Frequently Asked Questions ("FAQ") for Executive Order No. 171

October 28, 2020
(updated: 12/30/2020, 01/27/2021, 3/30/2021, 5/6/2021)

This FAQ provides guidance for the implementation of Executive Order No. 171 ("Order"), which has been extended by Executive Order Nos. 184, 191, and 206. The Order clarifies, ensures compliance, and extends protections under the Centers for Disease Control and Prevention ("CDC") order temporarily halting certain residential evictions for nonpayment of rent ("CDC Order"). Below are frequently asked questions ("FAQs") and their answers. In addition, individuals should check with local governments to determine whether additional restrictions have been imposed in their local jurisdictions to limit the spread of COVID-19.

This information is subject to change in light of new CDC guidance and additional Executive Orders or local government declarations.

General Information

On May 5, 2021, a federal judge in the United States District Court for the District of Columbia entered an order vacating the CDC Order. What does the federal order mean for the enforceability of the Governor's Order extending protection from eviction to certain residential tenants in North Carolina?

The Governor's Order remains in effect. The Governor's Order is independent from the requirements of the CDC Order and remains in full force despite the recent federal decision on the CDC Order. The protections of the Governor's Order continue to apply to residential tenants through June 30, 2021.

When does this Order expire?
This Order takes effect on October 30, 2020 at 5:00 p.m.

Has this Order been extended or modified?
- Executive Order No. 184 extended Executive Order No. 171 until January 31, 2021.
- Executive Order No. 191 extended Executive Order No. 171 until March 31, 2021.

- Executive Order No. 206 extended Executive Order No. 171, with modifications to conform with the CDC Order, until June 30, 2021.

How long are the Governor's Order and CDC Order in effect?
The CDC Order, which prohibits residential landlords nationwide from evicting certain tenants, went into effect on September 4, 2020 and was scheduled to expire on December 31, 2020. On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021, which extended the CDC Order through January 31, 2021. On January 29, 2021, the CDC extended its order through March 31, 2021. On March 29, 2021, the CDC Order was further extended until June 30, 2021.

On May 5, 2021, a federal judge in the United States District Court for the District of Columbia entered an order vacating the CDC Order. The United States Department of Justice immediately appealed this decision, and proceedings are ongoing. Other federal courts have examined and upheld the CDC Order.

However, the Governor's Order is independent from the requirements of the CDC Order. Section 5(B) of Executive Order 171 states, "The protections stated in this executive order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal ... of the CDC Order." The Governor's Order was not impacted by the May 5 decision or any other court decisions to-date on the CDC Order. The protections of the Governor's Order, as detailed below, remain in place for covered tenants who are at risk of residential eviction.

Information for Residential Tenants

Which residential tenants does this Order protect?
This Order protects individuals who qualify under the text of the March 29 CDC Order, including those who:
- Have used their best efforts to obtain government assistance for housing;
- Are unable to pay their full rent due to a substantial loss in income;
- Are making their best efforts to make timely partial payments of rent;
- Would become homeless or have to move into a shared living space if evicted; and
- Meet one of the following financial requirements:
  - An individual who earns $99,000 or less, or joint filers who earn $198,000 or less,
  - An individual who received a stimulus check, or
  - An individual who was not required to report any income to the IRS in 2019.

Applicants eligible for the North Carolina Housing Opportunities and Prevention of Evictions ("HOPE") program are also specifically protected from eviction under this Order.

Does the Order cover all forms of rental housing?

The Governor's Order, like the CDC Order, applies to all standard rental housing. It does not cover individuals renting hotels, motels, or other temporary guest home rentals.

How are tenants protected?
The Governor's Order, like the CDC Order, stops evictions for nonpayment of rent as long as the tenant qualifies and gives his or her landlord a signed declaration form, attesting that they qualify. The declaration may take any written form permitted by the CDC Order. If an eviction action is filed, landlords are required to provide tenants with a blank copy of the CDC declaration form.

Information for Residential Landlords

What are the requirements for landlords under this Order?
This Order requires that in any eviction action filed on or after the Order's date, a landlord must certify (through an affidavit presented to the court) that they have provided the tenant with a blank copy of the CDC declaration form.

Where can landlords find the declaration form?
The CDC declaration form may be found here: https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf. Tenants may also fill out an equivalent form that contains all of the required attestations.

Must each tenant under the same lease fill out a declaration form in order to avoid eviction?
No. A single declaration form from at least one tenant responsible for paying rent activates the protections of this Order for all tenants under that lease.

If an eviction proceeding has begun and a tenant then presents a declaration form to the court or landlord, does this Order prevent them from being evicted?
For an action pending or initiated after the date of this Order, the landlord must immediately notify the court when he or she receives a declaration from the tenant and submit it to the court within 5 days. Unless the landlord submits a response contesting the declaration, the landlord may not request a writ of possession.

Can a landlord remove a tenant for other reasons besides nonpayment or late payment of rent?
Yes. Nothing in the Order precludes evictions for reasons other than nonpayment or late payment of rent and other fees. If a tenant submits a CDC declaration, but the reason for eviction is something other than nonpayment or late payment, the landlord may file a response with the court identifying in writing why the landlord believes the action should still proceed despite the protections of the Governor's Order. If the court determines that the eviction should proceed and a judgment is ultimately entered against the tenant, the landlord may request a writ of possession.

Although nothing in the Governor's Order or the CDC Order precludes evictions for reasons other than nonpayment or late payment of rent and other fees, landlords should not cite other reasons for an attempted residential eviction when the actual underlying reason for eviction is for nonpayment or late payment of fees.

I am a landlord and believe the information provided by a tenant on the declaration form is false, what do I do?
Landlords may challenge a tenant's declaration by filing a response to the court identifying in writing why the landlord believes the eviction action should proceed. The court will hold a hearing to determine whether the eviction action should proceed. If the court determines that the eviction should proceed, the landlord may then request a writ of possession.

Are tenants still responsible for back rent accumulated during the moratorium?
Tenants are still responsible for unpaid rent balances that exist at the expiration of this moratorium.

What programs are available to assist tenants and provide landlords with income?
- HOPE Program- https://nc211.org/hope/.
- To learn about other resources available in your community, visit https://nc211.org/
  or call **NC 2-1-1**.