



Frequently Asked Questions (FAQs) about Evictions Updated August 6, 2021

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

#VaxUpCobb #MaskUpCobb

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

What are the latest updates on eviction cases?

(1) The Georgia Supreme Court's Declaration of Statewide Judicial Emergency expired at 11:59 p.m. on June 30, 2021. All courts are again required to adhere to statutory and rule-based timelines.

(2) The CDC's Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 ("CDC Order 1") expired on July 31, 2021.

(3) On August 3, 2021, the CDC issued a Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19 ("CDC Order 2"). As the two CDC Orders are nearly identical, the Magistrate Court must apply the CDC Order 2 in the same manner as the CDC Order 1.

(4) Please note: although the CDC Order 2 has been issued, all dispossession cases requiring a hearing continue to be scheduled as required under Georgia law. Tenants must file timely Answers when served with an eviction action, and all parties must appear in court when noticed to do so. If a Declaration has been provided in an applicable case, the case will be stayed at the hearing. Cases that are stayed will be scheduled for hearing as soon as the CDC Order 2 is no longer in effect.

(5) The Magistrate Court of Cobb County continues to partner with our Emergency Rental Assistance ("ERA") Program partners funded by the Board of Commissioners. Approximately 50% of Cobb County's ERA1 funding has been disbursed. While providers are available on site at the courthouse during hearings, landlords and/or tenants should apply with one provider as soon as possible. Those needing assistance may apply before an eviction action is even filed. Please visit www.cobbcounty.org/ERA to learn more.

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 August 3, 2021, the Centers for Disease Control and Prevention (“CDC”) issued a federal Agency Order entitled Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19 (“CDC Order 2”). The CDC Order 2 states that landlords, residential property owners, and others with a legal right to pursue eviction “shall not evict any covered person from any residential property in any county...while COVID-19 transmission is substantial or high...” The CDC Order does not apply to commercial properties.

Does the CDC Order 2 apply to Cobb County?

Yes. Unfortunately, Cobb County is currently experiencing High levels of community transmission of COVID-19. The Magistrate Court will continue to monitor this level as the CDC Order 2 would become inapplicable in Cobb County if community transmission falls below the Substantial level for fourteen (14) consecutive days.

Does the CDC Order 2 only apply to evictions filed on or after August 3, 2021?

No. The CDC Order 2 halts certain evictions from August 3, 2021 – October 3, 2021 regardless of whether a dispossessory affidavit was filed or Writ of Possession issued prior to August 3, 2021.

What about Writs of Possession that were issued August 1 – 3, 2021?

“Any eviction that was *completed* before issuance of [the CDC Order 2] including from August 1 through August 3, 2021 is not subject to [the CDC Order 2], as it does not operate retroactively. (emphasis added).” If a landlord received a Writ of Possession on or between August 1 – 3, 2021 in an applicable case where a Declaration has been received but that Writ has not yet been executed, such landlord may not execute that Writ until after the CDC Order 2 is no longer in effect. Execution of such a Writ may subject the landlord to federal criminal penalties. When the CDC Order 2 is no longer in effect, upon request of the landlord and re-swearing the standard Writ Request Affidavit, the Magistrate Court may re-release the Writ to the Sheriff’s Office.

Who is covered by the CDC Order 2?

The CDC Order 2 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) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020 or expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check);

- (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;
- (5) Eviction would likely render the individual homeless—or force the individual to move into and reside in close quarters in a new congregate or shared living setting—because the individual has no other available housing options; and
- (6) The individual resides in a U.S. county experiencing substantial or high rates of community transmission levels of SARS-CoV-2 as defined by CDC.

What else do parties need to know about the Declaration?

A Declaration form can be found in English and Spanish at: https://www.cdc.gov/coronavirus/2019-ncov/communication/EvictionProtectDeclare_508.pdf and https://www.cdc.gov/coronavirus/2019-ncov/communication/EvictionProtectDeclare_ESP_508.pdf. This form does NOT have to be used so long as the signed and sworn Declaration document—electronic or hard copy, in English or another language—provided by the tenant to the landlord includes all required elements of the CDC Order. Each person seeking to invoke the CDC Order's protections should provide a Declaration to his/her landlord. However, "In certain circumstances...it may be appropriate for one member of the residence to provide an executed [D]eclaration on behalf of the other adult residents..."

Is the Declaration filed with the Court?

The Magistrate Court will accept a Declaration for filing from any party, but the CDC Order 2 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 2 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 2's protections should provide the Declaration to the landlord as soon as possible to limit confusion.

What if a tenant already provided a Declaration under the CDC Order 1?

While eligibility for the moratorium will be based on the terms of the CDC Order 2, "as long as the information in a previously signed [D]eclaration submitted under a previous order remains truthful and accurate, covered persons do not need to submit a new [D]eclaration..."

If received, how can a landlord challenge a Declaration?

There is no provision in State or local law authorizing the Magistrate Court to hear a challenge to a Declaration provided to a landlord by a tenant. However, tenants "could be liable for perjury for any false or misleading statements or omissions in the [D]eclaration."

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

In residential non-payment 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 stay—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 contractual rent, late fees, penalties, and/or interest are accruing during the effective period of the CDC Order 2.

Are there exceptions to the CDC Order 2’s temporary halt on residential evictions?

Yes. Residential evictions may proceed on grounds other than non-payment of rent, including the following from the CDC Order 2:

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).

The CDC states that “engaging in criminal activity” does NOT include criminal trespass “where the underlying activity is a covered person remaining in a residential property for nonpayment of rent.” Further, the CDC elaborated that “threatening the health or safety of other residents” does NOT include “individuals who are confirmed to have, who have been exposed to, or who might have COVID-19 and take reasonable precautions to not spread the disease...”

How is the CDC Order 2 being enforced?

Federal authorities are responsible for enforcing the CDC Order 2. A person violating the CDC Order 2 may be subject to fines and/or federal jail time.

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 2 if a Declaration is provided in a residential non-payment 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 Clerk’s Office 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. As the CDC Order 2 is still in effect, it is important to note: if a CDC Declaration is provided in a residential, nonpayment of rent case, a Stay Order will be entered at the hearing and **NO WRIT OF POSSESSION MAY ISSUE.**

If a landlord fails to appear, the case may be dismissed and/or a judgment 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 “Third Order Amending Courthouse Safety Guidelines for All Classes of Court and [Updated Coronavirus Court Operating Procedures Memorandum](#)” issued by Cobb Judicial Circuit Chief Superior Court Judge Leonard on May 25, 2021.

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. Please see below for information about rental assistance that may be available.

Can I make partial rent payments?

Each situation is unique, and the CDC Order 2 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?

Yes. The Cobb County Board of Commissioners has appropriated federal funding for emergency rental assistance. The Board selected five (5) non-profit organizations to administer the program. Landlords and/or tenants may apply through any ONE provider as the terms and eligibility requirements are identical. Please visit www.cobbcounty.org/ERA for more information and contact ONE of the below rental assistance providers directly for an application.

Here is some key information:

- (a) Landlords and/or Tenants may apply.
- (b) Please apply as soon as possible. There does NOT have to be an active eviction case pending to apply or receive assistance.
- (c) Please apply with only one provider.

(d) If you've previously received assistance from one of the providers, please reapply with the same provider.

(e) All five providers are administering the identical federal program with the same initial application, documentation requirements, and ability to pay up to twelve (12) months of rent/utilities needed due to a COVID-19 hardship.

The Center for Family Resources	(770) 428-2601	thecfr.org
HomeFree-USA's Cobb Co. HomeSaver for Renters	(855) 493-4002	cobbhomesaver.org/renters
MUST Ministries	(770) 427-9862	mustministries.org
Star-C	(404) 698-3781	star-c.org/eviction-relief
Sweetwater Mission	(404) 402-5580	sweetwatermission.org

What other assistance is available?

Please see Cobb County government's COVID Assistance Center at <https://www.cobbcounty.org/communications/news/cobb-covid-assistance-center> for comprehensive information about help that is available during this difficult time in our community.

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.