



**Frequently Asked Questions (FAQs)  
about Evictions during the Judicial Emergency  
Updated September 22, 2020, Version 2.0**

*You, your case, and everyone's good health matter to the Magistrate Court!*

*#MaskUpCobb*

This is not intended to be used as legal advice. Please consult an attorney for legal advice about your individual case.

**Is Magistrate Court open?**

Yes. During this difficult time of pandemic and economic disruption, the Magistrate Court of Cobb County has remained open and working twenty-four (24) hours/day, every day. The Clerk's Office has continued to be accessible to the public in-person and by telephone during regular business hours. Because of the dedication and innovation of our own essential workers, the doors of the People's Court never closed to our community.

**What action did the CDC take concerning evictions?**

On September 4, 2020, the Centers for Disease Control and Prevention ("CDC") issued a federal Agency Order entitled Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 ("CDC Order"). The CDC Order states that landlords "shall not evict any covered person from any residential property...during the effective period of the Order." The CDC Order does not apply to commercial properties.

**Does the CDC Order only apply to evictions filed on or after September 4, 2020?**

No. The CDC Order halts certain evictions from September 4 – December 31, 2020 regardless of whether a dispossessory affidavit was filed or Writ of Possession issued prior to September 4, 2020.

**Who is covered by the CDC Order?**

The CDC Order covers residential tenants, lessees, and residents that provide a "Declaration" under penalty of perjury directly to their landlord indicating that:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;

- (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- (3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- (4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
- (5) Eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

**Does one Declaration cover an entire residence?**

No. The CDC Order states, “Each adult listed on the lease, rental agreement, or housing contract should...complete and provide a declaration.”

**Is the Declaration filed with the Court?**

The Magistrate Court will accept a Declaration for filing from any party, but the CDC Order does not require it to be filed with any court. The tenant is to provide the Declaration to the landlord.

**What is the deadline by which a tenant must provide a Declaration to his/her landlord?**

The CDC Order does not include any deadline by which a tenant must provide a Declaration to his/her landlord. Covered tenants that wish to avail themselves of the CDC Order's protections should provide the Declaration to the landlord as soon as possible to limit confusion.

**If received, how can a landlord challenge a Declaration?**

There is no provision in the CDC Order for challenging a Declaration provided to a landlord by a tenant. However, “false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.”

**What should parties do if a Declaration is provided during the course of the legal process?**

In residential nonpayment of rent cases, if a Declaration is provided to a landlord after filing a dispossessory affidavit, before an Answer is filed, once a hearing is set, at or after the court date, or even at the time of execution of a Writ, the eviction process must be halted. The Court will continue—not dismiss—the case. Regardless of when a Declaration is provided, parties must fulfill their regular legal obligations including filing an Answer and appearing in court. Failure to do so could result in dismissal of a case or default judgment. Note: A Declaration has no effect on commercial cases or those that exclusively allege ground(s) other than non-payment of rent.

### **Does a tenant still have to pay rent and follow the other terms of his/her lease?**

Yes. Tenants must continue to pay rent. Unpaid rent, late fees, penalties, and/or interest are accruing during the CDC's temporary halt on evictions. At the end of the moratorium, a landlord "may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make [a tenant] subject to eviction..."

### **Are there exceptions to the CDC Order's temporary halt on residential evictions?**

Yes. Commercial cases may proceed. Residential evictions may proceed on grounds other than non-payment of rent, including the following from the CDC Order:

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

### **How is the CDC Order being enforced?**

Federal authorities are responsible for enforcing the CDC Order. A person violating the CDC Order may be subject to fines and/or federal jail time.

### **What steps has the Magistrate Court of Cobb County taken in response to the CDC Order?**

For residential non-payment cases, the Court has temporarily paused the automatic scheduling of eviction hearings. Cases are NOT being dismissed and will be (re)scheduled upon expiration of the CDC Order. If the CDC Order is stayed by a federal court that covers the Northern District of Georgia or amended/superseded by Congressional action, the Court will resume scheduling residential non-payment cases. All other dispossessory hearings are proceeding as usual.

### **If a Declaration is required, why did the Court take this temporary action?**

The CDC Order does not provide a deadline by which tenants must provide landlords with the Declaration. The CDC Order never requires a copy of the Declaration be provided to the Court. Therefore, if a tenant failed to file an Answer or appear for a hearing, an eviction still must immediately stop if a Declaration is later produced in a residential nonpayment case. Even if a full hearing was held in the Magistrate Court and a Writ issued in a residential nonpayment case, an eviction would have to be immediately halted if a Declaration was produced as late as the time of the eviction or even *during* an eviction.

These omissions in the CDC Order could lead to confusing and potentially catastrophic results for landlords and tenants alike including last minute legal challenges at the time and place of eviction, criminal penalties, or wrongful eviction. Therefore, we have paused automatically scheduling residential non-payment cases until such time as we are able to adjudicate these important matters under Georgia law in a courtroom with certainty and finality.

**If a landlord has not received a Declaration covering a tenant, can a hearing be requested?**

Yes. If a landlord has not received the required Declaration from a tenant, then he/she may file a Request for Dispossessory Hearing. For good reason(s) shown, the Court may set a residential non-payment case down for hearing even during the CDC's temporary halt in residential evictions.

Landlords should understand that under the CDC Order if a Declaration is provided in a residential nonpayment of rent case at any time, *even after the issuance of a Writ*, the eviction must be halted. Eviction after receipt of a Declaration may result in the landlord facing federal criminal penalties including fines and/or jail time. Note: A Declaration has no effect on commercial cases or those that exclusively allege ground(s) other than non-payment of rent.

**If a landlord has not received a Declaration covering a tenant, can a default Writ be issued or previously-issued Writ released?**

Yes. If a landlord has not received the required Declaration from a tenant, then he/she may submit an Affidavit swearing that the landlord has not received the Declaration nor accepted any money from the tenant. At that point, the Court may issue a Writ in default cases or release a previously-issued Writ for execution.

Landlords should understand that under the CDC Order if a Declaration is provided in a residential nonpayment of rent case at any time, *even after the issuance of a Writ*, the eviction must be halted. Eviction after receipt of a Declaration may result in the landlord facing federal criminal penalties including fines and/or jail time. Note: A Declaration has no effect on commercial cases or those that exclusively allege ground(s) other than non-payment of rent.

**If I am served with a new eviction action, do I need to file an Answer?**

Yes. If you are served, you MUST answer on or before the seventh day after service as required by law and explained in the Summons. If you did not file a timely Answer, please call the Magistrate Court at (770) 528-8900.

**How do I file an Answer?**

You may answer:

- On-line at <https://efile.cobbcounty.org> or
- In-person at the Magistrate Court of Cobb County, Civil Division, Third Floor, 32 Waddell Street, Marietta, Georgia 30090 on Mondays – Fridays, 8:00 a.m. – 5:00 p.m.

**What happens if I don't file a timely Answer?**

If you do not answer on or before the seventh day after service, a Writ of Possession may be issued without a hearing, and a judgment against you for money damages may be entered.

**If I receive a court date notice, do I need to appear?**

Yes, subject to the below COVID-19 protocols, all parties must appear in court if they receive a court date notice, even if a Declaration has been provided to the landlord.

If a landlord fails to appear, the case may be dismissed and/or a judgement for damages on a counterclaim may be awarded. If a tenant fails to appear, a Writ of Possession may be issued and/or money judgment awarded.

**What do I need to know about COVID-19 protocols before I come to the courthouse?**

A mask or face covering is required to enter the courthouse. Your temperature may be taken upon entry. Please maintain social distancing at all times and print out any evidence for the court.

Please do not appear in person if you are sick or have been in contact with someone known or suspected to be positive for COVID-19:

- Have you had a recent onset of coughing?
- Have you had any recent difficulty breathing?
- Have you been around anyone who has been outside of the country in the last 14 days, or
- Have you been around anyone who has been diagnosed with or is under investigation for potential COVID-19 infection?

If your answer to any of the above questions is **YES**, please contact the Court at **(770) 528-8900**.

**What precautions are being taken to ensure public health at the courthouse?**

The Magistrate Court has developed detailed protocols for in-person proceedings including setting limited, staggered calendars throughout the day in lieu of large calendar calls, requiring social distancing in the courtroom and opening additional waiting areas, mandating face coverings, making hand sanitizer available, and establishing temperature screening.

For more information, please see the [“General Safety Guidelines Memorandum”](#) issued by Cobb Judicial Circuit Chief Superior Court Judge Reuben M. Green on June 16, 2020 and the [“Supplemental Operating Guidelines](#) for the Magistrate Court of Cobb County during the COVID-19 Pandemic and Judicial Emergency, effective July 16, 2020.”

**Is the Sheriff’s Office currently providing stand-by assistance during the execution of Writs of Possession?**

The Magistrate Court has no role in the execution of Writs. Please contact the Sheriff’s Office Civil Division at (770) 499-4641 for the latest information.

**I am worried that I will be evicted. What should I do?**

Contact a lawyer and stay in contact with your landlord or management company to determine what options may be available to you during this difficult time.

**Can I make partial rent payments?**

Each situation is unique, and the CDC Order requires “best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit” in residential nonpayment of rent cases. Contact an attorney, review your lease, or discuss partial payments with your landlord or management company directly.

**Is there rental assistance available?**

The Cobb County Board of Commissioners has appropriated CARES Act funding for rental assistance. The Board selected two non-profit organizations to administer funding:

- (1) If you live in an apartment community, please contact Star-C for more information about program terms and eligibility:

[www.star-c.org/eviction-relief](http://www.star-c.org/eviction-relief)

hello@star-c.org

(404) 698-3781

- (2) If you live in an apartment community that is not covered by Star-C or any other type of residence, please contact HomeFree-USA’s Cobb County HomeSaver for Renters Program:

<https://cobbhomesaver.org/renters>

CobbHomeSaver@HomeFreeUSA.org

(855) 493-4002

**What about foreclosures?**

Magistrate Court does not handle residential property foreclosures. Please speak with an attorney or your mortgage company.

**How can I get an attorney to help me?**

Please call Cobb Legal Aid (770-528-2565) or the Cobb County Bar Association Lawyer Referral Service (770-424-2947) for help finding legal representation. No or low cost options may be available.

**What should I do if I have a question about an eviction case?**

Please visit <http://www.cobbcounty.org/courts/magistrate-court> or contact the Magistrate Court at MagCivil@cobbcounty.org or (770) 528-8900. A real person will respond during normal business hours: Mon - Fri, 8:00 a.m. – 5:00 p.m.