



## **New Mexico Residential Eviction Moratorium and Claim Prevention Tips**

### **Background/Overview:**

- In March 2020, the New Mexico Supreme Court issued two orders (No. 20-8500-007 and No. 20-8500-008), suspending residential evictions (including from mobile home parks) for inability to pay rent during the COVID-19 public health emergency.
- Effective Date: March 24, 2020
- Current Expiration Date: January 31, 2021
- Applies to Residential only
- The order stays the execution of writs of restitution issued on or after March 24, 2020 for nonpayment of rent in a residential eviction proceeding.
- See [www.nmcourts.com](http://www.nmcourts.com)

### **Current Practice for Non-Payment of Rent during Moratorium:**

- If a landlord/PM files for a writ of execution (an eviction) on or after March 24, 2020 for nonpayment of rent, the tenant must participate in a hearing set by the judge. The judge must stay the eviction proceeding if the judge is satisfied that the tenant can prove a current inability to pay the monthly rent set out in the lease.
- Landlords/PM's must follow the eviction legal process under New Mexico state law, meaning that tenants cannot just be kicked or locked out of the premises. See Federal fair housing law, New Mexico Uniform Owner-resident Relations Act
- According to the renter's guide by New Mexico Legal Aid and shared by the New Mexico Department of Health, landlords/PM's must do the following first:
  - Give the tenant an initial notice to vacate the premises
  - If a tenant is on a month-to-month or week-to-week tenancy, the landlord/PM must give them one month (30 days) or one week (7 days), respectively, to leave.
  - If the tenant does not leave the premises, the landlord can file in court for eviction.
  - Tenant must attend court hearing and provide proof of financial inability caused by COVID-19 public health emergency.

If landlords/PM's have not followed the legal process they cannot increase the rent or cut services at the house or apartment to try to evict the tenant. They can't also prevent the tenant from accessing the premises by changing locks, blocking entrances or removing personal property from the unit.



Landlords/PM's can still move to evict tenants for other violations of the rental agreement other than COVID-19 issues.

The eviction moratoria in place does not mean a rent vacation for all residents. Residents still have to pay their rent if they are able. And it appears that if they are unable to pay all of their rent, they still have to pay a portion of it.

Eviction bans do not cancel out rent payments entirely. Residents still owe the rent they didn't pay. Once the moratorium is up, owners and property managers can begin eviction proceedings if they need to do so.

If a resident is in arrears, property managers have to notify residents according to the regulations in their state. In New Mexico, this means giving residents 30 days' notice for month to month renters. This gives residents 30 more days to pay owed rent and fees.

**FAQ: What happens to the stayed writs of restitution once the COVID-19 emergency is over?**

At this time, there does not appear to be a specific procedure as to how landlords/PM's are to handle stayed writs of execution. According to the New Mexico Supreme Court, this will be up to individual courts to decide.

New Mexico Legal Aid is asking that judges become familiar with landlord tenant law and are requesting that courts develop mediation programs to help tenants and landlords/PM's address ways in which a tenant might be able to stay in the property.

**Claim Prevention Tips:**

- Be informed of the laws that apply to your profession and specifically, to property management. e.g.,
  - Federal fair housing law
  - New Mexico Uniform Owner-resident Relations Act
  - New Mexico Property Management Laws were recently updated (effective January 3, 2021) [www.rld.state.nm.us](http://www.rld.state.nm.us) (although nothing specific to COVID-19)
- Monitor and be familiar with national, state, and local government and health department websites for the latest rules, regulations, emergency orders, updates, and best practices (government directives)
  - The Centers for Disease Control and Prevention (CDC)
  - World Health Organization.
- NM websites provide information relevant to the moratorium, tenant's rights and discuss evictions, paying of rent/utilities and other related issues due to COVID-19. (Also discussed above)
  - New Mexico State Government: [www.newmexico.gov](http://www.newmexico.gov)
  - New Mexico Real Estate Commission: [www.rld.state.nm.us](http://www.rld.state.nm.us)
  - New Mexico Association of Realtors: [www.nmrealtor.com](http://www.nmrealtor.com)

- New Mexico Supreme Court: [www.nmcourts.com](http://www.nmcourts.com)
- Review and be familiar with applicable contracts and agreements
  - *Property Management Agreement(s)*
    - Make sure there are indemnity provisions
      - Generally, a property management contract will specify that the property owner must “hold harmless” the property manager for any liability that arises as a result of the reasonable, competent and diligent exercise of its responsibilities within the scope of the property management engagement.
        - The usual exceptions are:
          - Gross negligence on behalf of the property manager, its staff or its agents.
          - Acts (or omissions) that are not within the scope of the contract.
      - Review the property management agreement to determine the property manager's obligation to comply with laws and other government directives and the owner's remedies for a breach.
      - Consider PM's cleaning protocols and other management practices and confirm they comply with CDC guidelines and other applicable government directives.
  - *Rental Agreements*
    - Review tenant leases to confirm
      - the landlord/PM and the tenants' obligations to comply with laws, regulations, and other government directives;
      - Confirm obligations to the tenants under applicable common law or state and local laws or regulations regarding: property maintenance; health and safety; and the landlord's negligence or intentional acts. (See New Mexico websites and laws cited above)
  - *Insurance policies*
    - Ensure that landlord carries homeowners and excess umbrella insurance
    - Confirm with landlord that the PM has been named as an additional insured where required (and obtain copy for file)
    - Ensure that PM's E&O insurance coverage is up to date
    - Consider whether PM needs additional liability insurance

#### Specific Do's and Don'ts for Eviction/Habitability Claims

- Consult the law and/or NMAR prior to acting on a specific issue (See above)
- Keep and maintain appropriate files on each property/tenant
- Communicate with tenants on a regular basis and about any issues
  - In writing is preferred, if not possible, follow up with e-mails, etc.



- Consider working out payment plan options for tenants who cannot pay rent. Once the moratorium expires, tenants will have to pay rent, but it appears that payment plans are being encouraged and may be enforced by the NM courts.
- Provide enough notice to tenant regarding eviction – 30 days/7 days
- Don't increase the rent or cut services at the house or apartment to try to evict the tenant.
- Don't prevent the tenant from accessing the premises by changing locks, blocking entrances or removing personal property from the unit.
- Despite COVID-19, PM's must respond to tenants' issues and requests to repair under the rental agreement. Make sure that PM's response to tenant's request is timely.
- Hire the appropriate contractors to make repairs. PM's should not do the repair work themselves.
  - Request that contractors are taking appropriate COVID precautions (wearing masks, etc.) when entering rental property to make repairs. If PM has to enter property, ensure that PM is also taking appropriate COVID precautions
- If tenant makes a repair request or has a complaint, document it in writing
- Tenant still needs to maintain/take care of property pursuant to renters agreement. Can be evicted for failure to do so, regardless of COVID.
  - If PM's inspect property, take photographs and otherwise document if failures of tenant to comply with renter's agreement are evident.

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*\*\*\*\* NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise. \*\*\*\**