

**The “End” of the CDC Eviction Order – Part II**  
**The “New” City of Boston Eviction Order**  
**September 1, 2021**

The rollercoaster ride continues...

I. The CDC Order

On August 26, 2021, the United States Supreme Court deemed the Centers for Disease Control Eviction Order (the “CDC Order”) unconstitutional, thereby rendering it unenforceable, based on a finding that the CDC lacked the legal authority to unilaterally prohibit evictions as a purported public health measure. The Court also noted, as we had previously suggested, that if the CDC were afforded the broad authority to require landlords to provide housing without the ability to collect rent, the CDC would also have the authority to interfere with the provision of other necessary services by private businesses such as requiring grocery stores to distribute free food or requiring computer companies to provide free computers to persons working from home. Based on the Supreme Court’s decision, the CDC Order is no longer in effect and there are now no federal laws preventing landlords from proceeding with eviction actions.

II. The City of Boston Ordinance

On August 31, 2021, the City of Boston Public Health Commission enacted an Order establishing an eviction moratorium in the City of Boston. This Order prohibits a landlord from levying on any execution, except in cases involving serious lease violations which impair the health and safety of other residents. Thus, while landlords may commence eviction cases and obtain judgments and executions from the court, they cannot physically recover possession of the apartment except where the case is based on a material lease violation affecting health and safety. In addition, this Order requires Boston landlords to provide 48 hours’ advanced notice of any entries, other than in the event of an emergency, and permits the tenant to reschedule such an inspection if the time is “inconvenient” for them, as long as they propose another “reasonable time”. Persons entering must also wear a mask while in the apartment. This Order remains in effect until the Commission decides otherwise, in its sole discretion. As such, pending the likely legal challenges referenced below, this Order prohibits any landlord in Boston from physically removing a tenant, except for the limited exceptions provided above.

As an initial matter, there appears to be a strong likelihood that this Order will be deemed unconstitutional based on the Supreme Court’s recent decision invalidating the CDC Order. Where the federal government has already been deemed to lack the legal authority to enact this



form of eviction moratorium, it seems clear that the City of Boston would also lack such authority. Furthermore, the City likely lacks the legal authority to alter state law, which already controls the manner in which landlords are legally entitled to recover their property. As such, it would be anticipated that this Order will quickly be subject to legal challenge.

Not only is this Order of questionable legality, but it is also clearly troubling on many fronts. As noted, this Order not only applies to non-payment of rent cases, but also applies to all cases in which the landlord has been deemed to have a legal right to recover their property by a court after a full hearing. Thus, even if a lease expired and a new tenant is set to move in, this Order would prevent the landlord from enforcing a court's order requiring the tenant to relocate. It would also prevent a landlord from recovering possession despite a court order finding that a tenant had violated their lease. Most concerning, however, is the fact that this Order appears to interfere with the current progress being made towards housing stability through access to RAFT and other rental assistance and gives the misimpression that a tenant does not have to pay their rent. Under the current state law, G.L. c. 257, a landlord cannot evict a tenant if they have a pending application for rental assistance through RAFT or other available programs. Following the expiration of the State Eviction Moratorium, landlords were finally able to bring tenants to court at which time the tenants were connected with these programs to assist with payment of outstanding rental arrears. Even if the tenant failed to appear in court, the current state law prevents any eviction if there is an application for rental assistance pending. Thus, the reality has been that few, if any, tenants have been evicted since landlords and the Courts have been able to connect tenants with RAFT and other resources. This Order, however, has no such requirement. A tenant can refuse to appear in court, refuse to apply for RAFT, and simply refuse to pay rent, without consequence. Regardless of whether the tenant has the means to pay the rent or has the ability to access RAFT, the landlord has no legal remedy. The tenant is empowered to simply refuse to pay rent and the landlord has no ability to compel compliance. Likewise, there is no requirement for the Commissioner to rescind this Order at any time and, as such, it could remain in effect in perpetuity. While the current state law offers significant protections from eviction by requiring tenants to seek available funding, this City of Boston Ordinance actually enables tenants to simply refuse to engage in the process without any potential consequences.

Finally, we would again note that this Order only applies in the City of Boston and in Somerville, where there is a similar Ordinance. Likewise, there is no prohibition, either in the City of Boston or elsewhere, on a landlord's right to commence and proceed on cases to recover rent. Our firm has been extremely successful in engaging residents in order to stabilize their housing by accessing the substantial rental assistance currently available and in ensuring that residents affected by COVID-19 remain stably housed.

*The foregoing is for informational purposes only and should not be considered legal advice. Please feel free to contact our office if you have any questions or need assistance. We are available to assist you with your legal needs as the housing industry navigates these complex and ever-changing circumstances.*