

# Tenants get relief as federal eviction ban moves to June 30; Arkansas renters' rights bill stalls in legislature

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By Wesley Brown

As Arkansas lawmakers continue to debate the issue of renters' rights in Arkansas, the Biden administration has extended the federal eviction ban three additional months through June 30, 2020.

CDC Director Dr. Rochelle Walensky on March 29 signed an extension to the eviction moratorium further preventing the eviction of tenants who are unable to make rental payments. The moratorium that was originally scheduled to expire on March 31.

The COVID-19 pandemic has presented a historic threat to the nation's public health. Keeping people in their homes and out of crowded or congregate settings — like homeless shelters — by preventing evictions is a key step in helping to stop the spread of COVID-19, said Walensky.

The Biden administration's action is the fourth extension of the CDC moratorium that was first implemented by former President Donald Trump more than a year ago, although a recent federal ruling said the ban is unconstitutional. Under the earlier Coronavirus Aid, Relief and Economic Security (CARES) Act signed by President Trump on March 17, 2020, 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.

On Sept. 1, President Trump again used his executive authority to force the CDC again to temporarily halt evictions nationwide through the end of 2020. The moratorium was extended a third time through March 30 after Congress approved the \$900 billion Consolidated Appropriations Act of 2021, which was signed into law by the former president on Dec. 27, 2020.

On March 15, however, the U.S. District Court for the Western District of Tennessee, entered a judgment favoring property owners and managers who brought a lawsuit against the CDC and Trump administration's Department of Justice (DOJ), Health and Human Services (HHS, and Department of Housing and Urban Development (HUD).

The case, Tiger Lily, LLC et al. vs. United States Department of Housing and Urban Development et al., argued that the government action exceeded its authority, was arbitrary

and capricious, and infringed upon constitutionally protected liberties. In his ruling, U.S. District Judge Mark S. Norris found that the national eviction moratorium which has prevented residential evictions since September 2020, is unlawful and exceeds the authority delegated to the CDC under the federal Public Health Service Act.

Judge Norris struck down the eviction moratorium and declared it unenforceable. In issuing his 20-page ruling, Norris stated that “[t]o hold otherwise would be to construe the statute so broadly as to grant this administrative agency unfettered power to prohibit or mandate anything....”

Despite that federal court ruling, along with other pending lawsuits, the Biden administration has still moved forward with the CDC and other moratoriums as millions of out-of-work renters and homeowners across the U.S. were facing possible evictions at the end of March and beyond, according to March 29 analysis by Zillow and other low-income housing advocates.

“Job disruptions and economic hardships brought by the pandemic have hit renters particularly hard, and the number at risk for eviction is staggering. Although the path forward is uncertain, there are still ways for policymakers to keep the vast majority of renters in their homes,” said Chris Glynn, senior managing economist at Zillow. “We know two things for certain: the current eviction moratorium is succeeding at keeping renters in their homes, and millions of renters believe that they will be evicted in coming months. How many actually are evicted depends on the economic recovery and individual landlord decisions.”

Zillow’s recent analysis of the Census Bureau’s Household Pulse Survey shows some 3.4 million Americans said they were at high risk of eviction this spring. As few as 130,000 to as many as 660,000 renter households ultimately could still be evicted now that the federal moratorium. The current economic recovery, highlighted by the \$1.9 trillion American Rescue Plan signed into law by President Joe Biden on March 11 that includes \$45 billion in rental assistance, along with individual landlord decision-making will also determine many renters will eventually be kicked out on the streets.

Nationally, more than 8.3 million U.S. renters reported being behind on rent payments as of March 15, with 16.8% (1.41 million) of those respondents indicating they were ‘very likely’ to be evicted in the next two months. While these numbers are sobering, it is expected that a small fraction of those fearing eviction will lose their homes – not all landlords will choose to evict and not all eviction filings result in actual judgments in courts.

However, with no historical precedent for this potential crisis, predicting how small the fraction might be once the moratorium expires is extremely difficult, especially with remaining uncertainty around federal policies and how landlords are able to respond, said the Seattle-based real estate data analytics giant.

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Landlords facing difficult choices too

Zillow’s recent report also notes that every tenant-landlord relationship is unique, but evictions based strictly on owed rent are not always in the landlord’s best interest. The process

of evicting a tenant is time-consuming, and in the end, landlords might find themselves struggling for several months to fill vacant units, which will ultimately cost them even more.

“Landlords are willing to work with tenants, and when the moratoria ends we would much rather find a solution than evict,” says Kellie Tollifson, owner and vice president of operations of T-Square Real Estate Services. “It’s all about maintaining a relationship and open communication to figure out the best path for your unique situation. Landlords can direct tenants where to find assistance or work out payment plans that support both parties. Keeping people housed is the right thing to do, and it’s also good for business, so landlords are highly motivated to work with renters to get through the pandemic together.”

In addition to the FHFA and other homeowner forbearance programs, the Centers for Disease Control and Prevention (CDC) has also issued a national moratorium on evictions for nonpayment of rent until March 31, 2021. Tenants seeking protection under the moratorium are required to submit a declaration statement to their landlord about their inability to make rent payments.

Once tenants have completed a declaration statement, which is available online through Center for Arkansas Legal Services (CALs), they then must give it to your landlord. Those landlords who violate the order may be subject to a fine of no more than \$100,000 if the violation does not result in death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law.

In addition to the CDC eviction ban, HUD, Veterans Affairs, and the U.S. Department of Agriculture on Feb. 17 also coordinated the extension and expansion of their respective forbearance and foreclosure relief programs. While the CDC moratorium deals only with renters in all public or private housing, these actions directly benefit the 2.7 million homeowners currently in COVID-19 forbearance and extend the availability of forbearance options for nearly 11 million government-backed mortgages nationwide also through June 30.

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### Arkansas lawmakers hold up renters’ rights bills

In Arkansas, meanwhile, House Bill 1563 has apparently stalled at the Arkansas legislature again after a House committee gave a do-pass recommendation for legislation that would require landlords to meet minimum rental housing standards. HB1563, which also creates a simple eviction procedure guaranteeing a hearing to both landlord and tenant, was approved by the House Insurance & Commerce Committee more than three weeks ago with the caveat that it be amended for a second time.

According to Lynn Foster, a retired UA Little Rock Law School professor, Arkansas is the only state in the U.S. where renters essentially do not have any rights and can go to jail for not paying rent. Under current Arkansas law, the landlord of a tenant who is one day late on rent may order the tenant to vacate the premises within 10 days. If the tenant fails to do so, they are guilty of a separate misdemeanor offense for each day they fail to vacate the premises following the expiration of the 10-day notice and must pay a fine of up to \$25 per day or offense.

Among many things, HB1563 would have required all residential rental properties to be structurally sound and have working locks, plumbing, electricity and heat, along with a few other basic living standards. Similar bills have failed to pass the several past legislative sessions due to opposition from the Arkansas Realtors Association.

Likewise, an amended HB 1563 remains on the House calendar with no apparent date for a new committee hearing. If eventually approved by the House, sponsor Rep. Jimmy Gazaway, R-Paragould, must also garner support for his controversial legislation in the Senate with one month left in the session.

Foster also said HB 1769, a companion bill to HB1563, is also on the House calendar but has no hearing date scheduled. That legislation by Rep. Nicole Clowney, D-Fayetteville, would repeal Arkansas's current statute criminalizing the eviction process. It was filed on March 18 and has also been assigned to the House Insurance Committee.

“These discussions are underway. That is why Rep. Gazaway did not run his bill this week,” Foster told The Daily Record ahead of the legislature spring break recess. “We will support any bill that will create a meaningful implied warranty of habitability comparable to the law in all other states.

According to Foster, hundreds of cases are filed each year by prosecutors booting renters out of their apartments. Tenants, often unaware of the criminal nature of the proceedings, may unwittingly find themselves later prosecuted for failure to appear, and be subject to large criminal fines, she said.

#### PHOTO CAPTION:

An amended House Bill 1563 that would require landlords to meet minimum rental housing standards has stalled in committee again after receiving a do-pass recommendation three weeks ago. Arkansas is the only state without renters' rights, experts say.

