

## IN THE TRIAL COURTS FOR THE STATE OF ALASKA

In the Matter of:

District Court Eviction Protocol.

### PRESIDING JUDGES' STATEWIDE DISTRICT COURT EVICTION PROTOCOL

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) published an order establishing a nationwide moratorium on residential eviction proceedings in an effort to impede the spread of COVID-19.<sup>1</sup> In short, the order established a moratorium on eviction proceedings as long as the tenant seeking protection met the requirements of the order and provided the requisite notice to the landlord<sup>2</sup> seeking to evict them.

In response to the CDC's order, on October 14, 2020, the presiding judge of the Third Judicial District adopted Presiding Judge Order #866, establishing a protocol for the Third District to follow with respect to pending eviction cases, new eviction filings, and eviction hearings while the moratorium remained in effect. The substance of the Third District's order was subsequently adopted by the presiding judge in the First Judicial District.<sup>3</sup>

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<sup>1</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020) (<https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf>) The first moratorium was provided for by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136). The CARES Act established a 120-day moratorium on the eviction of tenants in rental properties receiving federal assistance or federally related mortgage financing. The CARES Act moratorium expired on July 24, 2020.

<sup>2</sup> The order applied to landlords, property owners, and any other person with a legal right to pursue eviction.

<sup>3</sup> See First Judicial District Presiding Judge Administrative Order 20-06 dated October 29, 2020, Re: District Court Eviction Protocol.

The moratorium's original December 31, 2020 expiration date was extended a number of times. It was extended to January 31, 2021 legislatively by the Consolidated Appropriations Act of 2021,<sup>4</sup> and then three more times by the CDC – first until March 31, 2021, then until June 30, 2021, and finally (by an order issued on June 24, 2021) until July 31, 2021.<sup>5</sup> This was intended to be the final extension. In Alaska, the presiding judges similarly extended the use of the revised eviction protocols outlined in the Third District's Presiding Judge Order #866 (and updated in Presiding Judge Order #878) through July 31, 2021.<sup>6</sup>

But, on August 3, 2021, as a result of “unexpected developments in the trajectory of the COVID-19 pandemic, including the rise of the Delta variant,” the CDC issued a new eviction moratorium.<sup>7</sup> This new moratorium is in effect from August 3, 2021 until October 3, 2021, subject to revision by the agency.

Accordingly, the presiding judges adopt the following statewide eviction protocols, to remain in effect until October 3, 2021 – unless extended, modified, or rescinded.

## **I. APPLICABILITY**

Unlike the earlier moratoriums, the August 3, 2021 moratorium applies only in those areas experiencing heightened levels of community transmission as of August 3, 2021. As of

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<sup>4</sup> <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

<sup>5</sup> <https://crsreports.congress.gov/product/pdf/IN/IN11516>.

<sup>6</sup> See First Judicial District Presiding Judge Administrative Orders 21-03, 21-04, and 21-10; Second Judicial District Presiding Judge Administrative Order 21-01; and Fourth Judicial District Corrected Presiding Judge Administrative Order 21-06. These orders can be viewed at <https://courts.alaska.gov/covid19/index.htm#orders>.

<sup>7</sup> Centers for Disease Control and Prevention, Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19 (Aug. 3, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/communication/Signed-CDC-Eviction-Order.pdf>.

August 3, 2021, those Alaskan communities identified by the CDC as experiencing a substantial or high level of transmission are as follows:<sup>8</sup>

<p style="text-align: center;"><u>First Judicial District</u></p> <p>Angoon Hoonah Juneau Kake Ketchikan Prince of Wales Sitka Skagway Wrangell</p>	<p style="text-align: center;"><u>Second Judicial District</u></p> <p>Kotzebue Nome Unalakleet Utqiagvik</p>
<p style="text-align: center;"><u>Third Judicial District</u></p> <p>Anchorage Dillingham Homer Kenai Kodiak Palmer St. Paul Island Seward Unalaska</p>	<p style="text-align: center;"><u>Fourth Judicial District</u></p> <p>Aniak Bethel Delta Junction Emmonak Fairbanks Fort Yukon Galena Hooper Bay Nenana Tok</p>

As of the date of the adoption of this order, the protocols outlined herein apply only to the communities served by these court locations. This list is subject to amendment, however, by order of the presiding judge of each judicial district as follows:

- If a community not currently covered by the order later begins experiencing substantial or high levels of community transmission as identified by the CDC, that community will become subject to the order on the date it begins experiencing the heightened levels of transmission.

<sup>8</sup> <https://covid.cdc.gov/covid-data-tracker/#county-view>.

- Conversely, if the transmission level of a community covered by this order drops and remains below “substantial” or “high” for a period of 14 consecutive days, the moratorium will no longer apply in that community unless the community again experiences a substantial or high level of transmission.<sup>9</sup>

The moratorium does not apply to evictions based on a tenant, lessee, or resident:

- (1) engaging in criminal activity while on the premises (unless the sole basis for the eviction is an allegation that the tenant, lessee, or resident committed the crime of trespass by remaining in the residential property for nonpayment of rent);
- (2) threatening the health or safety of other residents (but individuals who are confirmed to have COVID-19 but who take reasonable precautions not to spread the disease may not be evicted for threatening the health and safety of others);
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating applicable building codes, health ordinances, or similar health and safety regulations;
- (5) violating any other contractual obligation other than the timely payment of rent or house-related payment (including non-payment or late payment of fees, penalties, or interest).<sup>10</sup>

In order to qualify for the protection of the moratorium, a tenant (lessee or resident) must provide the landlord seeking to evict them with a truthful, signed declaration confirming

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<sup>9</sup> CDC Order (August 3, 2021) at pp. 12 – 13.

<sup>10</sup> *Id.* at p. 13.

they are a “covered person” as defined by the CDC’s August 3, 2021 order.<sup>11</sup> The moratorium does not apply to or preclude a landlord from challenging the truthfulness of a declaration in court.<sup>12</sup>

## II. STATEWIDE DISTRICT COURT EVICTION PROTOCOL

The following procedures apply to all Forcible Entry and Detainer (Eviction) cases to which the moratorium applies.

### A. Pending Evictions

All pending eviction cases will continue to be scheduled and heard until such time that the tenant provides a signed declaration to the landlord or its agent. Once the tenant provides a legally sufficient declaration to the landlord, all further action in the case will immediately cease, unless the landlord seeks to challenge the truthfulness of the declaration.<sup>13</sup> If a matter is scheduled for a hearing and the landlord receives a declaration prior to the hearing, then the landlord shall immediately advise the Court that a declaration has been received and submit a copy of the declaration to the Court. Once the Court receives the declaration, the case will be removed from the calendar. The case will be stayed until the expiration of the CDC order or the moratorium no longer applies due to reduced levels of community transmission. The case will **not** be dismissed.

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<sup>11</sup> CDC order (Aug. 3, 2021) at p. 14. Tenants may use the declaration form provided by the Alaska Court System (Tenant Declaration of Protection Under CDC Temporary Halt of Evictions, form CIV-732, available at <https://public.courts.alaska.gov/web/forms/docs/civ-732.pdf> and <http://courts.alaska.gov/covid19/evictions-faq.htm>) but are not required to do so. A declaration is sufficient as long as it is signed, it addresses the required elements identified in the CDC’s order, and it contains a statement that the tenant understands they could be liable for perjury for any false or misleading statements or omissions in the declaration.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## **B. New Eviction Filings**

The August 3, 2021 CDC order does not prohibit new filings for non-payment of rent, unless the tenant has already provided a declaration to the landlord. If no declaration has been received, the landlord may file a new case for eviction. However, the Landlord must file a completed and signed Affidavit of Compliance with CDC Eviction Moratorium During COVID-19 Pandemic (form CIV-731).<sup>14</sup>

## **C. Eviction Hearings**

If a landlord (or its agent or attorney) appears at an eviction hearing, then the judge shall ask the landlord if the landlord has received a declaration from the tenant. If the landlord has received a declaration, then the hearing shall be vacated.

If a tenant appears at an eviction hearing, the judge shall ask the tenant if he or she is aware of the possibility of filing a declaration. The judge shall provide the tenant with information about the requirements for filing a declaration. If the tenant seeks to file a declaration, then the judge shall provide the tenant a brief opportunity to file a declaration and serve it upon the landlord.

Be advised that a declaration may be provided at any time during the eviction process. Both parties are subject to potential significant penalties, civil and criminal, for wrongful acts and/or false declarations, and therefore all parties should read the CDC order.

The District Court will not award attorney's fees or late fees until further notice.

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<sup>14</sup> The form is available on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/civ-731.pdf> and <http://courts.alaska.gov/covid19/evictions-faq.htm>.

**IT IS SO ORDERED.**

Dated August 5, 2021.



\_\_\_\_\_  
Amy Mead  
Presiding Judge First Judicial District



for \_\_\_\_\_  
Paul A. Roetman  
Presiding Judge Second Judicial District



for \_\_\_\_\_  
William F. Morse  
Presiding Judge Third Judicial District



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