

Practice Update

# Illinois Provides Additional COVID Protections Against Residential Evictions

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Since early March, all of Illinois has been under a gubernatorial disaster declaration; but while essential and non-essential business restrictions have waxed and waned per a variety of metrics, there has been an everlasting constant – eviction prohibitions.

## Prior Eviction Prohibition Regime

On March 20th, Executive Order 2020-10 (Stay at Home), first, provided eviction protection but for residential tenants only. It instructed all Illinois law enforcement officials to cease enforcing eviction orders for residential premises for the duration of the Gubernatorial Disaster Proclamation. However, rent and mortgage payment obligations and compliance to lease and rental agreements remained untouched.

However, following the Stay at Home order between April 23rd and 30th, the Governor quickly expanded the eviction prohibition regime to (i) prohibit the commencement of residential eviction actions under the Illinois Forcible Entry and Detainer Act, unless the tenant posed a direct threat to the health and safety of other tenants, an immediate and severe risk to property, or a violation of any application building code, health ordinance or similar regulation (collectively “**Bad Acts**”), and (ii) instruct all Illinois law enforcement officials to cease enforcing eviction

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orders for residential and non-residential premises, unless Bad Acts were *found* – presumably in a court of law. The rent and mortgage payment obligations and lease and rental agreement compliance continued for both residential and non-residential premises. Executive Order 2020-30 (Clarifies Ceasing Evictions), and -33 (Reissues Executive Orders).

Subsequently, Illinois law enforcement officials were no longer prohibited from enforcing non-residential eviction orders after August 22nd, pursuant to Executive Order 2020-48 (Reissues Executive Orders) (further supported by Executive Order 2020-52).

### New Eviction Prohibition Regime

As of November 13th, an entirely new process for residential evictions was instituted, pursuant to Executive Order 2020-72 (Extends Moratorium on Evictions). Prior to commencing any residential eviction proceeding or issuing a notice of termination of tenancy, the landlord party must provide the tenant a Tenant Declaration Form, which the tenant may sign under a penalty of perjury and return to the sender. If a tenant provides a declaration pursuant to Executive Order 2020-72, then it is a “Covered Person” and no residential eviction may be commenced against it, unless the person poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property. Notice that the bad acts carveout here is pared-back from earlier executive orders and excludes “*violations of any application building code, health ordinance or similar regulation.*” However, even without the declaration, all Illinois law enforcement officials are still prohibited from enforcing residential eviction orders, except in event of the pared-back bad acts. Therefore, landlords can start residential eviction actions against non-Covered Persons to obtain an eviction order for when the law enforcement prohibition ceases or is rescinded. The rent and mortgage payment

obligations and lease and rental agreement compliance requirements continue.

A “Covered Period” is a designation with multiple qualifying factors. In summary, a person qualifies if (a) such person is experiencing economic hardship due to COVID (including receipt of an Economic Impact Payment under the CARES Act) or those expected to earn no more than \$99,000 (single tax return filer) or \$198,000 (joint tax return filer) in annual income for calendar year 2020, (b) such person is unable to make full rent or housing payments due to the related-hardship but using best efforts to make timely payments as close to full payments as possible given the circumstances, and (c) eviction would likely render the individual homeless or forced into close quarters in a new crowded, communal or shared living setting.

Please note that if a landlord received a residential eviction order before the initial Stay at Home order in March, then it can be enforced only if the tenant was found to pose a direct threat to the health and safety of other tenants or an immediate and severe risk to property.

Executive Order 2020-72 (Extends Moratorium on Evictions) is set to expire with the expiration of the current Gubernatorial Disaster Proclamation on December 12, 2020, unless extended or amended further by Governor Pritzker.

Local court rules may create additional eviction protections for tenants.

Akerman is always here to assist and we will continue to stay abreast of any updates and additional COVID actions. Please contact us for any comments, questions or concerns.

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