

The Backus Bulletin

"Your Management, Your Way"

August 2021

Food for Thought on Legality of the Eviction Moratorium

A commentary written by George Will for the San Jose Mercury News brought up an interesting point.

In March, 2020, Congress legislated an eviction moratorium applicable to federally subsidized housing. It was to expire in July, 2020 and did not apply to non-subsidized properties.

In September, 2020, the Center for Disease Control and Prevention, an executive branch appendage, suddenly acted as a supplemental legislature. The CDC declared a ban on evictions from any rental housing for nonpayment of rent by persons who could self-certify having suffered pandemic related financial injury. The Biden administration extended the ban three times, through July 31, 2021.

The CDC attributed its power to impose the ban based its authority to "provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to

be sources of dangerous infection to human beings, and other measures."

The CDC reasons that evictions would cause people to move around, perhaps too congested spaces, therefore spreading the disease. Notice they do not give the reason of it would be inhumane to remove people from housing when the circumstances of their lack of money is out of their control. They do not give that reason because it would not come under the parvenu of the CDC.

The most recent of the federal courts have ruled the eviction ban does not fall under the "other measures" because it is not similar to the "other measures" in the same sentence.

The courts said that under CDC's interpretation of its power, it "can do anything it can conceive of to prevent the spread of this disease or others" exercising "near dictatorial power for the

duration of the pandemic."

This whole process basically has empowered an administrative entity essentially legislative power, without recourse, a pretty scary situation.

Yet to be discussed is the issue of the Constitution, which says "government shall not take private property for public use, without just compensation." Personally, I feel expecting an owner to forgo rent at government mandate, is indeed a "taking" of private property.

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So far, it actually has all worked out close to OK, but it makes me very nervous to see national policy being made by other than the legislature we elected. (OK, that is making me nervous too, but another day!)

On another issue: A reminder that the new rules under California Proposition 19, which passed last November, may cause you to want to make a change in your Trust or Will. Children inheriting investment property, or a principle residence that they will not be moving into, will not benefit from the passing along of the lower property tax basis. Check with your attorney!