



## Episode 22: Eviction Moratorium Update

Let's be honest -- REALTORS face an ever-changing industry. With emerging tech, growing trends, and a booming market, it's vital to keep up. Join me, Gilbert Gonzalez, CEO for the San Antonio Board of Realtors, as I get real with experts on what REALTORS need to know about this industry. It's time to get real.

GG (00:23):

We're talking today with April Gavin, who is a senior political representative with the National Association of REALTORS, and we wanted to talk a little bit about the CDC eviction moratorium, which just came out on August 3rd. So today is August 10th so we're talking a little bit about that, and we know things may change by the time this podcast comes out. The CDC has re-imposed the eviction moratorium through October 3rd, 2021, which was previously expiring on July 31st, 2021. And the CDC order states that the expiration is subject to revision based on the changing public health landscape. So, April, first thank you for joining us today.

AG (01:01):

Thank you for letting me join you today. It's always a pleasure to get to talk to Texans. I am the Texan myself, so.

GG (01:07):

Yeah. What is the difference about this latest order from the CDC? Is it truly a partial ban on evictions?

AG (01:14):

What NAR would argue is that to say that it's a totally different moratorium is actually just playing on semantics. So, the current CDC eviction ban was put into place at, at the guidance of the White House after a public outcry, when the moratorium, the most recent moratorium expired on July 31st. So, what does CDC did, because they couldn't do the same exact moratorium as before and we'll get into that again later, is they said, okay, we're going to put this moratorium in place, in places where there is a heightened level of community transmission, and that is defined by the CDC themselves. So, and then with this moratorium, every 14 days, they will look at the different counties and reevaluate where the ban should be in place. And there's a really great map on our website that you can look at and see kind of the national map and what that looks like. But visually most of the country is red and we estimate that about 90% of the country does fall under this new eviction moratorium that's now in effect.

GG (02:40):

So, they had to make it different because the Supreme court had already said, you can't have this eviction ban. So, in order to try and do something again, they did differently. And now they've said, but

it's gotta be in heightened levels of community transmission, but the way they've created it almost does apply to 90% of the United States.

AG (03:00):

Right. Exactly. And, and that, that is the higher, the crux of, of some of the legal battles that are, that are going on that I'm sure we'll address a little bit later, but that it is in fact the same eviction moratorium system. It's just in a different cloak, if you will.

GG (03:21):

So, what properties would you say are covered under this new ban then?

AG (03:26):

So, all rental properties falling under the, the jurisdictions as defined by the CDC. So, in heightened transmissions areas are covered and it's a shifting scale. So, if your county is not covered today, it could be covered in two weeks. If the level of COVID transmission goes up, it could also go down, you know, on, on the opposite side but, but I find, I think that's probably unlikely,

GG (03:58):

You know, April one of the things I was curious about though, is the news I was listening to the other day was talking about how the numbers, it's not that they're not reliable, it's just, they're not as consistent because everyone isn't reporting every single day like they were when we started all of this. You know, the, the curve was going down, everything was getting better. So, people are now starting to report a little bit slower in the numbers. So those numbers though, are what they're using to determine these areas, right? So, these numbers with, that are somewhat not being as accurately or timely reported is what's used to make these decisions.

AG (04:36):

Correct? Correct.

GG (04:38):

That seems, that seems interesting and problematic, but you know, we'll, we'll keep an eye on that. When, how, can you talk a little bit about how the eviction moratorium originally came about, when was it instituted?

AG (04:49):

Sure. as part of one of the many COVID relief packages that came about from March to September, this is, this is one of the final, final pieces of the pie, and it originated in September of 2020. And, and it was, it was as a result to help prevent spread and transmission and thought down that putting people at risk on the streets during a wide span for a pandemic was not in the interest of public health and that, that transmitting disease, if you had a bunch of people not kind of sequestered in their own homes, would actually be worse, worse for the overall public good. And so that went into effect September 4th, 2020, and it has been extended three times. With this last one we would argue is actually the fourth.

GG (05:47):

Now, would they argue that it's an, it's a completely new, and it's not an extension.

AG (05:51):

The CDC would argue that it is a completely new eviction moratorium because of its look at spread and not at all out ban nationwide.

GG (06:07):

So now it's possible when it expired on July 31st, there was this small gap, August 1st through the 3rd, that somebody, that there wasn't anything in place. Is it those evictions then, are there any processes that happen within those days, have those been called into question, or no?

AG (06:28):

That is a great, great question. So, there's a two-day window where if you completed your eviction, that that would stay, because this executive order does not act retroactively. If you started the eviction process, but it was not completed by August 3rd, then eviction moratorium currently in place would apply.

GG (06:59):

So, I want to switch a little bit to a question that I feel a lot of people ask and a lot of people talk about on the news and that's this idea of, one, how is the government able to do this? And it, I think most people agree the government is able to do it. But the thing that they question is, how is it the center for disease control, that's making a decision on housing and yet, you know, the housing and urban development, isn't where this is coming from.

AG (07:26):

This is a, this is a, to my knowledge the first time the CDC has ever acted in this, in this way. And it is obvious that there's a really unique circumstances. And what, what is it is essentially saying is that based under, there's a section called 36, 1 of the public health services act and it's designed to prevent the further spread of COVID or other diseases. And so, in the interest of public good and public safety, they have the, the ability to, to issue these quotes, temporary bans. But that being said, obviously we're just talking about it a little bit hinting at it. There are concerted efforts that NAR is currently pursuing to, to end any eviction moratoriums going forward.

GG (08:24):

Okay. So now can you talk to me about the days leading up to July 31<sup>st</sup>, because you know the Supreme court had already issued a statement. I mean, I'm sorry, a ruling. And we assumed everything was going to expire. How, how and why did the CDC take a different route?

AG (08:43):

This is an interesting and kind of long-winded to answer so very complicated question, but I'll do my best to, to parse it out for you. We have been in conversations with the White House working in partnership with them too for, for several months on a number of topics, but primarily talking about the importance of not extending the eviction moratorium and instead focusing on rental assistance and getting that out to, to our members and, and people nationwide. When the eviction moratorium looked like after the Supreme court ruled in late June, it, it looks like the White House was in agreement and was on board with our position. There was a lot of public pressure that was put on the White House and I don't know if y'all saw it in Texas, but there were members of Congress who camped out on the steps of the Capitol trying to demonstrate the homelessness that would be paused

AG (10:00):

If the eviction moratorium came to an end. And the pressure from the progressive caucus in the house was, was really significant. So, the White House did kind of about face and said, okay, Congress, we need

you to pass some legislation to, to extend the eviction moratorium. So, on July 27th, I believe that's the Thursday from getting right, dates right, the Chair of the Financial Services Committee Maxine Waters and the House Speaker Nancy Pelosi started to move legislation that would have extended a national eviction moratorium through December 31<sup>st</sup>, so, through the end of this year. NAR aggressively went to work and, and really mobilized, and this is where our grassroots resources and our members are just so incredibly great. We called all of our (inaudible), particularly those who had members on the house financial services committee and said, please contact your member of Congress and explain why this is, this is bad policy.

AG (11:15):

And at the end of the day, we were able to kill the legislation. They did not have enough votes to bring it to the floor. They then tried to pass the legislation, by unanimous consent, and it did not pass. So, we're really proud of our grassroots effort and being able to, to at least for the time being, kill that from going forward. So that's kind of where we were on the legislative front. So, then the PR, when that failed, the President said the CDC, put pressure back on the CDC. And then lots of legal scholars actually said, this is not going to pass constitutional muster. The CDC went ahead and said, just because it's a partial ban and it's not as straight up across the board the eviction moratorium that it was different. And so that's kinda where we are now.

GG (12:12):

So, what I wanted to ask is because it's a, a new form of restriction on behalf of the CDC, this is not something where you can look to everything that's happened before from the Supreme court, from the district courts and all those other things. This is a new, this has to be re litigated completely correct?

AG (12:36):

That is correct. And we are in the process of doing that, that,

GG (12:41):

So, and let's talk about what y'all did initially though, cause NAR is the only one to file a lawsuit to kind of stop these eviction moratoriums. And can you tell us a little bit about how that took, took to flight?

AG (12:57):

You have a plaintiff who, and in both Alabama and in Georgia, and there are state associations with the help of NAR filed the initial lawsuits. We, we are not the only group working in a space. There are others, but this is the one where the, the ruling that we're working on, working with originated. So that was the one that made it all the way to the Supreme court with, with their decision saying, you know, that they ultimately you can't do another nationwide eviction moratorium so, in a quick summary. So, moving forward that that because a new suit was required, we, we, the Alabama and Georgia associations have, have done that stepped up to the plate once more with the same plaintiff and have filed an, this past week, filed an emergency motion in the same court, with Judge Dabney Friedrich, which is in the DC court asking for her to enforce this current courts recent order to not extend the moratorium without new legislation. And our argument is essentially that it's the same moratorium. It's not any different.

GG (14:22):

My guess is though the CBC is going to say, it's not the same moratorium. So, you need to start all over again from the district court to the court of appeals, and then back up.

AG (14:35):

The whole thing. We, we are expecting this to move very, very quickly. We, we're expecting a decision from Judge Friedrich as early as yesterday, we may, we may have one today. So, this is an ever moving ever moving, ever changing pieces of litigation that's occurring and both sides are fully prepared and we expect them to appeal regardless of the decision almost instantaneously. And then the appellate courts tend to move very quickly after that. And probably it will end up back at the Supreme court.

GG (15:14):

You know, we always talk about realtors caring about private property rights. And this is a perfect example of the hard work that the national association does getting a ruling out of the Supreme court on June 29th is a pretty big deal. Can you talk to us a little bit about the significance of, of that kind of coming about?

AG (15:39):

Sure, it, it, it was a big deal and it's not, not, not very many cases get to go to the Supreme court. So it's, it's really kind of an honor that this issue was even taken up by the highest court in our country and it, and it goes to show the importance of private property rights to the core value system of, of, of America, right. So that's first of all, kind of cool. But yeah, so there were four Supreme court justices that agreed with our position, our merits on the case and challenging the lawfulness of the eviction moratorium and stating that they would have ended the evection ban immediately. The, there, the five justices who didn't quite agree with us don't, weren't not in agreement. The real crux of the argument is on the opinion that was written by justice Kavanaugh and his deciding vote to keep the moratorium in place until the end of July, which was two weeks essentially it was just a few, few weeks after the Supreme court, their statements.

AG (16:56):

And so, he said specifically in his, and I'm going to do quotes, in my view, clear and specific congressional authorization would be necessary for the CDC to extend the eviction moratorium, end quotes. And so that basically was the, the battle cry to Congress to say, if you want to keep doing this, it can't be the executive branch who's going along and doing this. It has to come from Congress. So, which is, which is, you know, part of the three legs system that our, our government works so great on. So, it's, it's really interesting that the CDC then went in and took the actions that they did without that clear delineation from Congress.

GG (17:47):

I mean, that's a perfect example of three separated system, right? The Supreme court is saying, you, Mr. President, don't get to do this. It has to come through Congress. Congress didn't do it though, and here we are.

AG (18:01):

And here we are. So, I think this is gonna be, it's gonna, it's gonna be really interesting to see how this plays out. And I think it'll, it'll definitely be, hopefully a victory for private property rights for, and set a precedent so we won't have to deal with this going forward.

GG (18:19):

What do you think aside from the legal challenges, what do you think the likelihood is that congressional intervention will happen in order to make this more likely to stand? I mean, that is clearly what the Supreme court said. If this is going to stand, it has to come from Congress. Where do you see that coming into play?

AG (18:40):

I think a lot of it is going to hinge upon what the courts say themselves with this most recent law suit and where they stand on, on the argument. I would say that right now, Congress is on, is in district work period in August, and they'll return to Washington in September. On their docket one of the things that they're really focusing on is, are a couple of infrastructure packages, which were part of the president's campaign promises. It's something that he's very much in support of, and there is bipartisan support on both sides to get something done in that space. So that's going to take up a lot of the oxygen in the room and not to say that Congress can't do more than one thing at a time. They certainly can, but when it's controversial, it makes it even that much more hard or challenging to, to pass and get through. So it is, things they're happening right now that have never happened before. So, for me to say, this is not going to happen before October 3<sup>rd</sup>, I can't say that. I don't think anybody could. It certainly could. I think there's some definite challenges for getting it passed and signed into law though, particularly in the Senate,

GG (20:00):

You know, NAR has great working relationships with the members of Congress. What have y'all heard about their reactions to this, both sides?

AG (20:08):

No, it is a, it is a hard position to be in, I think for everyone. NAR certainly does not want to be the face of kicking people out on the street, but it's not, that is not the goal here. Goal is, and we've communicated that with our, with our congressional friends on both sides of the aisle. I think the, it's, so it's a kind of an, it's a PR optics battle in some regards for certain members of Congress. Depending on where they're from they are very sympathetic, to, to our position. And I, I would point to the legislation failing last week and the house to, to their, their empathy with, with NAR's views on this. So, there are some that are really, really opposed, but a lot of members, when you, when you talk to them about it, you know, they don't want to hurt small business owners, small mom and pop landlord either because, you know, they're, they understand the plight that our, that our members are in as well.

GG (21:18):

You know, and I think a lot of that has to do with promoting the solutions that are out there. And I know NAR and a lot of entities have been working on rental assistance and getting that, getting that out as a top priority. Cause that would be a great fix, right? Is if we could help both people stay in their, their rental properties and the people who own those properties to be able to continue their own obligation. That's the solution. What have, have you heard from NAR from other places as far as the available to, to help people?

AG (21:52):

You know, what's interesting about this whole process is that with the funds being dispersed, the states were in charge of ultimately dispersing the 50 billion and emergency relief funds to the different tenants or housing providers through their own portals. And the states have, have had their own challenges. Number one, because they have never had to disperse this type of funding like this through there, these particular agencies that are being asked to do it ever before. So, it's a whole learning curve for the states. So, I don't want to make the state governments seem like the bad guy. They're, they're stuck in a hard and challenging place too. But the main thing that we're trying to do is help the state get the funds out. And we have been working, I think I mentioned this earlier, we've been working with the White House in partnership with them to promote resources that are available.

AG (22:53):

The one thing that is interesting is the different states in different localities can actually layer on additional requirements that you have to meet in order to receive funding, which makes it even more challenging to get those funds out. So that's another thing that we're trying to help folks work through and try to minimize some of that red tape. But, because what happens in San Antonio and the process there is, is different than what happens in even Houston. So it is, it's a and forget about California, it's way different there. So, it's not a one size fits all, but we are trying to educate folks and our members, particularly on, on different resources that are available. We have them on our national website with which you can go to, if you just type in eviction moratorium, it'll pull that up. There's a Toolcat there that you can find. But a great one to go to is the consumer finance.gov and that's all one word, consumer finance.gov, backslash rent help. And that's a, that's a great resource for folks to tap into as well.

GG (24:03):

So, if I understand correctly, there's \$50 billion worth of federal emergency funding, but only 6.5% of that has actually been able to get into the hands of those who need it. Is there anything that locally that, you know, at the state level or, or locally we can do as associations to help get that into the hands that that need it?

AG (24:29):

Yeah. And in fact, I was talking to your Texas realtor counterparts earlier this week on, on ideas and suggestions to get, get things moving in Texas. Even, even more, I know it is really frustrating and it goes, honestly, I think a lot of it goes to the fact that this is the first time this has ever happened. That anyone has ever had to, an agency has had to operate in this capacity. And so I think it is a bit of a learning curve. But it's, but it's time that we kind of get on with it, you know? So yes, not, not to worry, your Texas realtors are definitely, are definitely working on, on, on helping remove the bottleneck in Texas as we speak.

GG (25:18):

Excellent. And I think you mentioned something earlier and I know our NAR chairman, Charlie Oppler, has mentioned mom and pop housing providers. A lot of people have the opportunity, or a lot of people think that the people who are owning rental properties are huge corporate entities, but that's why we call them mom and pop because they're not

AG (25:41):

Right. I love, I love that question. It is, it is a really good one. Well, so we actually, as part of a coalition work with a group of multiple different entities, and some of them are these huge commercial apartment complexes and, you know, who made the owned by a hedge fund. They have the capital to be able to withstand, not collecting rent for a year or two. And, and they're fine. You know, it's an inconvenience. We use the term mom and pop as a way to separate for our members of Congress and to bring it home. What we found is most of our members who participate in this, in this space as landlords do so in order to have a little bit of supplemental income as, so they have a couple of investment properties that they, that they rent out. Oftentimes it's, it's a it's a mechanism for their future retirement plan. And so it's not, we want to put a more human face with, with the concept of landlord because oftentimes it, it, it feels less warm and fuzzy and really kind of illustrates that these are people too, who are not the trillionaires who can afford to not have the income coming in, because they ultimately are still on the hook for the taxes and for their mortgage payments, that they have one and the maintenance of the property, et cetera, et cetera, even without receiving a dime from their tenants.

GG (27:21):

And part of that was the obligations were still on them to maintain the property and then keep their own financial obligations for that, and still provide housing for people who, who needed it.

Speaker 4 (27:32):

Right.

GG (27:35):

So, obviously I'm going to ask you to look into a crystal ball and predict the future, but it seems almost impossible because it's a constant changing environment. We're doing this today, but like you mentioned earlier, the court could issue a ruling tomorrow. Where do you think we're going to be in a couple of days, a couple of weeks, a couple of months?

AG (27:53):

I think it's really an ever-changing landscape. And I think it's going to be very interesting to see where the courts fall on this going forward. And it'll be interesting to see if Congress does choose to take action after failing right before they went out for August recess to pass something. So, are people's positions going to change? You know, all signs say that the economy is actually improving. So, if the economy continues to improve, I think that that certainly helps the argument that rental assistance is probably the better solution, not a continued eviction moratorium. So, we'll more to come, you know.

GG (28:40):

April, I appreciate you giving us this update on everything that's been going on with the CDC at the national level. And we look forward to keeping our members informed over the coming days.

AG (28:47)

Thank you so much for letting me join.

GG (28:48)

You have a great day and welcome back to Texas anytime.

AG: (28:52)

Thank you.

Thanks for listening to Get Real! Be sure to subscribe for future episodes and share us with your friends on Facebook, Instagram, and Twitter. More information on this episode can be found at [sabor.com/getreal](http://sabor.com/getreal). Until next time!