



ALTUS LEGAL LLC

CONDO AND HOA LAW

March 2021

---

## UPDATE: Eviction Moratorium, Early Resolution, and Other Mandates

---

The State of Illinois, Illinois Supreme Court (“Court”), and Cook County have all issued new requirements for residential evictions (which include condominium and homeowner association actions). Below is a brief summary, followed by more in-depth details on the host of new requirements. Bear with us – there is quite a bit of information here:

Under the relevant executive orders and general administrative orders, as described below, the following requirements apply to residential eviction cases as of March 1, 2021:

- No residential eviction action may be commenced against a “covered person” (as defined in the Governor’s Executive Orders) **or a person who does not owe rent (including an investor unit owner’s tenants occupying the unit) unless the person poses a direct threat to the health and safety of others or an immediate and severe risk to property.**
- At least five days prior to the commencement of a residential eviction action (including the issuance of notice of termination), residents must receive a copy of the “covered person” declaration form prescribed by the Illinois Housing Development Authority.
- With the filing of any new eviction complaint, the plaintiff must include a completed certification form prescribed by the Illinois Supreme Court certifying that the “covered person” declaration form was served on the resident and that the resident is not a “covered person” (or did not return the declaration form) or falls within another exception to the eviction moratorium.
- A plaintiff may challenge the accuracy of a “covered person” declaration form by filing a motion requesting a hearing on that issue at the time the complaint and certification form is filed.
- Cook County: Any summons of a newly filed eviction case must include the “Notice of Early Resolution Program” (“Notice”). The Notice must also be sent to all defendants in eviction cases filed between March 27, 2020, to January 25, 2021.
- Other Illinois counties (*not* Cook): Associations located in counties other than Cook should consult with legal counsel about any early resolution program requirements established by the county’s circuit court.

## Illinois Supreme Court General Administrative Orders

On February 23, 2021, the Supreme Court of Illinois (“Court”) issued two general administrative orders affecting evictions:

1. The February 23 order revised the Court’s order of December 22, 2020. The December 22 order already required all eviction complaints to include a certification form prescribed by the Court, certifying whether the defendant is a “covered person” or whether a different exception to the eviction moratorium applied, as well as a procedure for the trial court judges to determine whether summons may be issued in any newly filed eviction case. The February 23 order adds: (1) a prohibition against filing evictions against a person who does not owe rent unless that person poses a direct threat to the health and safety of others and (2) a procedure by which a plaintiff may challenge the accuracy of a “covered person” declaration received by the plaintiff from the defendant. To challenge the accuracy of a “covered person” declaration form, the defendant must a motion requesting a hearing on that issue at the time the complaint and certification form are filed.
2. The other February 23<sup>rd</sup> order expressly authorizes each judicial circuit in Illinois to establish an “Eviction Early Resolution Program,” which may include mediation or some other online dispute resolution. That order also sets forth the minimum items that any general administrative order establishing such an early resolution program must include. The Court did not mandate the establishment of early resolution programs and grants each judicial circuit discretion in establishing such program. Therefore, associations will have to check with the judicial circuit in which they are situated to determine whether they are subject to an early resolution program.

## Circuit Court of Cook County General Administrative Orders

On January 22, 2021, the Chief Judge of the Circuit Court of Cook County issued a general administrative order establishing an early resolution program (“ERP”) with respect to evictions and consumer debt collection actions filed in Cook County. This is effectively a mandated “mediation” program for eviction cases by court order. The ERP applies to eviction cases filed on and after January 25, 2021, and newly filed consumer debt cases after February 8, 2021. The Circuit Court of Cook County issued “Notice of Early Resolution Program” (“Notice”) must accompany the summons of any newly filed case. Note, the Notice flyer must also be mailed retroactively by First Class mail to each defendant in an eviction case filed from March 27, 2020, to January 25, 2021. For any eviction case filed since March 27, 2020, the plaintiff must file a copy of the “Notice of Early Resolution Program” with the Clerk of the Circuit Court along with a certificate of service. There are similar requirements for consumer debt cases.

On November 23, 2020, the Chief Judge of the Circuit Court of Cook County issued a general administrative order that affects evictions, among other things. Under that order, a residential eviction cannot be commenced unless the tenant poses a direct threat to the health and safety of others or a violation of building code and health ordinances, except when otherwise permitted under the Governor’s executive orders. Also, under that order, the Cook County Sheriff is directed to refrain from enforcing residential eviction orders until further order of court.

## Governor Executive Orders

Pursuant to Executive Order 2021-04, the Governor extended the eviction moratorium under Executive Order 2020-72, as amended by Executive Order 2020-74 and 2021-01, to March 6, 2021. Executive Orders 2020-72 and 2020-74 prohibit any person or entity from commencing a residential eviction action under the Illinois Eviction Act against a “covered person” (as defined in those Executive Orders) or a tenant who does not owe rent unless that person poses a direct threat to the health and safety of others or an immediate and severe risk to property. Those Executive Orders require that a “covered person” declaration form, as prescribed by the Illinois Housing Development Authority, be served on all residents at least five days prior to commencement of a residential eviction (which includes prior to the issuance of a notice of termination). The “covered person” declaration form must be served in the same manner as a demand or notice under Section 9-211 of the Eviction Act.