

Practice Update

CFPB and FTC Put Landlords On Notice Regarding Tenants' Pandemic Protections

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On May 3, 2021, Consumer Financial Protection Bureau's (CFPB) Acting Director Dave Uejio and the Federal Trade Commission's (FTC) Acting Chairwoman Rebecca Slaughter sent notification letters to the country's largest landlords reminding them of the federal protections designed to prevent residential evictions during the pandemic. These include the Centers for Disease Control and Prevention (CDC) extension of its eviction moratorium until June 30, 2021 (see our separate alert [here](#) on the current status of the moratorium), and the CFPB's interim final rule in support of the CDC moratorium establishing new notice requirements under the Fair Debt Collection Practices Act (FDCPA).

The CDC eviction moratorium generally prohibits landlords from evicting tenants for non-payment of rent if the tenant submits a written declaration that he or she cannot afford full rent payments and would likely become homeless or need to move into a shared living setting if evicted, increasing their vulnerability to COVID-19. This prohibition applies to residential landlords, as well as their agents or attorneys acting on their behalf.

The CFPB interim final rule (86 Fed. Reg. 21,163 (April 22, 2021)), which took effect on May 3, 2021, requires debt collectors to provide tenants who may

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have rights under the CDC moratorium with “clear and conspicuous” written notice of these rights and prohibits debt collectors from misrepresenting tenants’ ineligibility for protection from eviction under the CDC’s moratorium. The notice must be provided on the same date as the eviction notice, or, if no eviction notice is required by law, on the date that the eviction action is filed. If a landlord does not provide the required notice, the FDCPA provides a private right of action against debt collectors, and violators can be liable for actual and statutory damages, and attorney’s fees. On March 29, 2021 Acting Director Uejio and Acting Chairwoman Slaughter issued a joint statement aimed to stop illegal evictions (as discussed in our [prior alert](#)).

The CFPB and FTC’s May 3, 2021 notification letters ask landlords to ensure their practices comply with the CDC moratorium and the FTC Act. The letters also encourage landlords to notify FDCPA-covered debt collectors working on their behalf, which may include attorneys, of the CDC moratorium, other state and/or local moratoria, and the parties’ obligations under the FTC Act and FDCPA, which includes the CFPB’s final rule. Acting Director Uejio noted “Landlords should ensure that FDCPA-covered debt collectors working on their behalf, which may include attorneys, notify tenants of their rights under federal law... [and the CFPB] will hold accountable debt collectors who move forward with illegal evictions.”

Landlords of residential properties, debt collectors, and attorneys acting on their behalf, should take steps to address this guidance. Landlords and debt collectors should also consider carefully monitoring customer communications for concerns related to residential evictions.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice

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