



Arkansas housing, real estate advocates sort out details of Trump administration's surprise eviction ban

by DAILY RECORD STAFF

Thousands of Arkansan homeowners and renters breathed a sigh of relief after President Donald Trump temporarily halted evictions through the end of 2020. However, questions still remain on what lies ahead as housing advocates, legal experts and critics of the recent executive order sort out the details of the federal mandate.

On Sept. 1, just ahead of the long Labor Day holiday, Trump announced that he would exercise his executive authority and request the U.S. Disease Control and Prevention (CDC) to temporarily halt evictions nationwide through the end of 2020.

"The intent of this order is to use federal authority to prevent evictions that could exacerbate the spread of COVID-19," Trump said in a statement. "It is essential during the pandemic that Americans have an effective place to quarantine, isolate, and social distance, and evicting people from residences undermines that objective."

As news of the executive order began to hit the ground in Arkansas after Labor Day, there was still plenty of confusion and angst concerning the executive memo that went into effect on Friday (Sept. 4) and applies to all tenants who meet certain requirements and present a COVID-19 declaration to their landlords.

Under the earlier Coronavirus Aid, Relief and Economic Security (CARES) Act signed by President Trump on March 17, a 120-day moratorium was placed on tenant eviction filings and late fees for much of the nation's affordable housing stock, including federal Housing and Urban Development and Low-Income Housing Tax Credit properties. That limited eviction ban expired on July 25.

Under the CDC Order, any renters who meet certain conditions cannot be evicted if they have affirmatively exhausted their best efforts to pay rent, sought government rental assistance, and are likely to become homeless due to eviction. In late August, HUD, the Federal Housing Finance Agency, Freddie Mac and Fannie Mae also announced they would extend their eviction and foreclosure moratoriums for most American homeowners through the end of the year.

At the Center for Legal Services Center (CALs) in Little Rock, which provides free legal services to low-income Arkansans in all 75 counties, officials were still trying to unravel details of the executive eviction ban Kendall Lewellen, Housing Law Practice Group Leader for nonprofit legal advocacy group, said the CDC order caught everyone off guard last week.

"I was shocked," Lewellen told *The Daily Record*. "Clearly the executive branch has shown a lot of interest in landlord-tenant issues during this crisis, so it isn't super shocking in itself, but it is an unprecedented move by the federal government."

"And I can say that I am in contact with a lot of housing advocates across the

country and none of us saw this coming," continued Lewellen, who is based in Fort Smith. "So, last week was quite a week."

In explaining the new four-month eviction ban, Lewellen stressed that Arkansas renters seeking protection under the moratorium are required to submit a declaration to their landlord regarding their inability to make payments despite good faith efforts.

Citing the coronavirus pandemic and the increased risks of housing instability pose for those facing eviction, the CDC order also prohibits residential evictions at all stages, regardless of whether it is federally housing or not.

Lewellen said "criminal evictions" or "failure to vacate" prosecutions are also prohibited under the order, noting that Arkansas is the only state in the country that provides for the criminal prosecution of tenants who are late on rent payments.

She added that "self-help evictions" or evictions performed by a landlord without a court order, are typically carried out by changing the locks or shutting off utilities and are clearly illegal under Arkansas law. Landlords who carry these evictions under the new CDC order, she said, could be subject to stiff criminal penalties.

The moratorium, however, does not prohibit evictions for reasons other than nonpayment of rent. It also does not relieve tenants of any obligation to pay rent owed or any late fees or other penalties. Lewellen said this omission from the executive order concerns housing advocates that have seen many renters and working-class homeowners struggle after many of the CARES Act provisions expired in late July, including the earlier eviction ban and a \$600 per week unemployment benefits for out-of-work Arkansans.

The statewide legal advocacy group also noted that the so-called Stout Interactive Eviction Tool shows that nearly 139,000 rental households in Arkansas were unable to make rent and are at risk for eviction as of late July. The interactive online also estimates that Arkansas tenants were behind on rent by an estimated \$126 million.

"Many tenants are already several months behind on their rent," said Lewellen. "They will probably face eviction when the moratorium expires at the end of the year unless they can produce thousands of dollars for back rent. This can cause a domino effect of problems in their lives – from losing their homes, jobs, and even their children."

Besides the ban on evictions through the end of 2020, HUD sent out a reminder on Friday that all states, cities, communities, and nonprofits that received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds can provide rental assistance or other aid to individuals experiencing financial hardship due to the pandemic and are at risk of being evicted. Rental assistance to prevent evictions is an allowable use of the \$7 billion in HUD CARES Act funds, agency officials said.

"From day one of this pandemic, the Administration has done everything in our power to ensure that the American people have a roof over their heads during these trying times," said Secretary HUD Secretary Ben Carson.

REAL ESTATE INDUSTRY DECRIES ORDER, REQUEST FEDERAL RENTAL ASSISTANCE

Despite those assurances, several trade groups representing the real estate and property management industry said they believe president's order will do more harm than good. The National Association of Realtors (NAR) President Vince Malta, along with Commercial Real Estate Member group and the Institute of Real Estate Management, together released a statement on Sept. 1 saying the CCD order "will bring chaos" nation's rental housing sector and put countless property owners out of business.

"Any eviction moratorium must also come with rental assistance for property owners, the vast majority of which are mom-and-pop investors and are still required to meet their financial obligations even as they cease to receive income on their properties," said Malta, a San Francisco real estate broker. "An untailed eviction moratorium will bring more havoc to our economy, not less, and will put America's 43 million renter households at significant risk."

NAR, the nation's largest trade group representing 1.4 million residential and commercial real estate members, further encouraged Congress to pass legislation to provide immediate emergency rental assistance directly to landlords and housing providers.

The influential Arkansas Realtors Association (ARA), which serves as the state arm of Washington, D.C.-based NAR, also offered a similar statement to *The Daily Record* concerning the nationwide eviction ban.

"The Arkansas Realtors Association, the Little Rock Realtors Association, and other local realtor boards across the state support (NAR) in asking Congress to enact an emergency rental assistance program to address the challenges for both housing providers and renters," ARA President Carolyn Cobb said on Sept. 9. "Without this emergency relief, the eviction moratorium will leave housing providers and renters struggling. Housing providers, without rental income, will struggle to meet their obligations – including mortgage payments, insurance, taxes, property maintenance, utilities and staff."

"When the moratorium expires, renters will struggle to make up massive amounts of back rent. The healthcare crisis of 2020 could become the housing crisis of 2021," added Cobb, whose trade group represents 28 independent local realtor boards and associations across Arkansas.

RENTERS AND LANDLORDS STILL AT RISK DESPITE EVICTION BAN

As noted, if Congress does not act to provide financial aid soon to bolster the nation's rental market, the U.S. could be facing the most severe housing crisis in American history, according to a recent report by the nonpartisan Aspen Institute. In an Aug. 3 report, entitled "The COVID-19 Eviction Crisis," the Aspen, Colo.-based think tank said between 30 to 40 million Americans could be at risk ahead of the president's eviction ban.

"Many property owners, who lack the credit or financial ability to cover rental payment arrears, will struggle to pay their mortgages and property taxes and maintain properties," the Aspen Institute report concludes. "The COVID-19 housing crisis has sharply increased the risk of foreclosure and bankruptcy, especially among small property owners; long-term harm to renter families and individuals; disruption of the affordable housing market; and destabilization of communities across the United States."

One issue that supporters and critics of the CDC order agree on is that the moratorium does not address the underlying economic conditions that could possibly push millions into homelessness at the end of 2020.

Katherine Lucas McKay, a senior program manager at the Aspen Institute's Financial Security Program, said the earlier CARES Act moratorium, the current CDC eviction ban, and similar local and state rent and mortgage freeze programs are only "a band aid in terms of keeping people housed in a longer-term way."

"Once a moratorium expires, people have to figure out how to pay their back rent. If they're unemployed, they need to evaluate their legal options, especially when facing an eviction court case," said McKay. "On top of all of that, they need to find a new place to live. But most landlords won't lease to someone with an eviction record."

Sam Gilman, co-founder of the COVID-19 Eviction Defense Project in Denver, said the U.S. Senate needs to pass legislation that will help struggling Americans stay housed. Besides unemployment benefits under the CARES Act to be extended, Gilman said renters and homeowners alike need cash assistance to pay rent and mortgages.

"It is devastating that tens of thousands have already been evicted during the last six months of non-action and that we still don't have long term rent relief, but this moratorium could make a massive difference in 2020 for millions of tenants if it is implemented," said Gilman, whose group partners with Aspen Institute to release the highly cited COVID-19 research report.

Other partners in the project the Wake Forest University School of Law,

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