

# Pandemic Eviction and Other Housing Laws and Rules



**BY LAWRENCE MCDONOUGH  
ATTORNEY AT LAW**

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# Presentations



Minnesota Continuing Legal Education (MCLE): Consumer Law - December 22, 2020

Revised from Prior Presentations:

Hennepin County Bar Association Landlord Tenant Law Section - December 14, 2020

HOME Line - November 18, 2020

Minnesota Justice Foundation - October 5, 2020

University of Saint Thomas School of Law - October 5, 2020

University of Minnesota School of Law - September 8, 2020

Law Enforcement Training Services, LLC and the Minnesota Sheriffs' Association - July 20, 2020

Legal Services State Support - May 1, 2020

Lawrence McDonough

Attorney at Law

Adjunct Professor of Law, University of Minnesota School of Law

Senior Minnesota Counsel, Lawyers' Committee for Civil Rights Under Law

651-398-8053

[mcdon056@umn.edu](mailto:mcdon056@umn.edu)

<http://povertylaw.homestead.com/Biolarrymcdonough.html>

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# Suspended Evictions and Exceptions



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## Federal Laws and Orders

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# Executive Order 20-14



[https://mn.gov/governor/assets/EO%2020-14%20Filed\\_tcm1055-424508.pdf](https://mn.gov/governor/assets/EO%2020-14%20Filed_tcm1055-424508.pdf)

The Governor suspended evictions except “where the tenant seriously endangers the safety of other residents or for violations of Minnesota Statutes 2019, section 504B.171, subdivision 1 [certain types of illegal activity]” while the executive orders stays in effect. Tenants still owe the rent, but landlords cannot evict those who cannot pay while the order is in effect.

It began March 24, 2020 at 5:00 p.m. and continues for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded.

Executive Order 20-79 supplemented and replaced Executive Order 20-14, effective August 4, 2020. *See* Slides 21-34.

The most recent peacetime emergency extension continues until December 14, 2020 but could be extended again.

# Executive Order 20-14



Included in the suspension:

Residential landlords, property owners, mortgage holders, or other persons entitled to recover residential premises: filing eviction actions and terminating residential leases

Officers who hold a writ of recovery: executing writs (not limited to residential, probably a mistake)

Financial institutions holding home mortgages: (1) *requested* to implement an immediate moratorium on foreclosures and evictions due to the pandemic, and (2) *strongly urged* not to impose late fees or other penalties for late mortgage payments due to the pandemic

# Executive Order 20-14



Exceptions:

Residential landlords, property owners, mortgage holders,  
or other persons entitled to recover residential premises:

Tenant seriously endangers the safety of other residents

Violations of Minn. Stat. § 504B.171, subdivision 1

***Nonpayment of rent is not an exception.***



# Executive Order 20-14

## Amended by Executive Order 20-73



Executive Order 20-73 expanded the eviction suspension exception to add where the tenant seriously endangers the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease.

[https://mn.gov/governor/assets/EO%2020-73%20Final\\_tcm1055-434929.pdf](https://mn.gov/governor/assets/EO%2020-73%20Final_tcm1055-434929.pdf)

# Executive Order 20-79



Executive Order 20-79 rescinded Executive Orders 20-14 and 20-73 and replaced them with a new eviction suspension, effective August 4, 2020.

It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

[https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20%28002%29\\_tcm1055-440501.pdf](https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20%28002%29_tcm1055-440501.pdf)

# Executive Order 20-79



Paragraph 2 of the Order provides that this suspension does not include eviction actions where the tenant:

- a. Seriously endangers the safety of other residents;
- b. Violates Minnesota Statutes 2019, section 504B.171, subdivision 1;
- c. Remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or
- d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:
  - i. Seriously endangers the safety of others; or
  - ii. Significantly damages property.

# Executive Order 20-79



Exceptions: Violations of Minn. Stat. § 504B.171, subdivision 1

<https://www.revisor.mn.gov/statutes/cite/504B.171>

(a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

# Executive Order 20-79



Exceptions: Violations of Minn. Stat. § 504B.171, subdivision 1

<https://www.revisor.mn.gov/statutes/cite/504B.171>

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

(iv) allow stolen property or property obtained by robbery in those premises or in the common area and curtilage of the premises; and

(2) the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152.

# Executive Order 20-79



Exceptions: Violations of Minn. Stat. § 504B.171, subdivision 1

<https://www.revisor.mn.gov/statutes/cite/504B.171>

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

Minn. Stat. § 504B.206, Subd. 1(a) acts include:

- (1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;
- (2) criminal sexual conduct under sections 609.342 to 609.3451; or
- (3) harass, as that term is defined under section 609.749, subdivision 1.

# Executive Order 20-79



Exception to the Exceptions: Violations of Minn. Stat. § 504B.171, subdivision 1

The covenant is not violated when a person other than the landlord or licensor or the tenant or licensee possesses or allows controlled substances in the premises, common area, or curtilage, unless the landlord or licensor or the tenant or licensee knew or had reason to know of that activity.

Other defenses:

- The tenant could not prevent the illegal drugs from being brought on the property. Minn. Stat. § 609.5317, subd. 3.
- Medical marijuana use is legal under state law. Minn. Stat. § 152.32.

# Executive Order 20-79



Paragraph 4 allows residential landlords to issue a termination of lease or nonrenewal of lease due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant.



# Executive Order 20-79



Paragraph 5 states that all officers who hold a writ of recovery of premises and order to vacate must cease executing such writs as required by Minnesota Statutes 2019, section 504B.365, subdivision 1, with the exception of:

- a. Writs designated as a priority execution under Minnesota Statutes 2019, section 504B.365, subdivision 2;
- b. Writs issued as a result of an eviction action judgment entered prior to the enactment of Executive Order 20-14 on March 24, 2020 at 5:00 pm; or
- c. Writs issued as a result of an eviction action permitted by paragraph 2.

# Executive Order 20-79



Paragraph 6 added that all property owners, mortgage holders, or other persons seeking possession on grounds permitted by this Executive Order must provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer.

# Executive Order 20-79



Similar to the earlier orders:

Pursuant to Minn. Stat. § 12.45, a person who willfully violates paragraphs 2, 3, and 5 of this Executive Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days. The Attorney General may also seek any relief available pursuant to Minn. Stat. § 8.31.

This Executive Order does not apply to properties on federal tribal trust land.

Nothing in this Executive Order creates grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.

Nothing in this Executive Order may in any way restrict state or local authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential real property.

# Executive Order 20-79



## Violations

Pursuant to Minn. Stat. § 12.45, a person who willfully violates paragraphs 1, 2, or 3 of this Executive Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days. The Attorney General may also seek any relief available pursuant to Minnesota Statutes 2019, section 8.31.

## Prosecutions

[https://www.ag.state.mn.us/Office/Communications/2020/04/03\\_Mostad.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/03_Mostad.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/07\\_Mostad.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/07_Mostad.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/10\\_DivineEstates.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/10_DivineEstates.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/17\\_LaPlant.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/17_LaPlant.asp)

# Executive Order 20-79



## Defenses:

- Plaintiff must prove claims supporting eviction by a preponderance of the evidence. See Residential Eviction Defense and Tenant Claims in Minnesota at V.H.6.  
[http://povertylaw.homestead.com/files/Reading/Residential\\_Eviction\\_Defense\\_in\\_Minnesota.htm#TOC1\\_62](http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_62)
- The property owner, mortgage holder, or other persons seeking possession on grounds permitted by this Executive Order *did not* provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer.
- Tenant did not *materially* violate a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: *significantly* damages property.

# Executive Order 20-79



## Defenses:

- Tenant holds over after *residential landlord* termination of lease or nonrenewal of lease *due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant*
- Minn. Stat. § 504B.171: *see* Slides 12-15; Residential Eviction Defense and Tenant Claims in Minnesota at VI.G.16  
[http://povertylaw.homestead.com/files/Reading/Residential\\_Eviction\\_Defense\\_in\\_Minnesota.htm#TOC1\\_312](http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_312)
- Tenant did not *seriously* endanger the safety of other residents
- Tenant did not *seriously* endanger the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease.

# Executive Order 20-79



## Other defenses and issues:

- Service, Minn. Stat. § 504B.331
- Waiver of notice, *Pappas v. Stark*, 123 Minn.81, 83, 142 N.W. 1042, 1047 (1913)
- Retaliation, under statute Minn. Stat. § 504B.285 and/or common law, *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019)
- Waiver of breach, *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907)
- Domestic abuse, Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a)
- Relief from forfeiture, *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932)
- Reasonable accommodation of disability: 42U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; *Douglas v. Kriegsfield Corp.*, 884 A.2d1109 (D.C. Ct. App. 2005); Minn. Stat. § 363A.10; *Schuett v. Anderson*, 386N.W.2d 249, 253 (Minn. Ct. App. 1986)
- Expungement, under statute Minn. Stat. § 484.014 or inherent authority Minn. Stat. § 504B.345, Subd. 1(c)(2)
- Attorney's fees, Minn. Stat. § 504B.172

See Residential Eviction Defense and Tenant Claims in Minnesota and Answer Forms

<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

# Executive Order 20-79



## Law Enforcement

Since law enforcement has liability for violating Executive Orders, it should require landlords to show documentation that the writ fits within the exceptions.



# Executive Order 20-79



Executive Orders 20-79 did not suspend mortgage foreclosures or contract for deed cancellations, but they suspended eviction court actions based on foreclosures and cancellations.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024



<https://library.nclc.org/sec-4024-temporary-moratorium-eviction-filings>

<https://library.nclc.org/major-consumer-protections-announced-response-covid-19#content-1>

The eviction moratorium operated by restricting lessors of *covered properties* (discussed in more detail below) from *filing* new eviction actions for non-payment of rent, and also prohibits “charg[ing] fees, penalties, or other charges to the tenant related to such nonpayment of rent.”

**The federal eviction moratorium took effect on March 27, 2020 and continued for 120 days until July 25, 2020.** The federal eviction moratorium did not affect cases (1) that were filed before the moratorium took effect or that are filed after it sunsets, (2) that involve non-covered tenancies (see below), or (3) where the eviction is based on another reason besides nonpayment of rent or nonpayment of other fees or charges.

**Part of the Act remains in effect.**

# CARES Act § 4024



## Covered Dwelling

A dwelling

Occupied by a tenant

Pursuant to a residential lease

Or

Without a lease or with a lease terminable under State law

And

Is on or in a *covered property*

# CARES Act § 4024



## Covered Properties

The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan.

According to recent estimates, the CARES Act applies to as many as 50% of tenancies in Minnesota.

# CARES Act § 4024



## Covered Properties

Properties that “participate in” a subsidy program covered by the Violence Against Women Act (VAWA”):

- Section 8 Housing Choice Voucher (“HCV”) or VASH (HUD-Veterans Affairs) voucher
- Section 8 Project-Based Voucher (PBV) units
- Public housing units
- HOME (HOME Investment Partnership) units
- HOPWA (Housing Opportunities for Persons with AIDS) units
- Permanent Supportive Housing (PSH) units
- Tenants that use a PSH or Shelter Plus Care voucher
- Federal Low Income Housing Tax Credit (LIHTC or “tax credit”) units
- Property receives a project-based subsidy through HUD
- Property receive a project-based subsidy through the U.S. Department of Agriculture

Property participated in the Section 542 Rural Housing Voucher program

Property has any tenant who uses a Rural Housing Voucher

# CARES Act § 4024



## Covered Properties:

How to find out if it is a covered property (Covered by VAWA or USDA rural housing voucher):

- If the tenant must do an annual income recertification the property is likely a covered property
- If the tenant deals with a Public Housing Authority for matters related to their housing it is likely a covered property
- If the tenant's rent adjusts based on their income the property is likely a covered property
- The tenant's lease may reference a federal subsidy program
- Some subsidies are searchable on the National Housing Preservation Database: <https://preservationdatabase.org/>

# CARES Act § 4024



## Covered Properties

Property has a federally backed single family (1-4 units) or multifamily mortgage:

- Mortgage insured by the Federal Housing Administration (FHA)
- Mortgage guaranteed, provided by, or insured by HUD, the Department of Veterans Affairs (VA), or Department of Agriculture (USDA)
- Mortgage owned by Fannie Mae or Freddie Mac

Federally backed multifamily mortgage loan secured by a property with five or more dwelling units

# CARES Act § 4024



## Covered Properties

How to find out if it is a covered property (Federally-backed mortgage):

- Sometimes this information is recorded in public records, but sometimes it is not.
- A non-exhaustive database of multifamily properties with HUD, FHA, USDA, Fannie Mae and Freddie Mac mortgages can be found at the National Low Income Housing Coalition: [https://nlihc.org/federal-moratoriums?ct=t%28update\\_041720%29](https://nlihc.org/federal-moratoriums?ct=t%28update_041720%29)
- Properties that have multifamily FHA or USDA mortgages are searchable on the National Housing Preservation Database: <https://preservationdatabase.org/>
- The landlord can call the FHA, VA, USDA, Fannie Mae or Freddie Mac escalation number listed on this website to inquire as to the status of their mortgage: <https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>

The landlord can look up if Fannie Mae or Freddie Mac own their mortgage on these sites:

<https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>

<https://www.knowyouoptions.com/loanlookup>

<https://ww3.freddie.mac.com/loanlookup/>



# CARES Act § 4024



An affected landlord could not:

- Evict for nonpayment of rent or fees until after July 25, 2020
- Issue a notice to vacate for any reason until after July 25, 2020
- **Charge late fees for late rent that accrues during the period from March 27, 2020 through July 25, 2020**

# CARES Act § 4024



After July 25, 2020

The federal moratorium also provides that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' notice that may not be given until after the moratorium period.

***This provision is not limited to nonpayment of rent, and has no expiration date.***

# CDC Eviction Suspension Order



Centers for Disease Control and Prevention (CDC) Order - Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

<https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

Effective September 4 through December 31, 2020

It declares a national moratorium on certain residential evictions for nonpayment (of rent, as well as other fees or charges) under the authority of 42 C.F.R. § 70.2 (authoring the CDC Director, upon a finding that state health authorities have not taken sufficient measures to prevent the spread of a communicable disease, to "take such measures to prevent such spread of the diseases as he/she deems reasonably necessary").

# CDC Eviction Suspension Order



The moratorium applies only to tenants who present a signed form declaration, the text of which appears in the order, to their landlords. To sign the declaration, a tenant must be able to meet certain financial criteria, be unable to pay full rent due to an income loss or "extraordinary" medical bills, have used best efforts to obtain governmental rent assistance, likely become homeless or forced to "live in close quarters" in another residence if evicted, and promise to "make timely partial payments that are as close to the full payment as the individual's circumstances may permit."

# CDC Eviction Suspension Order



The order applies in every U.S. state and territory with reported cases of Covid-19, except for states, local territorial, or tribal areas that already have "a moratorium on residential evictions that provides the same or greater level of public health protection than the requirements listed in this Order."

The order prohibits any "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action" from evicting a covered person from "from any residential property." The terms "landlord" and "owner" are not specifically defined. "Residential property" is defined to include "any property leased for residential purposes," and goes on to specify the term includes "any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes." However, the definition does "not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant" as defined under state law.

# CDC Eviction Suspension Order



To be a "covered person" entitled to the protection of the order, one must (i) be a "tenant, lessee, or resident of a residential property" and (ii) provide a required declaration, sworn under penalty of perjury, to the landlord. The order includes, as an attachment, a form declaration for tenants to use-though it is not clear whether tenants must use the form declaration or may use a different form so long as the required contents are present. The preamble to the form states that "[e]ach adult listed on the lease, rental agreement, or housing contract should complete this declaration," though again, it is unclear what the effect of having fewer than all listed adults sign the declaration would be.

# CDC Eviction Suspension Order



The contents of the declaration, and are as follows:

- I have used best efforts to obtain all available government assistance for rent or housing
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses.
- I am 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.

# CDC Eviction Suspension Order



- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.
- I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.
- I certify the truth and correctness of the contents "under penalty of perjury, pursuant to 28 U.S.C. 1746.



# CDC Eviction Suspension Order



Exceptions: "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)."

# CDC Eviction Suspension Order



## CDC Eviction Suspension Order

<https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>

## National Housing Law Project

<https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>

<https://www.nhlp.org/wp-content/uploads/CDC-FAQ-for-Renters.pdf>

## National Low Income Housing Coalition

<https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>

<https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf>

# Comparison of Executive Order 20-79, CARES Act § 4024, and the CDC Eviction Suspension Order



## Executive Order 20-79:

It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

Prohibits evictions actions and lease terminations except where: (1) the tenant violates Minn. Stat. § 504B.171, subdivision 1, (2) the tenant seriously endangers the safety of other residents, (3) the tenant materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: seriously endangers the safety of others, (4) the tenant materially violation of a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: significantly damages property, (5) the tenant holds over after residential landlord termination of lease or nonrenewal of lease due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant. Written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer, or (6) writs designated as a priority execution under Minn. Stat. § 504B.365, subdivision 2

Does not affect late fees

# Comparison of Executive Order 20-79, CARES Act § 4024, and the CDC Eviction Suspension Order



## CARES Act § 4024:

Applies only to covered properties

Prohibits late fees from March 27 through July 25, 2020

Requires 30-day lease termination notice given July 25, 2020 or afterward for all eviction bases with no expiration date

# Comparison of Executive Order 20-79, CARES Act § 4024, and the CDC Eviction Suspension Order



## CDC Eviction Suspension Order:

It might not apply while Executive Order 20-79 is in effect, since Executive Order 20-79 generally provides greater level of public health protection (i.e. more than just nonpayment of rent cases).

However, one of the Executive Order 20-79 exceptions provides less protection by allowing the property owner to eviction tenants to allow property owner or owner's family member(s) to move into the property.

If the courts interpret the CDC order as providing a "floor" of eviction protection, local moratorium provisions could be considered on a case-by-case basis and applied in addition to the CDC order where the local provision is more favorable to tenants.

# Comparison of Executive Order 20-79, CARES Act § 4024, and the CDC Eviction Suspension Order



## CDC Eviction Suspension Order:

Effective until December 31, 2020

"Residential property" is defined to include "any property leased for residential purposes," and goes on to specify the term includes "any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes." Exception: any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant" as defined under state law.

Tenant must provide a required declaration, sworn under penalty of perjury, to the landlord: (1) used best efforts to obtain all available government assistance; (2) limited income; (3) unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses; (4) 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) risk of homelessness; and (6) understand rent obligation.

Exceptions: (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).

# Mortgage Foreclosures



Under the CARES Act § 4022, a servicer of federally backed mortgage loan for 1-4 family properties may not initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment, order a sale, or execute a foreclosure-related eviction or foreclosure sale. This provision is not limited to borrowers with a COVID-19 related hardship.

<https://library.nclc.org/sec-4022-foreclosure-moratorium-and-consumer-right-request-forbearance>

The provision lasted until May 17, 2020, but the moratorium was extended to June 30, 2020 by guidelines issued by Fannie Mae, Freddie Mac, Federal Housing Administration (FHA), Veterans Administration (VA), and United States Department of Agriculture (USDA).

<https://library.nclc.org/major-consumer-protections-announced-response-covid-19#content-1>

The FHA extended the moratorium for FHA Title II single family forward mortgage and Home Equity Conversion Mortgage (HECM) reverse mortgage programs, except for those secured by vacant and/or abandoned properties, until August 31, and again until December 31, 2020

<https://www.hudexchange.info/news/fha-suspends-foreclosures-and-evictions-amid-the-covid-19-national-emergency/>

State executive orders did not suspend mortgage foreclosures or contract for deed cancellations, but they suspended eviction court actions based on foreclosures and cancellations.

# Court Orders on Operations of the Minnesota Judicial Branch



The Minnesota Judicial Branch continues to be in a transitional phase.

Hearings across all case types will be conducted remotely until February 1, 2021. Exceptions may be granted for in-person proceedings under limited circumstances.

At least one counter service window must be open in each county and for the appellate courts during normal business hours. Some services may be provided remotely or by appointment only.

Face coverings are required in all court facilities. Visitors who do not have access to a face covering will be provided one.

Everyone in a court facility is required to maintain 6 feet social distancing.

All Minnesota Supreme Court and District Court pandemic orders are posted here.

<http://www.mncourts.gov/Emergency.aspx>



# House File No. 4556, Art. 1, §16



The new law suspends statutory deadlines for district and appellate court proceedings until 60 days after the peacetime emergency ends. It also provides that courts may continue to hold hearings, require appearances, or issue orders if "circumstances relevant to public safety, personal safety, or other emergency matters require action in a specific case." It expires 60 days after the end of the peacetime emergency declaration or February 15, 2021, whichever is earlier.

<https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/74/>

It is unclear how this will affect deadlines in Minn. Stat. Ch. 504B, including Minn. Stat. §§ 504B.285, Subd. 5 (rent into court in combined breach and rent evictions), 504B.321 (eviction scheduling), 504B.331 (service of eviction summons), 504B.341 (eviction continuance), 504B.325 (stay of eviction writ), 504B.371 (eviction appeal), 504B.372 (lockout motion by landlord and appeal), 504B.385 (rent escrow action), and 504B.401 (scheduling tenant remedies action and service of summons).

# Answer Forms



Pov. Law Form No. A-1v (June 2020)

Private Tenancy under Executive Order 20-14 Amended by Executive Order 20-73

Pov. Law Form No. A1v1 (Aug. 2020)

Private Tenancy under Executive Order 20-79

Pov. Law Form No. A1v2

Private Tenancy after Expiration of Executive Order 20-79 (to be completed)

<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

# In Forma Pauperis



You can avoid filing fees by presenting the tenant's answer to the complaint orally. Minn. Stat. § 504B.335 (formerly § 566.07); Residential Eviction Defense and Tenant Claims in Minnesota Chapter V, § B.

If you need to file a document, request fee *In Forma Pauperis* waivers. Minn. Stat. § 563.01; Residential Eviction Defense and Tenant Claims in Minnesota Chapter V, § B1; Poverty Law Webpage Forms <http://povertylaw.homestead.com/IFP.html>.

# Evictions following Executive Order 20-79



The CARES Act § 4024: requires 30-day lease termination notice given July 25, 2020 or afterward for all eviction bases with no expiration date for covered properties

CDC Eviction Suspension Order: suspends nonpayment of rent evictions for covered tenants through December 31, 2020

Minnesota Supreme Court and District Court pandemic may stay in effect.

House File No. 4556, Art. 1, §16 continues suspension of statutory deadlines for court proceedings until 60 days after the end of the peacetime emergency declaration or February 15, 2021, whichever is earlier.

# Eviction Basics



Eviction Process

Answers

Threshold Defenses

Service Defenses

Precondition Defenses

Rent Defenses

Holding Over and Notice Defenses

Breach Defenses

Relief

Residential Eviction Defense and Tenant Claims in Minnesota and Answers

<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

# Expansive Thinking



In addition to defenses discussed *supra*:

Rent Cases: More time to redeem. *614 Co. v. D.H. Overmayer*, 297 Minn. 395, 398, 211 N.W.2d 891, 893 (1973). (affirmed 30 day extension to pay rent); Residential Eviction Defense and Tenant Claims in Minnesota Chapter VI, § E.20.

All Cases: Relief from forfeiture where the landlord is adequately protected. *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932); Residential Eviction Defense and Tenant Claims in Minnesota Chapter VI, § G.28.

All Cases: Longer stay of the writ. Minn. Stat. § 504B.345 (formerly § 566.09); House File No. 4556, Art. 1, §16; Residential Eviction Defense and Tenant Claims in Minnesota Chapter VIII, § B.

Residential Eviction Defense and Tenant Claims in Minnesota and Answers

<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsinMinnesota.html>

# Mediation



Community Mediation Minnesota consists of several member organizations across the state with staff and volunteers to help resolve disputes. Community Mediation Minnesota has a centralized intake and referral system so anyone in Minnesota can call a single phone number and be connected to a mediator who can provide services via video conferencing.

## Community Mediation Member Organizations:

Community Mediation & Restorative Services, Inc.

Conflict Resolution Center

Dispute Resolution Center

Mediation & Conflict Solutions

Mediation and Restorative Services

Restorative and Mediation Practices

## Contact:

<https://communitymediationmn.org>

1-833-266-2663

[info@CommunityMediationMN.org](mailto:info@CommunityMediationMN.org)

# Rent, Late Fees and Payment Plans



Executive Orders 24-14, 20-73, and 20-79: rent continues to accrue and late fees still are available

CARES Act § 4024: rent continues to accrue, but it prohibited late fees from March 27, 2020 through July 25, 2020

CDC Eviction Suspension Order: rent continues to accrue and late fees still are available

The lack of a present eviction remedy gives the tenant more power in the relationship.

Landlord remedies: (1) not eviction for now, (2) security deposit, and (3) Conciliation Court (currently low priority and not heard)

Strategies: (1) negotiation, (2) payment plans, (3) waive late fees, and (4) mediation



# Rent Increases



Executive Order 20-10 prohibits price gauging.

[https://mn.gov/governor/assets/FINAL\\_EO-20-10\\_EO%2020-10%20Price%20Gouging%20%28002%29\\_tcm1055-424358.pdf](https://mn.gov/governor/assets/FINAL_EO-20-10_EO%2020-10%20Price%20Gouging%20%28002%29_tcm1055-424358.pdf)

“Essential consumer goods or services” means goods or services vital and necessary for the health, safety, and welfare of the public, including without limitation: food, water, fuel, gasoline, housing, shelter, transportation, health care goods and services, pharmaceuticals, medical supplies, and personal hygiene, sanitation, and cleaning goods.

The amount charged represents a gross disparity between the price of the good or service and the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or

# Rent Increases



The amount charged for the good or service is more than twenty percent (20%) greater than the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or

The amount charged grossly exceeds the price at which the same or similar good or service is readily obtainable by other purchasers in the trade area, unless the person demonstrates that the price increase is substantially attributable to significant additional costs outside the control of the person.

# Rent Increases



The Attorney General may investigate and bring an enforcement action to remediate and enjoin any alleged violation of this section. The authority of the Attorney General under this Executive Order includes but is not limited to the authority provided under Minnesota Statutes 2019, section 8.31.

Pursuant to Minnesota Statutes 2019, section 12.45, any person who is found to have violated this section is subject to a civil penalty of not more than \$10,000 per sale or transaction. The Attorney General may additionally seek any relief available pursuant to Minnesota Statutes 2019, section 8.31.

Tenant might have a private right of action under Minn. Stat. § 8.31, Subd. 3a.

# Financial Assistance for Tenants



Minnesota Covid-19 Relief Housing Assistance Program -

<http://www.mnhousing.gov/sites/np/covid19housingassistanceprogramFAQ>

Hennepin County Emergency Rental Assistance - <https://www.hennepin.us/rent-help>

Neighborhood House - <http://neighb.org/>

Ramsey County - <https://www.ramseycounty.us/residents/assistance-support/assistance/financial-assistance/emergency-assistance>

Anoka County - <https://www.anokacounty.us/2689/Basic-Needs>

Minnesota Department of Human Services - <https://applymn.dhs.mn.gov/online-app-web/spring/public/process-login?execution=e1s1>

United Way 211 - <http://www.211unitedway.org/> Call 211™ or 651-291-0211

State-wide list of community resources, like housing assistance, shelters, and food shelf locations

*State and Local Rental Assistance* (National Low Income Housing Coalition - viewed Dec. 9, 2020) -

<https://nlihc.org/rental-assistance>

# Tenants Walking Away from Leases



Executive Orders 24-14, 20-73, and 20-79, the CARES Act § 4024, and CDC Eviction Suspension Order do not authorize tenants to break leases.

Death of a tenant or domestic abuse can be a basis for breaking a lease with notice.

<https://www.revisor.mn.gov/statutes/cite/504B.265>

<https://www.revisor.mn.gov/statutes/cite/504B.206>

Property destroyed or becomes uninhabitable or unfit for occupancy

<https://www.revisor.mn.gov/statutes/cite/504B.131>

The common law principles of frustration of purpose and impossibility might allow tenants who have lost income to break leases. There are no cases directly on point.

A landlord should consider whether it is better to require a tenant who cannot pay to stay or seek a tenant who can.

# Landlord Activities under the Safe Reopening Order



Under Executive Order 20-74 (June 5, 2020). All work must be conducted in a manner that adheres to Minnesota OSHA Standards and MDH and CDC Guidelines, including social distancing and hygiene practices. Businesses choosing to open or remain open must establish and implement a COVID-19 Preparedness Plan. Each Plan must provide for the business's implementation of guidance for their specific industry or, if there is no specific guidance, general guidance for all businesses, as well as Minnesota OSHA Standards and MDH and CDC Guidelines in their workplaces.

[https://mn.gov/governor/assets/EO%2020-74%20Final\\_tcm1055-437539.pdf](https://mn.gov/governor/assets/EO%2020-74%20Final_tcm1055-437539.pdf)

Under Executive Order 20-81 (July 22, 2020), Minnesotans must wear a face covering in indoor businesses and indoor public settings, with limited exceptions.

[https://mn.gov/governor/assets/EO%2020-81%20Final%20Filed\\_tcm1055-441323.pdf](https://mn.gov/governor/assets/EO%2020-81%20Final%20Filed_tcm1055-441323.pdf)

# Maintenance



The landlord is obligated to maintain the property. Tenants can ask landlords for repairs and can contact city housing inspection agencies.

[https://www.lawhelpmn.org/site-search?site\\_search\\_api\\_fulltext=repairs](https://www.lawhelpmn.org/site-search?site_search_api_fulltext=repairs)

The landlord should follow social distance and hygiene guidance.

# Showing Apartments



It is unclear whether landlords can require tenants to allow prospective renters to come into their units. Still, the landlord would not be able to evict the tenant for refusing since it would not fit the eviction suspension exceptions.

The lack of a present eviction remedy gives the tenant more power in the relationship.

I recently advised on a case where the parties reached an agreement with the landlord for the tenant creating a video showing of the apartment.



# Mediation



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# Help



Residential Eviction Defense and Tenant Claims in Minnesota

<http://povertylaw.homestead.com/HousingLawinMinnesota.html>

Manuals, forms, and slide shows

Pro Justice

<http://www.projusticemn.org/>

Scanned unreported decisions, forms, and instructions. After registering (if you have not done so already), go to Civil Law, Library, Housing, and Eviction Defense.

Law Help

<http://www.lawhelpmn.org/>

Answers to legal questions, finding legal aid offices, and court information.

Other Resources

<http://povertylaw.homestead.com/Resources-ResearchLinksandReferrals.html>

# Help



Talk to an expert.

- Your local legal services program has one or more.  
<https://www.lawhelpmn.org/providers-and-clinics>
- Me: Lawrence McDonough, 651-398-8053 and  
[mcdon056@umn.edu](mailto:mcdon056@umn.edu)

List Serves:

- Minnesota: Contact Legal Services State Support  
<http://www.mnlegalservices.org/contact>
- National: Contact National Housing Law Project Housing Justice Network  
<https://www.nhlp.org/about/contact/>

# Questions



Lawrence McDonough

Attorney at Law

Adjunct Professor of Law, University of Minnesota School  
of Law

Senior Minnesota Counsel, Lawyers' Committee for Civil  
Rights Under Law

651-398-8053

[mcdon056@umn.edu](mailto:mcdon056@umn.edu)

<http://povertylaw.homestead.com/Biolarrymcdonough.html>