

BANKRUPTCY BLOG

To Evict or Not to Evict – that is the Question.

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In April 2021, the Consumer Financial Protection Bureau (CFPB) issued an interim final rule in support of the Centers for Disease Control and Prevention (CDC)'s eviction moratorium. The CFPB's rule requires debt collectors to provide written notice to tenants of their rights under the eviction moratorium and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium.

The CDC order generally prohibits landlords from evicting tenants for non-payment of rent, if the tenant submits a written declaration that they are unable to afford full rental payments and would likely become homeless or must move into a shared living setting. This prohibition applies to an agent or attorney acting as a debt collector on behalf of a landlord or owner of the residential property. Thus, tenants can hold debt collectors accountable for illegal evictions.

However, at least in Texas and in the Sixth Circuit, the federal courts have struck down the CDC's broad eviction moratoriums. The driving force behind these decisions seems to be the constitutionality of government intrusion onto typically state-dominated areas. The effect of these rulings is somewhat limited in practice, however, as various foreclosure and eviction moratoriums for residential evictions remain in place for federally backed single-family mortgages.

On February 16, 2021, the U.S. Department of Housing and Urban Development extended the moratoriums on single-family foreclosures and real estate owned (REO) evictions for all FHA-approved mortgages until June 30, 2021, through Mortgagee Letter 2021-05. Further, on February 25, 2021, the Federal Housing Finance Agency extended the moratoriums on single-family foreclosures and REO evictions for Fannie Mae and Freddie Mac until June 30, 2021.

Given the recent challenges to the CDC's authority, more litigation is sure to come. As the public health effects of COVID-19 will diminish as more Americans are vaccinated, the economic effects on lenders, landlords and tenants are sure to prevail for months to come.

[1] See *in re Terkel, et al v. Centers for Disease Control and Prevention, et al.*, EDTX Case No. 20-CV-00564 and *Tiger Lily, LLC v. US Dept of Housing &Urban Development*, 992 F.3d 518 (6th Cir. 2021)