prohibit evictions for engaging in criminal activity, covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state-law offense) where the underlying activity is a covered person remaining in a residential property despite nonpayment of rent.

A person that is holding over after the expiration of a lease is not considered to be a trespasser in Texas. The eviction process is a civil process, not a criminal process. However, to the extent that an argument can be made that the term “criminal trespass” in the Order equates to a resident holding over beyond the end of the rental term, you may see this as an argument in a hold over eviction case.

Can I require that all adults listed on the lease sign or submit a CDC declaration in order for the CDC declaration to be valid?

Generally, yes, but circumstances may dictate otherwise. The declaration form continues to state that each adult listed on the lease should complete the declaration. However, the Order states that, in some circumstances, it may be appropriate for one member of the residence to provide an executed declaration on behalf of the other adult residents who are party to the lease.

Will this Order be extended further?

The Order states that it is effective on April 1, 2021 and will remain in effect through June 30, 2021, subject to revision based on the changing public health landscape.

The Order states that this 90-day extension will allow the assessment of natural changes to COVID-19 incidences, the influences of new variants, and the expansion of COVID-19 vaccine coverage to determine if there is a continued need for a national eviction moratorium.

Consequently, the CDC has left open the possibility that further extensions may be appropriate.

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It should be noted that two federal district courts have declared the CDC Order to be unconstitutional. Those cases have been appealed. With any new order from a governmental agency, the Order is subject to interpretation and further court determinations. As always, keep informed!