



Practice Tip (4.14.20)

The Eviction Moratoriums During the Pandemic

We're all living in it together: this upside-down, topsy-turvy, don't leave your home, coronavirus-infected world. And, just like the coronavirus does not treat everyone equally, neither does the economic destruction spewing in its wake. One of the particularly destructive legal mechanisms during this pandemic is evictions. When families are evicted from their homes, they are forced to leave quickly and typically end up living in hotels, shelters or doubling-up with family members and friends until they can secure a new place to live. Evictions essentially do the opposite of what "social distancing" and stay at home orders are trying to do.

Luckily, our elected officials have acted quickly to halt evictions for the near term, leaving only a very narrow exception when personal and public safety is at issue. These orders halting evictions have come both from the state of Minnesota and from the federal government, each granting slightly different, yet overall reasonably comprehensive, protections. The state and federal eviction moratoriums are described below:

Minnesota's Moratorium on Evictions:

On March 24, Governor Walz responded to the concern of evictions by issuing [Executive Order 20-14](#). In order to fully halt the eviction process and keep as many families as possible in their current housing, his executive order:

1. Suspends the ability of landlords to file evictions,¹
2. Prohibits landlords from terminating leases,
3. Orders Sheriffs to stop executing writs of recovery, and
4. Requests that financial institutions with home mortgages suspend foreclosure proceedings and evictions related to foreclosure proceedings, in addition to stop charging fees or penalties for late mortgage payments.

This Executive Order will remain in place for the duration of the peacetime emergency or until it is explicitly rescinded. While evictions and many other court proceedings have also been suspended by Chief Justice Gildea until at least April 22 per her [March 20 Order \(ADM20-8001\)](#), the suspension of evictions is also subject to the Executive Order, so evictions could be suspended longer than other court proceedings.

There is a narrow exception for cases in which individual or public health or safety is at risk,

¹ While Executive Order 20-14 prohibits landlords from filing evictions, the courts still accept evictions for filing and review for determination of qualification for emergency proceeding status. If filed cases are not deemed emergencies, several counties, including Ramsey, Hennepin and Anoka county will designate the filed cases as confidential until the Executive Order and Chief Justice Gildea's Emergency Order ADM20-8001 have lapsed. See, e.g., 2nd Judicial District Chief Judge John Guthmann, [Administrative Order Declaring Certain Housing/Eviction Matters Non-Public](#), (Mar. 31, 2020), <http://www.mncourts.gov/Find-Courts/Second-Judicial-District.aspx#Tab06Orders> and 4th Judicial District Presiding Judge Laurie Miller, [Administrative Order Declaring Certain Housing/Eviction Matters Non-Public](#), (Mar. 31, 2020), <http://www.mncourts.gov/Find-Courts/Hennepin/COVID-19-Information.aspx>.



including eviction actions alleging violations pursuant to Minn. Stat. § 504B.171, subd. 1 (providing for an eviction when certain unlawful activities take place on the property). In these situations, courts may immediately proceed with eviction hearings and Sheriffs may proceed with executing writs pursuant to these hearings.

To ensure that landlords comply, a willful violation of the executive order has been declared a misdemeanor. Additionally, the Minnesota Attorney General's office is actively monitoring landlords' compliance with the Executive Order and has set up a [website](#) where tenants can report problematic landlords. And, the Attorney General's office is actively prosecuting cases of landlords who willfully violate this law.²

It is important to note that other than the ability to evict and not renew leases, all other landlord/tenant obligations remain the same under the executive order. Tenants must continue to pay rent. Landlords must continue to keep properties in good repair and may not lock tenants out of rental properties. Late penalties and fees can still be assessed against tenants, but landlords may be wise to agree to suspend such fees.

Federal Eviction Protection under the CARES Act:

On March 27, President Trump signed the \$2.2 trillion [Coronavirus Aid, Relief and Economic Security Act](#). The CARES Act provides significant eviction protection to renters living in a "covered property." See CARES Act, § 4024(a)(1)(A). Covered properties include most federally assisted rental housing programs (e.g., Section 8, public housing, LIHTC, rural housing voucher programs) and any single or multi-family property financed with a federally backed mortgage (i.e., by Fannie, Freddie, and HUD loans).³ The CARES Act further prohibits landlords from evicting tenants if the landlord has requested forbearance of any federally backed multifamily mortgage loans. See CARES Act, §4023(d).

Landlords of a "covered property" are prohibited from filing *new* evictions for non-payment of rent. Evictions filed prior to March 27 are not covered by this act, nor are evictions filed for reasons other than non-payment. The CARES Act also prohibits landlords from charging any additional fees and penalties due to late payment or non-payment of rent.

This federal eviction moratorium extends for 120 days from March 27, 2020 to July 25, 2020. Landlords wishing to evict tenants at the end of the moratorium period must also provide tenants with a 30-day notice to evict and that notice can only be delivered after the moratorium expires. This means that non-payment of rent evictions filed against tenants living in property subject to the CARES Act should not be filed in court before August 24, 2020. In addition to the 120 day moratorium, Landlords seeking mortgage forbearance protection are prohibited from evicting tenants for the duration of the forbearance, which is capped at 90 days. This could extend the eviction moratorium even longer than July 25, 2020 for landlords who have taken advantage of mortgage forbearance protection.

² See [Attorney General's Office files action against Pine County landlord for violating executive order](#), KSTP (Apr. 3, 2020, 7:03PM), <https://kstp.com/minnesota-news/attorney-generals-office-files-action-against-pine-county-landlord-for-violating-executive-order-april-3-2020/5691634/>.

³ For a list of "covered properties" under the CARE Act, see [Summary and Analysis of Federal CARES Act Eviction Moratorium](#), National Housing Law Project (Mar. 28, 2020), <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf>.



To determine if a property is subject to the CARES Act, a first stop would be to check the [National Housing Preservation Database](#). Many, although not all, federally subsidized programs are listed here. Information about whether a property is subject to a federally backed loan may sometimes be found by reviewing publicly filed documents. Sometimes, however, even property records won't show an assignment or other proof of a loan with a federally backed lender. Tenants may be best served by requesting landlords to show proof that they are not covered by the CARES Act if proceeding with an eviction prior to the end of the federal moratorium.⁴

While it is hard to determine exactly how many rental properties will be subject to the CARES Act, one conservative estimate is at least 28% nationwide.⁵

Financial Resources for Landlords and Tenants:

For tenants who are experiencing problems paying rent, they should reach out to their County Emergency Assistance programs as the first level of support. Tenants can also contact 211 or look for other assistance at Minnesota's Housing Finance Agency, [Minnesota Housing](#). Tenants who have recently lost a job due to COVID-19 should also apply for unemployment benefits from the state.

For landlords experiencing financial difficulty due to loss of rental income, Governor Walz issued a second Executive Order on March 24 ([20-15](#)) which makes no interest loans available to small businesses. Information about that assistance is available through [Minnesota's Department of Employment and Economic Development \(DEED\)](#). The CARES Act also provides for emergency funding for small businesses.⁶

Both landlords and tenants should continue to watch for new sources of funding that might be forthcoming as the pandemic proceeds. The Minnesota legislature is currently considering a bill which would provide additional money for rental payments.⁷ Cities are also coming up with resources to help tenants experiencing difficulty paying rent due to the pandemic.⁸

⁴ See Enforcing Eviction Moratoria: Guidance for Advocates, National Housing Law Project (April 13, 2020), <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2>.

⁵ See The CARES Act Eviction Moratorium Covers All Federally Financed Rentals – That's One in Four US Rental Units, Urban Wire (April 13, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>.

⁶ For information on federal small business loan programs, see U.S. Small Business Administration, Coronavirus Relief Options (April 13, 2020) <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>.

⁷ Peter Callaghan, [Coalition of Minnesota landlords, tenant advocates push for rental assistance](#), MinnPost (Apr. 1, 2020), <https://www.minnpost.com/state-government/2020/04/coalition-of-minnesota-landlords-tenant-advocates-push-for-rental-assistance/>.

⁸ Minneapolis Mayor Frey has unveiled a plan to provide \$5 million in rental assistance through Gap Funding Programs. Liz Navratil, [\\$5 million relief plan in Minneapolis would aid renters, homeless, small businesses](#), Star Tribune (Apr. 3, 2020, 6:47 PM), <https://www.startribune.com/5-million-relief-plan-in-minneapolis-would-aid-renters-homeless-small-businesses/569353162/>. St. Paul's Bridge Fund gives \$1,000 to qualifying families and \$7500 to qualifying small businesses. <https://www.stpaul.gov/departments/planning-economic-development/saint-paul-bridge-fund>