

CDC Eviction Moratorium Vacated and Stayed

Alabama Association of REALTORS®, Georgia Association of REALTORS®, *et al.* v. HHS, *et al.* (U.S. Dist. Ct. D.C., Case No. 1:20-cv-03377-DLF, filed November 20, 2020)

June 4, 2021

NAR has always maintained that the best solution for all parties was rental assistance to cover the rent, taxes, and utility bills for tenants struggling during the pandemic. This prevents two crises—one for tenants, and one for mom-and-pop housing providers who do not have a reprieve from their bills.

With rental assistance secured, the economy strengthening, and unemployment rates falling, there is no need to continue a blanket, nationwide eviction ban. Our focus now is on the swift and full implementation of rental assistance as we aim to regain stability and normalcy in America's housing market.

On May 5, 2021, the U.S. District Court for the District of Columbia [struck down](#) the Center for Disease Control's (CDC's) nationwide eviction moratorium set to expire at the end of June, concluding the moratorium exceeds the limits Congress placed on the CDC's authority. In response, the Department of Justice (DOJ) [filed a notice of appeal and a request for an emergency stay](#) of the order pending the appeal, which the District Court granted temporarily while considering the basis for an emergency stay. On May 14, 2021, the D.C. District Court granted the emergency stay, which the plaintiffs sought to vacate by the D.C. Circuit Court.

On June 2, 2021, the [emergency stay was upheld by the D.C. Circuit Court](#), meaning the CDC eviction moratorium remains in place nationwide. As a result, plaintiffs have filed an [application with the Supreme Court](#) to vacate the stay before the CDC order expires at the end of June.

BACKGROUND:

The Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies filed the lawsuit this past November in defense of the millions of mom and pop housing providers across the country whose livelihoods have been in danger of financial ruin following months of lost income due to unpaid rent as a result of the moratorium. The rental payments go toward the mortgage on the properties, paying for services, taxes, and upkeep to maintain the properties' safety and livability. The lawsuit challenged the lawfulness of the eviction moratorium on a number of statutory and constitutional grounds.¹

In holding for the plaintiffs, the D.C. District Court decisively rejected the CDC's position that it has unlimited authority to regulate the nation's economy during a pandemic. The court held that Congress never granted the CDC such unlimited power and vacated the CDC order nationwide.

Housing providers want to *keep* tenants, not evict them, and hope that the rental assistance provided by Congress will help keep individuals in their homes, while preventing them from continuing to accumulate past due rent. The slow deployment of the rental assistance funding is a serious problem for housing providers that must be addressed in order to avoid instability in the rental housing market.

¹ The plaintiffs challenged how the CDC exceeded its authority under the *Public Health Services Act* and in violation of the *Administrative Procedures Act* and *Regulatory Flexibility Act*; how the Order constituted an unconstitutional taking under the Fifth Amendment, and; how the Order violated due process rights.



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NEXT STEPS:

- **Housing providers should continue to monitor the case, as the CDC's eviction moratorium remains in effect nationwide through its expiration on June 30th, or any further extensions, pending consideration by the Supreme Court.**
 - The Supreme Court is expected to rule on the Plaintiff's request to vacate the order within weeks.
- **The government's appeal on the merits of the D.C. District Court's order vacating the eviction moratorium could take several more months to resolve.**
 - Note that the [CFPB's interim final rule](#) remains in effect, which requires debt collectors seeking eviction for nonpayment of rent to provide clear and conspicuous written notice to tenants of their rights under the CDC's eviction moratorium.
- **Housing providers should keep in mind that some state and local governments may still have their own eviction moratoria in place that may still be in effect.** (See more [here](#).)
 - In addition, some state court systems adopted policies barring or disfavoring the filing of eviction proceedings in light of the CDC eviction moratorium, which may not be automatically lifted if the Supreme Court vacates the stay of the D.C. Circuit Court's ruling.

NAR ADVOCACY:

NAR remains focused on ensuring the effective deployment of rental assistance to protect tenants and avoid the ongoing financial burdens unfairly placed on housing providers. NAR continues to work closely with the Administration and a large coalition of industry partners on these efforts so that tenants and housing providers alike can meet their financial obligations and the housing market is stabilized.

Stay tuned to nar.realtor for the latest information.

ADDITIONAL RESOURCES:

[June 2, 2021 – The D.C. Circuit Court's Order Denying the Motion to Vacate the Stay Pending Appeal](#)

[May 14, 2021 - The U.S. District Court for D.C.'s Order Granting the Emergency Motion for a Stay Pending Appeal](#)

[May 5, 2021 - The U.S. District Court for D.C.'s Decision Vacating the CDC Eviction Moratorium](#)

[State by State Eviction and Foreclosure Moratoriums](#)

[NAR's Coronavirus Housing Providers FAQs](#)

[Emergency Rental Assistance Program](#)

