

## **CFPB Rule Clarifies Tenants Can Hold Debt Collectors Accountable for Illegal Evictions**

*By: cfpb*

**WASHINGTON, D.C.** – The Consumer Financial Protection Bureau (CFPB) on April 16th, issued an interim final rule in support of the Centers for Disease Control and Prevention (CDC)'s eviction moratorium. The CFPB's rule requires debt collectors to provide written notice to tenants of their rights under the eviction moratorium and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium. The CDC has established the eviction moratorium to protect the public health and reduce the spread of the virus. Debt collectors who evict tenants who may have rights under the moratorium without providing notice of the moratorium or who misrepresent tenants' rights under the moratorium can be prosecuted by federal agencies and state attorneys general for violations of the Fair Debt Collection Practices Act (FDCPA) and are also subject to private lawsuits by tenants.



### **CDC Moratorium**

A temporary eviction moratorium ordered by the CDC has been extended through June 30, 2021. The CDC order generally prohibits landlords from evicting tenants for non-payment of rent, if the tenant submits a written declaration that they are unable to afford full rental payments and would likely become homeless or have to move into a shared living setting. This prohibition applies to an agent or attorney acting as a debt collector on behalf of a landlord or owner of the residential property.

Tens of thousands of tenants and families are evicted every week, many of whom would have had a right to stay in their homes if they had given their landlord a completed CDC eviction moratorium declaration. According to a recent Government Accountability Office report, tenants facing eviction may be unaware of the moratorium or may not understand the steps they must take to act on its protections. Declarations can be submitted in languages other than English, and alternative forms are available online.

### **New Tenant Protections**

Under the FDCPA interim final rule, debt collectors, including attorneys, seeking to evict tenants for non-payment of rent must provide tenants who may have rights under the CDC order with clear and conspicuous written notice of those rights. 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.

Debt collectors must provide the notice in writing. Phone calls or electronic notice such as text messages or emails are not sufficient. The CFPB is providing debt collectors with sample language to satisfy the rule's disclosure requirements.

Failure to provide the required notice to tenants is a violation of the FDCPA. The FDCPA provides a private right of action against debt collectors, and violators can be held liable for actual damages, statutory damages, and attorney's fees. Class actions may be brought under the FDCPA.

## CFPB Rule Clarifies Tenants Can Hold Debt Collectors Accountable for Illegal Evictions

*Continued*



Some states and localities have adopted their own eviction moratoria. Debt collectors may also be required to provide notice of these moratoria. The CFPB's rule does not preempt more protective state law.

There are additional resources available to help struggling renters impacted by COVID-19. Congress has created the Emergency Rental Assistance Program, administered by the U.S. Department of Treasury. This program provides assistance through state and local government to help tenants catch up on missed payments to avoid eviction. Applicants must apply through their local programs. The National Low Income Housing Coalition has a directory of state and

local rental assistance programs that renters can use to find their local programs. Landlords may also be eligible for funds under the Emergency Rental Assistance Program.

The CFPB has authority under the FDCPA to “prescribe rules with respect to the collection of debts by debt collectors.” Attorneys who engage in eviction proceedings on behalf of landlords or residential property owners to collect unpaid residential rent may be “debt collectors” as defined by the FDCPA.

Given the urgency of the pandemic crisis, the Interim Final Rule will take effect on May 3, 2021. The CFPB believes this will give debt collectors time to come into full compliance. Debt collectors may begin complying with the rule before the compliance date.

### **NAA/AAGW Guidance**

To understand whether the rule applies to you, it is important to note the CFPB's definition of “debt collector,” derived from the Fair Debt Collection Practices Act (FDCPA). According to the CFPB, under the FDCPA:

*[The interim final rule requirement] may include lawyers who represent landlords or property managers in eviction court to collect unpaid rent, if they start collecting the debt for [a renter's] landlord after [renters] fall behind on [their] payments.*

We understand that there are other considerations as well, including relevant case law that may be more conclusive about whether property managers or management firms are categorized as “debt collectors,” and whether state eviction laws and court processes separate the process to recover possession from actions to cover outstanding rent debt.

We highly encourage all NAA members to seek the advice of a local attorney before proceeding with an eviction to understand whether CFPB's rule applies.

As an added protection, we suggest all members consider adding the CFPB's sample disclosure language to your eviction notice. For NAA members who participate in NAA Click & Lease, they are adding a form that contains similar disclosure language for users. Additional resources and compliance training are forthcoming, as well.

## CFPB Rule Clarifies Tenants Can Hold Debt Collectors Accountable for Illegal Evictions *Continued*

### CFPB's Sample Language:

**Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under Federal law.**

Learn the steps you should take now:

- Visit [www.cfpb.gov/eviction](http://www.cfpb.gov/eviction)
- Or call a housing counselor at 800-569-4287

The CFPB's rule is an unfortunate expansion of the CDC's Order, and the NAA is continuing conversations with the Administration and federal agency officials about the ongoing challenges that rental housing providers face while the CDC Order and related federal requirements remain in place. In addition to being bad public policy, these efforts make compliance difficult in an area where there is already an abundance and patchwork of legal requirements complicating the CDC's Order. This interim final ruling only adds to the confusion as federal, state and local eviction moratoria are being applied very differently in courts across the country.

It is time to end federal efforts that interfere with the eviction process. NAA will continue combating these policies and shift focus to the distribution of the almost \$50 billion of federal rental assistance.

## Fair Housing and Internal Communication Regarding Maintenance Work

*By: The Fair Housing Institute*

Best practices dictate that maintenance work is completed in the order the request was received, except for emergencies. By doing this, you can avoid being accused of discrimination or favoritism. But what constitutes an emergency can vary from property to property.

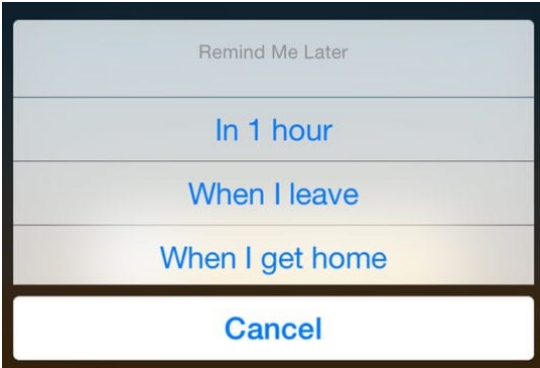
In our first scenario, we see this exact situation arise. A new employee immediately sends out a maintenance professional to repair a dishwasher. Why? At his last place of employment that was considered an emergency. Unfortunately, this is not the case at his current job. His lack of knowledge and training has just opened the door to a fair housing complaint.



Policies and procedures need to be effectively communicated to all employees, especially new ones. Documentation also needs to be provided as a point of reference. This is not a one-time thing. Ongoing conversations along with supervision will ensure staff is following proper fair housing procedures.

## Fair Housing and Internal Communication Regarding Maintenance Work *Continued*

### Internal Communication Regarding Callbacks



Callbacks are an important part of every property management’s daily business responsibilities. Whether it’s responding to current resident requests or potential resident inquiries. Like maintenance requests, callbacks should be handled in the order they were received.

This becomes difficult when you have multiple contact points: phone, email, text, and even social media. Is your staff aware of all the points of contact your company utilizes? Do you have a callback list that logs when the message was received? How can this situation turn into a fair housing violation?

At any time, your policies and procedures can be put to the test. If your staff is not aware of all lists and begins making callbacks out of order, you are now again open to a complaint of discrimination. Proper communication and training would have avoided this.

Along with training, you need documentation. Does your staff have the knowledge, access, and training when it comes to documenting? Documenting is not only a great form of internal communication, it can also help you handle complaints if they arise.

Of course, along with training and documentation, supervision is pivotal. Adequate supervision focuses on helping your staff achieve compliance. Ensuring that your team feels that they can ask questions will encourage a learning environment and hopefully get ahead of any potential problems.

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