

Pandemic Eviction Training for Attorneys



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Presenters



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Prior Presentations



Revised from Prior Presentations:

- Eighth Judicial District - March 26, 2021
- Judicare of Anoka County - March 4, 2021
- Seventh District Court - February 26, 2021
- Law Enforcement Training Services, LLC, and The Minnesota Sheriffs' Association - February 16, 2021
- Third District Court - January 29, 2021
- Ninth District Court - January 8, 2021
- 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

Topics



- Resources
- Pandemic Eviction Executive Orders and Laws
- Health Impacts on Tenants
- Eviction Action Basics
- Pandemic Eviction Actions
- Planning for after Emergency Executive Order 20-79
- When Nonpayment of Rent Eviction Actions Start
- Mediation Programs
- What You Can Do: Volunteer, Donate, and Advocate

Resources



[Housing Law in Minnesota](#)

- Residential Eviction Defense and Tenant Claims in Minnesota
- Answers Forms
- [Pandemic Eviction Defense and Tenant Claims in Minnesota](#)
- Tenants of Landlords in Foreclosure
- Public and Subsidized Housing
- Criminal Activity Cases
- Personal Property Disputes after an Eviction Judgment
- Expungement of Eviction Court Records
- Motions to Vacate Judgments
- Habitability and Lockout Cases
- Security Deposits

HOME Line - <https://homelinemn.org/> HOME Line provides free and low-cost legal, organizing, education, and advocacy services so that tenants throughout Minnesota can solve their own rental housing problems.

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.

Emergency Executive Order 20-79



Stays on evictions have been in place since March 2020 under Emergency Executive Order 20-14 and 20-73.

EO 20-79 is the current Executive Order suspending evictions and has been in effect since August 4, 2020.

It protects residential tenants from evictions from landlords, as well as post-mortgage foreclosure evictions, with some exceptions.

Also, residential landlords must not issue notices of termination of lease or nonrenewal of lease or terminate residential leases during the pendency of the peacetime emergency unless the termination or nonrenewal is based upon one of the grounds permitted by paragraph 2.

It remains in effect until the peacetime emergency declared in Emergency 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

Emergency Executive Order 20-79 - Exceptions



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](#) (controlled substances, prostitution, unlawful use or possession of a firearm, stolen property or property obtained by robbery, and acts under [Minn. Stat. § 504B.206, subdivision 1, paragraph \(a\)](#) (domestic abuse, criminal sexual conduct, and harassment));
- 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.

Nonpayment of rent is not an exception.

Emergency Executive Order 20-79 - Exceptions



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.

Emergency Executive Order 20-79 - Writs of Recovery



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,

Exceptions:

- 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.

Paragraph 5 is not limited to residential rental eviction writs, so it also covers eviction writs for commercial tenancies and post mortgage foreclosure and contract for deed cancellations.

Emergency Executive Order 20-79 - Notice Requirements



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.**

Emergency Executive Order 20-79



Violations:

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.

Application:

- 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.
- Emergency Executive Order 20-79 is Constitutional. [Heights Apartments, LLC, and Walnut Trails, LLLP v. Walz, No. 20-CV-2051, 2020 WL 7828818, Order on Motion to Dismiss and Motion for Preliminary Injunction \(D. Minn. Dec. 31, 2020\) \(Appendix PED-21\) \(Judge Brasel\).](#)

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



Part of the Act remains in effect.

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.

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

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

CARES Act § 4024 - Covered Properties



The Act defines a “covered property” as a property that:

- participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) as amended through the 2013 reauthorization, or participates in the “rural housing voucher program under section 542 of the Housing Act of 1949” (HUD and Rural Housing Service public and subsidized housing programs)
- has a federally backed mortgage loan or 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



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://www3.freddiemac.com/loanlookup/>

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](#)

The original order was set to expire on December 31, 2020, but Congress extended the order to January 31, 2021 in Sec. 502 of the Consolidated Appropriations Act of 2021. See Pub. L. 116-260, §502 (Dec. 27, 2020). The CDC then extended the order to March 31, 2021, 86 Fed. Reg. 8020 (Feb. 3, 2021), and has now extended it again in new Order effective through **June 30, 2021**.

[CDC, HHS, Temporary Halt in Residential Evictions to Prevent the Spread of Covid-19 \(Mar. 29, 2021\)](#).

[CDC Eviction Moratorium –Revised Analysis \(National Housing Law Project - downloaded March 30, 2021\)](#).

Congress is considering an extension through **September 2021**.

[Biden Extends Eviction Moratorium until March 31: What Renters Should Know, \(CNET Jan. 21, 2021\) \(viewed Feb. 11, 2021\)](#)

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

authorizing 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 - Tenant Declaration



The moratorium applies only to tenants who present a signed form declaration, 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 - Resources



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>

CDC Eviction Suspension Order - Considerations



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 evict 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.

Mortgage Foreclosures



On January 21, 2021, the United States Department of Housing and Urban Development (HUD) announced extension of its foreclosure and eviction moratorium for single family mortgages insured by the FHA or guaranteed by the Office of Native American Programs' Section 184 and 184A loan guarantee programs through March 31, 2021.

https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_008

On February 16, 2021, President Biden announced a coordinated Department of Housing and Urban Development, Department of Veterans Affairs, and Department of Agriculture extension and expansion of forbearance and foreclosure relief programs through June 30, 2021.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>

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

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.
 - 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>

Minn. Session Laws 2020

Chapter 74, H. F. No. 4556 and Chapter 3, H. F. No. 114



A special session law suspended statutory deadlines for district and appellate court proceedings. It also provided 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 expired on February 15, 2021. Minn. Session Laws 2020 Chapter 74, H. F. No. 4556.

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

Minn. Session Laws 2020 Chapter 3, H. F. No. 114 extended these provisions through April 15, 2021.

<https://www.revisor.mn.gov/laws/2021/0/Session+Law/Chapter/3/>

Courts can consider relaxing these deadlines in Minn. Stat. Ch. 504B, including:

- Minn. Stat. § 504B.285, Subd. 5 (rent into court in combined breach and rent evictions),
- Minn. Stat. § 504B.321 (eviction scheduling),
- Minn. Stat. § 504B.341 (eviction continuance),
- Minn. Stat. § 504B.345 (stay of eviction writ),
- Minn. Stat. § 504B.371 (eviction appeal),
- Minn. Stat. § 504B.375 (lockout motion by landlord and appeal),
- Minn. Stat. § 504B.385 (rent escrow action), and
- Minn. Stat. § 504B.401 (scheduling tenant remedies action).

Health Impact of Renewed Evictions During the Pandemic



A recent study tested whether lifting eviction moratoriums was associated with COVID-19 incidence and mortality. It concluded that:

[L]ifting eviction moratoriums was associated with significant increases in COVID-19 incidence and mortality in U.S. states, supporting the public health rationale for use of eviction moratoriums to prevent the spread of COVID-19. Lifting moratoriums amounted to an estimated 433,700 excess cases and 10,700 excess deaths during the study period (March 13-September 3).

Texas topped the list with estimates of 148,530 infections and 4,456 deaths.

K. Leifheit, S. Linton, J. Raifman, G. Schwartz, E. Benfer, F. Zimmerman, & C. Pollack, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* Abstract (November 30, 2020). The authors include professors from University of California, Los Angeles (UCLA), Johns Hopkins University Bloomberg School of Public Health, Boston University, University of California, San Francisco (UCSF) Institute for Health Policy Studies, and Wake Forest University School of Law.

<https://ssrn.com/abstract=3739576>

Health Impact of Emergency Executive Order 20-79



Study co-author Dr. Leifheit has estimated infections prevented and lives saved between May and September in states that maintained their eviction suspensions. She estimated 22,200 cases prevented and 680 lives saved in Minnesota.

K. Leifheit, *State-level COVID-19 Cases and Deaths Associated with Eviction Moratoriums* (Dec. 2020) https://drive.google.com/file/d/1x8qezy_mXiaW7eKsU_D9zQnQYY0YMfgP/view (viewed Feb. 25, 2121)

The estimated 22,200 cases prevented and 680 lives saved in Minnesota does not cover the fall of 2020 when many states saw dramatic increases in infections and deaths.

Coronavirus in the U.S.: Latest Map and Case Count (New York Times Dec. 15, 2020) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (viewed Feb. 25, 2121)

Health Impact of Emergency Executive Order 20-79



During the time span of the study, in Minnesota, from March 24, when the first Emergency Executive Order suspending evictions began, through September 3, Minnesota saw 1,834 deaths and 80,704 positive cases in just over 5 months.

Situation Update for COVID-19 (Minnesota Department of Health - viewed Feb. 25, 2121)
<https://www.health.state.mn.us/diseases/coronavirus/situation.html>

From September 4 through January 4, Minnesota saw another 3608 deaths and 342,455 positive cases in 4 months, *or twice as many deaths and over four times as many positive cases, for a total of 5,443 deaths and 429,022 positive cases.*

Situation Update for COVID-19 (Minnesota Department of Health - viewed Feb. 25, 2121)
<https://www.health.state.mn.us/diseases/coronavirus/situation.html>

It is reasonable to add twice as many saved lives and four times as many positive cases prevented to the summer estimate, totaling potentially 2,040 lives saved and 111,000 positive cases prevented through January 4, 2021.

Eviction Action Basics



Eviction actions are summary proceedings in that they move quickly before and after trial, although trials are no different than other civil trials.

They are governed by Minn. Stat. Chapter 504B

<https://www.revisor.mn.gov/statutes/cite/504b> as well as the common law of contracts and property.

Eviction Action Basics - Appearances



- Artificial entities like corporations and LLCs must be represented by counsel, except in housing courts in the 2nd and 4th district courts.
 - *Hinckley Square Associates v. Cervene*, 871 N.W.2d 426 (Minn. Ct. App. 2015); *Walnut Towers v. Schwan*, No. A07-1311, 2008 WL 4224462 (Minn. Ct. App. Sept. 16, 2008) (unpublished);
 - Minn. Gen. R. Prac. 603; *The Community Cares v. Faulkner*, 949 N.W.2d 296 (Minn. 2020).
- Unincorporated businesses and individual can appear pro se.
- The action may be commenced only by the person entitled to the premises, or the authorized management company or agent for the owner of the premises.
 - Minn. Stat. § 504B.285, subd. 1; Minn. Stat. § 481.02, subd. 3(13).
- The tenant or landlord may be represented by a person who is not a licensed attorney, except that person cannot conduct a jury trial or appeal and cannot charge or collect a separate fee for services rendered.
 - Minn. Stat. § 481.02, subd. 3(13).

Eviction Action Basics - Appearances



Effective March 1, 2021, eligible legal paraprofessionals under the supervision of a member of the bar, may provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minn. Stat. Chapter 504B and § 484.014 (expungements) in district courts that have established a Housing Court or a dedicated calendar for housing disputes, except the Housing Court in the Fourth Judicial District.

Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. Sep. 29, 2020); Minn. Supervised Prac. R. 12.

<https://mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Implementing-Legal-Paraprofessional-Pilot-Project.pdf>

See Report and Recommendations to the Minnesota Supreme Court Implementation Committee for Proposed Legal Paraprofessional Pilot Project, No. ADM19-8002 (Mar. 2, 2020).

<https://www.mncourts.gov/mncourtsgov/media/Implementation-Committee/Report-and-Recommendations-to-Minnesota-Supreme-Court-reduced-size.pdf>

Eviction Action Basics - Proof and Findings



- The plaintiff must prove claims supporting eviction by a preponderance of the evidence, and the court must make specific findings on the claims of the plaintiff.
 - *Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 197 (Minn. Ct. App. 2001).
- The Minnesota Rules of Evidence, Civil Procedure, and General Rules of Practice apply to eviction actions
 - Housing Court rules of the General Rules of Practice apply only to the 2nd and 4th district courts.
- Hearsay statements in testimony or within documents should be excluded unless they meet an exception to the hearsay rule.
 - *Countryview Mobile Home Park v. Oliveras*, No. A04-160, 2004 WL 20049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished).
- The parties and other lay witnesses have the right to testify about their observations without being experts.
 - *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

Eviction Action Basics - Complaint



- The plaintiff must plead in the complaint "the facts which authorize the recovery of possession."
 - Minn. Stat. § 504B.321; *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 317, 318 (Minn. Ct. App. 1986).
- The state complaint form requires the landlord to plead compliance with Minn. Stat. § 504B.181, in that the landlord has disclosed:
 - the names and addresses of the authorized manager of the premises and,
 - the owner or agent authorized to accept service, and
 - posted said information in an obvious place on the property
- If names and addresses are not disclosed as required by the statute, the landlord must show that the tenant knew such information at least 30 days before the issuance of the summons.

Eviction Action Complaint form instructions

<https://www.mncourts.gov/mncourtsgov/media/CourtForms/HOU101.pdf?ext=.pdf>

Eviction Action Basics - Methods of Service



Service must be complete at least 7 days before the first hearing

Minn. Stat. § 504B.331 (formerly § 566.06) provides:

- Personal service
- If the defendant cannot be found in the county, the summons may be served at least seven days before the date of the court appearance by leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there
- Mail and posting sequence:
 - (1) Defendants cannot be found in the county,
 - (2a) For residential property, service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m.,
 - (2b) For nonresidential property, no person actually occupies the property,
 - (3) A copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff,
 - (4) The plaintiff or counsel files an affidavit (a) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (b) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff, and
 - (5) Posting the summons in a conspicuous place on the property for not less than one week.

Eviction Action Basics - Service for Expedited Eviction Actions



Minn. Stat. § 504B.321

- Plaintiff requests an expedited procedure by affidavit
 - stating specific facts and instances under Minn. Stat. § 504B.171 (certain types of illegal activity), or
 - on the basis that the tenant is causing a nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property,
- Then the summons shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.

Eviction Action Basics – Strict Compliance and Server Requirements



Personal Jurisdiction and Proper Service of the Summons and Complaint

Strict compliance with service requirements, rather than mere substantial compliance, is a precondition to personal jurisdiction. *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013).

Service by the plaintiff is improper. Minn. R. Civ. P. 4.02. In *Lewis v. Contracting Northwest, Inc.*, 413 N.W.2d 154 (Minn. Ct. App. 1987), the court explained the reason for precluding parties from serving process: “The law has wisely entrusted the decision of disputes between citizens to persons wholly disinterested and free from bias and the acrimony of feeling so frequently, if not uniformly, engendered by litigation; and the same is equally true of the persons selected to execute the process necessary to the adjustment of such disputes.” *Id.* at 155.

Eviction Action Basics - Scheduling



- Minn. Stat. § 504B.321
 - The first appearance shall be between 7 and 14 days from the day of issuing the summons.
- Expedited eviction action
 - the complaint and affidavit shall be reviewed by a referee or judge and scheduled for an expedited hearing only if
 - sufficient supporting facts are stated and
 - they meet the requirements of this paragraph, and
 - if so, the appearance in an expedited hearing shall be not less than five days nor more than seven days from the date the summons is issued.

Courts can relax these deadlines through April 15, 2021.

Minn. Session Laws 2020 Chapter 3, H. F. No. 114.

<https://www.revisor.mn.gov/laws/2021/0/Session+Law/Chapter/3/>

Pandemic Eviction Action Court Administrative Orders



In the Second Judicial District, the complaint must state whether the property is governed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024 and if so, whether the plaintiff provided the required 30 day notice, and that the plaintiff provided the Emergency Executive Order 20-79 notice to the tenant of the intention to file the eviction action. Non-emergency cases shall be designated confidential. [*Administrative Order Regarding the Resumption of Housing Court Operations* \(Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020\) \(Judge Castro\) \(Appendix PED-19a\).](#)

In the Fourth Judicial District, if the judge or judicial officer determines that the case does not qualify for an emergency hearing, the matter shall not be accessible to the public and all case filings in said matter shall be designated confidential. [*Administrative Order Declaring Certain Housing/eviction Matters Non-public* \(Minn. Dist. Ct. 4th Dist. Mar. 31, 2020\) \(Judge Miller\) \(Appendix PED-18\).](#)

The landlord, landlord's attorney, or landlord's agent will have to affirm under oath that they have a good faith and reasonable belief that the subject property is not a covered property for purposes of the CARES Act and if so, that they have complied with notices requirements. [*Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01* \(Minn. Dist. Ct. 4th Dist. July 22, 2020\) \(Judge Robiner\) \(Appendix PED-19\).](#)

Pandemic Eviction Action Required Notices



Required Pre-filing Termination Notices

- Landlord family residency: Emergency Executive Order 20-79 does not state the length of the notice.
 - In a month-to-month tenancy, the notice should be one month. Minn. Stat. § 504B.135; *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 825 (1932).
 - In leases with notice provisions, the notice should conform to expiration of the lease, since Emergency Executive Order 20-79 did not create “grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.” [Emergency Executive Order 20-79, ¶ 12 at 3](#); see [Letter from Evan Romanoff, Assistant Minnesota Attorney General to _____ at 2 \(Nov. 18, 2020\) \(Appendix PED-22\)](#).
- CARES Act Covered Properties: 30-day notice. See [Newcastle Lake LLC v. Carmichael, No. 2020-005609-CC-20 \(Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020\) \(Judge Murray\) \(Appendix PED-4\)](#): eviction dismissed.
- Manufactured home parks: various notice requirements.
 - Minn. Stat. §§ 327C.09, 327C.095, 327C.10
- Mortgage foreclosure and contract for deed cancellation tenants.
 - Minn. Stat. § 504B.285, subd. 1a., 1b.

Pandemic Eviction Action Required Notices



Notice of Intention to File Required for All Eviction Actions

- [*Yimer v. _____*, No. 27-CV-HC-20-1408 \(Minn. Dist. Ct. 4th Dist. Sep. 10, 2020\) \(Referee Sedillos\) \(Appendix PED-1\)](#): dismissed and expunged the action.
- [*Henry v. _____*, No. 33-CV-20-180 \(Minn. Dist. Ct. 10th Dist. Oct. 30, 2020\) \(Judge Hiljus\) \(Appendix PED-2\)](#): the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2. The landlord failed in the second eviction action for significant property damage. *Id.* at 6.
- [*Dunnigan v. _____*, No. 19WS-CV-20-864 \(Minn. Dist. Ct. 1st Dist. Dec. 4, 2020\) \(Judge Perzel\) \(Appendix PED-5a\)](#): the landlord filed a prior residential eviction action but had not provided the tenant the seven-day notice before filing that eviction action, as required by Executive Order 20-79. The court dismissed the action. *Id.* at 4. The landlord succeeded in the second eviction action for significant property damage. *Id.* at 10.
- [*Kluge v. _____*, No. 31-CV-20-2602 \(Minn. Dist. Ct. 9th Dist. Nov. 19, 2020\) \(Judge McBroom\) \(Appendix PED-15\)](#): dismissed the eviction action without prejudice and ordered entry of judgment for the tenant.

Pandemic Eviction Action Notices Defenses



- Landlord retaliation
 - Minn. Stat. § 504B.285, or
 - Common law. *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).
- Landlord waived the notice to end the lease by accepting rent after the move out date
 - *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913).
- Notice Lease Defense Resources
 - [Residential Eviction Defense and Tenant Claims in Minnesota, Ch. VI, § F](#)
 - [Answers Forms](#)

Pandemic Eviction Action Causes of Action and Decisions



Minn. Stat. § 504B.171 Claims

- [*BBS LLC v. _____*, No. 27-CV-HC-20-1412 \(Minn. Dist. Ct. 4th Dist. Dec. 2, 2020\) \(Referee Sedillos\) \(Appendix PED-6\)](#): handyman testified smell of marijuana from apartment, tenants denied use and testified smell from other apartment, court dismissed the eviction action with prejudice, and ordered entry of judgment and expungement.
- [*Aysta Properties, Inc. v. _____*, No. 69VI-CV-20-419 \(Minn. Dist. Ct. 6th Dist. Nov. 13, 2020\) \(Judge Friday\) \(Appendix PED-8\)](#): another tenant testified she overheard talk of drugs and there was a significant amount of people going in and out of the apartment, test showed methamphetamine residue in the apartment but no baseline test showing no presence of methamphetamine before occupancy, court dismissed the eviction action with prejudice and reserved the issue of expungement for determination upon further motion, evidence and argument.
- [*Sela Group, LLC v. _____*, No. 27-CV-HC-20-1360 \(Minn. Dist. Ct. 4th Dist. July 14, 2020\) \(Referee Sedillos\) \(Appendix PED-10\)](#): the tenant's adult homeless son was not a tenant, the son stole her gun and allegedly committed a crime, and she did not have control of him, court dismissed the eviction action with prejudice, and expunged it.

Pandemic Eviction Action

Causes of Action and Decisions



Minn. Stat. § 504B.171 Defenses

- The landlord alleged the tenant unlawfully allowed certain unlawful activity on the property and the tenant did not know or have reason to know that there was unlawful activity on the property,
 - Minn. Stat. § 504B.171
- 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.

Pandemic Eviction Action

Causes of Action and Decisions

Significant Property Damage Claims: Decisions Holding for the Landlord

- [*Dunnigan v. _____*, No. 19WS-CV-20-864 \(Minn. Dist. Ct. 1st Dist. Sep. 22, 2020\) \(Judge Lutz\) \(Appendix PED-5\)](#): the damage in total was significant and constituted a material violation of the lease, including a bent and broken double garage door following removal not authorized by the landlord, a broken glass panel in the bay window, a cracked lower-level bathroom vanity, removed, broken, and/or now non-existent cabinet drawer fronts in the kitchen, a dented back door, a removed gutter, a dented and gasket-damaged refrigerator, and a damaged basement light fixture, court ordered entry of judgment and issuance of a writ to the landlord.
- [*Munger Terrace, LLLP v. _____*, No. 69DU-CV-20-1348 \(Minn. Dist. Ct. 6th Dist. Sep. 29, 2020\) \(Judge Neo\) \(Appendix PED-12\)](#): damage from a break-in to the front and back doors, there is no evidence that the tenant ever contacted law enforcement, damage will exceed \$2,000, and a history fights, screaming, slamming doors and noises at all hours, court entered judgment for the landlord, subject to a 7-day stay pursuant so the tenant could locate alternate arrangements for him and his pet.

Pandemic Eviction Action Causes of Action and Decisions



Significant Property Damage Claims: Decisions Holding for the Tenant

- [Henry v. _____, No. 33-CV-20-180 \(Minn. Dist. Ct. 10th Dist. Oct. 30, 2020\) \(Judge Hiljus\) \(Appendix PED-2\)](#): tenants materially breached the lease when they began demolition and remodel work, evidence submitted at the hearing that there was no longer any significant damage, court dismissed the action with prejudice.
- [Benolken v. _____, No. 62-HG-CV-20-624 \(Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020\) \(Judge Nelson\) \(Appendix PED-3\)](#): the landlord offered evidence of minor damage to the subject property during the time tenant lived there, including a refrigerator handle missing, a kitchen sink handle being inverted, and dog feces being found in the subject property on one occasion; the landlord also offered evidence of potentially significant damage to the subject property, including credible testimony of damage to doors in the subject property and that some flooring in the subject property needs to be replaced, but no evidence in the record to show the expected or incurred expense of repairing the damaged doors and flooring, or to show the extent of that damage and no evidence that the damage to the subject property exceeds the amount of the damage deposit, court entered judgment for the tenant.
- [Raintree Associates LLP v. _____, No. 69VI-CV-20-413 \(Minn. Dist. Ct. 6th Dist. Dec. 1, 2020\) \(Judge Anderson\) \(Appendix PED-7\)](#): the landlord argued that the tenant's alleged damage to a neighboring tenant's door constituted a significant damage to property. The court concluded: the landlord presented evidence indicating the Defendant damaged the door but the damage does not constitute significant damage to property, court suspended the action until such time as the Emergency Executive Order 20-79 is modified or expires.

Pandemic Eviction Action Causes of Action and Decisions



Substantial Endangerment Claims

- [*Olson Property Investments v. _____*, No. A20-1073 \(Minn. Ct. App. Sept. 1, 2020\) \(Appendix PED-17\)](#): the Minnesota Court of Appeals issued an unpublished order denying the landlord's petition for a writ of mandamus to compel the district court to issue a summons in an eviction action under the predecessors to Executive Order 20-79, the landlord had not pled with enough specificity.
- [*LKE Enterprises, LLC v. _____*, No. 31-CV-20-2600 \(Minn. Dist. Ct. 9th Dist. Nov. 19, 2020\) \(Judge McBroom\) \(Appendix PED-14\)](#): the court held for the landlord against the defaulting pro se tenant who assaulted another tenant and another individual, extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time.
- [*Minnesota Parks, LLC v. _____*, No. 31-CV-20-1686 \(Minn. Dist. Ct. 9th Dist. Aug. 5, 2020\) \(Judge Chandler\) \(Appendix PED-13\)](#): the tenant possessed a dog on the premises which caused harm to others and attempted to bite persons in the neighborhood that the tenant not properly restrain, court entered judgment for the landlord.

Pandemic Eviction Action Causes of Action and Decisions



Landlord Family Residency Claims

- [*Borsay v. _____*, No. 02-CV-20-4224 \(Minn. Dist. Ct. 10th Dist. Dec. 14, 2020\) \(Judge Logering\) \(Appendix PED-11\)](#): the landlord alleged that he needed to move his minor daughter, age 14, into a room in the property, she lived with him but did not have her own room, she was not homeless and would not become homeless, it was unclear why the landlord couldn't move his daughter into another property he owned, he had not established that a *need* exists to move his daughter into the leased premises and, even if such a need existed, he has not established that moving his daughter into the leased premises would be his only option, court dismissed the eviction action with prejudice and expunged it.
- [*Letter from Evan Romanoff, Assistant Minnesota Attorney General to _____* at 2 \(Nov. 18, 2020\) \(Appendix PED-22\)](#): landlord's attorney advised to provide "evidence that [the landlord] has a need to move into the property."
- [*Roggenkamp v. _____*, No. 18-CV-21-95 \(Minn. Dist. Ct. 9th Dist. Feb. 2, 2021\) \(Judge Middendorf\) \(Appendix PED-23\)](#): the court concluded the termination letter was improper for stating a need to move into the property, plaintiffs did not establish the need to evict defendants, and an LLC cannot have a family member with a need to move into rental property.

Equitable Considerations



The court can grant 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).

In [*Kelley v. _____*, No. 11-CV-19-2181 \(Minn. Dist. Ct. 9th Dist. Oct. 29, 2020\) \(Judge Strandlie\) \(Appendix PED-16\)](#), the court held for the landlord against the pro se tenant on the need for family member residency, ordering the eviction writ stayed for a month until November 30, 2020.

Equitable Considerations



In *Henry v. _____*, No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2), the court found that the tenants materially breached the lease when they began demolition and remodel work, but at the hearing that there no longer was any significant damage. The Court concluded:

“A court cannot operate in a bubble. The COVID-19 pandemic is worsening throughout the country and in Minnesota. Infection rates are on the rise. The underlying purpose of this eviction moratorium is to protect the health and safety of not only tenants of rental units, but those elsewhere across the state. Tenants evicted from housing often move around, perhaps to family or friends’ houses, thus increasing travel and the potential for infection spread. The Court sympathizes with landlords and property managers across the state who do not have the options to regain possession they did before the pandemic and how this may be affecting their livelihood. The Court understands that the Plaintiffs in this case did not give Defendants permission to remodel any part of the property and in fact told them to stop. Plaintiffs will have remedies in conciliation court and housing court available to them once the eviction moratorium is lifted.”

Id. at 3-5. The court dismissed the action with prejudice. *Id.* at 6.

Other Breach of Lease Defenses



- Conduct was not a material breach or substantial failure to perform under the lease.
 - *Cloverdale Foods of Minnesota, Inc.*, 580 N.W.2d 46, 49 (Minn. Ct. App. 1998); *Skogberg v. Huisman*, No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. Aug. 2003) (unpublished).
- Lease did not contain "right of reentry" clause.
 - *Bauer v. Knoble*, 51 Minn. 358, 359, 53 N.W. 805, 805 (1892).
- The landlord waived lease provisions by failing to enforce them or is estopped from enforcing them.
 - *Mitchell v. Rende*, 225 Minn. 145, 30 N.W.2d 27 (1947).
- The landlord waived the alleged breaches or is estopped from enforcing them by accepting rent with knowledge of the breach.
 - *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907).

Other Breach of Lease Defenses



- The landlord did not reasonably accommodate the tenant's disability.
 - 42 U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. Ct. App. 2005); Minn. Stat. § 363A.10; *Schuett v. Anderson*, 386 N.W.2d 249, 253 (Minn. Ct. App. 1986).
- The landlord is penalizing the tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct.
 - Minn. Stat. § 504B.205.
- The tenant is a victim of domestic abuse, criminal sexual conduct, or stalking.
 - Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a).
- The landlord retaliated for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease.
 - *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).

Other Breach of Lease Defenses



Breach of Lease Defense Resources

- [Residential Eviction Defense and Tenant Claims in Minnesota, Ch. VI, § G](#)
- [Answers Forms](#)

Eviction Action Basics - Relief



- Entry of judgment for the plaintiff or defendant.
- For landlord improperly filing an expedited case, dismiss the case and fine the landlord \$500.
 - Minn. Stat. § 504B.321.
- If the tenant loses, give the tenant seven days to move if the tenant did not cause a nuisance, or seriously endanger other tenants, their property, or the landlord's property, and if having to move in less than 7 days would be a substantial hardship.
 - Minn. Stat. § 504B.345 (formerly § 566.09).
 - Courts can relax this deadline through April 15, 2021. Minn. Session Laws 2020 Chapter 3, H. F. No. 114.
<https://www.revisor.mn.gov/laws/2021/0/Session+Law/Chapter/3/>
- Award costs and disbursements.
 - Minn. Stat. § 549.02; *HNA Properties v. Moore*, 848 N.W.2d 238 (Minn. Ct. App. 2014).

Eviction Action Basics - Relief



- Expunge or seal this court file:
 - Minn. Stat. § 484.014, or
 - Common law inherent authority. *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); Minn. Stat. § 504B.345, Subd. 1 (c)(2)
 - The court may expunge the file upon entering judgment. Minn. Stat. § 504B.345, Subd. 1 (c)(2).
- Attorney fees:
 - For the prevailing tenant if the lease provides for attorney fees to the landlord, or
 - Minn. Stat. § 504B.172, or
 - For the prevailing landlord if the lease provides for attorney fees to the landlord, except for nonpayment of rent redemption.
- [Answers Forms](#)

Planning for after Emergency Executive Order 20-79



Evictions before the Pandemic



- Statewide: 16,000 (1,333 per month)
- Fourth Judicial District - Hennepin County 6,000 (500 per month)
- Eighth Judicial District - 262 (22 per month), with the highest numbers in Kandiyohi County (93, or 8 per month), Meeker County (38, or 3 per month), and Chippewa County (33, or 3 per month)
- Tenth Judicial District - Anoka County: 1080 (90 per month)
- Third Judicial District - 1050 (88 per month), with the highest numbers in Olmsted County (377, or 31 per month), Winona County (123, or 10 per month), Mower County (121, or 10 per month), and Steele County (108, or 9 per month)
- Ninth Judicial District - 574 (48 per month), with the highest numbers in Crow Wing County (139, or 12 per month), Beltrami County (94, or 8 per month), Itasca County (91, or 8 per month), and Polk County (70, or 6 per month).

Citations:

- Stateside: S. Spaid, *Evictions in Greater Minnesota Report* at 2 (HOME Line June 1, 2018) <https://homelinemn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf>
- Fourth Judicial District: A. Holdener, et. al, *Eviction and Homelessness in Hennepin County*, at 2 (Hubert H. Humphrey School of Public Affairs May 19, 2018) https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Minnesota_humphrey-report-eviction-homelessness-may-2018.pdf
- Eighth Judicial District: *Filings By WCL Type January 2019 Thru December 2019* (MNJAD Mar. 25, 2021)
- Tenth Judicial District: Email from John Murphy, Anoka County Law Library Director, to Lawrence McDonough (Oct. 26, 2020)
- Third Judicial District: Email from Angie Hutchins, Third Judicial District Deputy District Administrator, to Lawrence McDonough (Jan. 14, 2121)
- Ninth Judicial District: *Pandemic Eviction Filings > March 24, 2020 through December 18, 2020* (Minn. Dist. Ct. 9th Dist. Dec. 18, 2020)

Evictions Blocked



One year later, around that many are on hold. Some tenants have moved, some tenants have negotiated with their landlords, some tenants have received assistance, and some landlords were able to file eviction actions within the exceptions of Emergency Executive Order 20-79, perhaps lowering the number of blocked evictions, *if the economy is ignored.*

But, what about economy?

Unemployment



Unemployment is high.

The Minnesota unemployment rate in January 2021 was 4.5%, down from 7.6% in July 2020 and 11.3% in May 2020, but still up from 3.5% in March 2020.

Resources:

- *State and National Employment and Unemployment Current Data* (Minnesota Department of Employment and Economic Development - viewed Mar. 25, 2021)
<https://mn.gov/deed/data/current-econ-highlights/state-national-employment.jsp>
- *Minnesota Unemployment* (Department of Numbers - viewed Mar. 25, 2021)
<https://www.deptofnumbers.com/unemployment/minnesota/>

Unemployment



Minnesota cumulative unemployment insurance applicants by county from March 16 to February 23, 2021 as a share of 2019 annual labor force:

- Fourth Judicial District: Hennepin County: 288,699 (40.1%) of 711,530
- Eighth Judicial District: Kandiyohi County - 7,018 (27.6%) of 25,415, Meeker County - 4,329 (32.5%) of 13,326, and Chippewa County - 2,371 (33.5%) of 7,070
- Seventh Judicial District: Stearns County - 35,059 of (38.1%) 92,043, Clay County - 5,486 of (15.1%) 36,336, Benton County - 9,860 of (44.4%) 22,224, and Otter Tail County - 9,438 of (29.4%) 32,110
- Tenth Judicial District: Anoka County - 85,445 (43.0%) of 198,938
- Third Judicial District: Olmsted County - 37,415 (41.3%) of 89,730, Winona County - 9,719 (33.5%) of 29,053, and Steele County - 7,983 (39.0%) of 20,451
- Ninth Judicial District: Beltrami County - 8,639 (34.9%) of 24,779, Crow Wing County - 14,336 (43.6%) of 32,904, and Roseau County - 5,837 (73.2%) of 7,972

Unemployment Insurance Statistics (Minnesota Department of Employment and Economic Development - viewed Feb. 25, 2121)

<https://mn.gov/deed/data/data-tools/unemployment-insurance-statistics/>

Local Area Unemployment Statistics (LAUS) (Minnesota Department of Employment and Economic Development - viewed Feb. 25, 2121) (selected Data Tool, Minnesota Counties, County, Historical Data, Annual and Labor Force)

<https://mn.gov/deed/data/data-tools/laus/>

Census Data and Eviction Estimates



As of March 10, 2021, out of 648,384 adult tenants estimated by the Census, it estimated:

- **116,756 (18.0%)** were not currently caught up on rent payments,
- **212,894 (32.8%)** were unemployed,
- **368,764 (56.9%)** experienced the loss of employment income of a household member,
- **105,625 (16.3%)** had no or slight confidence in the ability to make the next month's payment, and
- Of the 116,756 tenants estimated to not be currently caught up on rent payments, **65,339 (56.0%)** very likely or somewhat likely to leave home due to eviction in next two months.

Compare this with **16,000** eviction court actions statewide in 2017.

The Census data supports estimating the number of evictions on hold right now to well exceed the annual number. These evictions would overwhelm the legal services housing attorneys and the courts.

Citations:

- *Household Pulse Survey Data Tables, Phase 3* (United States Department of Commerce - viewed Mar. 11, 2121) <https://www.census.gov/programs-surveys/household-pulse-survey/data.html#phase3> and <https://www.census.gov/data/tables/2021/demo/hhp/hhp25.html>
- *Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota* (United States Department of Commerce Mar. 10, 2121) https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk25/housing1b_week25.xlsx (downloaded Mar. 11, 2121)
- *Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota* (United States Department of Commerce Mar. 10, 2121) https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk25/housing2b_week25.xlsx (downloaded Mar. 11, 2121)
- *Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: Minnesota* (United States Department of Commerce Mar. 10, 2121) https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk25/housing3b_week25.xlsx (downloaded Mar. 11, 2121)

Eviction Estimates



National estimates:

- Stout estimates for Minnesota, surveyed November 11 to 23, 2020: **32,100-69,800 potential evictions in January 2021**
- Aspen Institute concluded the risk of eviction at 30% renter unemployment for Minnesota on December 31, 2020 would be **281,085** tenants.

Citations:

- *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction* (Stout Risius Ross - viewed Jan. 27, 2021)
<https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTI1OTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>
- K. McKay, Z. Neumann & S. Gilman, *20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship* (The Aspen Institute June 19, 2020) <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>

Planning Underway



Courts:

- [*Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01*](#) (Minn. Dist. Ct. 4th Dist. July 22, 2020) (Judge Robiner) (Appendix PED-19)
- [*Administrative Order Regarding the Resumption of Housing Court Operations*](#) (Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020) (Judge Castro) (Appendix PED-19a)
- [**STANDING ORDER** Re: 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01](#) (Minn. Dist. Ct. 10th Dist. Anoka Cty. Oct. 29, 2020) (Judge Fountain Lindberg) (Appendix PED-36)
- Other Minnesota Supreme Court and District Court pandemic orders are posted [here](#).

Legislature

- [Senate F. No. 1470](#)
- [House F. No. 12](#)

It Is Time to Plan



Legislature:

- Expand staggered evictions to start when economic and health data support it

- Funding:

- Financial assistance to tenants and landlords
- Financial assistance to industries that employ tenants
- Financial assistance to shelters
- Emergency Assistance
- Legal aid programs
- Mediation programs
- More judicial resources for evictions

Advocacy and Mediation:

- More attorney representation for tenants
- More mediators for tenants and landlords

Courts:

- Staggered evictions
- More judicial resources for evictions

When Nonpayment of Rent Eviction Actions Start



Proof

- Testimony and documents
- Pre-filing notice
 - Manufactured home park tenancies. Minn. Stat. Ch. 327C.
 - Covered properties under the Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024
 - If § 4024 is repealed, some public and subsidized housing programs still will require notice for nonpayment of rent eviction actions. *See* Answer Forms 2-8, Residential Eviction Defense and Tenant Claims in Minnesota <http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

When Nonpayment of Rent Eviction Actions Start



Property conditions and habitability

- Minn. Stat. §§ 504B.161, the landlord must maintain:
 - premises and all common areas are fit for the use intended by the parties,
 - the premises in reasonable repair, and
 - the premises in compliance with applicable state and local housing maintenance, health, and safety laws.
- Exception: where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent.
- The statute is to be liberally construed.
- The parties may not waive or modify the covenants.
- While the tenant may agree in writing to perform special repairs or maintenance if such agreement is supported by adequate consideration, the agreement does not waive the covenants.
- Paying rent into court: The defendant can provide security in one of three ways:
 - Pay into court "rent to be withheld" and "any future rent withheld" [rather than back rent],
 - Deposit such rents in escrow subject to appropriate terms and conditions, or
 - Provide adequate security if such is more suitable under the circumstances.
 - *Fritz v. Warthen*, 213 N.W.2d 339, 341-43 (1973)
- Relief: Rent abatement. *Id.*

When Nonpayment of Rent Eviction Actions Start



Nonpayment of Rent Defenses

- Landlord failure to comply with city rental license ordinances.
 - *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sep. 4, 2007) (unpublished).
- Landlord nonpayment of utilities or illegal shared metering of utilities.
 - Minn. Stat. § 504B.215.
- Landlord charging improper late fees or other fees.
 - Minn. Stat. § 504B.177.
- Landlord waiver of rent claim by accepting a partial payment of rent without a written nonwaiver clause.
 - Minn. Stat. § 504B.291.
- Landlord retaliation for complaints about material violations by the landlord of state or local law, residential covenants, or the lease.
 - *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).

When Nonpayment of Rent Eviction Actions Start



Redemption

- There is no limit by statute or case law on the amount of time the court can give the tenant to pay rent due or conditions the court can consider.
- [614 Co. v. D. H. Overmayer, 297 Minn. 395, 396, 211 N.W.2d 891, 893 \(1973\), affirming First and Second Interlocutory orders, No. 204678 \(Minn. Dist. Ct. 2nd Dist. Apr. 22 and July 9, 1972\) \(Appendix 54\) \(Affirmed trial court orders allowing commercial tenant one month to pay amount in default\).](#)

Nonpayment of Rent Defense Resources

- [Residential Eviction Defense and Tenant Claims in Minnesota Ch. VI, § E.](#)
- [Answers Forms](#)

Tenants Walking Away from or Ending Leases or Limiting Rent Liability



Death of Tenant - Minn. Stat. § 504B.265.

Domestic Violence - Minn. Stat. § 504B.206; [Residential Eviction Defense and Tenant Claims in Minnesota at XII.B.5.b1.](#)

Constructive Eviction: Housing Uninhabitable or Unfit for Occupancy - Minn. Stat. § 504B.131; [Residential Eviction Defense and Tenant Claims in Minnesota at XII.B.3.d.](#)

Privacy Violations - Minn. Stat. § 504B.211; [Residential Eviction Defense and Tenant Claims in Minnesota at XII.B.2.](#)

Frustration of Purpose and Impossibility or Impracticability of Performance - *see* [Pandemic Eviction Defense and Tenant Claims in Minnesota](#)

Mediation Programs



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

What Can You Do? Volunteer and Donate



Free Legal Aid Programs Representing Tenants:

- Anishinabe Legal Services - <https://alslegal.org/>
- Central Minnesota Legal Services - <https://www.centralmnlegal.org/>
- Judicare of Anoka County - <http://www.anokajudicare.org/>
- Legal Aid Service of Northeastern Minnesota - <http://lasnem.org/>
- Legal Assistance of Dakota County - <http://www.dakotalegal.org/>
- Legal Assistance of Olmsted County - <http://laocmn.org/>
- Legal Services of Northwest Minnesota - <https://lsnmlaw.org/>
- Mid-Minnesota Legal Aid - <https://mylegalaid.org/>
- Southern Minnesota Regional Legal Services - <https://www.smrls.org/>
- Volunteer Lawyers Network - <https://www.vlnmn.org/>

What Can You Do? Volunteer and Donate



Advice:

- On Line Advice: Minnesota Legal Advice Online (MLAO) - <https://www.mnlegaladvice.org/>
- Tenant Hotline Advice: HOME Line - <https://homelinemn.org/>
- See Free Legal Aid Programs (prior slide)

Law Students:

- Minnesota Justice Foundation (MJF) - <https://www.mnjustice.org/>

Mediation:

- Community Mediation Minnesota - <https://communitymediationmn.org/>

Tenant Organizing:

- HOME Line - <https://homelinemn.org/>
- United Renters For Justice/Inquilinxs Unidxs Por Justicia - <https://www.inquilinxsunidxs.org/>

What Can You Do? Volunteer and Donate



Housing Litigation and Policy Advocacy:

- HOME Line - <https://homelinemn.org/>
- Housing Justice Center - <https://www.hjcmn.org/>
- Housing Law in Minnesota - <http://povertylaw.homestead.com/HousingLawinMinnesota.html>
- Mid-Minnesota Legal Aid - <https://mylegalaid.org/>
- Minnesota Anti-Eviction Project, Lawyers' Committee for Civil Rights Under Law - <https://www.lawyerscommittee.org/>
- United Renters For Justice/Inquilinxs Unidxs Por Justicia - <https://www.inquilinxsunidxs.org/>
- Volunteer Lawyers Network - <https://www.vlnmn.org/>

National Housing Litigation and Policy Advocacy:

- National Housing Law Project - <https://www.nhlp.org/>
- National Low Income Housing Coalition - <https://nlihc.org/>

What Can You Do? Advocate.



Minnesota Government:

- Governor Tim Walz - <https://mn.gov/governor/about/timwalz/>
- Attorney General Keith Ellison - <http://www.ag.state.mn.us/>
- Minnesota Housing Commissioner Jennifer Ho - <http://www.mnhousing.gov/sites/np/leadership>
- Minnesota Department of Human Rights Commissioner Rebecca Lucero - <https://mn.gov/mdhr/about/staff/commissioner.jsp>
- Minnesota Senators - <https://www.senate.mn/>
- Minnesota House of Representatives - <https://www.house.leg.state.mn.us/members/>

Local Government:

- County Commissioners - <https://mn.gov/portal/government/local/counties/>
- City Mayors and City Councils - <https://mn.gov/portal/government/local/cities/>

Courts:

- Minnesota Supreme Court - <https://www.mncourts.gov/SupremeCourt.aspx>
- District Courts- <https://www.mncourts.gov/Find-Courts.aspx>

United States:

- President Joe Biden - <https://www.whitehouse.gov/>
- Senate - <https://www.senate.gov/>
- House of Representatives - <https://www.house.gov/>
- Centers for Disease Control and Prevention (CDC) - <https://www.cdc.gov/>
- Department of Housing and Urban Development (HUD) - <https://www.hud.gov/>

Questions



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