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The CDC's National Covid-19 Eviction Moratorium And Its Effects On California Landlords And Tenants

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A national “eviction moratorium” issued by the Centers for Disease Control and Prevention (CDC) on September 4, 2020, initially was set to expire December 31, 2020, and subsequently was extended through January 31, 2021, and then to March 31, 2021, and most recently to June 30, 2021. Unlike the California statutory eviction moratorium that currently prohibits residential notices to vacate and unlawful detainer actions through June 30, 2021, the CDC moratorium is not self-actuating, and must be claimed by the tenant through direct communications with the landlord, but it also does not limit or affect the landlord’s right to recover rent through remedies other than eviction or dispossession of the tenant. It is an unusual regulatory intervention by a federal agency, compelled by executive order rather than legislation, into landlord-tenant law, which is traditionally within the province of local and state governments alone, and it operates independently of the California statewide eviction moratorium (SB 91) discussed in the lead article of the March 2021 issue of the Miller & Starr Real Estate Newsalert. However, the requirements for a tenant to invoke the CDC Order are nominal, and a landlord that attempts to look behind the tenant’s claims and challenge his or her eligibility for the defense will do so at its peril. The CDC Order not only creates the potential for easily claimed, federally-mandated defenses against eviction for tenants who ostensibly have been affected by COVID-19, it also poses the risk of potentially crippling fines and other criminal penalties for landlords who violate its strictures (up to \$250,000 per violation), and it accordingly is significant whether or not the state law continues to apply.

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