

# Frequently Asked Questions: Late-Pandemic Eviction Protections

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This FAQ is a follow up to NCLER's training, Preventing Eviction During the Ongoing Covid-19 Crisis and Beyond. The [webcast recording](#) and [slides](#) have more information.

## What eviction protections are still in effect for tenants unable to pay full rent during the pandemic?

The CDC eviction halt order has been extended through March 31, 2021, and could be further extended. The CDC protects tenants from eviction if they present a signed declaration to their landlords meeting five essential criteria:

- They have used best efforts to obtain all available government assistance for housing;
- They meet an income limit (\$99,000 in 2021 income (\$198,000 if married & filing jointly); or received a federal stimulus check; or are not required to report income to the IRS in 2020;
- Are unable to pay full rent due to substantial loss of household income or extraordinary medical expenses;
- Are making best efforts to pay partial rent (as close to full as circumstances permit); and
- Would likely to become homeless or live in “close quarters” if evicted.

The CDC has a declaration form available for this purpose.

In addition to the CDC eviction halt order, the federal CARES Act requires landlords of any “covered dwelling” to give 30 days’ notice in writing before commencing an eviction lawsuit; covered dwellings include those with federally-backed mortgages or that participate in federal housing programs such as Housing Choice Vouchers, Low-Income Housing Tax Credits, or Rural Development housing. Some cities and states have their own local eviction protections as well.

Pandemic-era evictions protections are incredibly complicated and change frequently. Rather than trying to determine whether protection is available on their own, tenants unable to pay rent should contact their local legal aid programs to seek legal assistance.

## By the time my client found out about the CDC eviction halt order, their landlord had already taken them to court for eviction. Is it too late to assert the protection?

There is no deadline to give the CDC declaration to a landlord. As long as some step remains for a landlord to complete in the eviction process, a tenant can present the CDC declaration to prevent being evicted.

## **Are there government programs where individuals can apply for financial assistance for their delinquent rent?**

Yes. At the end of 2020, Congress appropriated \$25 billion in rent relief funds. These will be distributed through Emergency Rental Assistance Programs with state, local, and tribal governments and agencies. The funds can cover up to 12 months of rent arrears and up to three months of future rent. To qualify, an applicant must have income below 80% of the area median, have had an income loss or financial hardship related to Covid-19, and be at risk of homelessness or housing instability. Local program requirements and application processes may vary.

## **My client is delinquent in rent but their income has stabilized and they would like to keep their current housing. What should they be concerned about in negotiating a payment plan with their landlord?**

Ideally, the landlord will enter into a new lease with the tenant and establish a separate payment plan on the arrearage—this way, if they wind up missing a payment on the arrearage, it's not grounds for eviction. They will also want the landlord to agree to cooperate with any application the tenant makes for rental relief funds. The landlord should also agree to report the tenant's tenancy account (to credit reporting agencies) as current so long as they keep up with the payments, as this is required by federal law. An additional term to ask for is having the ability to adjust the amount of the payment in case the tenant's income is reduced.

Some terms to avoid in a payment plan include: (i) including late fees, interest, attorney fees, or other charges besides just rent in the plan, (ii) waiving any legal notices or rights as part of the plan, or (iii) making a default on the payment plan grounds for eviction—even if the tenant continues paying the rent on time (note that a landlord may want to apply any money the tenant pays to the plan first—this has the same effect because if funds are applied to the payment plan first, then the tenant would wind up delinquent in rent if they didn't pay enough to cover both amounts).

## **When my client lost their job during the pandemic, they turned to every source of credit they could find to keep their housing and meet their basic needs. They were able to avoid eviction, but now they owe thousands of dollars in credit card debt and payday loans. They are back to work now and make enough to cover their basic needs, but they don't know how they will ever pay off these debts—the interest is accumulating faster than they can pay them.**

Some people may need to consider filing bankruptcy petitions to reorganize or liquidate debts incurred during the pandemic. People who make enough to meet their ongoing living expenses but not to pay down debts tend to be good candidates for bankruptcy.

After the first wave of COVID-19 shutdowns, my client lost their job—and soon fell behind on rent. They were evicted during the summer of 2020, and haven't been able to find steady housing since then. They still owe money to their former landlord and having an eviction record doesn't help. They have steady employment again now but every place they apply either turns them down or tells them not to even bother paying the application fee. What can I do to help them obtain housing?

Unfortunately, landlord-tenant debts and eviction records have long posed serious barriers to rental admission and this remains true during the pandemic. Some states have procedures that enable tenants to seal or expunge eviction records, however, and some have even adopted tenant-screening rules that protect applicants against being denied housing due to COVID-19-related evictions or negative rental history. These rules are complicated and tenants struggling to secure rental housing should contact their local legal aid programs for assistance. It's also important to keep records and documents related to housing applications and rejections, contacts with tenant-screening companies, and other materials related to a housing search. Persons struggling to obtain housing because of COVID-19-related debts and eviction records may also consider sharing their stories with elected officials and policy advocates, as additional cities and states may adopt protections for housing seekers.

## Are Assisted Living Facilities covered by the CDC eviction moratorium?

The CDC Order states that “a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.”

The first question is whether an ALF is a residential property. The Order defines a “residential property” as: any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

While an “assisted living facility” is neither explicitly included nor excluded from the list of property types constituting a “residential property” under the Order, the Order seems to be distinguishing between temporary dwellings and more permanent forms of housing. The term “assisted living facility” is used to describe a range of facilities that provide both housing and personal care. However, that housing is ongoing and creates a tenancy. ALF's can include board and care homes, as well as larger facilities. It may be helpful to look at the definition of an ALF under your state's law to see if it is considered a residential property, and whether it is covered under your state's residential eviction laws. This would bolster your argument that the CDC eviction moratorium applies. Of course, all of the other requirements under the CDC eviction moratorium must be met.

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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