

Evictions During the Peacetime Emergency



**LAW ENFORCEMENT TRAINING SERVICES, LLC,
AND
THE MINNESOTA SHERIFFS' ASSOCIATION**

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Suspended Evictions and Exceptions



Executive Orders 20-14, 20-73, and 20-79

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

Order Continuing Operations of the Minnesota Judicial
Branch under Emergency Executive Order No. 20-33

Executive Order 20-14



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 pm, and continues for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded.

Executive Order 20-78 extended the peacetime emergency extension through August 12, 2020.

https://mn.gov/governor/assets/EO%2020-78%20Final_tcm1055-440367.pdf

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 Orders 20-14 and 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

Executive Orders 20-14 and 20-73



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 Orders 20-14 and 20-73



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 Orders 20-14 and 20-73



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 Orders 20-14 and 20-73



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 Orders 20-14 and 20-73



Other defenses to evictions based on exceptions to Executive Orders 20-14 and 20-73:

- Waiver, *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).
- Retaliation, *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).

Executive Orders 20-14 and 20-73



Beginning no later than March 24, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency or until the Executive Orders are rescinded, all officers who hold a writ of recovery of premises and order to vacate must cease executing such writs as required by Minn. Stat. § 504B.365, Subd. 1

Executive Orders 20-14 and 20-73



Exceptions:

- Writs of recovery designated as a priority execution under Minn. Stat. § 504B.365, Subd. 2,
- For any order to vacate that is based on an eviction under Minn. Stat. § 504B.171, or
- On the basis that the tenant seriously endangered the safety of residents, or
- Where the tenant seriously endangered 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 Orders 20-14 and 20-73



Exceptions:

Federal tribal trust land

Executive Orders 20-14 and 20-73



State and local government actions not preempted

Nothing in this Executive Order shall 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 Orders 20-14 and 20-73



Violations

Pursuant to Minn. Stat. § 12.45, a person who willfully violates 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/2020/04/07_Mostad.asp

https://www.ag.state.mn.us/Office/Communications/2020/04/10_DivineEstates.asp

https://www.ag.state.mn.us/Office/Communications/2020/04/17_LaPlant.asp

Executive Orders 20-14 and 20-73



Executive Orders 20-14 and 20-73 do not suspend mortgage foreclosures or contract for deed cancellations, but it suspends eviction court actions based on foreclosures and cancellations.

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.

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



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.

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 operates 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 extends for 120 days until July 25, 2020.

The federal eviction moratorium does 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.

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

CARES Act § 4024



Covered Properties

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
- 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.knowyouroptions.com/loanlookup>
- <https://ww3.freddiemac.com/loanlookup/>

CARES Act § 4024



An affected landlord may 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

The courts are considering requiring landlords to submit an affidavit of compliance.

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.

Differences between Executive Orders 20-14, 20-73, and 20-79, and CARES Act § 4024



Executive Orders 20-14 and 20-73:
Expire August 4, 2020

Prohibits evictions actions and lease terminations except where the tenant seriously endangers the safety of residents, 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, or for violations of Minn. Stat. § 504B.171, subdivision 1.

Allows execution of:

- Writs of recovery designated as a priority execution under Minn. Stat. § 504B.365, Subd. 2,
- For any order to vacate that is based on an eviction under Minn. Stat. § 504B.171, or
- On the basis that the tenant seriously endangered the safety of residents, or
- Where the tenant seriously endangered 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.

Do not affect late fees

Differences between Executive Orders 20-14, 20-73, and 20-79, and CARES Act § 4024



Executive Orders 20-79

Begins August 4, 2020

Prohibits evictions actions and lease terminations except:

- 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.

Allows execution 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.

Does not affect late fees

Differences between Executive Orders 20-14, 20-73, and 20-79, and CARES Act § 4024



CARES Act § 4024:

Expires July 25, 2020

Prohibits evictions actions for nonpayment of rent or fees

Prohibits lease terminations for any reason

Prohibits late fees

Requires 30-day lease termination notice that cannot be given until July 25, 2020 for all eviction bases

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 has been extended to June 30, 2020 by guidelines issued by Fannie Mae, Freddie Mac, FHA, VA and USDA.

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

Executive Orders 20-14, 20-73, and 20-79 do not suspend mortgage foreclosures or contract for deed cancellations, but it suspends eviction court actions based on foreclosures and cancellations.

Mortgage Foreclosures



Also under the CARES Act § 4022, homeowners with federally backed mortgage loans for 1-4 family properties affected by COVID-19 can request and obtain forbearance from mortgage payments for up to 180 days, and then request and obtain additional forbearance for up to another 180 days. During a period of forbearance, no fees, penalties, or interest shall accrue on the borrower's account beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract. The covered period appears to be during the emergency or until December 31, 2020, whichever is earlier.

The CARES Act § 4023 provides for different forbearance rights for owners of multi-family property (5 or more units). They can request and obtain forbearance from mortgage payments for up to 30 days, and then request and obtain additional forbearance for up to another 30 days, twice. It also provides that tenants are protected from eviction if the owner seeks such forbearance.

<https://library.nclc.org/sec-4023-forbearance-residential-mortgage-loan-payments-multifamily-properties-federally-backed>

Court Orders on Operations of the Minnesota Judicial Branch



The April 9, and May 1, 2020 Orders provided that hearings shall be held in the courtroom on an emergency basis in the following case types: housing/eviction matters when there is a showing of individual or public health or safety at risk, which includes eviction actions alleging a violation of Minnesota Statutes§ 504B.171, subd. 1.

The May 15, 2020 Order superseded them, referring to a yet to be concluded transition plan.

<http://mncourts.gov/About-The-Courts/NewsAndAnnouncements/ItemDetail.aspx?id=1900>

District Court Orders

<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. 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).

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

Evictions following Executive Order 20-79



Expiration of Executive Order 20-79 still will leave some properties governed by the CARES Act § 4024:

- Expires July 25, 2020
- Prohibits evictions actions for nonpayment of rent or fees
- Prohibits lease terminations for any reason
- Prohibits late fees
- Requires 30-day lease termination notice that cannot be given until July 25, 2020 for all eviction bases

Order Continuing Operations of the Minnesota Judicial Branch under Emergency Executive Order No. 20-33 has no expiration date.

Local orders 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.

Questions



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