



Written by [Joe Wolverton, II, J.D.](#) on September 10, 2020

## President Trump's Executive Order Taking Control of Rental Property Under Scrutiny

*"Property must be secured or liberty cannot exist."*

— John Adams, Discourses on Davila (1791)

"By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered ... that the Director of FHFA shall review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19."



That quote is taken from [Executive Order 13945](#) issued by President Donald Trump on August 8, 2020. The president claims that the U.S. Constitution grants him authority to constructively seize ownership of all privately owned rental property in the United States. This usurpation reduces every rental contract in America to mere non-binding memoranda, being unenforceable by the owners of the private rental property, that property having been placed under the absolute control of the federal government, per Executive Order 13945.

Following the president's issuance of Executive Order 13945, the CDC published protocols for those renters wanting to evade eviction. Renters must download documents from the CDC website and submit them to their landlords. Should a landlord refuse to comply with the president's edict or the CDC guidelines given under the "authority" of that order, he becomes liable to criminal charges.

According to the order issued by the CDC, the protections promulgated by President Trump's executive order will last through the end of 2020.

Some Republican members of Congress have publicly challenged the president's unprecedented seizure of private property.

"CDC does not have the authority to do this. It's dangerous precedent and bad policy," Senator Rand Paul (R-Ky.) tweeted on September 2.

Senator Paul's fellow Kentuckian and fellow Republican, Representative Thomas Massie (R-Ky.), took to Twitter that same day to express his opposition to the president's power grab. "Rental contracts are governed by state law. There is no federal authority to overturn them. The CDC order is an affront to the rule of law, and an emasculation of every legislator in this country — state and federal. Barely a whimper from most of them, Democrat or Republican," Massie wrote.

Apart from these three legislators, Republicans have remained mute witnesses to the president's signing of an executive order taking the very socialist tack of taking control of private property. One wonders how the GOP might have reacted had this order been issued by Barack Obama.

Of course, there is no possible argument contrary to the assertions of Paul and Massie. There isn't a



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syllable of the U.S. Constitution that would grant to the president — or any other branch of government or officer thereof — power to take control of contracts and the private property of Americans.

Former Republican, now Libertarian Representative Justin Amash (L-Mich.) joined his two constant constitutionally consistent companions in calling out the president for his historically unrivaled autocratic seizure of property. “The unintended consequences will harm the people it’s intended to help. Again, the best form of pandemic relief is direct cash payments to the people,” said Amash.

In an article discussing the economic fallout that will unavoidably follow this latest presidential decree, Jeff Deist of the Mises Institute explains how renters will ultimately pay the cost of the government’s “care.” Deist writes:

Rental housing units will drop in price as more landlords abandon the business—setting the stage for commercial and private equity buyers to grab units on the cheap from individuals and small owners. Ultimately, foreclosures, evictions, and tax sales will happen no matter what the federal government does. The likely outcome is bigger players owning more and more of the rental housing stock, consolidating the permanent renter class and adding to the rootlessness many Americans feel. Even the most modest home ownership creates skin in the game and encourages better neighborhoods, while areas dominated by rentals lack the same incentives for improvement. And the new owners of rental units will pass all the uncertainty, risks, and potential losses on to millions of Americans in the form of higher rents.

Even for 2020 standards of head-shaking happenings, President Trump’s decision to unilaterally usurp power over private property is nearly unbelievable.

I would ask how our Founding Fathers would have reacted if some king issued a fiat giving himself control of their contracts for use of their own private property, but we don’t have to wonder. We know how they would react because we have only to read the Declaration of Independence and the record of how they sacrificed their lives, fortunes, and sacred honor to restore their right to govern themselves and to control their own property.

The book *Our Rights* puts a fine point on the primacy of property rights to our Founding Fathers: “The centrality of property rights to the American conception of liberty can scarcely be exaggerated.”

No one with even a cursory understanding of American history needs to read a catalog of quotes from the Founding Fathers to know that the *Our Rights* summary of the situation is accurate.

I will, however, include a couple of quotes, hoping to clear up any doubt as to the constitutionality or American-ality of the president’s consolidation of control over rental property in the land of the free.

“The right of property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty,” Arthur Lee of Virginia wrote in *An Appeal to the Justice and Interests of the People of Great Britain* in 1775.

Echoing that equation of property rights and liberty, I present James Madison. “Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions,” Madison wrote in an essay called “Property” written in 1792.

This last quote is not from a Founding Father, but is from a man often quoted by the Founding Generation in the letters, essays, and books: Thomas Gordon. “Happiness is the Effect of Independency, and Independency the Effect of Property,” Gordon wrote in *Cato’s Letters* No. 68, published in 1721.

I’ll close with a couple of quotes from the most applicable authority on this subject: the U.S.



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Constitution.

The Fifth Amendment reads, in relevant part: “Nor shall private property be taken for public use, without just compensation.”

Neither President Trump’s executive order, nor the CDC directives issued subsequently provide any compensation — much less *just* compensation — to the owners of the rental properties that will now be controlled by the federal government.

Article I, Section 1 begins: “All legislative [lawmaking] powers herein granted shall be vested in a Congress of the United States.”

Executive Order 13945 was not passed by Congress, and Congress is the only branch of the federal government that can make laws; otherwise, those laws are not made with the consent of the governed, and that got our Founding Fathers a little upset at their own property-pilfering executive. It seems that “stroke of the pen, law of the land” policy so popular with previous presidents is still very much in vogue with the current occupant of the Oval Office.

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