

Landlord Rise and Learn During the COVID-19 Pandemic



HEADING HOME ANOKA COLLABORATIVE
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BY LAWRENCE MCDONOUGH
PRO BONO COUNSEL
DORSEY AND WHITNEY, LLP

Presenter



Lawrence McDonough

Pro Bono Counsel

Dorsey and Whitney, LLP

Suite 1500

50 South Sixth Street

Minneapolis, MN 55402-1498

612-492-6795

McDonough.Lawrence@Dorsey.com

Biographies

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

<https://www.dorsey.com/people/m/mcdonough-lawrence>

Topics



Suspended Evictions and Exceptions

Rent, Late Fees and Payment Plans

Tenants Walking Away from Leases

Landlord Activities under the Stay At Home Order

Maintenance

Showing Apartments

Harassment Restraining Orders

Mediation

Suspended Evictions and Exceptions



Executive Order 20-14

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for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded.

The Governor extended the peacetime emergency through May 13, 2020 and could extend it further. Executive Order 20-35.

https://mn.gov/governor/assets/EO%2020-35%20Final%20%28002%29_tcm1055-428113.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 Order 20-14



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

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

- (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;
- (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

Executive Order 20-14



Exceptions: Violations of Minn. Stat. § 504B.171, subdivision 1
<https://www.revisor.mn.gov/statutes/cite/504B.171>

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

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

Executive Order 20-14



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.

Executive Order 20-14



Exceptions:

Officers who hold a writ of recovery:

Writs of recovery designated as a priority execution under Minn. Stat. § 504B.365, subdivision 2: eviction action under section 504B.171, or on the basis that the defendant is causing a nuisance or seriously endangers the safety of other residents, their property, or the plaintiff's property

Any order to vacate that is based on an eviction under Minn. Stat. § 504B.171

The tenant seriously endangered the safety of other residents.

Executive Order 20-14



Exceptions:

Federal tribal trust land

Executive Order 20-14



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 Order 20-14



Violations

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

Prosecutions

https://www.ag.state.mn.us/Office/Communications/2020/04/03_Mostad.asp

https://www.ag.state.mn.us/Office/Communications/2020/04/07_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

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



<https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H5FCB77F196104E7394A52A8F1DC5D1C2>

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.

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.freddie.mac.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

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 Order 20-14 and CARES Act § 4024



Executive Order 20-14:

- Expires May 13 but can be extended
- Suspends evictions except where the tenant seriously endangers the safety of other residents or for violations of Minn. Stat. § 504B.171, subdivision 1.
- Does not affect late fees

CARES Act § 4024:

- Expires July 25, 2020
- Suspends only evictions for nonpayment of rent or fees
- Prohibits late fees

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



<https://macsnc.courts.state.mn.us/ctrack/document.do?document=7375582d47abc4ab5b583956a62457e749c1ecb747c8e3e827dc3ea9a3998ddb>

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.

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



Other than the proceedings that require a courtroom hearing, all proceedings in all case types shall be held by ITV or any other remote technology that permits the parties and attorneys to appear without being in the courtroom or by review of the parties' submissions without oral argument, to the extent feasible, practicable, and in the interests of justice. The district courts are authorized and encouraged to use remote technology when possible to conduct hearings or proceedings in any pending cases in addition to the hearings and proceedings.

If you have a court case scheduled in Anoka County District Court, call (763) 760-6700 to determine if your case will be heard or scheduled to a future date. You may also contact the court by email and use the dropdown menu to select the appropriate county.

<http://www.mncourts.gov/Find-Courts/District-Court-Contact.aspx>

Rent, Late Fees and Payment Plans



Executive Order 20-14: rent continues to accrue and late fees still are available

CARES Act § 4024: rent continues to accrue, but it prohibits late fees

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

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

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

Rent Increases



Executive Order 20-10 prohibits price gauging.

https://mn.gov/governor/assets/FINAL_EO-20-10_EO%2020-10%20Price%20Gouging%20%28002%29_tcm1055-424358.pdf

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

Rent Increases



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

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

Tenants Walking Away from Leases



Neither Executive Order 20-14 of CARES Act § 4024 authorize tenants to break leases.

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

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

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

Property destroyed or becomes uninhabitable or unfit for occupancy

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

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

Consider whether it is better to require a tenant who cannot pay to stay or seek a tenant who can.

Landlord Activities under the Stay At Home Order



The first stay at home order allows landlords to maintain the property. The exception to the order “includes workers needed to keep apartment complex buildings and other congregate residences or homes operational and sanitary.” Executive Order 20-20

https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf

The second stay at home order added “Workers cleaning common areas in apartment buildings and other similar common spaces. Executive Order 20-33.

https://mn.gov/governor/assets/2a.%20EO%2020-33%20Final_tcm1055-427370.pdf

Landlord Activities under the Stay At Home Order



Penalties

A worker 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.

Any business owner, manager, or supervisor who requires or encourages any of their employees to violate this Executive Order is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed \$3,000 or by imprisonment for not more than a year.

In addition to those criminal penalties, the Attorney General, as well as city and county attorneys, may seek any civil relief available pursuant to Minn. Stat. § 8.31, for violations of this Executive Order, including civil penalties up to \$25,000 per occurrence from businesses and injunctive relief. Nothing in this Executive Order is intended to encourage or allow law enforcement to transgress individual constitutional rights.

Maintenance



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

https://www.lawhelpmn.org/site-search?site_search_api_fulltext=repairs

Follow social distance and hygiene guidance

Showing Apartments



It is unclear whether showing apartments while occupied is keeping apartment complex buildings operational and sanitary. It also is unclear whether landlords can require tenants to allow prospective renters to come into their units. Still, the landlord would not be able to evict the tenant for refusing since it would not be a case “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].” Executive Order 20-14

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

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

Harassment Restraining Orders



Minn. Stat. § 609.748

<https://www.revisor.mn.gov/statutes/cite/609.748>

A single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target

Mediation



Mediation and Restorative Services

<https://www.mediationservice.org/>

Questions



Lawrence McDonough

Pro Bono Counsel

Dorsey and Whitney, LLP

Suite 1500

50 South Sixth Street

Minneapolis, MN 55402-1498

612-492-6795

McDonough.Lawrence@Dorsey.com