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Ramsey County Housing and Conciliation Court Self Help Center

# Housing Manual

Revised Edition 2020

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Second Edition—2017—Ann Arntson, Ramsey County Law Library
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# Ramsey County Housing Court Basic Information

## Housing Court

Ramsey County Courthouse
15 W Kellogg Blvd, Room 170
St Paul MN 55102
(651) 266-8253

Hours: Monday-Friday 8:00-4:30
Closed on Legal Holidays

## Ramsey County Law Library

Ramsey County Courthouse
15 W Kellogg Blvd, 18th Floor
St Paul MN 55102
Phone: (651) 266-8391
Email: AskLawLibrarian@co.ramsey.mn.us

Hours: Monday-Friday 8:00-4:30
Closed on Ramsey County Holidays

# MINNESOTA JUDICIAL BRANCH

**The Minnesota Judicial Branch continues to monitor the most current statements and recommendations regarding COVID-19 (coronavirus) in Minnesota.** Learn more »

## Ramsey Civil Division

The Civil Division includes Conciliation Court, Housing Court, Probate Court, Civil Commitment Court, and offices for Civil Case Filing, and Scheduling (Assignment).

**Ramsey County Court Records Information »**

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### Related Legal Topics:

- Vehicle Seizure & Forfeiture
- Interest Rates
- Name Change

Overview | Filing | Case Scheduling | Conciliation (Small Claims) | Civil Commitment | Housing Court | Probate Court | Ramsey Civil FAQs

Housing Court in Ramsey County hears and decides civil cases related to residential rental housing under **Minn. Stat. §504B** and criminal cases related to housing code enforcement. This includes, for example, claims for rent abatement, rent escrow proceedings, eviction actions, and actions for violation of state, county, or city housing codes. Housing Court ensures housing claims are brought before a single, trained referee. This is to encourage consistent decisions and prompt compliance with Minnesota's housing laws.

Ramsey County District Court appoints a referee to hold hearings and make recommended decisions. After the hearing in each case, the referee's recommended findings and orders are sent to a district court judge. These become the findings and order of the court when confirmed by the district judge. The landlord or tenant may ask the district court judge to review any order or finding recommended by the referee. The person who is requesting the review must file and serve (provide to the other party) a notice of the recommended order or finding within 10 days of the order. This notice must explain the reasons for requesting a review and state the specific parts of the recommended findings or orders that are disputed. After receiving this notice, a time for the review hearing may be set. Upon review of the request, the court record, the referee's recommendation, and testimony (if a hearing was required), the judge will decide whether to accept, reject or change the referee's recommended decision.

Ramsey County landlords and tenants are encouraged to use the Housing Court to resolve housing related disputes that they cannot work out themselves.

### Free Legal Clinic to assist unrepresented parties prepare and file matters in Housing Court

Volunteer attorneys and law students are available for brief consultation meetings every Tuesday afternoon from 1 to 4PM. The Minnesota Justice Foundation (MJF), Ramsey County District Court, and the Ramsey County Law Library are collaborating to offer a pro bono clinic in the Ramsey County Law Library on the 18th floor of the Ramsey County Court House. For more information, visit the **Ramsey County Law Library** webite.

- For more information, please visit the **Landlord and Tenant Issues** Help Topic.
- Additional Information about **Landlords and Tenants Rights and Responsibilities** is available from the Attorney General's Office.

**FAQs**

- **How do I pursue eviction (unlawful detainer)? »**
- **How do I respond to an eviction summons? »**
- **Can my landlord keep my property? »**
- **Can I file a claim against my landlord in Housing Court? »**
- **Do I have to pay rent if repairs need to be done? »**

## 484.013 HOUSING CALENDAR CONSOLIDATION PROGRAM.

Subdivision 1. **Establishment.** (a) A program is established in the Second and Fourth Judicial Districts to consolidate the hearing and determination of matters related to residential rental housing and to ensure continuity and consistency in the disposition of cases.

(b) Outside the Second and Fourth Judicial Districts, a district court may establish the program described in paragraph (a) in counties that it specifies in the district.

Subd. 2. **Jurisdiction.** The housing calendar program may consolidate the hearing and determination of all proceedings under chapter 504B; criminal and civil proceedings related to violations of any state, county or city health, safety, housing, building, fire prevention or housing maintenance code; escrow of rent proceedings; and actions for rent abatement. A proceeding under sections 504B.281 to 504B.371 may not be delayed because of the consolidation of matters under the housing calendar program.

The program must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party. A court may not consolidate claims unless the plaintiff has met the applicable jurisdictional and procedural requirements for each cause of action. A request for consolidation of claims by the plaintiff does not require mandatory joinder of defendant's claims, and a defendant is not barred from raising those claims at another time or forum.

Subd. 3. **Referee.** The chief judge of district court may appoint a referee for the housing calendar program. The referee must be learned in the law. The referee must be compensated according to the same scale used for other referees in the district court. Section 484.70, subdivision 6, does not apply to the housing calendar program.

Subd. 4. **Referee duties.** The duties and powers of the referee in the housing calendar program are as follows:

(1) to hear and report all matters within the jurisdiction of the housing calendar program and as may be directed to the referee by the chief judge; and

(2) to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders for judgment.

All recommended orders and findings of the referee are subject to confirmation by a judge.

Subd. 5. **Transmittal of court file.** Upon the conclusion of the hearing in each case, the referee shall transmit to the district court judge, the court file together with the referee's recommended findings and orders in writing. The recommended findings and orders of the referee become the findings and orders of the court when confirmed by the district court judge. The order of the court is proof of the confirmation.

Subd. 6. **Confirmation of referee orders.** Review of a recommended order or finding of the referee by a district court judge may be had by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review must specify the grounds for the review and the specific provisions of the recommended findings or orders disputed, and the district court judge, upon receipt of the notice of review, shall set a time and place for the review hearing.

Subd. 7. **Procedures.** The chief judge of the district must establish procedures for the implementation of the program, including designation of a location for the hearings. The chief judge may also appoint other staff as necessary for the program.

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Subd. 8. [Repealed, 2006 c 260 art 5 s 54]

**History:** *1993 c 265 s 6; 1993 c 317 s 16; 1999 c 199 art 2 s 20; 1999 c 216 art 6 s 16,17; 2014 c 205 s 1*

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VOLUNTEER LAWYERS NETWORK

July 2017 Tip of the Month

# Communication in the Landlord-Tenant Relationship

Submitted by Laura Busian,
VLN Resource Attorney/Program Manager, Housing Law

Communication is an essential part of the landlord-tenant relationship, and effective communication is essential to a successful landlord-tenant relationship. Successful communication in the landlord-tenant relationship includes the following:

1. Knowing who to talk to;
2. Active listening;
3. Effective communication; and
4. Positive I-messages.

Once a tenant has determined who they should talk to about an issue or question related to the lease or the property they are renting, active listening, effective communication, and positive I-messages must be used to engage in successful communication with that person. A reminder of the definition of communication is helpful, particularly in this context – communication is defined as the process of sharing thoughts, opinions or information between two or more people. In seeking to talk to their landlords or property managers, tenants are well reminded that they are about to engage in an exchange of information, which is likely to include thoughts and opinions that are different from their own, and they should therefore be open to the exchange because the exchange is necessary to reach a resolution. When stressed, individuals are often so busy being angry or worried that they do not listen to what is being said. Tenants should be sure to approach their landlords or property managers when all parties are likely to be calm and open to communication. This often sets the stage for a positive and beneficial exchange.

**Active Listening**

Listening is an important part of communicating with others, particularly for tenants communicating with their landlords or property managers. Listening does not mean sitting still without speaking – to truly understand what is being said, it is necessary to listen actively. Active listening is when the listener shares in their own words what they think they have heard and clarifies misunderstandings, asking questions and providing feedback.

**Effective Communication**

Some tips for communicating effectively are as follows:

- Give the speaker undivided attention
- Look at the speaker directly, if appropriate
- Put aside distracting thoughts
- Avoid being distracted by environmental factors
- "Listen" to the speaker's body language
- Use body language and gestures to convey attention, such as nodding and smiling
- Encourage the speaker to continue with small verbal comments, such as "yes" and "uh huh"
- Provide feedback
- Reflect what has been said by paraphrasing – "what I'm hearing is ..." and "sounds like you are saying ..."

- Ask questions to clarify certain points – "what do you mean when you say ...?" and "is this what you mean?"
- Summarize the speaker's comments periodically
- Defer judgment
- Allow the speaker to finish and do not interrupt
- Respond appropriately

**Positive I-Messages**

I-messages are a method of communicating to someone in which the individual refers to himself or herself stating their own feelings generally expressed as a sentence beginning with the word "I." The following guidelines can help tenant communicate their messages in a positive way:

- Speak for yourself – say what you feel and need
- Do not tell the other person what they are feeling, doing, or going to do
- Own the message – use "I," rather than "you" or "they"
- Discuss one issue at a time – avoid the "laundry list" approach
- Describe the facts of the situation
- Don't call the other person names or make accusations

I-messages should have the following parts:

- Feelings of the Speaker – "I feel ..."
- Action of the Listener – "... when you ..."
- Consequences of the Behavior – "... because ..."
- Request for Change – "I'd like ..."

In housing matters, as well as many other types of legal matters, we often find ourselves counseling our clients and helping them problem-solve and manage crises, in addition to providing legal services. One way we can help our clients navigate the situations they are facing is to coach them in the communication skills they can use to communicate effectively and successfully when advocating for themselves or resolving conflict in the landlord-tenant relationship.

Tenants (prospective or current) may benefit from the University of Minnesota's Renter 101 Online Course: https://www.extension.umn.edu/family/live-healthy-live-well/healthy-homes/renter-101/.

*Laura Busian* in the Housing Resources Attorney/Program Manager at Volunteer Lawyers Network and has been trained in the *RentWise* curriculum by University of Minnesota Extension (June 6, 2017).

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Primary Source: Hendrickson, L., and Hagen Jokela, R. (2017). *RentWise*. University of Minnesota. (*Content used with permission of the authors.*) *RentWise* is a comprehensive curriculum that is intended to be taught in one-on-one or group setting to individuals who would benefit from additional education and skills to become a successful renter.

# CHAPTER 504B

# LANDLORD AND TENANT


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**504B.0001** MS 2006 [Renumbered 15.001]

## DEFINITIONS

### 504B.001 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Controlled substance.** "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of section 152.02. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.

Subd. 3. **Distress for rent.** "Distress for rent" means the act of a landlord seizing personal property of the tenant or other person to enforce payment of rent.

Subd. 4. **Evict or eviction.** "Evict" or "eviction" means a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in this chapter.

Subd. 5. **Housing-related neighborhood organization.** "Housing-related neighborhood organization" means a nonprofit corporation incorporated under chapter 317A that:

(1) designates in its articles of incorporation or bylaws a specific geographic community to which its activities are limited; and

(2) is formed for the purposes of promoting community safety, crime prevention, and housing quality in a nondiscriminatory manner.

For purposes of this chapter, an action taken by a neighborhood organization with the written permission of a residential tenant means, with respect to a building with multiple dwelling units, an action taken by the neighborhood organization with the written permission of the residential tenants of a majority of the occupied units.

Subd. 6. **Inspector.** "Inspector" means the person charged by the governing body of the political subdivision in which a residential building is situated, with the responsibility of enforcing provisions of local law, the breach of which could constitute a violation as defined in subdivision 14, clause (1). If there is no such person, "inspector" means the county agent of a community health board as authorized under

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section 145A.04 or the chair of the board of county commissioners, and in the case of a manufactured home park, the state Department of Health or its designee.

Subd. 7. **Landlord.** "Landlord" means an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, agent, or other person directly or indirectly in control of rental property.

Subd. 8. **Lease.** "Lease" means an oral or written agreement creating a tenancy in real property.

Subd. 9. **License.** "License" means a personal privilege to do a particular act or series of acts on real property without possessing any estate or interest in real property. It may be created in writing or orally.

Subd. 10. **Person.** "Person" means a natural person, corporation, limited liability company, partnership, joint enterprise, or unincorporated association.

Subd. 11. **Residential building.** "Residential building" means:

(1) a building used in whole or in part as a dwelling, including single-family homes, multiple-family units such as apartments, and structures containing both dwelling units and units used for nondwelling purposes, and includes a manufactured home park; or

(2) an unoccupied building which was previously used in whole or in part as a dwelling and which constitutes a nuisance under section 561.01.

Subd. 12. **Residential tenant.** "Residential tenant" means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.

Subd. 13. **Tenancy at will.** "Tenancy at will" means a tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date.

Subd. 14. **Violation.** "Violation" means:

(1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;

(2) a violation of any of the covenants set forth in section 504B.161, subdivision 1, clause (1) or (2), or in section 504B.171, subdivision 1; or

(3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building.

Subd. 15. **Writ of recovery of premises and order to vacate.** "Writ of recovery of premises and order to vacate" means the writ set out in section 504B.361.

**History:** *1999 c 199 art 1 s 1; 2015 c 21 art 1 s 109*

## LEASING AND RENT

### 504B.101 DISTRESS FOR RENT.

The remedy of distress for rent is abolished.

**History:** *1999 c 199 art 1 s 2*

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**504B.111 WRITTEN LEASE REQUIRED; PENALTY.**

A landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant. The written lease must identify the specific unit the residential tenant will occupy before the residential tenant signs the lease. Notwithstanding any other state law or city ordinance to the contrary, a landlord may ask for the tenant's full name and date of birth on the lease and application. A landlord who fails to provide a lease, as required under this section, is guilty of a petty misdemeanor.

**History:** *1999 c 199 art 1 s 3; 1Sp2019 c 1 art 6 s 56*

**504B.115 TENANT TO BE GIVEN COPY OF LEASE.**

Subdivision 1. **Copy of written lease to tenant.** Where there is a written lease, a landlord must give a copy to a tenant occupying a dwelling unit whose signature appears on the lease agreement. The landlord may obtain a signed and dated receipt, either as a separate document or an acknowledgment included in the lease agreement itself, from the tenant acknowledging that the tenant has received a copy of the lease. This signed receipt or acknowledgment is prima facie evidence that the tenant has received a copy of the lease.

Subd. 2. **Legal action to enforce lease.** In any legal action to enforce a written lease, except for nonpayment of rent, disturbing the peace, malicious destruction of property, or a violation of section 504B.171, it is a defense for the tenant to prove that the landlord failed to comply with subdivision 1. This defense may be overcome if the landlord proves that the tenant had actual knowledge of the term or terms of the lease upon which any legal action is based.

**History:** *1999 c 199 art 1 s 4*

**504B.118 RECEIPT FOR RENT PAID IN CASH.**

A landlord receiving rent or other payments from a tenant in cash must provide a written receipt for payment immediately upon receipt if the payment is made in person, or within three business days if payment in cash is not made in person.

**History:** *2010 c 315 s 2*

**504B.121 TENANT MAY NOT DENY TITLE; EXCEPTION.**

A tenant in possession of real property under a lawful lease may not deny the landlord's title in an action brought by the landlord to recover possession of the property. This prohibition does not apply to a tenant who, prior to entering into the lease, possessed the property under a claim of title that was adverse or hostile to that of the landlord.

**History:** *1999 c 199 art 1 s 5*

**504B.125 PERSON IN POSSESSION LIABLE FOR RENT; EVIDENCE.**

Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold or for any term of years, shall be liable for the amount or proportion of rent due from the land in possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein

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contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases or provided by law.

**History:** *1999 c 199 art 1 s 6*

**504B.131 RENT LIABILITY; UNINHABITABLE BUILDINGS.**

A tenant or occupant of a building that is destroyed or becomes uninhabitable or unfit for occupancy through no fault or neglect of the tenant or occupant may vacate and surrender such a building. A tenant or occupant may expressly agree otherwise except as prohibited by section 504B.161.

**History:** *1999 c 199 art 1 s 7*

**504B.135 TERMINATING TENANCY AT WILL.**

(a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

**History:** *1999 c 199 art 1 s 8*

**504B.141 URBAN REAL ESTATE; HOLDING OVER.**

When a tenant of urban real estate, or any interest therein, holds over and retains possession after expiration of the lease without the landlord's express agreement, no tenancy for any period other than the shortest interval between the times of payment of rent under the terms of the expired lease shall be implied.

**History:** *1999 c 199 art 1 s 9*

**504B.145 RESTRICTION ON AUTOMATIC RENEWALS OF LEASES.**

Notwithstanding the provisions of any residential lease, in order to enforce any automatic renewal clause of a lease of an original term of two months or more which states, in effect, that the term shall be deemed renewed for a specified additional period of time of two months or more unless the tenant gives notice to the landlord of an intention to quit the premises at the expiration of the term due to expire, the landlord must give notice to the tenant as provided in this section. The notice must be in writing and direct the tenant's attention to the automatic renewal provision of the lease. The notice must be served personally or mailed by certified mail at least 15 days, but not more than 30 days prior to the time that the tenant is required to furnish notice of an intention to quit.

**History:** *1999 c 199 art 1 s 10*

**504B.146 LEASE DURATION NOTICE.**

A written lease for a residential unit must identify the lease start date and lease end date. If the lease requires the tenant to move in or out of the residential unit on a date other than the first or last day of the month, and the rent is prorated, then the lease must indicate the amount of the prorated rent for the relevant months. The information required by this section must be provided on the first page of the lease.

**History:** *1Sp2019 c 1 art 6 s 57*

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## 504B.147 TIME PERIOD FOR NOTICE TO QUIT OR RENT INCREASE.

Subdivision 1. **Application.** This section applies to a residential lease that provides a time period for the landlord to give notice to quit the premises or notice of a rent increase that is different than the time period the tenant is required to give for notice of intention to quit the premises. For purposes of this section, "notice to quit" includes a notice of nonrenewal of a lease.

Subd. 2. **Tenant option to choose notice period.** The tenant may give notice of an intention to quit the premises using either:

(1) the time period provided in the lease for the tenant to give a notice of intention to quit the premises; or

(2) the time period provided in the lease for the landlord to give a notice to quit the premises or notice of a rent increase.

Subd. 3. **Landlord notice requirements.** The landlord may not give a notice to quit the premises or notice of a rent increase that is shorter than the time period the lease provides for the tenant to give notice of an intention to quit the premises.

Subd. 4. **No waiver.** The requirements of this section may not be waived or modified by the parties to a residential lease. Any provision, whether oral or written, of a lease or other agreement by which any provision of this section is waived by a tenant is contrary to public policy and void.

**History:** *1Sp2019 c 1 art 6 s 58*

## 504B.151 RESTRICTION ON RESIDENTIAL LEASE TERMS FOR BUILDINGS IN FINANCIAL DISTRESS; REQUIRED NOTICE OF PENDING FORECLOSURE.

Subdivision 1. **Limitation on lease and notice to tenant.** (a) Once a landlord has received notice of a contract for deed cancellation under section 559.21 or notice of a mortgage foreclosure sale under chapter 580 or 582, or summons and complaint under chapter 581, the landlord may only enter into (i) a periodic residential lease agreement with a term of not more than two months or the time remaining in the contract cancellation period or the mortgagor's redemption period, whichever is less or (ii) a fixed term residential tenancy not extending beyond the cancellation period or the landlord's period of redemption until:

(1) the contract for deed has been reinstated or paid in full;

(2) the mortgage default has been cured and the mortgage reinstated;

(3) the mortgage has been satisfied;

(4) the property has been redeemed from a foreclosure sale; or

(5) a receiver has been appointed.

(b) Before entering into a lease under this section and accepting any rent or security deposit from a tenant, the landlord must notify the prospective tenant in writing that the landlord has received notice of a contract for deed cancellation or notice of a mortgage foreclosure sale as appropriate, and the date on which the contract cancellation period or the mortgagor's redemption period ends.

(c) This section does not apply to a manufactured home park as defined in section 327C.01, subdivision 5.

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(d) A landlord who violates the requirements in this subdivision is liable to the lessee for a civil penalty of $500, unless the landlord falls under the exception in subdivision 2. The remedy provided under this paragraph is in addition to and shall not limit other rights or remedies available to landlords and tenants.

Subd. 2. **Exception allowing a longer term lease.** This section does not apply if:

(1) the holder or the mortgagee agrees not to terminate the tenant's lease other than for lease violations for at least one year from the commencement of the tenancy; and

(2) the lease does not require the tenant to prepay rent for any month commencing after the end of the cancellation or redemption period, so that the rent payment would be due prior to the end of the cancellation or redemption period.

For the purposes of this section, a holder means a contract for deed vendor or a holder of the sheriff's certificate of sale or any assignee of the contract for deed vendor or of the holder of the sheriff's certificate of sale.

Subd. 3. **Transfer of tenancy by operation of law.** (a) A tenant who enters into a lease under subdivision 2 is:

(1) deemed by operation of law to become the tenant of the holder immediately upon the holder succeeding to the interest of the landlord under the lease; and

(2) bound to the holder under all the provisions of the lease for either the balance of the lease term or for one year after the start of the tenancy, whichever occurs first.

(b) A tenant who becomes the tenant of the holder under this subdivision is not obligated to pay rent to the holder until the holder mails, by first class mail to the tenant at the property address, written notice that the holder has succeeded to the interest of the landlord. A letter from the holder to the tenant to that effect is prima facie evidence that the holder has succeeded to the interest of the landlord.

Subd. 4. **Holder not bound by certain acts.** A holder succeeding to an interest in a lease lawfully entered into under subdivision 2 is not:

(1) liable for any act or omission of any prior landlord;

(2) subject to any offset or defense which the tenant had against any prior landlord; or

(3) bound by any modification of the lease entered into under subdivision 2, unless the modification is made with the holder's consent.

**History:** *1999 c 199 art 1 s 11; 2008 c 177 s 1; 2009 c 123 s 3; 2013 c 100 s 1*

## OBLIGATIONS AND COVENANTS

### 504B.155 TENANT MUST GIVE COLD WEATHER NOTICE BEFORE VACATION OF BUILDING.

Except upon the termination of the tenancy, a tenant who, between November 15 and April 15, removes from, abandons, or vacates a building or any part thereof that contains plumbing, water, steam, or other pipes liable to injury from freezing, without first giving to the landlord three days' notice of intention so to remove is guilty of a misdemeanor.

**History:** *1999 c 199 art 1 s 12*

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## 504B.161 COVENANTS OF LANDLORD OR LICENSOR.

Subdivision 1. **Requirements.** (a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. **Tenant maintenance.** The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.

Subd. 3. **Liberal construction.** This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established in this section.

Subd. 4. **Covenants are in addition.** The covenants contained in this section are in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. **Injury to third parties.** Nothing in this section shall be construed to alter the liability of the landlord or licensor of residential premises for injury to third parties.

Subd. 6. **Application.** The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

**History:** *1999 c 199 art 1 s 13; 2000 c 260 s 70; 2007 c 136 art 3 s 5*

## 504B.165 UNLAWFUL DESTRUCTION; DAMAGES.

(a) An action may be brought for willful and malicious destruction of leased residential rental property. The prevailing party may recover actual damages, costs, and reasonable attorney fees, as well as other equitable relief as determined by the court.

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(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 14*

## 504B.171 COVENANT OF LANDLORD AND TENANT NOT TO ALLOW UNLAWFUL ACTIVITIES.

Subdivision 1. **Terms of covenant.** (a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

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

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

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

Subd. 2. **Breach voids right to possession.** A breach of the covenant created by subdivision 1 voids the tenant's or licensee's right to possession of the residential premises. All other provisions of the lease or license, including but not limited to the obligation to pay rent, remain in effect until the lease is terminated by the terms of the lease or operation of law. If the tenant or licensee breaches the covenant created by subdivision 1, the landlord may bring, or assign to the county or city attorney of the county or city in which the residential premises are located, the right to bring an eviction action against the tenant or licensee. The assignment must be in writing on a form provided by the county or city attorney, and the county or city attorney may determine whether to accept the assignment. If the county or city attorney accepts the assignment of the landlord's right to bring an eviction action:

(1) any court filing fee that would otherwise be required in an eviction action is waived; and

(2) the landlord retains all the rights and duties, including removal of the tenant's or licensee's personal property, following issuance of the writ of recovery of premises and order to vacate and delivery of the writ to the sheriff for execution.

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Subd. 3. **Waiver not allowed.** The parties to a lease or license of residential premises may not waive or modify the covenant imposed by this section.

**History:** *1999 c 199 art 1 s 15; 2003 c 52 s 1; 2014 c 188 s 1*

**504B.172 RECOVERY OF ATTORNEY FEES.**

If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord.

**History:** *2010 c 315 s 3*

**504B.173 APPLICANT SCREENING FEE.**

Subdivision 1. **Limitations.** A landlord may not:

(1) charge an applicant a screening fee when the landlord knows or should have known that no rental unit is available at that time or will be available within a reasonable future time;

(2) collect or hold an applicant screening fee without giving the applicant a written receipt for the fee, which may be incorporated into the application form, upon request of the applicant; or

(3) use, cash, or deposit an applicant screening fee until all prior applicants have either been screened and rejected, or offered the unit and declined to enter into a rental agreement.

Subd. 2. **Return of applicant screening fee.** (a) The landlord must return the applicant screening fee if:

(1) the applicant is rejected for any reason not listed in the disclosure required under subdivision 3; or

(2) a prior applicant is offered the unit and agrees to enter into a rental agreement.

(b) If the landlord does not perform a personal reference check or does not obtain a consumer credit report or tenant screening report, the landlord must return any amount of the applicant screening fee that is not used for those purposes.

(c) The applicant screening fee may be returned by mail, may be destroyed upon the applicant's request if paid by check, or may be made available for the applicant to retrieve.

Subd. 3. **Disclosures to applicant.** If a landlord accepts an applicant screening fee from a prospective tenant, the landlord must:

(1) disclose in writing prior to accepting the applicant screening fee:

(i) the name, address, and telephone number of the tenant screening service the landlord will use, unless the landlord does not use a tenant screening service; and

(ii) the criteria on which the decision to rent to the prospective tenant will be based; and

(2) notify the applicant within 14 days of rejecting a rental application, identifying the criteria the applicant failed to meet.

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Subd. 4. **Remedies.** (a) In addition to any other remedies, a landlord who violates this section is liable to the applicant for the applicant screening fee plus a civil penalty of up to $100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

(b) A prospective tenant who provides materially false information on the application or omits material information requested is liable to the landlord for damages, plus a civil penalty of up to $500, civil court filing costs, and reasonable attorney fees.

**History:** *1999 c 150 s 1; 1999 c 199 art 1 s 174; 2010 c 315 s 4*

**504B.175 PRELEASE DEPOSIT.**

Subdivision 1. **Definition.** For the purpose of this section, "prelease deposit" means payment given to a landlord from a prospective tenant of a residential dwelling unit before the prospective tenant and the landlord have entered into a rental agreement. "Prelease deposit" does not include the payment of a reasonable applicant screening fee used to conduct a background check on the prospective tenant.

Subd. 2. **Limitations.** (a) A prelease deposit may be accepted only if the landlord and prospective tenant enter into a conspicuous written agreement that includes:

(1) the circumstances under which it will be returned; and

(2) that the landlord is required to return the prelease deposit within seven days of the occurrence of a circumstance described in clause (1).

(b) "Return" means postmarked within seven days except that upon the prospective tenant's request, a landlord may destroy the payment or hold it for retrieval by the tenant instead of returning it by mail.

Subd. 3. **Application on entry into rental agreement.** If a prospective tenant and landlord do enter into a rental agreement, the prelease deposit must be applied to that tenant's security deposit or rent.

Subd. 4. **Remedies.** In addition to any other remedies, a landlord who violates this section is liable to the payor of the prelease deposit for the amount of the deposit paid, plus one-half of that amount as a penalty. A landlord who enters into a rental agreement with a tenant is not liable under this section unless the landlord failed to comply with subdivision 3.

**History:** *1999 c 97 s 1; 1999 c 199 art 1 s 174*

**504B.177 LATE FEES.**

(a) A landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have agreed in writing that a late fee may be imposed. The agreement must specify when the late fee will be imposed. In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected is not considered to be either interest or liquidated damages. For purposes of this paragraph, the "due date" does not include a date, earlier than the date contained in the written or oral lease by which, if the rent is paid, the tenant earns a discount.

(b) Notwithstanding paragraph (a), if a federal statute, regulation, or handbook permitting late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook.

**History:** *2010 c 315 s 5; 2012 c 132 s 1*

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## 504B.178 INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES; LIMIT ON WITHHOLDING LAST MONTH'S RENT.

Subdivision 1. **Applicability.** Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. **Interest.** Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.55, subdivision 26, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple noncompounded interest at the rate of three percent per annum until August 1, 2003, and one percent per annum thereafter, computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than $1 shall be excluded from the provisions of this section.

Subd. 3. **Return of security deposit.** (a) Every landlord shall:

(1) within three weeks after termination of the tenancy; or

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant,

and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

(b) It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

(1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(c) In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

Subd. 4. **Damages.** Any landlord who fails to:

(1) provide a written statement within three weeks of termination of the tenancy;

(2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant; or

(3) transfer or return a deposit as required by subdivision 5,

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after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Subd. 5. **Return of deposit.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(1) transfer the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of the transfer and of the transferee's name and address; or

(2) return the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. **Successor in interest.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to the deposit, except that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. **Bad faith retention.** The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $500 for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

Subd. 8. **Withholding rent.** No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, or for the last month of a contract for deed cancellation period under section 559.21 or a mortgage foreclosure redemption period under chapter 580, 581, or 582, on the grounds that the deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that the deposit should serve as payment for the rent. Any tenant who remains in violation of this subdivision after written demand and notice of this subdivision shall be liable to the landlord for the following:

(1) a penalty in an amount equal to the portion of the deposit which the landlord is entitled to withhold under subdivision 3 other than to remedy the tenant's default in the payment of rent; and

(2) interest on the whole deposit as provided in subdivision 2, in addition to the amount of rent withheld by the tenant in violation of this subdivision.

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Subd. 9. **Action to recover deposit.** An action, including an action in conciliation court, for the recovery of a deposit on rental property may be brought in the county where the rental property is located, or at the option of the tenant, in the county of the landlord's residence.

Subd. 10. **Waiver.** Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.

Subd. 11. **Tenancies after July 1, 1973.** The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

**History:** *1999 c 199 art 1 s 16; 2000 c 282 s 1; 2003 c 52 s 2; 2004 c 203 art 2 s 61; 2008 c 177 s 2; 2009 c 123 s 4; 2010 c 315 s 6*

## 504B.181 LANDLORD OR AGENT DISCLOSURE.

Subdivision 1. **Disclosure to tenant.** There shall be disclosed to the residential tenant either in the rental agreement or otherwise in writing prior to commencement of the tenancy the name and address of:

(1) the person authorized to manage the premises; and

(2) the landlord of the premises or an agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands.

Subd. 2. **Posting of notice.** (a) A printed or typewritten notice containing the information which must be disclosed under subdivision 1 shall be placed in a conspicuous place on the premises. This subdivision is complied with if notices posted in compliance with other statutes or ordinances contain the information required by this section.

(b) Unless the landlord is required to post a notice by section 471.9995, the landlord shall also place a notice in a conspicuous place on the property that states that a copy of the statement required by section 504B.275 is available from the attorney general to any residential tenant upon request.

Subd. 3. **Service of process.** If subdivisions 1 and 2 have not been complied with and a person desiring to make service of process upon or give a notice or demand to the landlord does not know the name and address of the landlord or the landlord's agent, as that term is used in subdivision 1, then a caretaker or manager of the premises or an individual to whom rental payments for the premises are made shall be deemed to be an agent authorized to accept service of process and receive and give receipt for notices and demands on behalf of the landlord. In case of service of process upon or receipt of notice or demand by a person who is deemed to be an agent pursuant to this subdivision, this person shall give the process, notice, or demand, or a copy thereof, to the landlord personally or shall send it by certified mail, return receipt requested, to the landlord at the landlord's last known address.

Subd. 4. **Information required for maintenance of action.** Except as otherwise provided in this subdivision, no action to recover rent or possession of the premises shall be maintained unless the information required by this section has been disclosed to the tenant in the manner provided in this section, or unless the information required by this section is known by or has been disclosed to the tenant at least 30 days prior to the initiation of such action. Failure by the landlord to post a notice required by subdivision 2, paragraph (b), or section 471.9995 shall not prevent any action to recover rent or possession of the premises.

Subd. 5. **Notice to landlord.** Any residential tenant who moves from or subleases the premises without giving the landlord at least 30 days written notice shall void any provision of this section as to that tenant.

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Subd. 6. **Successors.** This section extends to and is enforceable against any successor landlord or individual to whom rental payments for the premises are made.

**History:** *1999 c 199 art 1 s 17; 2000 c 260 s 71; 2001 c 7 s 80*

## INSPECTION REPORTS AND CODE VIOLATIONS

### 504B.185 INSPECTION; NOTICE.

Subdivision 1. **Who may request.** If requested by a residential tenant, a housing-related neighborhood organization with the written permission of a residential tenant, or, if a residential building is unoccupied, by a housing-related neighborhood organization, an inspection shall be made by the local authority charged with enforcing a code claimed to be violated.

Subd. 2. **Notice.** (a) After the local authority has inspected the residential building under subdivision 1, the inspector shall inform the landlord or the landlord's agent and the residential tenant or housing-related neighborhood organization in writing of any code violations discovered.

(b) A reasonable period of time must be allowed in which to correct the violations.

**History:** *1999 c 199 art 1 s 18*

### 504B.195 DISCLOSURE REQUIRED FOR OUTSTANDING INSPECTION AND CONDEMNATION ORDERS.

Subdivision 1. **Disclosure to tenant.** (a) Except as provided in subdivision 3, a landlord, agent, or person acting under the landlord's direction or control shall provide a copy of all outstanding inspection orders for which a citation has been issued, pertaining to a rental unit or common area, specifying code violations issued under section 504B.185, that the housing inspector identifies as requiring notice because the violations threaten the health or safety of the tenant, and all outstanding condemnation orders and declarations that the premises are unfit for human habitation to:

(1) a tenant, either by delivery or by United States mail, postage prepaid, within 72 hours after issuance of the citation;

(2) a person before signing a lease or paying rent or a security deposit to begin a new tenancy; and

(3) a person prior to obtaining new ownership of the property subject to the order or declaration. The housing inspector shall indicate on the inspection order whether the violation threatens the health or safety of a tenant or prospective tenant.

(b) If an inspection order, for which a citation has been issued, does not involve code violations that threaten the health or safety of the tenants, the landlord, agent, or person acting under the landlord's control shall post a summary of the inspection order in a conspicuous place in each building affected by the inspection order, along with a notice that the inspection order will be made available by the landlord for review, upon a request of a tenant or prospective tenant. The landlord shall provide a copy of the inspection order for review by a tenant or a prospective tenant as required under this subdivision.

Subd. 2. **Penalty.** If the landlord, agent, or person acting under the landlord's direction or control violates this section, the tenant is entitled to remedies provided by section 8.31, subdivision 3a, and other equitable relief as determined by the court.

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Subd. 3. **Exception.** A landlord, agent, or person acting under the landlord's direction or control is not in violation of this section if:

(1) the landlord, agent, or person acting under the landlord's direction or control has received only an initial order to repair;

(2) the time allowed to complete the repairs, including any extension of the deadline, has not yet expired, or less than 60 days has elapsed since the expiration date of repair orders and any extension or no citation has been issued; or

(3) the landlord, agent, or person acting under the landlord's direction or control completes the repairs within the time given to repair, including any extension of the deadline.

Subd. 4. **Landlord's defense.** It is an affirmative defense in an action brought under this section for the landlord, agent, or person acting under the landlord's control to prove that disclosure was made as required under subdivision 1.

Subd. 5. **Remedies additional.** The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 20*

### 504B.204 ACTION FOR RENTAL OF CONDEMNED RESIDENTIAL PREMISES.

(a) A landlord, agent, or person acting under the landlord's direction or control may not accept rent or a security deposit for residential rental property from a tenant after the leased premises have been condemned or declared unfit for human habitation by the applicable state or local authority, if the tenancy commenced after the premises were condemned or declared unfit for human habitation. If a landlord, agent, or a person acting under the landlord's direction or control violates this section, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant after date of condemnation or declaration, plus costs and attorney fees.

(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 21*

## TENANT'S RIGHTS

### 504B.205 RESIDENTIAL TENANT'S RIGHT TO SEEK POLICE AND EMERGENCY ASSISTANCE.

Subdivision 1. **Definitions.** In this section, "domestic abuse" has the meaning given in section 518B.01, subdivision 2.

Subd. 2. **Emergency calls permitted.** (a) A landlord may not:

(1) bar or limit a residential tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or

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(2) impose a penalty on a residential tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct.

(b) A residential tenant may not waive and a landlord may not require the residential tenant to waive the residential tenant's right to call for police or emergency assistance.

Subd. 3. **Local preemption.** This section preempts any inconsistent local ordinance or rule including, without limitation, any ordinance or rule that:

(1) requires an eviction after a specified number of calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct; or

(2) provides that calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct may be used to penalize or charge a fee to a landlord.

This subdivision shall not otherwise preempt any local ordinance or rule that penalizes a landlord for, or requires a landlord to abate, conduct on the premises that constitutes a nuisance or other disorderly conduct as defined by local ordinance or rule.

Subd. 4. **Residential tenant responsibility.** This section shall not be construed to condone or permit any breach of a lease or of law by a residential tenant including, but not limited to, disturbing the peace and quiet of other tenants, damage to property, and disorderly conduct.

Subd. 5. **Residential tenant remedies.** A residential tenant may bring a civil action for a violation of this section and recover from the landlord $250 or actual damages, whichever is greater, and reasonable attorney's fees.

Subd. 6. **Attorney general authority.** The attorney general has authority under section 8.31 to investigate and prosecute violations of this section.

**History:** *1999 c 199 art 1 s 22*

## 504B.206 RIGHT OF VICTIMS OF VIOLENCE TO TERMINATE LEASE.

Subdivision 1. **Right to terminate; procedure.** (a) A tenant to a residential lease may terminate a lease agreement in the manner provided in this section without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to:

(1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;

(2) criminal sexual conduct under sections 609.342 to 609.3451; or

(3) harass, as that term is defined under section 609.749, subdivision 1.

(b) The tenant must provide signed and dated advance written notice to the landlord:

(1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;

(2) stating that the tenant needs to terminate the tenancy;

(3) providing the date by which the tenant will vacate; and

(4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

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(c) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a qualifying document.

(d) The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons. Disclosure shall not be a precondition of terminating the lease.

(e) The tenancy terminates, including the right of possession of the premises, as provided in subdivision 3.

Subd. 2. **Treatment of information.** (a) A landlord must not disclose:

(1) any information provided to the landlord by a tenant in the written notice required under subdivision 1, paragraph (b);

(2) any information contained in the qualifying document;

(3) the address or location to which the tenant has relocated; or

(4) the status of the tenant as a victim of violence.

(b) The information referenced in paragraph (a) must not be entered into any shared database or provided to any person or entity but may be used when required as evidence in an eviction proceeding, action for unpaid rent or damages arising out of the tenancy, claims under section 504B.178, with the consent of the tenant, or as otherwise required by law.

Subd. 3. **Liability for rent; termination of tenancy.** (a) A tenant who is a sole tenant and is terminating a lease under subdivision 1 is responsible for the rent payment for the full month in which the tenancy terminates. The tenant forfeits all claims for the return of the security deposit under section 504B.178 and is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. In a sole tenancy, the tenancy terminates on the date specified in the notice provided to the landlord as required under subdivision 1.

(b) In a tenancy with multiple tenants, one of whom is terminating the lease under subdivision 1, any lease governing all tenants is terminated at the later of the end of the month or the end of the rent interval in which one tenant terminates the lease under subdivision 1. All tenants are responsible for the rent payment for the full month in which the tenancy terminates. Upon termination, all tenants forfeit all claims for the return of the security deposit under section 504B.178 and are relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. Any tenant whose tenancy was terminated under this paragraph may reapply to enter into a new lease with the landlord.

(c) This section does not affect a tenant's liability for delinquent, unpaid rent or other amounts owed to the landlord before the lease was terminated by the tenant under this section.

Subd. 4. [Repealed by amendment, 2014 c 188 s 2]

Subd. 5. **Waiver prohibited.** A residential tenant may not waive, and a landlord may not require the residential tenant to waive, the tenant's rights under this section.

Subd. 6. **Definitions.** For purposes of this section, the following terms have the meanings given:

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(1) "court official" means a judge, referee, court administrator, prosecutor, probation officer, or victim's advocate, whether employed by or under contract with the court, who is authorized to act on behalf of the court;

(2) "qualified third party" means a person, acting in an official capacity, who has had in-person contact with the tenant and is:

(i) a licensed health care professional operating within the scope of the license;

(ii) a domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l); or

(iii) a sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k);

(3) "qualifying document" means:

(i) a valid order for protection issued under chapter 518B;

(ii) a no contact order currently in effect, issued under section 629.75 or chapter 609;

(iii) a writing produced and signed by a court official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known;

(iv) a writing produced and signed by a city, county, state, or tribal law enforcement official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known; or

(v) a statement by a qualified third party, in the following form:

STATEMENT BY QUALIFIED THIRD PARTY

I, ..... (name of qualified third party), do hereby verify as follows:

1. I am a licensed health care professional, domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l), or sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k), who has had in-person contact with ..... (name of victim(s)).

2. I have a reasonable basis to believe ..... (name of victim(s)) is a victim/are victims of domestic abuse, criminal sexual conduct, or harassment and fear(s) imminent violence against the individual or authorized occupant if the individual remains (the individuals remain) in the leased premises.

3. I understand that the person(s) listed above may use this document as a basis for gaining a release from the lease.

I attest that the foregoing is true and correct.

(Printed name of qualified third party)

(Signature of qualified third party)

(Business address and business telephone)

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(Date)

Subd. 7. **Conflicts with other laws.** If a federal statute, regulation, or handbook permitting termination of a residential tenancy subsidized under a federal program conflicts with any provision of this section, then the landlord must comply with the federal statute, regulation, or handbook.

**History:** *2007 c 54 art 4 s 3; 2010 c 299 s 14; 2014 c 188 s 2; 1Sp2019 c 1 art 6 s 59; 1Sp2019 c 5 art 2 s 29*

**504B.211 RESIDENTIAL TENANT'S RIGHT TO PRIVACY.**

Subdivision 1. **Definitions.** For purposes of this section, "landlord" has the meaning defined in section 504B.001, subdivision 7, and also includes the landlord's agent or other person acting under the landlord's direction and control.

Subd. 2. **Entry by landlord.** Except as provided in subdivision 5, a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter. A residential tenant may not waive and the landlord may not require the residential tenant to waive the residential tenant's right to prior notice of entry under this section as a condition of entering into or maintaining the lease.

Subd. 3. **Reasonable purpose.** For purposes of subdivision 2, a reasonable business purpose includes, but is not limited to:

(1) showing the unit to prospective residential tenants during the notice period before the lease terminates or after the current residential tenant has given notice to move to the landlord or the landlord's agent;

(2) showing the unit to a prospective buyer or to an insurance representative;

(3) performing maintenance work;

(4) allowing inspections by state, county, or city officials charged in the enforcement of health, housing, building, fire prevention, or housing maintenance codes;

(5) the residential tenant is causing a disturbance within the unit;

(6) the landlord has a reasonable belief that the residential tenant is violating the lease within the residential tenant's unit;

(7) prearranged housekeeping work in senior housing where 80 percent or more of the residential tenants are age 55 or older;

(8) the landlord has a reasonable belief that the unit is being occupied by an individual without a legal right to occupy it; or

(9) the residential tenant has vacated the unit.

Subd. 4. **Exception to notice requirement.** Notwithstanding subdivision 2, a landlord may enter the premises rented by a residential tenant to inspect or take appropriate action without prior notice to the residential tenant if the landlord reasonably suspects that:

(1) immediate entry is necessary to prevent injury to persons or property because of conditions relating to maintenance, building security, or law enforcement;

(2) immediate entry is necessary to determine a residential tenant's safety; or

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(3) immediate entry is necessary in order to comply with local ordinances regarding unlawful activity occurring within the residential tenant's premises.

Subd. 5. **Entry without residential tenant's presence.** If the landlord enters when the residential tenant is not present and prior notice has not been given, the landlord shall disclose the entry by placing a written disclosure of the entry in a conspicuous place in the premises.

Subd. 6. **Penalty.** If a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178, and up to a $100 civil penalty for each violation. If a landlord violates subdivision 5, the residential tenant is entitled to up to a $100 civil penalty for each violation. A residential tenant shall follow the procedures in sections 504B.381, 504B.385, and 504B.395 to 504B.471 to enforce the provisions of this section.

Subd. 7. **Exemption.** This section does not apply to residential tenants and landlords of manufactured home parks as defined in section 327C.01.

**History:** *1999 c 199 art 1 s 23*

## UTILITIES; INTENTIONAL OUSTER

### 504B.215 BILLING; LOSS OF SERVICES.

Subdivision 1. **Definitions.** For the purposes of this section, "single-metered residential building" means a multiunit rental building with one or more separate residential living units where the utility service measured through a single meter provides service to an individual unit and to all or parts of common areas or other units.

Subd. 2. **Single-meter utility service payments.** Except as provided in subdivision 3, the landlord of a single-metered residential building shall be the bill payer responsible, and shall be the customer of record contracting with the utility for utility services. The landlord must advise the utility provider that the utility services apply to a single-metered residential building. A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221. This subdivision may not be waived by contract or otherwise. This subdivision does not require a landlord to contract and pay for utility service provided to each residential unit through a separate meter which accurately measures that unit's use only. This subdivision does not prohibit a landlord from apportioning utility service payments among residential units and either including utility costs in a unit's rent or billing for utility charges separate from rent.

Subd. 2a. **Conditions of separate utility billing to tenant in single-meter buildings.** (a) A landlord of a single-metered residential building who bills for utility charges separate from the rent:

(1) must provide prospective tenants notice of the total utility cost for the building for each month of the most recent calendar year;

(2) must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord;

(3) must include in the lease a provision that, upon a tenant's request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant's request, a landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant

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received an apportioned utility bill. Past copies of utility bills must be provided for the preceding two years or from the time the current landlord acquired the building, whichever is most recent; and

(4) may, if the landlord and tenant agree, provide tenants with a lease term of one year or more the option to pay those bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill.

(b) By September 30 of each year, a landlord of a single-metered residential building who bills for gas and electric utility charges separate from rent must inform tenants in writing of the possible availability of energy assistance from the Low Income Home Energy Assistance Program. The information must contain the toll-free telephone number of the administering agency.

(c) A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221.

Subd. 2b. **De minimis exception.** Any tariff approved by the Public Utilities Commission regarding a violation of subdivision 2 shall include a de minimis exception. The de minimis exception shall provide that electrical service in a common area that does not exceed an aggregate 1,752 kilowatt hours per year, which service is measured through a meter serving an individual residential unit, shall not cause a building to be a "single-metered residential building" as used in this section. The amount of common area usage may be determined by actual measurement or, when such measurement is not possible, it may be determined not likely to exceed 1,752 kilowatt hours per year by a licensed tradesperson or a housing inspector. The landlord shall bear the burden and cost associated with proving an exception.

If a tariff is not adopted, this subdivision shall have no effect.

Subd. 3. **Procedure.** (a) A municipality, utility company, or other company supplying home heating oil, propane, natural gas, electricity, or water to a building who issues a final notice proposing to disconnect or discontinue the service to the building because a landlord who has contracted for the service has failed to pay for it or because a landlord is required by law or contract to pay for the service and fails to do so must provide notice to the residents of the impending disconnection by posting the building. The posting must be placed in at least one conspicuous location in or on the building and provide tenants with, at a minimum, the following information:

(1) the date the service will be discontinued;

(2) the telephone number to call at the utility to obtain further information;

(3) a brief description of the rights of tenants under this section to continue or restore service; and

(4) advice to consider seeking assistance from legal aid, a private attorney, or a housing organization in exercising the rights of tenants under Minnesota law to maintain their utility service.

A tenant or group of tenants may pay to have the service continued or reconnected as provided under this section. Before paying for the service, the tenant or group of tenants shall give oral or written notice to the landlord of the tenant's intention to pay after 48 hours, or a shorter period that is reasonable under the circumstances, if the landlord has not already paid for the service. In the case of oral notification, written notice shall be mailed or delivered to the landlord within 24 hours after oral notice is given.

(b) In the case of natural gas or electricity, if the landlord has not paid the bill by the time of the tenant's intended payment or if the service remains discontinued, the tenant or tenants may pay the current charges for the most recent billing period and the utility company or municipality must restore the service for at least

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one billing period. In a residential building with less than five units, one of the tenants may notify the utility company or municipality that the tenant agrees to become the bill payer responsible and customer of record and the utility company or municipality must place the account disconnected or subject to disconnection in the tenant's name and provide service prospectively, provided the tenant satisfies all requirements for establishing service. A tenant becoming the customer of record of a cooperative electric association does not acquire membership rights. Exercise of the right to pay the current charges for the most recent billing period does not preclude exercising the right to become the bill payer responsible and customer of record, provided that if there are multiple tenants in an affected multifamily building, the utility company or municipality is not required to offer the right to become the bill payer responsible and the customer of record to more than one tenant in a 12-month period.

(c) In the case of water, if the landlord has not paid the bill by the time of the tenant's intended payment or if the service remains discontinued, upon request from a tenant, a municipality must provide a copy of each bill the landlord fails to pay. The tenant:

(1) has a continuing right to pay the current charges for the most recent billing period and retain service;

(2) has the period of time provided by the governing ordinance, policy, or practice within which to pay the charges;

(3) is not subject to any deposit requirements; and

(4) is entitled to reasonable notice of any disconnection.

This paragraph does not require a municipality to alter its accounting system or billing records if the tenant exercises the right to pay current charges and retain water service. If there are multiple tenants in an affected property, the municipality is not required to offer the right to pay current charges and retain service to more than one tenant in a 12-month period.

(d) For purposes of this subdivision, "current charges" does not include arrears or late payment fees incurred by the landlord.

(e) In a single-metered residential building, other residential tenants in the building may contribute payments to the utility company or municipality on the account of the tenant who is the customer of record under paragraph (b) or on the landlord's account under paragraph (c).

(f) A landlord who satisfies all requirements for reestablishing service, including paying, or entering into an agreement acceptable to the utility company or municipality to pay, all arrears and other lawful charges incurred by the landlord on the account that was placed in the tenant's name, may reestablish service in the landlord's name.

(g) This section does not restrict or prohibit a municipal utility provider from exercising its authority pursuant to section 444.075, subdivisions 3 and 3e, to make contracts with and impose utility charges against property owners and to certify unpaid charges to the county auditor with taxes against the property served for collection as a tax.

(h) In the case of home heating oil or propane, if the landlord has not yet paid the bill by the time of the tenant's intended payment, or if the service remains discontinued, the tenant or tenants may order and pay for one month's supply of the proper grade and quality of oil or propane.

(i) After submitting documentation to the landlord of the tenant's payment to the utility company or municipality, a tenant may deduct the amount of the tenant's payment to the utility company or municipality

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from the rental payment next paid to the landlord. Any amount paid to the municipality, utility company, or other company by a tenant under this subdivision is considered payment of rent to the landlord for purposes of section 504B.291.

Subd. 4. **Limitations; waiver prohibited; rights as additional.** The tenant rights under this section:

(1) do not extend to conditions caused by the willful, malicious, or negligent conduct of the tenant or of a person under the tenant's direction or control;

(2) may not be waived or modified; and

(3) are in addition to and do not limit other rights which may be available to the tenant in law or equity, including the right to damages and the right to restoration of possession of the premises under section 504B.291.

**History:** *1999 c 199 art 1 s 24; 2000 c 268 s 1,2; 2006 c 183 s 1; 2008 c 313 s 1,2; 2010 c 210 s 1; 2010 c 315 s 7*

**504B.221 UNLAWFUL TERMINATION OF UTILITIES.**

(a) Except as otherwise provided in this section, if a landlord, an agent, or other person acting under the landlord's direction or control, interrupts or causes the interruption of electricity, heat, gas, or water services to the tenant, the tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees. It is a defense to any action brought under this section that the interruption was the result of the deliberate or negligent act or omission of a tenant or anyone acting under the direction or control of the tenant. The tenant may recover only actual damages under this section if:

(1) the tenant has not given the landlord, an agent, or other person acting under the landlord's direction or control, notice of the interruption; or

(2) the landlord, an agent, or other person acting under the landlord's direction or control, after receiving notice of the interruption from the tenant and within a reasonable period of time after the interruption, taking into account the nature of the service interrupted and the effect of the interrupted service on the health, welfare, and safety of the tenants, has reinstated or made a good faith effort to reinstate the service or has taken other remedial action; or

(3) the interruption was for the purpose of repairing or correcting faulty or defective equipment or protecting the health and safety of the occupants of the premises involved and the service was reinstated or a good faith effort was made to reinstate the service or other remedial action was taken by the landlord, an agent, or other person acting under the landlord's direction or control within a reasonable period of time, taking into account the nature of the defect, the nature of the service interrupted, and the effect of the interrupted service on the health, welfare, and safety of the tenants.

(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 25*

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### 504B.225 INTENTIONAL OUSTER AND INTERRUPTION OF UTILITIES; MISDEMEANOR.

A landlord, an agent, or person acting under the landlord's direction or control who unlawfully and intentionally removes or excludes a tenant from lands or tenements or intentionally interrupts or causes the interruption of electrical, heat, gas, or water services to the tenant with intent to unlawfully remove or exclude the tenant from lands or tenements is guilty of a misdemeanor. In any trial under this section, it shall be presumed that the landlord, agent, or other person acting under the landlord's direction or control interrupted or caused the interruption of the service with intent to unlawfully remove or exclude the tenant from lands or tenements, if it is established by evidence that the landlord, an agent, or other person acting under the landlord's direction or control intentionally interrupted or caused the interruption of the service to the tenant. The burden is upon the landlord to rebut the presumption.

The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 26*

### 504B.231 DAMAGES FOR OUSTER.

(a) If a landlord, an agent, or other person acting under the landlord's direction or control unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees.

(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 27*

## RESIDENTIAL TENANT REPORTS

### 504B.235 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 504B.235 to 504B.245.

Subd. 2. **Proper identification.** "Proper identification" means information generally considered sufficient to identify a person, including a Minnesota driver's license, a Minnesota identification card, other forms of identification provided by a unit of government, a notarized statement of identity with a specimen signature of the person, or other reasonable form of identification.

Subd. 3. **Residential tenant report.** "Residential tenant report" means a written, oral, or other communication by a residential tenant screening service that includes information concerning an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and that is collected, used, or expected to be used for the purpose of making decisions relating to residential tenancies or residential tenancy applications.

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Subd. 4. **Residential tenant screening service.** "Residential tenant screening service" means a person or business regularly engaged in the practice of gathering, storing, or disseminating information about tenants or assembling tenant reports for monetary fees, dues, or on a cooperative nonprofit basis.

**History:** *1999 c 199 art 1 s 28*

## 504B.241 RESIDENTIAL TENANT REPORTS; DISCLOSURE AND CORRECTIONS.

Subdivision 1. **Disclosures required.** (a) Upon request and proper identification, a residential tenant screening service must disclose the following information to an individual:

(1) the nature and substance of all information in its files on the individual at the time of the request; and

(2) the sources of the information.

(b) A residential tenant screening service must make the disclosures to an individual without charge if information in a residential tenant report has been used within the past 30 days to deny the rental or increase the security deposit or rent of a residential housing unit to the individual. If the residential tenant report has not been used to deny the rental or increase the rent or security deposit of a residential housing unit within the past 30 days, the residential tenant screening service may impose a reasonable charge for making the disclosure required under this section. The residential tenant screening service must notify the residential tenant of the amount of the charge before furnishing the information. The charge may not exceed the amount that the residential tenant screening service would impose on each designated recipient of a residential tenant report, except that no charge may be made for notifying persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

(c) Files maintained on a residential tenant must be disclosed promptly as established in paragraphs (1) to (4).

(1) A residential tenant file must be disclosed in person, during normal business hours, at the location where the residential tenant screening service maintains its files, if the residential tenant appears in person and furnishes proper identification at that time.

(2) A residential tenant file must be disclosed by mail, if the residential tenant makes a written request with proper identification for a copy of the information contained in the residential tenant report and requests that the information be sent to a specified address. A disclosure made under this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the written request for disclosure is received by the residential tenant screening service. A residential tenant screening service complying with a request for disclosure under this paragraph shall not be liable for disclosures to third parties caused by mishandling mail, provided that the residential tenant file information is mailed to the address specified by the residential tenant in the request.

(3) A summary of the information in a residential tenant file must be disclosed by telephone, if the residential tenant has made a written request with proper identification for telephone disclosure.

(4) Information in a residential tenant's file required to be disclosed in writing under this subdivision may be disclosed in any other form including electronic means if authorized by the residential tenant and available from the residential tenant screening service.

Subd. 2. **Corrections.** If the completeness or accuracy of an item of information contained in an individual's file is disputed by the individual, the residential tenant screening service must reinvestigate and

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record the current status of the information. If the information is found to be inaccurate or can no longer be verified, the residential tenant screening service must delete the information from the individual's file and residential tenant report. At the request of the individual, the residential tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months.

Subd. 3. **Explanations.** The residential tenant screening service must permit an individual to explain any eviction report or any disputed item not resolved by reinvestigation in a residential tenant report. The explanation must be included in the residential tenant report. The residential tenant screening service may limit the explanation to no more than 100 words.

Subd. 4. **Court file information.** If a residential tenant screening service includes information from a court file on an individual in a residential tenant report, the report must provide the full name and date of birth of the individual in any case where the court file includes the individual's full name and date of birth, and the outcome of the court proceeding must be accurately recorded in the residential tenant report including the specific basis of the court's decision, when available. If a tenant screening service knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service. Whenever the court supplies information from a court file on an individual, in whatever form, the court shall include the full name and date of birth of the individual, if that is indicated on the court file or summary, and information on the outcome of the court proceeding, including the specific basis of the court's decision, coded as provided in subdivision 5 for the type of action, when it becomes available. The residential tenant screening service is not liable under section 504B.245 if the residential tenant screening service reports complete and accurate information as provided by the court.

Subd. 5. **Eviction action coding.** The court shall indicate on the court file or any summary of a court file the specific basis of the court's decision in an eviction action according to codes developed by the court that, at a minimum, indicates if the basis of the court's decision is nonpayment of rent, a violation of the covenants under section 504B.161 or 504B.171, other breach of a lease agreement, or a counterclaim for possession of the premises under section 504B.385.

**History:** *1999 c 199 art 1 s 29,74; 1999 c 229 s 2*

### 504B.245 TENANT REPORT; REMEDIES.

The remedies provided in section 8.31 apply to a violation of section 504B.241. A residential tenant screening service or landlord in compliance with the provisions of the Fair Credit Reporting Act, United States Code, title 15, section 1681, et seq., is considered to be in compliance with section 504B.241.

**History:** *1999 c 199 art 1 s 30*

## MISCELLANEOUS RIGHTS

### 504B.251 RECORDING OF NOTICE OF CANCELLATION OF LEASES.

Where a lease has been duly recorded, the county recorder must record a copy of the notice of cancellation or termination of the lease that has been presented for recording by the landlord, landlord's agent, or attorney. The notice must be accompanied by proof of service and an affidavit of the landlord or the landlord's agent or attorney stating that the tenant has not complied with the terms of the notice. This notice is prima facie evidence of the facts stated in it.

**History:** *1999 c 199 art 1 s 31*

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**504B.255 TERMINATION NOTICE REQUIREMENT FOR FEDERALLY SUBSIDIZED HOUSING.**

The landlord of federally subsidized rental housing must give residential tenants of federally subsidized rental housing a one-year written notice under the following conditions:

(1) a federal Section 8 contract will expire;

(2) the landlord will exercise the option to terminate or not renew a federal Section 8 contract and mortgage;

(3) the landlord will prepay a mortgage and the prepayment will result in the termination of any federal use restrictions that apply to the housing; or

(4) the landlord will terminate a housing subsidy program.

The notice shall be provided at the commencement of the lease if the lease commences less than one year before any of the conditions in clauses (1) to (4) apply.

**History:** *1999 c 199 art 1 s 32*

**NOTE:** Clause (3) of this section was found preempted to the extent that it creates a longer termination timeline than under applicable federal law in Forest Park II v. Hadley, 336 F.3d 724 (8th Cir. 2003).

**504B.261 PETS IN SUBSIDIZED DISABILITY ACCESSIBLE RENTAL HOUSING UNITS.**

In a multiunit residential building, a tenant of a disability accessible unit, in which the tenant or the unit receives a subsidy that directly reduces or eliminates the tenant's rent responsibility, must be allowed to have two birds or one spayed or neutered dog or one spayed or neutered cat. A renter under this section may not keep or have visits from an animal that constitutes a threat to the health or safety of other individuals, or causes a noise nuisance or noise disturbance to other renters. The landlord may require the renter to pay an additional damage deposit in an amount reasonable to cover damage likely to be caused by the animal. The deposit is refundable at any time the renter leaves the unit of housing to the extent it exceeds the amount of damage actually caused by the animal.

**History:** *1999 c 199 art 1 s 33; 2005 c 56 s 1*

**504B.265 TERMINATION OF LEASE UPON DEATH OF TENANT.**

Subdivision 1. **Termination of lease.** Any party to a lease of residential premises other than a lease at will may terminate the lease prior to its expiration date in the manner provided in subdivision 2 upon the death of the tenant or, if there is more than one tenant, upon the death of all tenants.

Subd. 2. **Notice.** Either the landlord or the personal representative of the tenant's estate may terminate the lease upon at least two months' written notice, to be effective on the last day of a calendar month, and hand delivered or mailed by postage prepaid, first class United States mail, to the address of the other party. The landlord may comply with the notice requirement of this subdivision by delivering or mailing the notice to the premises formerly occupied by the tenant. The termination of a lease under this section shall not relieve the tenant's estate from liability either for the payment of rent or other sums owed prior to or during the notice period, or for the payment of amounts necessary to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

Subd. 3. **Waiver prohibited.** Any attempted waiver by a landlord and tenant or tenant's personal representative, by contract or otherwise, of the right of termination provided by this section, and any lease

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provision or agreement requiring a longer notice period than that provided by this section, shall be void and unenforceable; provided, however, that the landlord and tenant or tenant's personal representative may agree to otherwise modify the specific provisions of this section.

Subd. 4. **Applicability.** The provisions of this section apply to leases entered into or renewed after May 12, 1981.

**History:** *1999 c 199 art 1 s 34*

**504B.271 TENANT'S PERSONAL PROPERTY REMAINING IN PREMISES.**

Subdivision 1. **Abandoned property.** (a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

(b) The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

(c) The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

(d) Prior to a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail.

Subd. 2. **Landlord's punitive damages.** If a landlord, an agent, or other person acting under the landlord's direction or control, in possession of a tenant's personal property, fails to allow the tenant to retake possession of the property within 24 hours after written demand by the tenant or the tenant's duly authorized representative or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant or a duly authorized representative when the landlord, the landlord's agent or person acting under the landlord's direction or control has removed and stored the personal property in accordance with subdivision 1 in a location other than the premises, the tenant shall recover from the landlord punitive damages in an amount not to exceed twice the actual damages or $1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees.

In determining the amount of punitive damages the court shall consider (1) the nature and value of the property; (2) the effect the deprivation of the property has had on the tenant; (3) if the landlord, an agent, or other person acting under the landlord's direction or control unlawfully took possession of the tenant's property; and (4) if the landlord, an agent, or other person under the landlord's direction or control acted in bad faith in failing to allow the tenant to retake possession of the property.

The provisions of this subdivision do not apply to personal property which has been sold or otherwise disposed of by the landlord in accordance with subdivision 1, or to landlords who are housing authorities, created, or authorized to be created by sections 469.001 to 469.047, and their agents and employees, in possession of a tenant's personal property, except that housing authorities must allow the tenant to retake possession of the property in accordance with this subdivision.

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Subd. 3. **Storage.** If the landlord, an agent, or other person acting under the landlord's direction or control has unlawfully taken possession of a tenant's personal property the landlord shall be responsible for paying the cost and expenses relating to the removal, storage, or care of the property.

Subd. 4. **Remedies additional.** The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 35; 2010 c 315 s 8,9*

### 504B.275 ATTORNEY GENERAL'S STATEMENT; DISTRIBUTION.

In this section, "residential tenant" does not include residents of manufactured home parks as defined in section 327C.01, subdivision 9.

The attorney general shall prepare and make available to the public a statement which summarizes the significant legal rights and obligations of landlords and residential tenants of rental dwelling units. The statement shall include descriptions of the significant provisions of this chapter. The statement shall notify residential tenants in public housing to consult their leases for additional rights and obligations they may have under federal law. The statement shall include the telephone number and address of the attorney general for further information.

The attorney general shall annually revise the statement provided in this section as necessary to ensure that it continues accurately to describe the statutory and case law governing the rights and duties of landlords and residential tenants of rental dwelling units. After preparing the statement for the first time and after each annual revision of the statement, the attorney general shall hold a public meeting to discuss the statement and receive comments on its contents before it is issued. When preparing the statement and evaluating public comment, the attorney general shall be guided by the legislature's intent that the statement be brief, accurate, and complete in identifying significant legal rights and obligations, and written using words with common, everyday meanings.

**History:** *1999 c 199 art 1 s 36*

## EVICTION ACTIONS

### 504B.281 FORCIBLE ENTRY AND UNLAWFUL DETAINER PROHIBITED.

No person may occupy or take possession of real property except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.

**History:** *1999 c 199 art 1 s 37*

### 504B.285 EVICTION ACTIONS; GROUNDS; RETALIATION DEFENSE; COMBINED ALLEGATIONS.

Subdivision 1. **Grounds.** (a) The person entitled to the premises may recover possession by eviction when:

(1) any person holds over real property:

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(i) after a sale of the property on an execution or judgment;

(ii) after the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the property; or

(iii) after the expiration of the time for redemption on a real estate tax judgment sale;

(2) any person holds over real property after termination of the time for which it is demised or leased to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or

(3) any tenant at will holds over after the termination of the tenancy by notice to quit.

(b) A landlord may not commence an eviction action against a tenant or authorized occupant solely on the basis that the tenant or authorized occupant has been the victim of any of the acts listed in section 504B.206, subdivision 1, paragraph (a). Nothing in this paragraph should be construed to prohibit an eviction action based on a breach of the lease.

Subd. 1a. **Grounds when the person holding over is a tenant in a foreclosed residential property.** (a) With respect to residential real property or a dwelling where the person holding the residential real property or dwelling after the expiration of the time for redemption on foreclosure of a mortgage was a tenant during the redemption period under a lease of any duration, and the lease began after the date the mortgage was executed, but prior to the expiration of the time for redemption, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, and effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

(b) With respect to residential real property or a dwelling where the term of a bona fide lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease, and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest or an immediate subsequent bona fide purchaser will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

For purposes of this section, a "bona fide lease" means:

(1) the mortgagor or the child, spouse, or parent of the mortgagor is not the tenant;

(2) the lease or tenancy was the result of an arm's-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy.

(c) With respect to residential real property or a dwelling involving a tenancy subject to section 8 of the United States Housing Act of 1937, as amended, where the term of the lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant

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pays the rent and abides by all terms of the lease, except if the immediate successor in interest will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

Subd. 1b. **Grounds when the person holding over is a tenant in a property subject to a contract for deed.** The person entitled to the premises may recover possession by eviction when any person holds over real property after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for termination was a tenant during the termination period under a lease of any duration and the lease began after the date the contract for deed was executed but prior to the expiration of the time for termination, and the person has received:

(1) at least two months' written notice to vacate no sooner than one month after the expiration of the time for termination, provided that the tenant pays the rent and abides by all terms of the lease; or

(2) at least two months' written notice to vacate no later than the date of the expiration of the time for termination, which notice shall also state that the sender will hold the tenant harmless for breaching the lease by vacating the premises if the contract is reinstated.

Subd. 1c. [Repealed, 2013 c 100 s 6]

Subd. 2. **Retaliation defense.** It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:

(1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or

(2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.

If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.

Subd. 3. **Rent increase as penalty.** In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in subdivision 2, providing that the tenant tender to the court or to the plaintiff the amount of rent due and payable under the tenant's original obligation.

Subd. 4. **Nonlimitation of landlord's rights.** Nothing contained in subdivisions 2 and 3 limits the right of the landlord pursuant to the provisions of subdivision 1 to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under the tenant's direction or control.

Subd. 5. **Combining allegations.** (a) An action for recovery of the premises may combine the allegation of nonpayment of rent and the allegation of material violation of the lease, which shall be heard as alternative grounds.

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(b) In cases where rent is outstanding, a tenant is not required to pay into court the amount of rent in arrears, interest, and costs as required under section 504B.291 to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.

(c) If the landlord does not prevail in proving material violation of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due. The court may order the tenant to pay rent and any costs determined to be due directly to the landlord or to be deposited with the court.

**History:** *1999 c 199 art 1 s 38; 2008 c 177 s 3; 2009 c 130 s 1; 2010 c 315 s 10-13; 2011 c 58 s 1; 2012 c 132 s 2-4; 2013 c 100 s 2,3; 2014 c 188 s 3; 1Sp2017 c 1 art 2 s 40*

## 504B.291 EVICTION ACTION FOR NONPAYMENT; REDEMPTION; OTHER RIGHTS.

Subdivision 1. **Action to recover.** (a) A landlord may bring an eviction action for nonpayment of rent irrespective of whether the lease contains a right of reentry clause. Such an eviction action is equivalent to a demand for the rent. There is a rebuttable presumption that the rent has been paid if the tenant produces a copy or copies of one or more money orders or produces one or more original receipt stubs evidencing the purchase of a money order, if the documents: (i) total the amount of the rent; (ii) include a date or dates approximately corresponding with the date rent was due; and (iii) in the case of copies of money orders, are made payable to the landlord. This presumption is rebutted if the landlord produces a business record that shows that the tenant has not paid the rent. The landlord is not precluded from introducing other evidence that rebuts this presumption. In such an action, unless the landlord has also sought to evict the tenant by alleging a material violation of the lease under section 504B.285, subdivision 5, the tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5, and by performing any other covenants of the lease.

(b) If the tenant has paid to the landlord or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and attorney's fees required by paragraph (a), the court may permit the tenant to pay these amounts into court and be restored to possession within the same period of time, if any, for which the court stays the issuance of the order to vacate under section 504B.345.

(c) Prior to or after commencement of an action to recover possession for nonpayment of rent, the parties may agree only in writing that partial payment of rent in arrears which is accepted by the landlord prior to issuance of the order granting restitution of the premises pursuant to section 504B.345 may be applied to the balance due and does not waive the landlord's action to recover possession of the premises for nonpayment of rent.

(d) Rental payments under this subdivision must first be applied to rent claimed as due in the complaint from prior rental periods before applying any payment toward rent claimed in the complaint for the current rental period, unless the court finds that under the circumstances the claim for rent from prior rental periods has been waived.

Subd. 2. **Lease greater than 20 years.** (a) If the lease under which an action is brought under subdivision 1 is for a term of more than 20 years, the action may not begin until the landlord serves a written notice on the tenant and on all creditors with legal or equitable recorded liens on the property. The notice must state: (1) the lease will be canceled unless the amounts, agreements, and legal obligations in default are paid or performed within 30 days, or a longer specified period; and (2) if the amounts, agreements, and legal

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obligations are not paid or performed within that period, then the landlord may evict the tenant at the expiration of the period.

(b) If the lease provides that the landlord must give more than the 30 days' notice provided in paragraph (a), then notice must be the same as that provided in the lease.

(c) The tenant may be restored to possession of the property under the terms of the original lease if, before the expiration of six months after the landlord obtains possession due to the tenant's abandonment or surrender of the property or the landlord prevails in the action, the tenant or a creditor holding a legal or equitable lien on the property: (1) pays to the landlord or brings into court the amount of rent then in arrears, with interest and the costs of the action; and (2) performs the other agreements or legal obligations that are in default.

Subd. 3. **Recording of eviction or ejectment actions.** Upon recovery of possession by the landlord in the action, a certified copy of the judgment shall, upon presentation, be recorded in the office of the county recorder of the county where the land is situated if unregistered land or in the office of the registrar of titles of the county if registered land and upon recovery of possession by the landlord by abandonment or surrender by the tenant an affidavit by the landlord or the landlord's attorney setting forth the fact shall be recorded in a like manner and the recorded certified copy of the judgment or the recorded affidavit shall be prima facie evidence of the facts stated therein in reference to the recovery of possession by the landlord.

**History:** *1999 c 199 art 1 s 39; 2010 c 315 s 14*

**504B.301 EVICTION ACTION FOR UNLAWFUL DETENTION.**

A person may be evicted if the person has unlawfully or forcibly occupied or taken possession of real property or unlawfully detains or retains possession of real property.

A seizure under section 609.5317, subdivision 1, for which there is not a defense under section 609.5317, subdivision 3, constitutes unlawful detention by the tenant.

**History:** *1999 c 199 art 1 s 40*

**504B.305 NOTICE OF SEIZURE PROVISION.**

Landlords shall give written notice to tenants of the provision relating to seizures in section 504B.301. Failure to give such notice does not subject the landlord to criminal or civil liability and is not a defense under section 609.5317, subdivision 3.

**History:** *1999 c 199 art 1 s 41*

**504B.311 NO EVICTION ACTION IF TENANT HOLDS OVER FOR THREE YEARS.**

No person may bring an eviction action against an occupant of any premises where that occupant's lease, or the lease of that occupant's ancestors or predecessor in interest, was terminated more than three years before the beginning of the action and where the occupant of the premises or that person's ancestors or predecessor in interest were in quiet possession for three consecutive years immediately before the filing of the eviction.

**History:** *1999 c 199 art 1 s 42*

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**504B.315 RESTRICTIONS ON EVICTION DUE TO FAMILIAL STATUS.**

(a) As used in this section, "familial status" has the meaning given it in section 363A.03, subdivision 18.

(b) No residential tenant of residential premises may be evicted, denied a continuing tenancy, or denied a renewal of a lease on the basis of familial status commenced during the tenancy unless one year has elapsed from the commencement of the familial status and the landlord has given the tenant six months prior notice in writing, except in case of nonpayment of rent, damage to the premises, disturbance of other tenants, or other breach of the lease. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 43*

**504B.321 COMPLAINT AND SUMMONS.**

Subdivision 1. **Procedure.** (a) To bring an eviction action, the person complaining shall file a complaint with the court, stating the full name and date of birth of the person against whom the complaint is made, unless it is not known, describing the premises of which possession is claimed, stating the facts which authorize the recovery of possession, and asking for recovery thereof.

(b) The lack of the full name and date of birth of the person against whom the complaint is made does not deprive the court of jurisdiction or make the complaint invalid.

(c) The court shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons.

(d) The appearance shall be not less than seven nor more than 14 days from the day of issuing the summons, except as provided by subdivision 2.

(e) A copy of the complaint shall be attached to the summons, which shall state that the copy is attached and that the original has been filed.

Subd. 2. **Expedited procedure.** (a) In an eviction action brought under section 504B.171 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, the person filing the complaint shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required.

(b) 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.

(c) 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. The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.

(d) If the court determines that the person seeking an expedited hearing did so without sufficient basis under the requirements of this subdivision, the court shall impose a civil penalty of up to $500 for abuse of the expedited hearing process.

**History:** *1999 c 199 art 1 s 44; 2007 c 13 art 3 s 30*

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**504B.325 EXPEDITED RELIEF.**

A landlord or the landlord's agent may request expedited temporary relief by bringing an action under section 609.748 or filing a petition for a temporary restraining order, in conjunction with a complaint filed under section 504B.321.

**History:** *1999 c 199 art 1 s 45*

**504B.331 SUMMONS; HOW SERVED.**

(a) The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action.

(b) 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:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

**History:** *1999 c 199 art 1 s 46; 2005 c 10 art 2 s 4*

**504B.335 ANSWER; TRIAL.**

(a) At the court appearance specified in the summons, the defendant may answer the complaint, and the court shall hear and decide the action, unless it grants a continuance of the trial as provided in section 504B.341.

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(b) Either party may demand a trial by jury.

(c) The proceedings in the action are the same as in other civil actions, except as provided in sections 504B.281 to 504B.371.

(d) The court, in scheduling appearances and hearings under this section, shall give priority to any eviction brought under section 504B.171, or on the basis that the defendant is a tenant and is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property.

**History:** *1999 c 199 art 1 s 47*

**504B.341 CONTINUANCE OF TRIAL.**

(a) In an eviction action, the court, in its discretion, may grant a continuance of the trial for no more than six days unless all parties consent to longer continuance.

(b) However, in all actions brought under section 504B.285, other than actions on a written lease signed by both parties, the court shall continue the trial as necessary but for no more than three months if the defendant or the defendant's agent or attorney:

(1) states under oath that the defendant cannot proceed to trial because a material witness is not present;

(2) names the witness;

(3) states under oath that the defendant has made due exertion to obtain the witness;

(4) states the belief that if the continuance is allowed the defendant will be able to procure the attendance of the witness at the trial or to obtain the witness's deposition; and

(5) gives a bond that the plaintiff will be paid all rent that accrues during the pendency of the action and all costs and damages that accrue due to the adjournment.

**History:** *1999 c 199 art 1 s 48*

**504B.345 JUDGMENT; EXECUTION.**

Subdivision 1. **General.** (a) If the court or jury finds for the plaintiff, the court shall immediately enter judgment that the plaintiff shall have recovery of the premises, and shall tax the costs against the defendant. The court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of recovery of premises and order to vacate.

(b) The court shall give priority in issuing a writ of recovery of premises and order to vacate for an eviction action brought under section 504B.171 or on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property.

(c) If the court or jury finds for the defendant:

(1) the court shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution in favor of the defendant; and

(2) the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant.

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(d) Except in actions brought: (1) under section 504B.291 as required by section 609.5317, subdivision 1; (2) under section 504B.171; or (3) on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property, upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days.

Subd. 2. **Expedited writ.** If the court enters judgment for the plaintiff in an action brought under section 504B.291 as required by section 609.5317, subdivision 1, the court may not stay issuance of the writ of recovery of premises and order to vacate unless the court makes written findings specifying the extraordinary and exigent circumstances that warrant staying the writ for a reasonable period, not to exceed seven days.

**History:** *1999 c 199 art 1 s 49; 2014 c 246 s 5*

**504B.351 FAILURE OF JURY TO REACH A VERDICT.**

If the jury cannot agree upon a verdict, the court may discharge the members and issue an order impaneling a new jury, immediately or as agreed to by the parties or fixed by the court.

**History:** *1999 c 199 art 1 s 50*

**504B.355 FORM OF VERDICT.**

The verdict of the jury or the finding of the court in favor of the plaintiff in an eviction action shall be substantially in the following form:

At a court held at ....., on the ..... day of ....., year ....., before ....., a judge in and for the county of ..... in an action between ....., plaintiff, and ....., defendant, the jury (or, if the action be tried without a jury, the court) find that the facts alleged in the complaint are true, and the plaintiff shall recover possession of the premises and the defendant(s) shall vacate the premises immediately.

.....

If the verdict or finding is for the defendant, it shall be sufficient to find that the facts alleged in the complaint are not true.

**History:** *1999 c 199 art 1 s 51*

**504B.361 FORMS OF SUMMONS AND WRIT.**

Subdivision 1. **Summons and writ.** The state court administrator shall develop a uniform form for the summons and writ of recovery of premises and order to vacate.

Subd. 2. **Priority writ.** The court shall identify a writ of recovery of premises and order to vacate property that is issued pursuant to an eviction action under section 504B.171, or on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property and clearly note on the order to vacate that it is a priority order. Notice that it is a priority order must be made in a manner that is obvious to an officer who must execute the order under section 504B.365.

**History:** *1999 c 199 art 1 s 52; 2005 c 10 art 2 s 4; 2007 c 54 art 5 s 12*

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## 504B.365 EXECUTION OF THE WRIT OF RECOVERY OF PREMISES AND ORDER TO VACATE.

Subdivision 1. **General.** (a) The officer who holds the order to vacate shall execute it by demanding that the defendant, if found in the county, any adult member of the defendant's family who is occupying the premises, or any other person in charge, relinquish possession and leave, taking family and all personal property from the premises within 24 hours.

(b) If the defendant fails to comply with the demand, then the officer shall bring, if necessary, the force of the county and any necessary assistance, at the cost of the plaintiff. The officer shall remove the defendant, family, and all personal property from the premises and place the plaintiff in possession.

(c) If the defendant cannot be found in the county, and there is no person in charge of the premises, then the officer shall enter the premises, breaking in if necessary, and remove and store the personal property of the defendant at a place designated by the plaintiff as provided in subdivision 3.

(d) The order may also be executed by a licensed police officer or community crime prevention licensed police officer.

Subd. 2. **Priority; execution of priority order.** An officer shall give priority to the execution, under this section, of any order to vacate that is based on an 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.

Subd. 3. **Removal and storage of property.** (a) If the defendant's personal property is to be stored in a place other than the premises, the officer shall remove all personal property of the defendant at the expense of the plaintiff.

(b) The defendant must make immediate payment for all expenses of removing personal property from the premises. If the defendant fails or refuses to do so, the plaintiff has a lien on all the personal property for the reasonable costs and expenses incurred in removing, caring for, storing, and transporting it to a suitable storage place.

(c) The plaintiff may enforce the lien by detaining the personal property until paid. If no payment has been made for 60 days after the execution of the order to vacate, the plaintiff may hold a public sale as provided in sections 514.18 to 514.22.

(d) If the defendant's personal property is to be stored on the premises, the officer shall enter the premises, breaking in if necessary, and the plaintiff may remove the defendant's personal property. Section 504B.271 applies to personal property removed under this paragraph. The plaintiff must prepare an inventory and mail a copy of the inventory to the defendant's last known address or, if the defendant has provided a different address, to the address provided. The inventory must be prepared, signed, and dated in the presence of the officer and must include the following:

(1) a list of the items of personal property and a description of their condition;

(2) the date, the signature of the plaintiff or the plaintiff's agent, and the name and telephone number of a person authorized to release the personal property; and

(3) the name and badge number of the officer.

(e) The officer must retain a copy of the inventory.

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(f) The plaintiff is responsible for the proper removal, storage, and care of the defendant's personal property and is liable for damages for loss of or injury to it caused by the plaintiff's failure to exercise the same care that a reasonably careful person would exercise under similar circumstances.

(g) The plaintiff shall notify the defendant of the date and approximate time the officer is scheduled to remove the defendant, family, and personal property from the premises. The notice must be sent by first class mail. In addition, the plaintiff must make a good faith effort to notify the defendant by telephone. The notice must be mailed as soon as the information regarding the date and approximate time the officer is scheduled to enforce the order is known to the plaintiff, except that the scheduling of the officer to enforce the order need not be delayed because of the notice requirement. The notice must inform the defendant that the defendant and the defendant's personal property will be removed from the premises if the defendant has not vacated the premises by the time specified in the notice.

Subd. 4. **Motions concerning removal or storage of personal property.** The court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property under this section. If the plaintiff refuses to return the property after proper demand is made as provided in section 504B.271, the court shall enter an order requiring the plaintiff to return the property to the defendant and awarding reasonable expenses including attorney fees to the defendant.

Subd. 5. **Penalty; waiver not allowed.** Unless the premises has been abandoned, a plaintiff, an agent, or other person acting under the plaintiff's direction or control who enters the premises and removes the defendant's personal property in violation of this section is guilty of an unlawful ouster under section 504B.231 and is subject to penalty under section 504B.225. This section may not be waived or modified by lease or other agreement.

**History:** *1999 c 199 art 1 s 53; 2001 c 7 s 81; 2010 c 315 s 15*

**504B.371 APPEALS.**

Subdivision 1. **Statement of intention to appeal.** If the court renders judgment against the defendant and the defendant or defendant's attorney informs the court the defendant intends to appeal, the court shall issue an order staying the writ for recovery of premises and order to vacate for at least 24 hours after judgment, except as provided in subdivision 7.

Subd. 2. **Time for appeal.** A party who feels aggrieved by the judgment may appeal within 15 days as provided for civil actions in district court.

Subd. 3. **Appeal bond.** If the party appealing remains in possession of the property, that party must give a bond that provides that:

(1) all costs of the appeal will be paid;

(2) the party will comply with the court's order; and

(3) all rent and other damages due to the party excluded from possession during the pendency of the appeal will be paid.

Subd. 4. **Stay pending appeal.** After the appeal is taken, all further proceedings in the case are stayed, except as provided in subdivision 7.

Subd. 5. **Stay of writ issued before appeal.** (a) Except as provided in subdivision 7, if the court issues a writ for recovery of premises and order to vacate before an appeal is taken, the appealing party may request

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that the court stay further proceedings and execution of the writ for possession of premises and order to vacate, and the court shall grant a stay.

(b) If the party appealing remains in possession of the premises, that party must give a bond under subdivision 3.

(c) When the officer who has the writ for possession of premises and order to vacate is served with the order granting the stay, the officer shall cease all further proceedings. If the writ for possession of premises and order to vacate has not been completely executed, the defendant shall remain in possession of the premises until the appeal is decided.

Subd. 6. **Dismissal of appeals; amendments; return.** In all cases of appeal, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially in accordance with the provisions of this chapter. Amendments may be allowed at any time, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. The court may compel the trial court, by attachment, to make or amend any return which is withheld or improperly or insufficiently made.

Subd. 7. **Exception.** Subdivisions 1, 4, and 6 do not apply in an action on a lease, against a tenant holding over after the expiration of the term of the lease, or a termination of the lease by a notice to quit, if the plaintiff gives a bond conditioned to pay all costs and damages if on the appeal the judgment of restitution is reversed and a new trial ordered. In such a case, the court shall issue a writ for recovery of premises and order to vacate notwithstanding the notice of appeal, as if no appeal had been taken, and the appellate court shall issue all needful writs and processes to carry out any judgment which may be rendered in the court.

**History:** *1999 c 199 art 1 s 54; 2013 c 100 s 4*

## RESIDENTIAL TENANT ACTIONS

### 504B.375 UNLAWFUL EXCLUSION OR REMOVAL; ACTION FOR RECOVERY OF POSSESSION.

Subdivision 1. **Unlawful exclusion or removal.** (a) This section applies to actual or constructive removal or exclusion of a residential tenant which may include the termination of utilities or the removal of doors, windows, or locks. A residential tenant to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e).

(b) The residential tenant shall present a verified petition to the district court of the judicial district of the county in which the premises are located that:

(1) describes the premises and the landlord;

(2) specifically states the facts and grounds that demonstrate that the exclusion or removal was unlawful, including a statement that no writ of recovery of the premises and order to vacate has been issued under section 504B.345 in favor of the landlord and against the residential tenant and executed in accordance with section 504B.365; and

(3) asks for possession.

(c) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the residential tenant or the residential tenant's attorney or agent that the exclusion or removal was unlawful, the court shall immediately order that the residential tenant have possession of the premises.

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(d) The residential tenant shall furnish security, if any, that the court finds is appropriate under the circumstances for payment of all costs and damages the landlord may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of security, the court shall consider the residential tenant's ability to afford monetary security.

(e) The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises. If the landlord, the landlord's agent, or other person in control of the premises cannot be found and if there is no person in charge, the officer shall immediately enter into and place the residential tenant in possession of the premises. The officer shall also serve the order and verified petition or affidavit immediately upon the landlord or agent, in the same manner as a summons is required to be served in a civil action in district court.

Subd. 2. **Motion for dissolution or modification of order.** The landlord may, by written motion and notice served by mail or personally on the residential tenant or the residential tenant's attorney at least two days before the hearing date on the motion, obtain dissolution or modification of the order for possession issued under subdivision 1, paragraph (c), unless the residential tenant proves the facts and grounds on which the order is issued. A landlord bringing a motion under this subdivision may recover possession of the premises only by an eviction action or otherwise provided by law. Upon the dissolution of the order, the court shall assess costs against the residential tenant, subject to the provisions of section 563.01, and may allow damages and reasonable attorney fees for the wrongful granting of the order for possession. If the order is affirmed, the court shall tax costs against the landlord and may allow the residential tenant reasonable attorney's fees.

Subd. 3. **Finality of order.** An order issued under subdivision 1, paragraph (c), or affirmed, modified, or dissolved under subdivision 2, is a final order for purposes of appeal. Either party may appeal the order within ten days after entry. If the party appealing remains in possession of the premises, bond must be given to:

(1) pay all costs of the appeal;

(2) obey the court's order; and

(3) pay all rent and other damages that justly accrue to the party excluded from possession during the pendency of the appeal.

Subd. 4. **Waiver not allowed.** A provision of an oral or written lease or other agreement in which a residential tenant waives this section is contrary to public policy and void.

Subd. 5. **Purpose.** The purpose of this section is to provide an additional and summary remedy for residential tenants unlawfully excluded or removed from rental property and, except where expressly provided in this section, sections 504B.285 to 504B.371 do not apply to proceedings under this section.

Subd. 6. **Application.** In addition to residential tenants and landlords, this section applies to:

(1) occupants and owners of residential real property that is the subject of a mortgage foreclosure or contract for deed cancellation for which the period for redemption or reinstatement of the contract has expired; and

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(2) mortgagees and contract for deed vendors.

**History:** *1999 c 199 art 1 s 55; 2005 c 10 art 2 s 4*

**504B.381 EMERGENCY TENANT REMEDIES ACTION.**

Subdivision 1. **Petition.** A person authorized to bring an action under section 504B.395, subdivision 1, may petition the court for relief in cases of emergency involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing.

Subd. 2. **Venue.** The venue of the action authorized by this section is the county where the residential building alleged to contain the emergency condition is located.

Subd. 3. **Petition information.** The petitioner must present a verified petition to the district court that contains:

(1) a description of the premises and the identity of the landlord;

(2) a statement of the facts and grounds that demonstrate the existence of an emergency caused by the loss of essential services or facilities; and

(3) a request for relief.

Subd. 4. **Notice.** The petitioner must attempt to notify the landlord, at least 24 hours before application to the court, of the petitioner's intent to seek emergency relief. An order may be granted without notice to the landlord if the court finds that reasonable efforts, as set forth in the petition or by separate affidavit, were made to notify the landlord but that the efforts were unsuccessful.

Subd. 5. **Relief; service of order.** The court may order relief as provided in section 504B.425. The petitioner shall serve the order on the landlord personally or by mail as soon as practicable.

Subd. 6. **Limitation.** This section does not extend to emergencies that are the result of the deliberate or negligent act or omission of a residential tenant or anyone acting under the direction or control of the residential tenant.

Subd. 7. **Effect of other laws.** Section 504B.395, subdivisions 3 and 4, do not apply to a petition for emergency relief under this section.

**History:** *1999 c 199 art 1 s 56*

**504B.385 RENT ESCROW ACTION TO REMEDY VIOLATIONS.**

Subdivision 1. **Escrow of rent.** (a) If a violation exists in a residential building, a residential tenant may deposit the amount of rent due to the landlord with the court administrator using the procedures described in paragraphs (b) to (d).

(b) For a violation as defined in section 504B.001, subdivision 14, clause (1), the residential tenant may deposit with the court administrator the rent due to the landlord along with a copy of the written notice of the code violation as provided in section 504B.185, subdivision 2. The residential tenant may not deposit the rent or file the written notice of the code violation until the time granted to make repairs has expired without satisfactory repairs being made, unless the residential tenant alleges that the time granted is excessive.

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(c) For a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation. The court must provide a simplified form affidavit for use under this paragraph.

(d) The residential tenant need not deposit rent if none is due to the landlord at the time the residential tenant files the notice required by paragraph (b) or (c). All rent which becomes due to the landlord after that time but before the hearing under subdivision 6 must be deposited with the court administrator. As long as proceedings are pending under this section, the residential tenant must pay rent to the landlord or as directed by the court and may not withhold rent to remedy a violation.

Subd. 2. **Counterclaim for possession.** (a) The landlord may file a counterclaim for possession of the property in cases where the landlord alleges that the residential tenant did not deposit the full amount of rent with the court administrator.

(b) The court must set the date for a hearing on the counterclaim not less than seven nor more than 14 days from the day of filing the counterclaim. If the rent escrow hearing and the hearing on the counterclaim for possession cannot be heard on the same day, the matters must be consolidated and heard on the date scheduled for the hearing on the counterclaim.

(c) The contents of the counterclaim for possession must meet the requirements for a complaint under section 504B.321.

(d) The landlord must serve the counterclaim as provided in section 504B.331, except that the affidavit of service or mailing may be brought to the hearing rather than filed with the court before the hearing.

(e) The court must provide a simplified form for use under this section.

Subd. 3. **Defenses.** The defenses provided in section 504B.415 are defenses to an action brought under this section.

Subd. 4. **Filing fee.** The court administrator may charge a filing fee in the amount set for complaints and counterclaims in conciliation court, subject to the filing of an inability to pay affidavit.

Subd. 5. **Notice of hearing.** (a) A hearing must be held within ten to 14 days from the day a residential tenant:

(1) deposits rent with the court administrator; or

(2) files the notice required under subdivision 1, paragraph (b) or (c), if the tenant is not required to deposit rent with the court administrator under subdivision 1, paragraph (d).

Nothing in this subdivision relieves the tenant of the obligation to deposit rent that becomes due to the landlord after the filing but before the hearing with the court administrator.

(b) If the cost of remedying the violation, as estimated by the residential tenant, is within the jurisdictional limit for conciliation court, the court administrator shall notify the landlord and the residential tenant of the time and place of the hearing by first class mail.

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(c) The residential tenant must provide the court administrator with the landlord's name and address. If the landlord has disclosed a post office box as the landlord's address under section 504B.181, notice of the hearing may be mailed to the post office box.

(d) If the cost of remedying the violation, as estimated by the tenant, is above the jurisdictional limit for conciliation court, the tenant must serve the notice of hearing according to the Minnesota Rules of Civil Procedure.

(e) The notice of hearing must specify the amount the residential tenant has deposited with the court administrator and must inform the landlord that possession of the premises will not be in issue at the hearing unless the landlord files a counterclaim for possession or an eviction action.

Subd. 6. **Hearing.** The hearing shall be conducted by a court without a jury. A certified copy of an inspection report meets the requirements of rule 803(8) of the Minnesota Rules of Evidence as an exception to the rule against hearsay, and meets the requirements of rules 901 and 902 of the Minnesota Rules of Evidence as to authentication.

Subd. 7. **Release of rent prior to hearing.** If the residential tenant gives written notice to the court administrator that the violation has been remedied, the court administrator must release the rent to the landlord and, unless the hearing has been consolidated with another action, must cancel the hearing. If the residential tenant and the landlord enter into a written agreement signed by both parties apportioning the rent between them, the court administrator must release the rent in accordance with the written agreement and cancel the hearing.

Subd. 8. **Consolidation with an eviction action.** Actions under this section and eviction actions which involve the same parties must be consolidated and heard on the date scheduled for the eviction action.

Subd. 9. **Judgment.** (a) Upon finding that a violation exists, the court may, in its discretion, do any or all of the following:

(1) order relief as provided in section 504B.425, including retroactive rent abatement;

(2) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation;

(3) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or

(4) impose fines as required in section 504B.391.

(b) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action, and the landlord prevails, the residential tenant may redeem the tenancy as provided in section 504B.291.

(c) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action on the grounds of nonpayment, the court may not require the residential tenant to pay the landlord's filing fee as a condition of retaining possession of the property when the residential tenant has deposited with the court the full amount of money found by the court to be owed to the landlord.

Subd. 10. **Release of rent after hearing.** If the court finds, after a hearing on the matter has been held, that no violation exists in the building or that the residential tenant did not deposit the full amount of rent due with the court administrator, it shall order the immediate release of the rent to the landlord. If the court finds that a violation existed, but was remedied between the commencement of the action and the hearing,

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it may order rent abatement and must release the rent to the parties accordingly. Any rent found to be owed to the residential tenant must be released to the tenant.

Subd. 11. **Retaliation; waiver not allowed.** Section 504B.441 applies to proceedings under this section. The residential tenant rights under this section may not be waived or modified and are in addition to and do not limit other rights or remedies which may be available to the residential tenant and landlord, except as provided in subdivision 1.

**History:** *1999 c 199 art 1 s 57; 2013 c 100 s 5*

### 504B.391 VIOLATIONS OF BUILDING REPAIR ORDERS.

Subdivision 1. **Noncompliance; fines.** If the court finds that a landlord has willfully failed to comply with a court order to remedy a violation, the court shall fine the landlord according to the following schedule:

(1) $250 for the first failure to comply;

(2) $500 for the second failure to comply with an order regarding the same violation; and

(3) $750 for the third and each subsequent failure to comply with an order regarding the same violation.

Subd. 2. **Criminal penalty.** A landlord who willfully fails to comply with a court order to remedy a violation is guilty of a gross misdemeanor if it is the third or subsequent time that the landlord has willfully failed to comply with an order to remedy a violation within a three-year period.

**History:** *1999 c 199 art 1 s 58*

## TENANT REMEDIES ACTION

### 504B.395 PROCEDURE.

Subdivision 1. **Who may bring action.** An action may be brought in district court by:

(1) a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, is alleged to exist;

(2) any housing-related neighborhood organization with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist;

(3) a housing-related neighborhood organization that has within its geographical area an unoccupied residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist; or

(4) a state, county, or local department or authority, charged with the enforcement of codes relating to health, housing, or building maintenance.

Subd. 2. **Venue.** The venue of the action authorized by this section is the county where the residential building alleged to contain violations is located.

Subd. 3. **When action may be brought.** (a) After a residential building inspection has been made under section 504B.185, an action may not be brought under sections 504B.381, 504B.385, or 504B.395 to 504B.451 until the time granted under section 504B.185, subdivision 2, has expired and satisfactory repairs to remove the code violations have not been made.

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(b) Notwithstanding paragraph (a), an action may be brought if the residential tenant, or neighborhood organization with the written permission of a tenant, alleges the time granted under section 504B.185, subdivision 2, is excessive.

Subd. 4. **Landlord must be informed.** A landlord must be informed in writing of an alleged violation at least 14 days before an action is brought by:

(1) a residential tenant of a residential building in which a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), is alleged to exist; or

(2) a housing-related neighborhood organization, with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (2), is alleged to exist. The notice requirement may be waived if the court finds that the landlord cannot be located despite diligent efforts.

Subd. 5. **Summons and complaint required.** The action must be started by service of a complaint and summons. The summons may be issued only by a judge or court administrator.

Subd. 6. **Contents of complaint.** (a) The complaint must be verified and must:

(1) allege material facts showing that a violation or violations exist in the residential building;

(2) state the relief sought; and

(3) list the rent due each month from each dwelling unit within the residential building, if known.

(b) If the violation is a violation as defined in section 504B.001, subdivision 14, clause (1), the complaint must be accompanied by:

(1) a copy of the official report of inspection by a department of health, housing, or buildings, certified by the custodian of records of that department stating:

(i) when and by whom the residential building concerned was inspected;

(ii) what code violations were recorded; and

(iii) that notice of the code violations has been given to the landlord; or

(2) a statement that a request for inspection was made to the appropriate state, county, or municipal department, that demand was made on the landlord to correct the alleged code violation, and that a reasonable period of time has elapsed since the demand or request was made.

**History:** *1999 c 199 art 1 s 59*

**504B.401 SUMMONS.**

Subdivision 1. **Contents.** (a) On receipt of the complaint in section 504B.395, the court administrator shall prepare a summons. The summons shall:

(1) specify the time and place of the hearing to be held on the complaint; and

(2) state that if at the time of the hearing a defense is not interposed and established by the landlord, judgment may be entered for the relief requested and authorized by sections 504B.381 and 504B.395 to 504B.471.

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(b) The hearing must be scheduled not less than seven nor more than 14 days after receipt of the complaint by the court administrator.

Subd. 2. **Service.** The summons and complaint must be served upon the landlord or the landlord's agent not less than seven nor more than 14 days before the hearing. Service shall be by personal service upon the defendant pursuant to the Minnesota Rules of Civil Procedure. If personal service cannot be made with due diligence, service may be made by affixing a copy of the summons and complaint prominently to the residential building involved, and mailing at the same time a copy of the summons and complaint by certified mail to the last known address of the landlord.

**History:** *1999 c 199 art 1 s 60; 2003 c 114 s 1*

**504B.411 ANSWER.**

At or before the time of the hearing, the landlord may answer in writing. Defenses that are not contained in a written answer must be orally pleaded at the hearing before any testimony is taken. No delays in the date of hearing may be granted to allow time to prepare a written answer or reply except with the consent of all parties.

**History:** *1999 c 199 art 1 s 61*

**504B.415 DEFENSES.**

It is a sufficient defense to a complaint under section 504B.385 or 504B.395 that:

(1) the violation or violations alleged in the complaint do not exist or that the violation or violations have been removed or remedied;

(2) the violations have been caused by the willful, malicious, negligent, or irresponsible conduct of a complaining residential tenant or anyone under the tenant's direction or control; or

(3) a residential tenant of the residential building has unreasonably refused entry to the landlord or the landlord's agent to a portion of the property for the purpose of correcting the violation, and that the effort to correct was made in good faith.

**History:** *1999 c 199 art 1 s 62*

**504B.421 HEARING.**

If issues of fact are raised, they must be tried by the court without a jury. The court may grant a postponement of the trial on its own motion or at the request of a party if it determines that postponements are necessary to enable a party to procure necessary witnesses or evidence. A postponement must be for no more than ten days except by consent of all appearing parties.

**History:** *1999 c 199 art 1 s 63*

**504B.425 JUDGMENT.**

(a) If the court finds that the complaint in section 504B.395 has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.

(b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.

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(c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

(d) The court may appoint an administrator with powers described in section 504B.445, and:

(1) direct that rents due:

(i) on and from the day of entry of judgment, in the case of petitioning residential tenants or housing-related neighborhood organizations; and

(ii) on and from the day of service of the judgment on all other residential and commercial tenants of the residential building, if any,

shall be deposited with the administrator appointed by the court; and

(2) direct that the administrator use the rents collected to remedy the violations found to exist by the court by paying the debt service, taxes, and insurance, and providing the services necessary to the ordinary operation and maintenance of the residential building which the landlord is obligated to provide but fails or refuses to provide.

(e) The court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated.

(f) After termination of administration, the court may continue the jurisdiction of the court over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes.

(g) The court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization. The $500 limitation does not apply to awards made under section 549.211 or other specific statutory authority.

**History:** *1999 c 199 art 1 s 64*

### 504B.431 SERVICE OF JUDGMENT.

A copy of the judgment must be personally served on every residential and commercial tenant of the residential building whose obligations will be affected by the judgment. If, with due diligence, personal service cannot be made, service may be made by posting a notice of the judgment on the entrance door of the residential tenant's dwelling or commercial tenant's unit and by mailing a copy of the judgment to the residential tenant or commercial tenant by certified mail.

**History:** *1999 c 199 art 1 s 65*

### 504B.435 LANDLORD'S RIGHT TO COLLECT RENT SUSPENDED.

If an administrator has been appointed pursuant to section 504B.425, paragraph (d), any right of the landlord to collect rent from the petitioner is void and unenforceable from the time the court signs the order for judgment until the administration is terminated. Any right of the landlord to collect rent from other

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tenants is void and unenforceable from the time of service of judgment as set forth in section 504B.431 until the administration is terminated.

**History:** *1999 c 199 art 1 s 66*

**504B.441 RESIDENTIAL TENANT MAY NOT BE PENALIZED FOR COMPLAINT.**

A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's complaint of a violation. The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant.

**History:** *1999 c 199 art 1 s 67*

**504B.445 ADMINISTRATOR.**

Subdivision 1. **Appointment.** The administrator may be a person, local government unit or agency, other than a landlord of the building, the inspector, the complaining residential tenant, or a person living in the complaining residential tenant's dwelling unit. If a state or court agency is authorized by statute, ordinance, or regulation to provide persons or neighborhood organizations to act as administrators under this section, the court may appoint them to the extent they are available.

Subd. 2. **Posting bond.** A person or neighborhood organization appointed as administrator shall post bond to the extent of the rents expected by the court to be necessary to be collected to correct the violation or violations. Administrators appointed from governmental agencies shall not be required to post bond.

Subd. 3. **Expenses.** The court may allow a reasonable amount for the services of administrators and the expense of the administration from rent money. When the administration terminates, the court may enter judgment against the landlord in a reasonable amount for the services and expenses incurred by the administrator.

Subd. 4. **Powers.** The administrator may:

(1) collect rents from residential and commercial tenants, evict residential and commercial tenants for nonpayment of rent or other cause, enter into leases for vacant dwelling units, rent vacant commercial units with the consent of the landlord, and exercise other powers necessary and appropriate to carry out the purposes of sections 504B.381 and 504B.395 to 504B.471;

(2) contract for the reasonable cost of materials, labor, and services including utility services provided by a third party necessary to remedy the violation or violations found by the court to exist and for the rehabilitation of the property to maintain safe and habitable conditions over the useful life of the property, and disburse money for these purposes from funds available for the purpose;

(3) provide services to the residential tenants that the landlord is obligated to provide but refuses or fails to provide, and pay for them from funds available for the purpose;

(4) petition the court, after notice to the parties, for an order allowing the administrator to encumber the property to secure funds to the extent necessary to cover the costs described in clause (2), including reasonable fees for the administrator's services, and to pay for the costs from funds derived from the encumbrance; and

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(5) petition the court, after notice to the parties, for an order allowing the administrator to receive funds made available for this purpose by the federal or state governing body or the municipality to the extent necessary to cover the costs described in clause (2) and pay for them from funds derived from this source.

The municipality shall recover disbursements under clause (5) by special assessment on the real estate affected, bearing interest at the rate determined by the municipality, but not to exceed the rate established for finance charges for open-end credit sales under section 334.16, subdivision 1, clause (b). The assessment, interest, and any penalties shall be collected as are special assessments made for other purposes under state statute or municipal charter.

Subd. 5. **Termination of administration.** At any time during the administration, the administrator or any party may petition the court after notice to all parties for an order terminating the administration on the ground that the funds available to the administrator are insufficient to effect the prompt remedy of the violations. If the court finds that the petition is proved, the court shall terminate the administration and proceed to judgment under section 504B.425, paragraph (e).

Subd. 6. **Residential building repairs and services.** The administrator must first contract and pay for residential building repairs and services necessary to keep the residential building habitable before other expenses may be paid. If sufficient funds are not available for paying other expenses, such as tax and mortgage payments, after paying for necessary repairs and services, the landlord is responsible for the other expenses.

Subd. 7. **Administrator's liability.** The administrator may not be held personally liable in the performance of duties under this section except for misfeasance, malfeasance, or nonfeasance of office.

Subd. 8. **Dwelling's economic viability.** In considering whether to grant the administrator funds under subdivision 4, the court must consider factors relating to the long-term economic viability of the dwelling, including:

(1) the causes leading to the appointment of an administrator;

(2) the repairs necessary to bring the property into code compliance;

(3) the market value of the property; and

(4) whether present and future rents will be sufficient to cover the cost of repairs or rehabilitation.

**History:** *1999 c 199 art 1 s 68; 2004 c 275 s 3*

### 504B.451 RECEIVERSHIP REVOLVING LOAN FUND.

The Minnesota Housing Finance Agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators under section 504B.445 for properties for occupancy by low- and moderate-income persons or families. Landlords must repay administrative expense payments made from the fund.

**History:** *1999 c 199 art 1 s 69*

### 504B.455 REMOVAL OF ADMINISTRATOR.

Subdivision 1. **Petition by administrator.** The administrator may, after notice to all parties, petition the court to be relieved of duties, including in the petition the reasons for it. The court may, in its discretion, grant the petition and discharge the administrator upon approval of the accounts.

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Subd. 2. **Petition by a party.** A party may, after notice to the administrator and all other parties, petition the court to remove the administrator. If the party shows good cause, the court shall order the administrator removed and direct the administrator to immediately deliver to the court an accounting of administration. The court may make any other order necessary and appropriate under the circumstances.

Subd. 3. **Appointment of new administrator.** If the administrator is removed, the court shall appoint a new administrator in accordance with section 504B.445, giving all parties an opportunity to be heard.

**History:** *1999 c 199 art 1 s 70*

**504B.461 TERMINATION OF ADMINISTRATION.**

Subdivision 1. **Events of termination.** The administration shall be terminated upon one of the following:

(1) certification is secured from the appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; or

(2) an order according to section 504B.445, subdivision 5.

Subd. 2. **Accounting by administrator.** After the occurrence of any of the conditions in subdivision 1, the administrator shall:

(1) submit to the court an accounting of receipts and disbursements of the administration together with copies of all bills, receipts, and other memoranda pertaining to the administration, and, where appropriate, a certification by an appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; and

(2) comply with any other order the court makes as a condition of discharge.

Subd. 3. **Discharge of administrator.** Upon approval by the court of the administrator's accounts and compliance by the administrator with any other order the court may make as a condition of discharge, the court shall discharge the administrator from any further responsibilities pursuant to sections 504B.381 and 504B.395 to 504B.471.

**History:** *1999 c 199 art 1 s 71*

**504B.465 WAIVER NOT ALLOWED.**

Any provision of a lease or other agreement in which a provision of section 504B.381 or sections 504B.395 to 504B.471 is waived by a residential tenant is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 72*

**504B.471 PURPOSE TO PROVIDE ADDITIONAL REMEDIES.**

The purpose of section 504B.381 and sections 504B.395 to 504B.471 is to provide additional remedies and nothing contained in those sections alters the ultimate financial liability of the landlord or residential tenant for repairs or maintenance of the building.

**History:** *1999 c 199 art 1 s 73*

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# MINNESOTA JUDICIAL BRANCH

## Current Fees in Ramsey County

To find court fees online, go to www.mncourts.gov and select "Help Topics." Find and select "Fees" in the alphabetical list. Click on the button labeled "District Court Fee." There will be two drop down menus, in the left drop down menu labeled "County" select Ramsey. The direct web address is as follows: http://www.mncourts.gov/Help-Topics/Court-Fees/District-Court-Fees.aspx?cat=all&c=ramsey&cookieCheck=true

## I. Civil Action or Proceeding

**Filing a motion or response to a motion in civil, family (excluding child support), and guardianship cases**
Total Fee: $75.00
Fee Calculation: Base Fee $75
Authorization: Minn. Stat. § 357.021 , subd. 2(4), Court Operations Policy 506(h)

**Issuing all Writs/Filing return**
Total Fee: $55.00
Fee Calculation: Base Fee $55
Authorization: Minn. Stat. § 357.021 , subd. 2(5)

**Name Change**
Total Fee: $300.00
Fee Calculation: Base Fee $285 + Law Library Fee $15
Authorization: Minn. Stat. § 357.021 , subd. 2(1), 134A.09, 134A.10

**Party Requesting Trial by Jury at Same Time First Paper Filed**
Total Fee: $400.00
Fee Calculation: Base Fee $285 + Jury Trial Fee $100 + Law Library Fee $15
Authorization: Minn. Stat. § 357.021 , subd. 2(1), 134A.09, 134A.10

**Plaintiff / Petitioner and Defendant / Respondent - First Paper Filed**
Total Fee: $300.00
Fee Calculation: Base Fee $285 + Law Library Fee $15
Authorization: Minn. Stat. § 357.021 , subd. 2(1), 357.021, 134A.10

**Request for Trial by Jury**
Total Fee: $100.00
Fee Calculation: Base Fee $100
Authorization: Minn. Stat. § 357.021 , subd. 2(1)

**Subpoena - For Each Name**
Total Fee: $16.00
Fee Calculation: Base Fee $16
Authorization: Minn. Stat. § 357.021 , subd. 2(3)

**Trust Accounts (Annual or Partial)**
Total Fee: $55.00
Fee Calculation: Base Fee $55
Authorization: Minn. Stat. § 357.021 , subd. 2(10)

## II. Housing

**File a Rent Escrow**
Total Fee: $80.00
Fee Calculation: Base Fee $65 + Law Library Fee $15
Authorization: Minn. Stat. § 504B.385 , subd. 4, 357.022, 134A.09, 134A.10

**File an Eviction Action**
Total Fee: $300.00
Fee Calculation: Base Fee $285 + Law Library Fee $15
Authorization: Minn. Stat. § 357.021 , subd. 2(1), 134A.09, 134A.10

## III. Miscellaneous Fees

**Faxes - $25 transmission fee for each 50 pages, or part thereof**
Total Fee: $25.00
Authorization: Civil Court Rule 5.05, Juvenile Court Rules 31.01 , subd. 2, Juvenile Court Rules - Adoption 25.01 , subd. 3

**Forms Packets - 1 to 10 pages**
Total Fee: $0.00
Authorization: Court Operations Policy 506(b)

**Forms Packets - 11 or more pages**
Total Fee: $5.00
Authorization: Court Operations Policy 506(b)

**Forms Packets - Harassment**
Total Fee: $0.00
Authorization: Court Operations Policy 506(b)

**NSF Checks (non-sufficient funds)**
Total Fee: $30.00
Authorization: Minn. Stat. § 604.113, subd. 2

**Request for Driver's License Suspension**
Total Fee: $14.00

Fee Calculation: Base Fee $14
Authorization: Minn. Stat. § 357.021 , subd. 2(2)

**Subpoena - For Each Name**
Total Fee: $16.00
Fee Calculation: Base Fee $16
Authorization: Minn. Stat. § 357.021 , subd. 2(3)

## IV. Copies

**Certified copy of any instrument from a civil or criminal proceeding**
Total Fee: $14.00
Fee Calculation: Base Fee $14
Authorization: Minn. Stat. § 357.021 , subd. 2(2)

**Certified print outs of imaged or electronically filed documents accessible from the Courthouse view of MNCIS**
Total Fee: $14.00
Fee Calculation: Base Fee $14
Authorization: Minn. Stat. § 357.021 , subd. 2(2), Court Operations Policy 506(b)

**Certified scan or picture of documents in a court file where court staff has to dismantle the file**
Total Fee: $14.00
Fee Calculation: Base Fee $14
Authorization: Minn. Stat. § 357.021 , subd. 2(2), Court Operations Policy 506(b)

**Certified screen prints generated from case management system**
Total Fee: $14.00
Authorization: Minn. Stat. § § 357.021, subd. 2(14) Court Operations Policy 506(b)

**Copies of reports generated from case management system (provided to requester via email or paper form) - 1 to 50 pages (per report)**
Total Fee: $5.00
Authorization: Court Operations Policy 506(b)

**Copies of reports generated from case management system (provided to requester via email or paper form) - 50+ pages (per 50 pages or part thereof)**
Total Fee: $25.00
Authorization: Court Operations Policy 506(b)

**Exemplified and Certified copy of any instrument from a civil or criminal proceeding**
Total Fee: $28.00

Fee Calculation: Base Fee $28
Authorization: Minn. Stat. § 357.021, subd. 2(2), Court Operations Policy 506(b)

**Exemplified and Uncertified copy of any instrument from a civil or criminal proceeding**
Total Fee: $14.00
Authorization: Minn. Stat. § 357.021, subd. 2(2), Court Operations Policy 506(b)

**Scanning Fee - $25 fee for each 50 pages, or part thereof of the filing (Effective July 1, 2016)**
Total Fee: $25.00
Authorization: Minn. Gen. R. Prac. 14.01(b)(3)

**Uncertified copy of any instrument from a civil or criminal proceeding**
Total Fee: $8.00
Fee Calculation: Base Fee $8
Authorization: Minn. Stat. § 357.021 , subd. 2(2)

**Uncertified print outs of imaged or electronically filed documents accessible from the Courthouse view of MNCIS**
Total Fee: $8.00
Fee Calculation: Base Fee $8
Authorization: Minn. Stat. § 357.021 , subd. 2(2), Court Operations Policy 506(b)

**Uncertified scan or picture of documents in a court file where court staff has to dismantle the file**
Total Fee: $8.00
Fee Calculation: Base Fee $8
Authorization: Minn. Stat. § 357.021 , subd. 2(2), Court Operations Policy 506(b)

**Uncertified screen prints generated from case management system**
Total Fee: $8.00
Authorization: Minn. Stat. § § 357.021, subd. 2(14) Court Operations Policy 506(b)

# INSTRUCTIONS - WAIVER OF COURT FEES AND COSTS (IN FORMA PAUPERIS) Minnesota Statutes § 563.01

If you cannot afford to pay court fees and costs, you may be able to have these fees and costs waived. Under the law, the court can waive these fees and costs if:

1. You are receiving public assistance under one or more of the following programs:

   Minnesota Family Investment Plan (MFIP), MFIP-Emergency Assistance, or MFIP-Diversionary Assistance; General Assistance or Emergency General Assistance; Medical Assistance or General Assistance Medical Care; Food Stamps; Supplemental Security Income; Minnesota Supplemental Assistance (MSA) or MSA-Emergency Assistance; Energy Assistance.

OR

2. You are represented by a legal services or volunteer attorney on behalf of a civil legal services program or a volunteer attorney program based on indigence.

OR

3. Your annual family income before taxes is less than 125% of the Federal Poverty Guidelines (2020 figures) for your family size as indicated below.

Maximum Income Level – 125% of Poverty

| Please Check Your Family Size | Size of Family Unit | Annual Family Income Before Taxes | Monthly Family Income Before Taxes | Weekly Family Income Before Taxes |
|---|---|---|---|---|
| | 1 | $ 15,950 | $ 1,329 | $ 307 |
| | 2 | $ 21,550 | $ 1,796 | $ 414 |
| | 3 | $ 27,150 | $ 2,263 | $ 522 |
| | 4 | $ 32,750 | $ 2,729 | $ 630 |
| | 5 | $ 38,350 | $ 3,196 | $ 738 |
| | 6 | $ 43,950 | $ 3,663 | $ 845 |
| | 7 | $ 49,550 | $ 4,129 | $ 953 |
| | 8 | $ 55,150 | $ 4,596 | $ 1,061 |

More than 8 members, add $5600 annually for each additional family member (or $467 monthly or $108 weekly)

Number of family members: _____ Calculate and enter figure here: $ _____

OR

4. Your income is not enough to pay for the common necessities of life for yourself and the people you support and also to pay court fees and costs.

If you believe you meet one of the categories above, you can apply to proceed In Forma Pauperis (the Latin title used to describe the procedure for waiver of court fees and costs).

**STEP 1:** Complete the *Affidavit for Proceeding In Forma Pauperis*. Sign the *Affidavit for Proceeding In Forma Pauperis* under penalty of perjury. This means you are stating that the information in the *Affidavit* is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions. Make sure you attach copies of any documents requested on the form, such as proof of public assistance, etc.

**STEP 2:** Complete the case heading for the *Order Denying / Granting In Forma Pauperis*. The case heading (name of Plaintiff/Petitioner and Defendant/Respondent, etc.) should match your *Affidavit for Proceeding In Forma Pauperis*. The rest of the order can be left blank. The judge will decide whether to sign the section denying or granting the order based on the information you provide.

**STEP 3:** File these documents with the Court Administrator. The staff person will tell you the procedures for having a judge review your application.

If the judge grants your request to waive fees and/or costs, the order will only apply to the court case listed in the caption of the *In Forma Pauperis* (IFP) order. The IFP order will expire one year from the date of the order. The court may alter or amend the order at any time before expiration of the order. If the court action is not resolved before the expiration date of the IFP order and other fees or costs are required to be paid, you will need to fill out another *In Forma Pauperis Appication* or *Supplemental In Forma Pauperis Application.*

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the yellow pages under "Attorneys"), or by going to www.lawhelpmn.org.

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

**CONFIDENTIAL**

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: _____ |
|---|---|

_____
Plaintiff/Petitioner (first, middle, last)

vs/and

_____
Defendant/Respondent (first, middle, last)

# Affidavit for Proceeding In Forma Pauperis

(Minn. Stat §563.01)

1. I am a party in this action. I am a natural person (not a corporation, partnership or other entity). In good faith, I request a court order waiving court fees and costs. I cannot support my family and myself and also pay or give security for costs.

2. I believe that I have valid reasons for pursing this action. My **pleadings** (the Petition, Complaint, Answer, Appeal or other pleading) are **attached**.

3. a. ☐ I am receiving public assistance under one or more of the following **means-tested** programs.
   - ☐ MSA (Minnesota Supplemental Assistance Programs);
   - ☐ MFIP (Minnesota Family Investment Program);
   - ☐ Food Stamps;
   - ☐ General Assistance or Discretionary Work Program;
   - ☐ MinnesotaCare, Medical Assistance, or General Assistance Medical Assistance;
   - ☐ Energy Assistance;

   b. ☐ I am receiving public assistance under some other means-tested programs. (Name the program)

   _____

   **I have attached proof that I receive public assistance** (such as MFIP card or canceled check from agency) or **I will provide proof if requested.**

   c. ☐ I receive Supplemental Security Income (SSI) as a resource for meeting my expenses.

4. ☐ I am represented by attorney _____ on behalf of _____ a civil legal services program or volunteer attorney program, based on indigency.

5. My family size is _____ . (Include yourself, your spouse, your minor children, and other dependents in your household. For my family size, I counted myself and (list all others):

| Name | Age: | Relationship to you |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

6. ☐ My gross **annual** family income (before taxes and deductions) is _____ which is less than 125% of the Federal Poverty Line for my family size of _____ members. **I have attached proof of my family income or I will provide proof if requested.**

7. My gross monthly income (before taxes and deductions) is _____ My net (take home) **monthly** income is _____ and the source of that income is: ☐ Job/wages ☐ Unemployment ☐ Spousal Support ☐ Trust Income ☐ Social Security ☐ Other _____

8. My spouse's gross **monthly** income (before taxes and deductions) is _____ My spouse's net (take home) monthly income is _____ and the source of that income is _____ OR, I do not know my spouse's income because: _____ .

OR ☐ I am not married.

9. All other family members and dependents living with me have net **monthly** income as follows:

| Name of person | Age | Net (take home) monthly income | Source of Income |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

10. I receive _____ per month in child support (includes medical support and/or child care support.

11. I pay _____ per month in child support (includes medical support and/or child care support.

12. I pay _____ per month in court-ordered spousal support.

13. I pay _____ per month for ☐ rent ☐ mortgage payment.

14. I own:

Cash _____

Checking, savings, and credit union accts _____

Cars, other vehicles (list make, year and equity value ([market value minus unpaid loans])

_____ _____

_____ _____

Real Estate (market value minus unpaid mortgage/loans)

Homestead: _____

Other Real Estate: _____

Other personal property (jewelry, stocks, bonds, etc. list separately)

_____ _____

_____ _____

15. I am presently _____ in debt, excluding car loans and real estate mortgage/loans.

16. Other factors which support your request are (explain unusual medical expenses, emergencies, reasons that the family money is not available to you, or other circumstances to help the Judge understand your situation):

_____

_____

_____

_____

_____

**By signing this Affidavit, I am certifying that these statements are true under penalty of perjury. I understand that if I provide false information on the form it may lead to criminal charges. I understand that failure to execute the form or failure to provide information or requested records may result in denial of my motion to proceed In Forma Pauperis. I am authorizing that the facts contained in this Affidavit may be verified by any means required.**

Dated: _____

_____
Signature

_____
County and State where signed

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: _____ |
|---|---|

_____
Plaintiff/Petitioner (first, middle, last)

vs.

_____
Defendant/Respondent (first, middle, last)

**ORDER**
☐ **DENYING**
☐ **GRANTING**

**In Forma Pauperis Application**
(Minn Stat. § 563.01)

---

**Order Denying In Forma Pauperis Application**

Based on the affidavit of the applicant _____
and the authority of Minn Stat. § 563.01, the Court FINDS:

☐ The action is frivolous.

☐ The applicant is not found to be indigent and is not entitled to proceed in forma pauperis.

☐ The applicant has not provided the court with enough information to make a finding of indigency. The record shall be kept open until _____ to allow the applicant to submit additional evidence to the court for consideration of the application. If no additional evidence is submitted by this date, the case will be closed.

☐ Other: _____

**IT IS ORDERED THAT:** The applicant's request to proceed in forma pauperis is **DENIED**.

Recommended by: BY THE COURT

_____ _____
Referee of District Court Judge of District Court

Dated: _____ Dated: _____

## Order Granting In Forma Pauperis Application

Based on the affidavit of the applicant _____

and the authority of Minn Stat. § 563.01, the Court FINDS:

1. The applicant's claims are

☐ not frivolous and applicant is financially unable to pay any fees and entitled to proceed in forma pauperis.

OR

☐ not frivolous and applicant does not meet the eligibility criteria under Minn. Stat 563.01, subd. 3(b), but is able to pay a portion of the fees, costs, and security for costs.

**IT IS ORDERED THAT:**

1. The applicant is authorized to proceed in forma pauperis.
2. ☐ The applicant shall not be required to pay any fees, costs and security.

   OR

   ☐ The applicant shall pay _____ towards fees, costs and security, and shall be due immediately upon filing.
3. All necessary pleadings in this proceeding shall be served by the Sheriff of the appropriate county as requested without payment of any fees or costs.
4. If, following commencement of the action, the applicant no longer meets the eligibility criteria under Minn. Stat. § 563.01, subd. 3(b) or becomes able to pay a higher amount than previously ordered, the Court may order reimbursement of all or a portion of the fees, costs, and security for costs.
5. If funds are recovered by either settlement or judgment in this action, the costs deferred and expenses directed by the Court to be paid in this order shall be included in such settlement or judgment and shall be paid directly to the Court Administrator by the opposing party.
6. This order expires one year from the date of this order, unless otherwise amended or altered by the court. The applicant shall reapply if the applicant seeks to proceed in forma pauperis after the one year period.

Recommended by: BY THE COURT

_____ _____

Referee of District Court Judge of District Court

Dated: _____ Dated: _____

CONFIDENTIAL

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: _____ |
|---|---|

_____
Plaintiff/Petitioner (first, middle, last)

vs.

_____
Respondent (first, middle, last)

## Supplemental Affidavit for Proceeding In Forma Pauperis

(Minn. Stat. §563.01)

1. I am a party in this action and make this request in good faith.
2. (Check one of the following:)

○ An order allowing me to proceed *in forma pauperis* without paying filing fees, service and publication fees, and copy fees has previously been issued in this case. OR

○ I have completed and attached an "Affidavit for Proceeding *In Forma Pauperis*."

3. I am asking for an order directing payment of the following costs by the state courts:

a. ☐ Witness/expert for: _____

☐ Trial ☐ Deposition

Name and address of witness: _____

_____

_____

I expect this witness to provide the following evidence or testimony (please give a general description):

_____

I estimate the costs for this witness to be:

Subpoena _____

Service Fee _____

Mileage _____

Attendance Fee _____

Other _____ _____

b. ☐ Transcript expenses:

Date of hearing, trial or deposition: _____

I need a copy of this transcript for the following reasons:

_____

I estimate the costs of obtaining this transcript to be:

Court reporter fees _____

Copy fees _____

Other _____ _____

c. ☐ Other expenses:

_____

These expenses are necessary because:

_____

Estimated costs _____

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____ _____

Signature

_____

County and State where signed

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: General |
|---|---|

_____
Petitioner (first, middle, last)

vs.

_____
Respondent (first, middle, last)

## Supplemental Order for Proceeding In Forma Pauperis

(Minn Stat. § 563.01)

Upon the affidavit of _____ and based on the authority of Minn. Stat. § 563.01, the Court makes the following Findings of Fact and Conclusions of Law:

☐ Petitioner's claim is not frivolous, and petitioner is entitled to proceed under Minn. Stat. § 563.01.

☐ _____ is a witness to this case, has evidence material and necessary to this case and is within the State of Minnesota.

☐ In order to adequately prepare, present or decide an issue presented by this action, it is necessary to depose _____ and prepare a transcript of that deposition.

☐ In order to adequately prepare, present or decide an issue presented by this action, it is necessary to obtain a transcript of the hearing, trial, or deposition held on _____ .

☐ Other: _____

☐ Applicant is not entitled to expenses.

**IT IS ORDERED:**

The following costs to be paid by the state courts:

☐ Witness expenses incurred in subpoenaing _____ and the fees and costs of this witness not to exceed $ _____ .

☐ Deposition expenses incurred in deposing _____ and the costs of obtaining a transcript of the deposition not to exceed $ _____ .

☐ Expenses incurred in obtaining a transcript of the hearing, trial, or deposition held on _____ not to exceed $ _____ .

☐ Other: _____

Not to exceed: $ _____ .

☐ If money is recovered in this action, these costs shall be paid directly to the court administrator by the losing party.

☐ The application for payment of expenses is denied.

RECOMMENDED BY:

_____ _____
Referee Date

BY THE COURT:

_____ _____
Judge Date

**Minnesota General Rules of Practice for the District Courts**
With amendments effective January 1, 2020

# TITLE VII. HOUSING COURT RULES--HENNEPIN AND RAMSEY COUNTIES


**Rule 601.** **Applicability of Rules**

**Rule 602.** **Housing Court Referee**

**Rule 603.** **Parties**

**Rule 604.** **Complaint**

**Rule 605.** **Return of Summons**

**Rule 606.** **Filing of Affidavits**

**Rule 607.** **Calendar Call**

**Rule 608.** **Withheld Rent**

**Rule 609.** **Recovery of Premises**

**Rule 610.** **Motions**

**Rule 611.** **Review of Referee's Decision**

**Rule 612.** **Discovery**

## RULE 601. APPLICABILITY OF RULES

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.

***Task Force Comment--1991 Adoption***

*These rules apply only in Hennepin and Ramsey Counties. Housing Courts created by the legislature exist only in those counties.*

*These rules were drafted as a joint effort of legal advisory committees for the Ramsey and Hennepin County Housing Courts. Those committees met on a number of occasions, and these rules are the result of significant drafting efforts and compromise. Those drafting committees included the Housing Court Referee, court administrator, judges, and practitioners of landlord and tenant law in each County. The rules are generally drawn from a current local rule, 4th Dist. R. 13 and the Housing Court Temporary Rules, Rule 17.*

*The Task Force is mindful that Housing Court is currently in existence in only Ramsey and Hennepin Counties, 1989 Minnesota Laws, chapter 328, article 2, sections 17, 18 and 19 (uncodified), and these rules should be reviewed and revised if Housing Courts are used in other districts.*

## RULE 602. HOUSING COURT REFEREE

The housing court referee may preside over all actions brought under Minnesota Statutes, Chapter 504B, criminal and civil proceedings related to violations of any health, safety, housing, building, fire prevention or housing maintenance code, escrow of rent proceedings, landlord and tenant damage actions, and actions for rent and rent abatement.

A party may request that a judge hear a case by filing such request in writing with the court administrator at least 24 hours before the scheduled hearing date.

(Amended effective January 1, 2020.)

***Advisory Committee Comment--1999 Amendments***

*The former chapters 504 and 566 were consolidated into and replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference. (Added effective January 1, 2000.)*

*Task Force Comment--1991 Adoption*

*The procedure for removal of a referee assigned in Housing Court is intended to be different, due to the exigencies of practice in that court, from the procedure created by Minn. Gen. R. Prac. 107.*

## RULE 603. PARTIES

An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing. No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

*Task Force Comment--1991 Adoption*

*The Task Force expresses no opinion about whether or the extent to which the role of lay advocates constitutes the unauthorized practice of law. See Minnesota Statutes, section 481.01, et seq. (1990).*

## RULE 604. COMPLAINT

**(a) Contents of Complaint.** The plaintiff in an eviction action case shall file with the court administrator a complaint containing the following:

(1) A description of the premises including a street address;
(2) The legal owner of the property or other person entitled to possession of the premises;
(3) A statement of how plaintiff has complied with Minnesota Statutes, section 504B.181, by written notice to the defendant, by posting or by actual knowledge of the defendant;
(4) The facts which authorize recovery; and,
(5) A request for return of possession of the property.

**(b) Signature.** The complaint shall be signed by the plaintiff or the plaintiff's authorized agent or a duly licensed lawyer.

**(c) Termination.** If the complaint contains allegations of holding over after termination of the lease, a copy of the termination notice, if any, must be attached to the complaint or provided to defendant or defendant's counsel at the initial appearance, unless

the plaintiff does not possess a copy of the notice or if the defendant at the hearing acknowledges receipt of the notice.

**(d) Breach.** If the complaint contains allegations of breach of the lease or rental agreement, a copy of the lease or rental agreement, if any, must be attached to the complaint or provided to defendant and defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy.

(Amended effective July 1, 2019.)

***Advisory Committee Comment--1999 Amendments***

*The former statute section 504.22 was replaced by a new statute section 504B.181. This change is not intended to have any substantive effect other than to correct the statutory reference. (Added effective January 1, 2000.)*

## RULE 605. RETURN OF SUMMONS

All summons shall be served in the manner required by Minnesota Statutes, Chapter 504B, and the affidavit of service shall be filed with the court by 3:00 o'clock p.m., 3 days before the hearing, excluding intervening Saturdays, Sundays, or legal holidays, or the matter may be dismissed. The affidavit must contain the printed or typed name of the person who served the summons.

(Amended effective January 1, 2020.)

***Advisory Committee Comment--1999 Amendments***

*The former chapter 560 was replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference.*

## RULE 606. FILING OF AFFIDAVITS

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff's lawyer shall:

(1) file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state, and

(2) file an affidavit stating that a copy of the summons and complaint has been mailed to the defendant at the defendant's last known address or that such an address is unknown to the plaintiff.

Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. A separate affidavit shall be filed stating that the summons has been posted and the date and location of the posting.

(Amended effective January 1, 1998.)

***Advisory Committee Comment--1999 Amendments***

*This rule is amended to conform the service requirements to the service provisions of Minnesota Statutes, section 504B.331 (Supp. 1999). The procedure of the revised rule also streamlines the procedure for issuance, service, and filing of process, and should permit service to be accomplished at a lower cost. (Amended effective January 1, 2000.)*

## RULE 607. CALENDAR CALL

At the first call of the calendar the parties shall specify whether the case is a default or for trial, and if for trial, whether by court or jury. When each case is called for hearing, the defendant shall be asked whether the defendant admits or denies the charges in the complaint. If a jury trial is demanded, the jury fee must be paid before the jury is impaneled.

(Amended effective July 1, 2019.)

## RULE 608. WITHHELD RENT

In any eviction action case where a tenant withholds rent in reliance on a defense, the defendant shall deposit forthwith into court an amount in cash, money order or certified check payable to the District Court equal to the rent due as the same accrues or such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.

(Amended effective July 1, 2019.)

## RULE 609. RECOVERY OF PREMISES

A writ of recovery and order to vacate shall issue within 24 hours after the entry of judgment, excluding Saturdays, Sundays and legal holidays, unless a stay authorized by law is specifically ordered by the court.

(Amended effective July 1, 2019.)

## RULE 610. MOTIONS

Any motion otherwise allowed by the Minnesota Rules of Civil Procedure may be made by any party orally or in writing at any time including the day of trial. Whenever possible, oral or written notice of any dispositive motions and the grounds therefore shall be provided by the moving party to all parties before the hearing.

All motions shall be heard by the court as soon as practicable. The court may grant a request by any party for time to prepare a response to any motion for good cause shown by the requesting party or by agreement of the parties.

The requirements of service of notice of motions and any time periods set forth in the Minnesota Rules of Civil Procedure and Minnesota General Rules of Practice 115 do not apply.

(Amended effective January 1, 2020.)

## RULE 611. REVIEW OF REFEREE'S DECISION

**(a) Notice.** In all cases except conciliation court actions, a party not in default may seek review by a judge of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator. The notice must be served and filed within 10 days after an oral announcement in court by the referee of the recommended order or, if there is no announcement of the order in court, within 10 days after service by electronic means or mail of the adopted written order. Service by mail of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the last known address of the petitioner. Service of the notice of review shall be in accordance with Rule 14 of these rules.

A judge's review of a decision recommended by the referee shall be based upon the record established before the referee. Upon the request of any party, a hearing shall be scheduled before the reviewing judge.

**(b) Stays.** In civil cases, filing and service of a notice of review does not stay entry of judgment nor vacate a judgment if already entered unless the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of bond and payment(s). The decision to set or waive a bond or payment(s) in lieu of bond shall be based upon Minn. R. Civ. App. P. 108.02. A hearing on a bond or payment(s) in lieu of bond shall be scheduled before the referee, and the referee's order shall remain in effect unless a judge modifies or vacates the order.

In criminal cases, the execution of judgment or sentence shall be stayed pending review by the judge.

**(c) Transcripts.** The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis.

Any transcript request by the petitioner must be made within one day, excluding weekend days and legal holidays, of the date the notice of review is filed. The transcript must be provided within 7 days after its purchase by the petitioner.

For good cause the reviewing judge may extend any of the time periods described in this Rule 611(c).

(Amended effective January 1, 2020.)

## RULE 612. DISCOVERY

Because of the summary nature of proceedings in Housing Court, the parties shall cooperate with reasonable informal discovery requests by another party.

Upon the request of any party to a matter scheduled for trial, the presiding referee or judge may issue an order for an expedited discovery schedule.

## CHAPTER III: SUBJECT MATTER JURISDICTION

### A. MINN. STAT. § 504B.285: HOLDING OVER, BREACH, AND RENT

Minn. Stat. § 504B.285 (formerly § 566.03), Subd. 1 provides the most common basis for subject matter jurisdiction:

1. Holding over after sale on an execution or judgment, expiration of the redemption period following mortgage foreclosure, or termination of a contract for deed.

2. Holding over after expiration of the term of the lease.

3. Breach of lease.

4. Nonpayment of rent.

5. Holding over after termination of the tenancy by notice to quit.

The landlord may combine actions for nonpayment of rent and material lease violations under § 504B.285 (formerly § 566.03), subd. 5. These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violation of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violation claim. The tenant is not required to pay into court outstanding rent, interest or costs to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord.

A tenant cannot bring an unlawful detainer (eviction) action against the landlord who has wrongfully reentered the premises. The tenant's remedy is provided by the lockout statute, Minn. Stat. § 504B.375 (formerly § 566.175). *Berg v. Wiley*, 303 Minn. 247, 250-51, 226 N.W.2d 904, 906-07 (1975). (*Berg I*).

A state court does not have jurisdiction over an unlawful detainer (eviction) action involving the right of an enrolled member of an Indian tribe to possession of property held in trust for Indians by the United States. *White Earth Housing & Redevelopment Authority v. J.F.*, No. C8-91-224 (Minn. Dist. Ct. 9th Dist. Feb. 5, 1992) (Appendix 24); *All Mission Indian Housing Authority v. Silvas*, 680 F. Supp. 330 (C.D. Cal. 1987); 28 U.S.C. § 1360(b).

In *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996) the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (formerly unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord was entitled to the rent increase and the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues. *But see Duling Optical Corp. v. First Union*

*Management, Inc.*, No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision: affirmed the district court's conclusion in a separate damages action that it lacked jurisdiction to award attorney's fees for separate eviction (formerly unlawful detainer) actions, since the issue of attorney's fees should have been decided in the unlawful detainer actions).

B. MINN. STAT. § 504B.301: UNLAWFUL DETENTION AND DRUG SEIZURES

Minn. Stat. § 504B.301 (formerly § 566.02) provides jurisdiction for unlawfully detaining the premises after having entered unlawfully, forcibly, or peaceably. Unlawful detention includes a seizure on residential rental property of contraband or a controlled substance manufactured, distributed or acquired in violation of Chapter 152 (Prohibited Drugs) and with a retail value of $100.00 or more, if the tenant does not have a defense under § 609.5317. *See* discussion, *infra*, at VI.G.16. While Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1 applies to tenants, this section would cover occupants who are not tenants in addition to tenants. *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction by owner of her adult daughter who was not a rent-paying tenant).

## CHAPTER IV: PERSONAL JURISDICTION

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## CHAPTER V: PROCEDURE

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C. IMPROPER SERVICE (LACK OF PERSONAL JURISDICTION)

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   a0. *Challenges to affidavits of service,* VI.C.2.a0
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3. It is unclear whether defendants can be designated as "John" or "Jane Doe", VI.C.3
4. Subtenants, VI.C.4

1. Requirements for personal jurisdiction

"The summons shall be served . . . in the manner provided for service of a summons in a civil action in the district court." Minn. Stat. § 504B.331 (formerly § 566.06). *See* Minn. R. Civ. P. 4. The summons and complaint shall be served not less than seven (7) nor more than fourteen (14) days before the initial court appearance. Minn. Stat. §§ 504B.321 (formerly § 566.05), 504B.331 (formerly § 566.06). The time period excludes the date of service but includes the date of the initial hearing. Minn. Stat. § 645.15. *See Township Bd. v. Lewis*, 305 Minn. 488, 490-92, 234 N.W.2d 815, 817-18 (1975).

Minn. Stat. § 504B.331 (formerly § 566.06) provides for the methods of service:

504B.331 Summons; How Served.

(a) The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action.

(b) 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:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

The statute can be broken down into three types of service:

1. By delivery to the defendants.

2. If the defendants cannot be found in the county, substituted service by delivery at the defendant's residence, to a family member or other person of suitable age and discretion residing at the defendant's residence,

3. If the defendants cannot be found in the county, substituted service by mail and posting, if:

   (a) for the two types of tenants:

      (1) for residential, 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., or

      (2) for non-residential, no person actually occupies the property, and

(b) the plaintiff or counsel files an affidavit (1) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (2) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.

The summons may be served by any person not named a party to the action. See also Minn. R. Civ. P. 4.02. If the defendant is confined to a state institution, by serving also the chief executive officer at the institution. Minn. R. Civ. P. 4.03(a).

1a. Strict compliance required

Strict compliance with service requirements, rather than mere substantial compliance, is a precondition to personal jurisdiction,. *Color-Ad Packaging, Inc. v. Kapak Industries, Inc.*, 285 Minn. 525, 526 n.1, 172 N.W.2d 568, 569 n.1 (1969), overruled on other grounds by *In re Lake Valley Twp. Bd., Traverse Cnty. v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975); *Bloom v. American Express Co.*, 222 Minn. 249, 253, 23 N.W.2d 570 (1946); *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649–50 (Minn. Ct. App. 2002); *B&J Property Management v. Gates*, No. UD-01970602519 (Minn. Dist. Ct. 4th Dist. June 12, 1997) (Appendix 247) (Dismissal for improper service, failure to register trade name, and failure to attach notice to quit and lease to complaint).

2. Specific defenses

a0. *Challenges to affidavits of service*

A party challenging an affidavit of service must overcome the presumption of service by clear and convincing evidence. *Drews v. Fannie Mae,* 850 N.W.2d 738 (Minn. Ct. App. 2014); *Imperial Premium Finance, Inc. v. GK Cab Co., Inc.,* 603 N.W.2d 853 (Minn. Ct. App. 2000).

a. *No service*

Minn. Stat. § 504B.331 (formerly § 566.06); *Karnis v. Rayford*, No. UD-1940714513 (Minn. Dist. Ct. 4th Dist. Aug. 15, 1994) (personal service proven by a preponderance of the evidence) (Appendix 37); *Koop v.* _____, No. 27-CV-HC-09-1163 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2009) (Appendix 606) (eviction dismissed for improper service, where action listed four named defendants and affidavit of service claimed service on "John Doe"). If the process server and the defendant are within speaking distance of each other and the process server takes such action as to convince a reasonable person that personal service is being attempted, the defendant cannot avoid service simply by refusing to accept the summons. *Nielsen v. Braland*, 264 Minn. 481,484, 119 N.W.2d 737, 739 (1963).

b. *Service less than seven (7) days before the initial hearing*

The summons must be served seven days before the hearing, but not to the exact hour. *Central Internal Medicine Assoc. P.A. v. Chilgren*, No. C2-00-36, 2000 WL 987858 (Minn. Ct. App. July 18, 2000) (unpublished). Minn. Stat. § 504B.331 (formerly § 566.06).

In *Bray v.* _____, No. 27-CV-HC-16-27 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2016) (Appendix 766), the court granted dismissal where the summons and complaint were posted less than 7 days and tenant and son testified credibly and server did not testify in support of affidavit of service. *See*

*Homlquist v.* _____, No. HC 050927536 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2005) (Appendix 651) (eviction dismissed for improper service time, improper notice, and waiver of notice by acceptance of rent); *Bratton v. Cobb*, No. 8C-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (Appendix 380) (parties agreed there was short service but executed move out agreement; case expunged due to short service); *Judge v. Rio Hot Properties, Inc.,* No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing); *Peart v. Peloquin,* No. C3-90-430 (Minn. Dist. Ct. 8th Dist. May 25, 1990) (court dismissed action when the tenant received the summons and complaint only five days before the hearing. (Appendix 2.A).

c. *Service on legal holidays.*

Minn. Stat. §645.44, subd. 5 prohibits services on legal holidays. Service on Sunday had been prohibited by § 624.04, but it was repealed in 2005.

d. *Service by a named plaintiff or agents*

Service by the plaintiff is improper. Minn. R. Civ. P. 4.02. *Williams v. McCrimmon*, No. UD-1991207535 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1999) (Appendix 428) (Improper service by delivery to a person of suitable age and discretion, who lives in Iowa and was only a temporary guest of the tenant; service on the tenant was made by the plaintiff; action dismissed). *See Landgren v. Pipestone County Board of Commissioners*, 633 N.W.2d 875 (Minn. Ct. App. 2001) (sheriff may not serve his own action).

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 (emphasis added). A court should carefully scrutinize service by persons related to or employed by the plaintiff who are not "wholly disinterested and free from bias" related to the action.

A number of courts have held that partners, managers, caretakers, and other employees of the plaintiff are not authorized to serve defendants because they are not wholly disinterested in the case. In *Hedlund v. Potter*, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991), the caretaker for the landlord served the tenant with the summons and complaint. The caretaker had signed the lease, and was authorized to sign leases, collect rent, maintain the premises, and receive service of process on behalf of the landlord under Minn. R. Civ. P. 4.03. *Id.* at 2. The court held that service was improper under Minn. Stat. § 566.06 (now § 504B.331) and Minn. R. Civ. P. 4.02, which states that the summons must be served by any person not named a party in the action. *Id.* at 4. (Appendix 4.C.2). *See DuFour v.* _____, No. 27-CV-HC-13-78 (Minn. Dist. Ct. 4th Dist. Jan. 16, 2013) (Appendix 771) (dismissal for service by employee); *Meldahl and SJM Prop. v.* _____, No. 1050923509, Order on Referee Review at 12-14 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord); *MJD Enterprises, Inc. v.* _____, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called

## Rule 3. Commencement of the Action; Service of the Complaint; Filing of the Action

### 3.01 Commencement of the Action

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant; or

(b) at the date of signing a waiver of service pursuant to Rule 4.05; or

(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

(Amended effective July 1, 2013; amended effective July 1, 2015; amended effective July 1, 2018.)

***Advisory Committee Comment - 2018 Amendments***

*Rule 3.01 is amended to implement the amendment to Rule 4.05, which replaces the somewhat unreliable procedure involving the "Acknowledgment of Service" form with a more straightforward procedure relying on a "Waiver of Service" form. Rule 3.01 defines the date of commencement of an action using the waiver of process procedure.*

### 3.02 Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

***Advisory Committee Comments - 2015 Amendments***

*This rule is amended to add the explicit provision for consent to service by any means in subdivision (b), not only service by mail. If the party to be served consents to service, the service is effective and constitutionally sound regardless of method. Thus, a party may consent to service by ordinary electronic mail even though the rules do not otherwise provide for it.*

## § 5.1 ACTION COMMENCES ON SERVICE, NOT FILING, OF SUMMONS AND COMPLAINT

"Service of process is the means by which a court obtains personal jurisdiction over a defendant." *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016). A civil lawsuit in Minnesota is generally commenced on the service, not the filing, of the summons and complaint. *See* MINN. R. CIV. P. 3.01 (commencement of the action); 3.02 (a copy of the complaint must accompany the summons, except when service is made by publication). Practitioners must note, however, that pursuant to Minnesota Rule of Civil Procedure 81.01, some special causes of action may require more than mere service of the complaint to be deemed "commenced." These special causes of action are set out in Appendix A to the Minnesota Rules of Civil Procedure and include mechanic's lien foreclosure actions, tax court proceedings, and marital dissolutions, among other "special proceedings." Practitioners should carefully review the list of statutes and special proceedings found in Appendix A and check the Minnesota General Rules of Practice for the District Courts to ensure that their lawsuit does not fall outside the general rule that an action commences upon service.

For the purposes of service, a "summons" is "simply any document that commences a civil action." *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 475 (Minn. 2013). "A 'summons' is '[a] writ or process commencing the plaintiff's action and requiring the defendant to appear and answer.'" *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 697 (Minn. 2012) (alteration in original) (quoting BLACK'S LAW DICTIONARY 1574 (9th ed. 2009)); *see also Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 768 (Minn. 1977) (concluding that an appeal in an assessment proceeding initiates a civil action); *Warner Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) ("[a]s a general rule a civil action is commenced ... when personal service upon the defendant is actually made as prescribed by statute or rule."). Under Minnesota Rule of Civil Procedure 4, the summons or other process is the document that invokes the jurisdiction of the court and compels the defendant to appear. *Skyline*, 835 N.W.2d at 475. Pursuant to Minnesota Rule of Civil Procedure 4.01, the summons must: (1) state the name of the court and the names of the parties; (2) be signed by the plaintiff or plaintiff's attorney; (3) include the time within which the defendant is required to answer; and (4) include a statement that notifies the defendant that if he or she fails to respond, judgment will be rendered against him or her. The failure to properly serve a defendant with a summons and complaint results in a lack of personal jurisdiction. *Wick v. Wick*, 670 N.W.2d 599, 603–04 (Minn. Ct. App. 2003). Practitioners should consult the summons form found in the Appendix of Forms in the Minnesota Rules of Civil Procedure.

Pursuant to the 2018 amendments to Minnesota Rule of Civil Procedure 3.01, which took effect on July 1, 2018, a civil action is commenced: (1) when the summons is served on the defendant; (2) on the date of the signing of a waiver of service pursuant to Minnesota Rule of Civil Procedure 4.05; or (3) when the summons is delivered to the sheriff in the county where the defendant resides for service, "but such delivery shall be ineffectual" unless the sheriff actually serves the summons on the defendant or a first publication of the summons is made. MINN. R. CIV. P. 3.01. The advisory committee notes to the 2018 amendments to Minnesota Rule of Civil Procedure 3.01 state that the rule was amended to implement amendments to Minnesota Rule of Civil Procedure 4.05, which replaces the "somewhat unreliable" older procedure involving "Acknowledgement of Service." Under this earlier version of Minnesota Rule of Civil Procedure 4.05, service could be made by mail, but was only effective to the extent that a defendant signed and returned an acknowledgement.

This rule can be a stumbling block for practitioners more familiar with the federal rule and the rule in many other jurisdictions, under which a lawsuit commences upon the *filing* of the summons and complaint. *See* FED. R. CIV. P. 3 ("A civil action is commenced by filing a complaint with the court.").



### PRACTICE TIP

Because it can be challenging to achieve service, practitioners are strongly cautioned to monitor applicable statutes of limitations when contemplating commencing an action, understanding that service can be difficult to achieve and that the statute of limitations may run while service is being attempted.

## § 5.2 ACCOMPLISHING SERVICE

As noted, Minnesota Rule of Civil Procedure 3.01 authorizes three forms of service of the summons and complaint: (1) personal service; (2) waiver of service; and (3) service through the sheriff, effective as of the date the summons was delivered to the sheriff, provided that within 60 days, the sheriff actually serves the summons and complaint or the first publication of the summons is made. *See* MINN. R. CIV. P. 3.01; 3.02; 4.03; 4.05. "Whether service of process was effective . . . is a question of law . . . ." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). Service of process in a manner not specifically authorized is ineffective. *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. Ct. App. 1999), *rev. denied* (Minn. July 28, 1999).

Personal service of the summons and complaint may be made by a sheriff or "any person" not less than 18 years old and not a party to the action, "unless otherwise ordered by the Court." *See* MINN. R. CIV. P. 4.02. A lawyer is not prohibited from serving a summons and complaint in an action in which he or she represents a plaintiff. *See Melin v. Aronson*, 285 N.W. 830 (Minn. 1939) (attorney service of a summons is the same as service by any other private citizen who is not a party to the case). Minnesota lawyers, however, generally rely on professional process servers or sheriffs, both of whom will execute an affidavit of service and be available for later testimony should service or their affidavits be challenged. In the face of an affidavit of service, the burden is on the defendant to show improper service. *See DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 274 (Minn. 2016) (noting that "[i]t is well-settled that the ultimate burden of proving insufficient service of process is upon the defendant," but the plaintiff must first submit evidence that service was effectively made, and accordingly, "the plaintiff bears the initial burden of production, and the defendant bears the ultimate burden of persuasion"). Relying on a third party to serve a summons and complaint avoids the possibility of the lawyer becoming a witness regarding questions of proper service.



### ETHICAL CONSIDERATIONS

Even though a lawyer is not prohibited from serving a summons and complaint in an action in which he or she represents the plaintiff, the decision to do so should be considered carefully. Minnesota Rule of Professional Conduct 3.7 prohibits a lawyer from acting as an advocate at a trial in which the lawyer is likely to be a necessary witness unless the testimony relates to an uncontested matter. If the lawyer participates in the personal service of the defendant, the rules relating to transactions with persons other than clients apply. Minnesota Rule of Professional Conduct 4.1 prohibits the lawyer from making false statements of fact or law. Minnesota Rule of Professional Conduct 4.3 prohibits the lawyer from stating that he or she is disinterested, prohibits the giving



## ETHICAL CONSIDERATIONS, CONTINUED

of legal advice to an unrepresented person, and requires the lawyer to disclose that his or her client's interests are adverse to the unrepresented person.

If the lawyer uses legal assistants, secretaries, investigators, or process servers to accomplish service, Minnesota Rule of Professional Conduct 5.3 requires the lawyer to make reasonable efforts to ensure that all work performed by non-lawyers is compatible with the professional obligations of the lawyer. The lawyer must give all non-lawyer assistants, including independent contractors, appropriate instruction concerning the ethical aspects of their employment.

To serve a summons and complaint through the sheriff, the documents are delivered to the sheriff in the county in which the defendant resides. *See* MINN. R. CIV. P. 3.01(c). The lawsuit is deemed "commenced" upon delivery of the summons and complaint to the sheriff, but only if the summons and complaint are actually served within 60 days of delivery to the sheriff or the first publication of the summons. The Minnesota Supreme Court recently determined that faxing a summons and complaint to a sheriff is not "delivery" to the sheriff within the meaning of Minnesota Rule of Civil Procedure 3.01. *See Cox v. Mid-Minnesota Mut. Ins. Co.*, 909 N.W.2d 540, 546 (Minn. 2018). In *Cox*, the plaintiff faxed copies of his summons and complaint to sheriffs in two Minnesota counties, both of whom acknowledged receiving the documents. The defendant contended that the words in the rule regarding "delivery" to the sheriff meant personal delivery and precluded fax delivery. Following an exhaustive analysis of the word "delivery," the Minnesota Supreme Court concluded that documents had to be personally delivered to the sheriff. The sheriff eventually served the defendant and the court held that the case commenced when that occurred, although it was "cold comfort" to the plaintiff as, by that time, the statute of limitations had run. *Id.* at 547.



## PRACTICE TIP

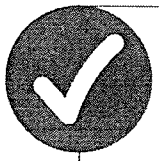
Practitioners are cautioned to carefully track the service of the summons and complaint through the sheriff's office so that they can determine if service has actually been made within the time permitted. In metropolitan counties in Minnesota, the resources of the sheriffs' departments for serving process can be overtaxed. In addition, many sheriffs' departments simply do not have the resources available to locate difficult-to-find defendants, to serve papers at odd times or on a highly expedited basis, or to make repeated attempts at service. In other words, service of the summons may take a back seat to more pressing law enforcement work.

If service is not made within the prescribed 60-day time frame, the suit will not be considered "commenced." This is particularly problematic if there is a looming expiration of a governing statute of limitations. *See Johnson v. Husebye*, 469 N.W.2d 742 (Minn. Ct. App. 1991) (affirming the dismissal of an action as untimely when the sheriff could not complete service within the 60 days permitted under the rule). In addition, practitioners must remember that delivery of the summons and complaint into the hands of a private process server does not trigger "commencement" under the rule as does delivery into the hands of a sheriff. When employing a private process server, the lawsuit does

not commence until the summons and complaint are served according to Minnesota Rule of Civil Procedure 4.03. Rule 4.03 describes how personal service within the state of Minnesota is to be made: (1) upon individuals; (2) upon partnerships, associations, and corporations; (3) upon the state of Minnesota; and (4) upon municipal or other public corporations. The procedures for service described in Rule 4.03 must be strictly followed or the practitioner risks having the lawsuit dismissed. In addition, practitioners should always check Appendix A to the Minnesota Rules of Civil Procedure and the Minnesota General Rules of Practice for the District Courts to determine if there are special rules of service that apply to their particular causes of action.

Service by publication of the summons and complaint may be made: (1) when a resident leaves the state with the intent to defraud creditors or to avoid service; (2) when the plaintiff has a lien on property within the state and the defendant is a resident who has either left the state or cannot otherwise be found or is a nonresident or foreign corporation, partnership, or association; (3) when the action is for dissolution of marriage, and the court has ordered publication of the summons and petition for dissolution; (4) when the subject of the action is real or personal property within the state in which the defendant clams a lien or interest, and the relief requested consists solely in excluding the defendant from any such lien or interest; and (5) when the action is to foreclose a mortgage or enforce a lien on real estate within the state. *See* MINN. R. CIV. P. 4.04.

Service by publication requires that the plaintiff file the complaint with the court, together with an affidavit describing how the case fits within the reasons enumerated by the rule for service by publication. The summons is published for three weeks, and service is deemed complete 21 days after the first publication. The complaint is not published, only the summons.



**PRACTICE TIP**

Again, because of the length of time required for service by publication, practitioners are cautioned to carefully watch applicable statutes of limitations.

The publication responsible for publishing the summons will generally provide the practitioner with an affidavit of service by publication, appending a copy of the published summons. That affidavit should be filed with the court as proof that publication for the requisite three weeks has taken place. Minnesota Rule of Civil Procedure 4.04(a) is subject to the strict compliance standard because "it is in derogation of the common law." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

Minnesota Rule of Civil Procedure 4.05 imposes on any individual, corporation, or association subject to service the duty to avoid unnecessary service expenses. To promote that goal, the plaintiff may request that the defendant waive service of the summons. When requesting a waiver, the plaintiff must: (1) make the request in writing; (2) enclose a copy of the complaint, two copies of Form 22B (entitled "Waiver of Service of Summons," available at <www.mncouts.gov>), or a substantially similar form; and (3) include a pre-paid means to return the form.



### PRACTICE TIP

An example of a substantially similar form is Form 22A. Attorneys should not create their own form; they should use the forms available at <www.mncourts.gov>.

Form 22B informs the defendant that they have 30 days to return the waiver (60 days, if sent outside the United States) and also informs the defendant that failing to execute the waiver without good cause may result in the court imposing later costs of service, and attorney fees and costs if a motion is required to collect the service expenses. In a nutshell, Minnesota Rule of Civil Procedure 4.05 employs a carrot and stick approach to service, providing that the waiving defendant has 60 days after a waiver request was sent to answer the complaint (90 days if sent outside the United States), but can be tagged with later service costs if the defendant refuses to cooperate.



### ETHICAL CONSIDERATIONS

Because of the timing issues involved with delivering the summons and complaint to the sheriff for service or sending the summons and complaint with an acknowledgement of service for the defendant to sign, in any case in which the statute of limitations is about to expire, it is very important for the lawyer to make sure the defendant is properly served in a timely manner. Failure to properly serve the defendant will implicate Minnesota Rules of Professional Conduct 1.1 and 1.3, which require a lawyer to be familiar enough with legal and procedural issues involved to represent the client competently and to act with reasonable diligence and promptness in representing the client.

The Minnesota Rules of Civil Procedure do not *require* the defendant to sign a waiver, and service is not deemed effective until the waiver is signed. *See* MINN. R. CIV. P. 4.05(d). Consequently, as under the old mail service rule, practitioners must *always* keep an eye on any potential statute of limitations issues.



### JUDICIAL CONSIDERATION

Determining when a lawsuit is commenced can be a trap for the unwary, especially where the statute of limitations is involved. Plaintiff's counsel must be careful to meet the service requirements, and defense counsel should investigate this carefully for a possible motion to dismiss.



### ETHICAL CONSIDERATIONS

If a lawyer represents a defendant who has received an acknowledgement of service by mail, is the lawyer required to counsel the client to accept service? Minnesota Rule of Professional Conduct 3.2 requires the lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. This does not necessarily mean that the lawyer has to advise the client to acknowledge service. If there is a potential statute of limitations defense or other legal basis for declining, it may be in the client's best interest to not acknowledge service. If there is no reason not to acknowledge service, the client may do so to avoid the taxation of the costs of personal service. The advantages and disadvantages of acknowledging service should be discussed with the client. Minnesota Rule of Professional Conduct 1.4(b) requires the lawyer to explain a matter to the client to the extent reasonably necessary to permit the client to make an informed decision regarding the matter. Minnesota Rule of Professional Conduct 1.4(a)(2) requires the lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished.

Minnesota common law imposes the requirement that service of a summons and complaint be made "knowingly and intentionally." *See Lee v. Skrukrud*, 42 N.W.2d 544, 545 (Minn. 1950). This requirement is not found in Minnesota Rule of Civil Procedure 4, but has been construed to be implicit in the rule. Thus, if a summons and complaint "finds its way" to the intended recipient, the fact that the recipient has actual notice of the lawsuit is insufficient to prevent dismissal for lack of jurisdiction if there is evidence that the plaintiff did not substantially comply with the Rule 4 requirement. *See Thiele v. Stich*, 425 N.W.2d 580, 584 (Minn. 1988). For example, giving an envelope containing a summons and complaint to someone who does not know what the envelope contains and does not know that they are serving a summons and complaint does not constitute "knowing and intentional" service, and accordingly, does not substantially comply with Rule 4. *See Smith v. Flotterud*, 716 N.W.2d 378 (Minn. Ct. App. 2006).

Generally, an affidavit of service is "strong evidence of proper service" unless rebutted by "production of clear and convincing evidence" to the contrary. *Peterson v. Eishen*, 495 N.W.2d 223, 226 (Minn. Ct. App. 1993), *aff'd* 512 N.W.2d 338 (Minn. 1994) (finding that an error on an affidavit of service was not fatal because of an error in the address since the defendant was personally served; if substitute service had been made, the place of service would have been critical).

## § 5.3 STRATEGIC CONSIDERATIONS REGARDING SERVICE, BUT NOT IMMEDIATE FILING, OF THE ACTION

Minnesota Rule of Civil Procedure 5.04 provides that any action not filed within one year of the date of service is deemed dismissed with prejudice against all parties unless the parties sign a stipulation to extend the filing period. This rule does not apply to family court cases governed by the Minnesota General Rules of Practice 301 through 378. MINN. R. CIV. P. 5.04. It does apply even when the defendant is in default. *Zimmerle v. X-Pole USA, LLC*, No. A16-0217, 2016 WL 3961983, at *1 (Minn. Ct. App. July 25, 2016).

The Minnesota Supreme Court has construed this relatively recent statute. In *Gams v. Houghton*, 884 N.W.2d 611 (Minn. 2016), the Minnesota Supreme Court concluded that: (1) Minnesota Rule of Civil Procedure 60.02 (relief from

judgment) applies to a "deemed dismissal" pursuant to Minnesota Rule of Civil Procedure 5.04(a); (2) application of Rule 5.04(a) in that context does not violate procedural due process; and (3) when considering a Rule 60.02 motion implicating Rule 5.04(a), a court must make specific findings as to whether every prong of the four-factor test described in *Finden v. Klass*, 128 N.W.2d 748, 750 (Minn. 1964) has been satisfied. Pursuant to *Finden*, a court should examine whether: (1) there is a reasonable defense on the merits; (2) the party has a reasonable excuse for the actions; (3) the party has acted with due diligence after notice of the entry of judgment; and (4) the party shows that no substantial prejudice will result to the other party. *Finden*, 128 N.W.2d at 750. In *Cole v. Wutzke*, 884 N.W.2d 636 (Minn. 2016), the Minnesota Supreme Court rejected defendant's argument that Minnesota Rule of Civil Procedure 5.04(a) was akin to a statute of limitations and emphasized that it was a procedural rule implemented for the orderly conduct of court business. The court concluded that the analysis described in *Finden* applied to determining if a party was entitled to relief from judgment due to mistake when a suit was dismissed for failure to file within one year. The Minnesota Supreme Court found that the district court looked only at the "reasonable excuse" prong of the *Finden* test and remanded for a consideration of all of the *Finden* factors.

Additionally, when seeking relief under Minnesota Rule of Civil Procedure 60.02 from a dismissal for failure to file a lawsuit within one year of service, courts will apply the one-year motion filing deadline under Rule 60.02. *Johnson v. City of Duluth*, 903 N.W.2d 1, 6 (Minn. Ct. App. 2017), *rev. denied* (Minn. Dec. 19, 2017). In other words, if a suit is deemed dismissed for failure to timely file, the plaintiff has one year from the date of the deemed dismissal (or two years after the action was commenced by service) to file their motion for relief from the deemed dismissal.

Before this amendment, there was no obligation to ever file a "commenced" lawsuit. Even with the rule change, during the period where the suit has been "commenced" but not filed, there is no open court file and no judicial oversight of the case. Practitioners who want to manage the progress of the case without judicial involvement for the permitted one-year window may prefer this approach. Conversely, practitioners may want to serve a summons and complaint, and then attempt to resolve the matter quickly without the added expense of filing or the costs associated with judicially-imposed conferences or other appearances. Additionally, many parties desire to avoid making their dispute public, and thus avail themselves of this procedure. In some cases, the mere threat of filing the action may be sufficient to trigger meaningful settlement discussions with the defendant. In other cases, the impending expiration of a statute of limitations may prompt service of the action to preserve the plaintiff's rights. Practitioners long-familiar with the old rule, which imposed no deadline on the time within which a suit must be filed, must be very aware of the "dismissal with prejudice" provision of the new rule. The time can be extended by stipulation, but the time to seek such a stipulation should be well in advance of the expiration of the one-year deadline.



### JUDICIAL CONSIDERATION

Even though one side may wish not to file, the other side may file an answer or any other pleading, thereby invoking and inviting judicial case management.

Without an open court file (i.e., an unfiled, but "commenced" lawsuit), practitioners cannot avail themselves of the judicial intervention so often needed in litigation. Further, if the parties reach a settlement for which they will seek enforcement or which would—or should—result in an entry of judgment, it will be necessary to file the case and have a court file created. Entry of judgment and subsequent docketing and post-judgment proceedings will require an open file in district court. When the plaintiff has not done so, the defendant is free to file the action and may choose to do so to trigger court-imposed deadlines, judicial intervention, to bring dispositive motions, or to gain publicity.



## ETHICAL CONSIDERATIONS

The advantages and disadvantages of filing the summons and complaint should be discussed with the client. What best serves the client's objectives? Minnesota Rule of Professional Conduct 1.4(a)(2) requires the lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished. Minnesota Rule of Professional Conduct 1.4(b) requires the lawyer to explain a matter to a client to the extent reasonably necessary to permit the client to make an informed decision regarding the matter. For example, if the defendant has filed the answer, Minnesota Rule of Professional Conduct 1.1, pertaining to competent representation, may require that the summons and complaint be filed so the lawyer will receive all notices from the court about the case. Just like with statutes of limitations, the automatic dismissal with prejudice for failure to file the lawsuit within one year of service is something that every practitioner should be keenly aware. Failure to file within the required time period may subject the lawyer to discipline for failing to represent the client competently, MINN. R. PROF'L CONDUCT 1.1, and/or failing to act with reasonable diligence and promptness in representing a client, MINN. R. PROF'L CONDUCT 1.3.

The decision to file a case promptly after the matter has been commenced through service, or to delay filing, is a strategic decision that the practitioner must make on a case-by-case basis. Any indication that judicial involvement will be necessary, either for resolution of disputed discovery issues (to require mediation of a reluctant party) or to achieve a settlement that can be enforced through contempt or other actions, points toward early filing.



## ETHICAL CONSIDERATIONS

Even though a lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation, Minnesota Rule of Professional Conduct 1.4 requires the lawyer to consult with the client as to the means to be pursued. Thus, all strategic decisions concerning the case should be discussed with the client. Keeping the client informed of the status and progress of the case helps the lawyer avoid potential Rule 1.4 violations for failing to reasonably consult with the client and failing to keep the client reasonably informed about the status of the matter.

## Rule 4. Service

### 4.01 Summons; Form

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

### 4.02 By Whom Served

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

### 4.03 Personal Service

Service of summons within the state shall be as follows:

**(a) Upon an Individual.** Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is an infant under the age of 14 years, by serving also the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

**(b) Upon Partnerships and Associations.** Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

**(c) Upon a Corporation.** Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

**(d) Upon the State.** Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

**(e) Upon Public Corporation.** Upon a municipal or other public corporation by delivering a copy

(1) To the chair of the county board or to the county auditor of a defendant county;

(2) To the chief executive officer or to the clerk of a defendant city, village or borough;

(3) To the chair of the town board or to the clerk of a defendant town;

(4) To any member of the board or other governing body of a defendant school district; or

(5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

**4.04 Service by Publications; Personal Service Out of State**

**(a) Service by Publications.** Service by publication shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent;

(2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(A) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(B) The defendant is a nonresident individual or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

(3) When the action is for marriage dissolution or separate maintenance and the court has ordered service by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that the affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

**(b) Personal Service Outside State.** Personal service of such summons outside the state, proved by the affidavit of the person making the same, shall have the same effect as the published notice provided for herein.

**(c) Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(Amended effective January 1, 1997; amended effective July 1, 2015.)

***Advisory Committee Comment - 1996 Amendment***

*Rule 4.04 is amended to conform the rule to its federal counterpart, in part. The new provision adopts verbatim the provisions for service of process outside the United States contained in the federal rules. This modification is appropriate because this subject is handled well by the federal rule and because it is advantageous to have the two rules similar. This is particularly valuable given the dearth of state-court authority on foreign service of process. Existing portions of the rule are renumbered for clarity.*

***Advisory Committee Comments - 2015 Amendments***

*Rule 4.04 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically, by rule, that notarization is necessary. The difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization, and notarization often places a significant burden on self-represented litigants. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits." Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.*

### 4.041 Additional Information to be Published

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

### 4.042 Service of the Complaint

If the defendant shall appear within 14 days after the completion of service by publication, the plaintiff, within 7 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least 21 days in which to answer the same.

(Amended effective January, 1, 2020.)

*Advisory Committee Comment - 2019 Amendments*

*Rule 4.042 is. amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules - counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.*

*The amendment to Rule 4.042 also lengthens the time to respond to a Complaint served following service of the Summons by publication, to 21 days. This is the same period a party has following other forms of service of the Complaint, and there is no reason to require a shorter period. See Rule 12.01. This amendment is intended to obviate at least some motions for extension of the time to answer that are encountered under the shorter deadline in the previous rule.*

### 4.043 Service by Publication; Defendant May Defend; Restitution

If the summons is served by publication, and the defendant receives no actual notification of the action, the defendant shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for marriage dissolution, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense is sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

### 4.044 Nonresident Owner of Land Appointing an Agent

If a nonresident person or corporation owning or claiming any interest or lien in or upon lands in the state appoints an agent pursuant to Minnesota Statutes, section 557.01, service of summons in an action involving such real estate shall be made upon the agent or the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

### 4.05 Waiving Service of Summons

**(a) Requesting a Waiver.** An individual, corporation, or association that is subject to service under Rule 4.03 has a duty to avoid unnecessary expenses of serving the summons. A plaintiff may request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for a defendant subject to service under Rule 4.03(b)-(e) to the agent authorized to receive service;

(2) be accompanied by a copy of the complaint, two copies of Form 22B or a substantially similar form, and a prepaid means for returning a signed copy of the form;

(3) inform a defendant, using Form 22B or a substantially similar form, of the consequences of waiving and not waiving service;

(4) state the date when the request is sent;

(5) give a defendant 30 days after the request was sent - or 60 days if sent to a defendant outside the United States - to return the waiver; and

(6) be sent by first-class mail or other reliable means.

**(b) Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(1) the expenses later incurred in making service; and

(2) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

**(c) Time to Answer a Waiver.** A defendant who, before being served with process, timely returns a signed waiver need not serve an answer to the complaint until 60 days after the request was sent to that defendant - or until 90 days after it was sent to that defendant outside the United States.

**(d) Results of Filing of a Waiver.** When a plaintiff files a waiver of service, proof of service is not required and these rules apply as if a summons and complaint had been served on the date of signing of the waiver.

**(e) Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(Amended effective July 1, 2018.)

***Advisory Committee Comment - 2018 Amendments***

*Rule 4.05 is completely revamped to replace the somewhat unreliable procedure relying on the "Acknowledgement of Service" form with a more straightforward procedure, used in federal court since 1993, relying on a "Waiver of Service" form. New Rule 4.05 is modeled closely on its federal counterpart.*

*The former procedure created the illusion that valid service could be accomplished by U.S. Mail, but it was a procedure that gave control over the process completely to the defendant and little incentive to a plaintiff to make use of it. This rule does not authorize service by mere mailing - it is necessary for the defendant to waive formal service and return the waiver-of-service form. Service is accomplished and proven by the waiver, not the mailing. Additionally, the new procedure is not limited to delivery by mail or any other means expressly authorized by these rules - it allows valid service to be accomplished by any means that is agreed to the defendant being served - mail, private courier, email, or even social media would all be acceptable if the defendant agreed to waive service under this rule. The only requirement is that the defendant sign and return a waiver-of-service form.*

### 4.06 Return

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the affidavit of any other person making it, by the written admission or acknowledgment of the party served, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(Amended effective August 1, 2000.)

### 4.07 Amendments

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.

Last Updated: June 1, 2020

# MINNESOTA JUDICIAL BRANCH

Information retrieved from MN Courts website. Select the "Find Courts" tab. Then select "Ramsey County/2nd District." Under the "A-Z topics" tab click on "Civil Assignment Office." The following information is under the "Case Scheduling" tab. You can also access the webpage using the following address: http://www.mncourts.gov/Find-Courts/Ramsey/RamseyCivilCourt.aspx#tab03CaseScheduling

## Case Scheduling

Civil Assignment is responsible for all scheduling and general case management of major civil cases. In addition, implied consent cases are scheduled and monitored by Civil Assignment. If your case is assigned to one of the Civil Judges and you wish to schedule a hearing or motion, please call the appropriate telephone number listed below:

Civil Assignment is responsible for all scheduling and general case management of major civil cases. In addition, implied consent cases are scheduled and monitored by Civil Assignment. If your case is assigned to one of the Civil Judges and you wish to schedule a hearing or motion, please select the appropriate telephone number or email listed below:

Hon. Leonardo Castro
(651) 266-8252

Hon. Thomas A. Gilligan, Presiding Judge
(651) 266-8252

Hon. Sara R. Grewing
(651) 266-8307

Hon. John H. Guthmann
(651) 266-8306

Hon. Lezlie O. Marek
(651) 266-8306

Hon. Laura E. Nelson
(651) 266-8309

Implied Consent cases
(651) 266-8309

Last Updated: June 1, 2020

**The Civil Assignment Office is located at the following address:**

Ramsey County Courthouse, Room 170
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
Phone: (651) 266-8253

Hours: Monday - Friday
8:00 a.m. to 4:30 p.m

**Special Term Motions**

If you wish to schedule a motion to be heard before a referee in a case that has been filed in District Court but has not been assigned to a civil judge, please call (651) 266-8248 and a court clerk will assist you.



### PRACTICE TIP

Whether done by correspondence or by stipulation, it is advisable for the agreement to provide that the defendant is being granted an extension of time to answer the complaint "or otherwise respond." Without including the language "or otherwise respond," the plaintiff's counsel may object to a Rule 12 motion or other motion as not being agreed upon and, therefore, untimely or waived.

## § 7.5 EFFECT OF FAILURE TO TIMELY RESPOND

If an answer to the complaint is not timely served, the plaintiff may move the court for a default judgment and it is just as conclusive against the defendant as any other judgment. Therefore, defense counsel should timely answer, or otherwise respond to, the complaint or agree upon an extension. In the unfortunate event that an answer or other response is not timely interposed, there are recourses defense counsel can take. It is possible that the plaintiff's counsel has waived the right to object to an untimely answer. Or if a default judgment has been entered, defense counsel can seek to vacate the default judgment.



### ETHICAL CONSIDERATIONS

A lawyer should but is not required to consult with his or her client before seeking a default judgment against a defendant for failure to timely answer a complaint. While lawyers must be zealous advocates for their clients in litigation matters, they are "not bound, however, to press for every advantage that might be realized for a client." MINN. R. PROF'L CONDUCT 1.3, cmt. [1]. Looking at the issue from the perspective of the defaulted defendant's attorney, if the failure to timely respond to a complaint is attributable to the lawyer's negligence, the lawyer has a duty to inform the client without delay. The lawyer must not compound his or her error by concealing it from the client. In most situations, the problem can be remedied by seeking the plaintiff's consent to vacate a default judgment or by bringing a motion pursuant to Minnesota Rule of Civil Procedure 60.02. *See infra* section 7.5.C. The failure to apprise the client of the lawyer's negligence could violate Minnesota Rule of Professional Conduct 1.4 and creates a conflict with the client under Minnesota Rule of Professional Conduct 1.7. *See* LAWYERS PROFESSIONAL RESPONSIBILITY BOARD OPINION 21, *A Lawyer's Duty to Consult with a Client About the Lawyer's Own Malpractice* (Oct. 2, 2009).

### A. Default Judgment

#### 1. General Rule

A default judgment may be entered against a party who fails to plead or otherwise defend a claim within the time allowed by the law. MINN. R. CIV. P. 55.01; *Doe v. Legacy Broad. of Minn., Inc.*, 504 N.W.2d 527, 528

(Minn. Ct. App. 1993). A default judgment is equivalent to an admission by the defaulting party to properly pleaded claims and allegations. *Parr v. Gonzalez*, 669 N.W.2d 401, 405 (Minn. Ct. App. 2003). Accordingly, once the court determines that a party is in default, the complaint's factual allegations, except those related to damages, will be taken as true. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 337 (Minn. Ct. App. 2004). A judgment by default is just as conclusive an adjudication between parties as any other. *Id.*

#### 2. Applicability to Counterclaims and Cross-Claims

Default judgments are applicable to third-party claims, counterclaims, and cross-claims. MINN. R. CIV. P. 55.02.

### B. Waiver of Default Judgment

An attorney may waive the right to object to an adversary's untimely service of pleadings. *Bentley v. Kral*, 26 N.W.2d 532, 533 (Minn. 1947); *Doe v. Legacy Broad. of Minn., Inc.*, 504 N.W.2d 527, 528 (Minn. Ct. App. 1993). For example, in *Legacy Broadcasting*, an attorney did not object to a late answer at the time of service, but then four months later brought a motion for a default judgment based upon the untimeliness of the answer. *Legacy Broad.*, 504 N.W.2d at 529. The court held that the attorney waived the objection to the untimeliness of the answer because during the four months the parties' attorneys contacted each other, participated in mediation, and scheduled depositions of some witnesses. *Id.* Therefore, the award of default judgment was reversed. *Id.*

### C. Vacating Default Judgment

A district court has discretion to vacate a default judgment under Minnesota Rule of Civil Procedure 60.02. *Black v. Rimmer*, 700 N.W.2d 521, 529 (Minn. Ct. App. 2005). Minnesota Rule of Civil Procedure 60.02 permits courts to grant relief from a final judgment, order, or proceeding for certain enumerated reasons such as mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief. MINN. R. CIV. P. 60.02; *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001). In addition, under the residual clause of Minnesota Rule of Civil Procedure 60.02(f), a default judgment may be vacated "where there is not sufficient evidence to support an award of damages." *Black*, 700 N.W.2d at 529 (quoting *Wiethoff v. Williams*, 413 N.W.2d 533, 537 (Minn. Ct. App. 1987)).

In seeking relief from a default judgment under Minnesota Rule of Civil Procedure 60.02, the party must demonstrate that: (1) he or she has a reasonable defense on the merits of the case; (2) he or she has a reasonable excuse for his or her failure to act; (3) he or she acted with due diligence after the notice of entry of the default judgment; and (4) the opposing party will not be substantially prejudiced if the motion to vacate the default judgment is granted. *Coats*, 633 N.W.2d at 510. All four factors must be met to justify granting relief under Minnesota Rule of Civil Procedure 60.02. *Id.* The courts, however, should liberally apply these factors to further the policy of resolving cases on their merits. *Black*, 700 N.W.2d at 529.



**JUDICIAL CONSIDERATION**

In practice, the district courts are very liberal in applying the factors under *Black v. Rimmer*, 700 N.W.2d 521 (Minn. Ct. App. 2005). This is particularly so where counsel who is in default has contacted opposing counsel promptly.

## Rule 103. Appeal - How Taken

### 103.01 Manner of Making Appeal

**Subdivision 1. Notice of Appeal and Filings.** An appeal shall be made by filing a notice of appeal with the clerk of the appellate courts and serving the notice on the adverse party or parties within the appeal period. The notice shall contain:

(a) a statement specifying the judgment or order from which the appeal is taken; and

(b) the names, addresses, and telephone numbers of opposing counsel, indicating the parties they represent.

The notice shall be accompanied by:

(c) proof of service on the adverse party or parties; and

(d) proof of filing with the administrator of the trial court in which the judgment or order appealed from is entered or filed.

The appellant shall, simultaneously with the notice of appeal, file the following with the clerk of the appellate courts:

(1) a copy of the judgment or order from which the appeal is taken,

(2) the statement of the case required by Rule 133.03, and

(3) a filing fee of $550.

The appellant shall at the same time also file a copy of the notice of appeal with the trial court administrator.

**Subd. 2. Relief.** When a party in good faith files and serves a notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the appellate court may grant relief on such terms as may be just.

**Subd. 3. When Filing Fee Not Required.** The filing fees set out in Rule 103.01, subdivision 1, shall not be required when:

(a) the appellant has been authorized to proceed without payment of the filing fee pursuant to Rule 109; or

(b) the appellant is represented by a public defender's office or a legal aid society; or

(c) the appellant is a party to a proceeding pursuant to Minnesota Statutes, chapter 253B or 253D; or

(d) the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or

(e) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or

(f) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or

(g) the appeal is taken by an applicant for unemployment insurance benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective March 1, 2001; amended effective July 1, 2003; amended effective July 1, 2009; amended effective July 1, 2014.)

See **Appendix** for form of notice of appeal (**Forms 103A and 103B**) and statement of the case (**Form 133**).

***Comment - 1983***

*Filing the notice of appeal with the clerk of the appellate courts, in addition to service on the adverse party, is required to initiate an appeal.*

*A substantial change has been made in Rule 103.01. Under the new rule service alone no longer initiates an appeal. The notice of appeal served on both the adverse party and the clerk of the trial court and filed with the clerk of the appellate courts is required in order to vest jurisdiction in the Court of Appeals.*

*Proof of service, a certified copy of the judgment or order from which the appeal is taken, and the statement of the case (described at Rule 133.03) must accompany the notice of appeal when it is filed. For purposes of these rules, filing is timely if the notice of appeal is deposited in the mail within the time fixed for filing. See Rule 125.01.*

*A change has been made in the amount of the filing fee and to which courts it is paid.*

*Since prehearing conferences will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must send to the clerk of the appellate courts a written order for the transcript or a notice of intent to proceed on a statement of the proceedings. See Rule 110.02.*

*See Appendix for form of notice of appeal (Forms 103A and 103B) and statement of the case (Form 133).*

***Advisory Committee Comment - 1998 Amendments***

*The additional language in the first paragraph of the rule is intended to clarify the steps that must be taken to invoke appellate jurisdiction. Timely filing the notice of appeal with the clerk of the appellate courts and timely service on the adverse party are the jurisdictional steps required to initiate an appeal. Failure of an appellant to take any step other than the timely filing and service of the notice of appeal does not affect appellate jurisdiction, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. The reference to supersedeas bonds previously contained in the rule has been deleted, in light of the concurrent revisions made to Rule 108, which clarify the timing and procedure regarding filing supersedeas bonds.*

***Advisory Committee Comment - 2014 Amendments***

*Rule 103.01 is amended in several important ways. Together these changes will streamline the appellate process and make it easier to perfect appeals. First, the requirement for filing a certified copy of the trial court order or judgment from which the appeal is taken is modified to remove the certification requirement. The appellant must still provide a copy of the as-filed order or judgment, as the case may be, but it is no longer necessary that either be certified as authentic by the court administrator. The filing of these uncertified documents, however, does carry the implied*

*representation of the filing party or counsel that they are indeed true and correct copies of the documents on file with the tribunal issuing them.*

*The second change is the removal of the requirement that a cost bond be provided. This change is a part of the amendment of Rule 107.*

*Only a single copy of any statement of the case need be filed.*

*A copy of the notice of appeal must be filed with the trial court administrator to alert the trial court to the pendency of an appeal. For this filing, the trial court's filing rules should be followed. Because this copy of the notice of appeal is filed with the district court, it is permissible under Rule 125.01(d), as adopted at the time of these amendments, to effect service of it on other parties by any means authorized by the trial court rules. This rule permits service by the trial court e-filing system, which should be useful for documents that may be filed with the trial court using the same system. Because that service would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts.*

*Rule 103.01, subdivision 3, is amended to conform the terminology in the rule to that of the statutes governing the listed proceedings. This change is not intended to change the procedure under the rule.*

### 103.02 Joint Appeals; Related Appeals; Consolidated Appeals

**Subdivision 1. Joint Appeals.** If two or more parties are entitled to appeal from a judgment or order or to petition for certiorari in the same action and their interests are such as to make joinder practicable, they may file a joint notice of appeal or petition, or may join in the appeal after filing separate timely notices of appeal or petitions for certiorari, and they may then proceed on appeal as a single appellant.

**Subd. 2. Related Appeals.** After one party timely files a notice of appeal, any other party may seek review of a judgment or order in the same action by serving and filing a notice of related appeal. The notice of related appeal shall specify the judgment or order to be reviewed. The notice of related appeal shall be accompanied by:

(a) a filing fee of $100,

(b) a copy of the judgment or order from which the related appeal is taken if different than the judgment or order being challenged in the original appeal, and

(c) a statement of the case.

A cost bond is not required unless ordered by the court.

**Subd. 3. Consolidated Appeals.** Related appeals from a single trial court action or appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

(Amended effective January 1, 2010; amended effective July 1, 2014.)

***Advisory Committee Comment - 2009 Amendments***

*Rule 103.02 is amended to add a new subdivision 2 to establish a new procedure for filing of a cross-appeal or another related appeal after any party has filed a notice of appeal. This rule applies in civil cases, as the Minnesota Rules of Criminal Procedure address the right to file a cross-appeal in criminal cases. See Minn. R. Crim. P. 28.04, subd 3. The new notice is denominated*

*a "Notice of Related Appeal." See Appendix for form of Notice of Related Appeal (Form 103C). This procedure replaces the notice-of-review procedure formerly established by Rule 106. Existing subdivision 2 is renumbered as subdivision 3 and is amended to provide for consolidation of related appeals from a single trial court proceeding. This consolidation may be ordered by the court based on information in the statement of the case or may be ordered upon motion of any party to any related appeal.*

***Advisory Committee Comment - 2014 Amendments***

*The change to Rule 103.02, subdivision 2, is simply to remove the requirement for certified copies of the orders or judgment appealed from, and is a companion change to the amendment to Rule 103.01, subdivision 1. The amended rule continues to require providing copies of the judgments or orders; it is no longer necessary that they be certified by the trial court administrator.*

*Similarly, only a single copy of the statement of the case is required under this rule, and a cost bond is not normally required. These changes conform the procedure for a party filing a notice of related appeal to that for the appellant.*

**103.03 Appealable Judgments and Orders**

An appeal may be taken to the Court of Appeals:

(a) from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02;

(b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;

(c) from an order vacating or sustaining an attachment;

(d) from an order denying a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;

(f) from a final order or judgment made or rendered in proceedings supplementary to execution;

(g) except as otherwise provided by statute, from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding;

(h) from an order that grants or denies modification of custody, visitation, maintenance, or child support provisions in an existing judgment or decree;

(i) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment; and

(j) from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.

(Amended effective January 1, 1999; amended effective March 1, 2001.)

### *Comment - 1983*

*An order for judgment is not an appealable order. There is a right of appeal only from a judgment or an order enumerated in Rule 103.03. An appeal from any order not specifically included in Rule 103.03 is discretionary, and permission must be sought by petition as provided in Rule 105.*

*Two substantial changes have been made in Rule 103.03. The deletion from clause (a) of "order for judgment" marks a return to former practice: a judgment is appealable; an order for judgment is not appealable. Because of the uncertainties resulting from its broad, unspecific language, former clause (d) "From an order involving the merits of the action or some part thereof" has also been deleted. Review of any order not specifically enumerated in Rule 103.03 is discretionary only, and permission to appeal must be sought pursuant to Rule 105.*

### *Advisory Committee Comment - 1998 Amendments*

*While Rule 103.03 contains a nearly exhaustive list of appealable orders and judgments, it is not the exclusive basis for appellate jurisdiction. See In re State & Regents Bldg. Asbestos Cases, 435 N.W.2d 521 (Minn. 1989); Anderson v. City of Hopkins, 393 N.W.2d 363 (Minn. 1986). In these and other cases, the Minnesota Supreme Court has recognized that there are certain instances in which an appeal may be allowed as a matter of right even though the ground for that appeal is not found expressly in the provisions of Rule 103.03. Such instances include:*

*Orders granting or denying motions to dismiss or for summary judgment when the motions are based on the trial court's alleged lack of personal or subject matter jurisdiction, regardless of whether the motion seeks dismissal of the entire action. See McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830, 833 (Minn. 1995) (order denying summary judgment is appealable when motion is based on district court's lack of subject matter jurisdiction); Hunt v. Nevada State Bank, 285 Minn. 77, 88-89, 172 N.W.2d 292, 298 (1996) (order denying motion to dismiss for lack of personal jurisdiction immediately appealable of right).*

*Orders denying motions to dismiss or for summary judgment based on governmental immunity from suit, provided that the denial is not based on the existence of a question of fact. See Anderson, 393 N.W.2d at 364 (order denying defendant's motion for summary judgment is appealable when motion is based on governmental immunity from suit); Carter v. Cole, 526 N.W.2d 209 (Minn App. 1995), aff'd, 539 N.W.2d 241 (Minn. 1995) (affirming dismissal of appeal from order denying government official's motion for summary judgment based solely on the finding that there is a genuine issue of material fact whether the official committed the acts alleged; reserving question of appealability of an order denying summary judgment where the genuine issues of material fact identified by the trial court are related to the issue of immunity, and not to the merits of the claim); see also Johnson v. Jones, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995) (order denying summary judgment on immunity grounds not appealable where motion is denied because of genuine issue of material fact).*

*Orders vacating final orders or judgments, when the orders are issued after the time to appeal the underlying orders or judgments has expired, or from orders refusing to vacate default judgments. See State & Regents, 435 N.W.2d at 522 (order vacating final judgment is appealable); Spicer v. Carefree Vacations, Inc., 370 N.W.2d 424 (Minn. 1985) (denial of a Rule 60 motion is appealable if the judgment is rendered ex parte against a party who has made no appearance). But see Carlson v. Panuska, 555 N.W.2d 745 (Minn. 1996) (Spicer exception applies only to true default judgments and not to "default" judgments entered after contested hearings for failure to comply with discovery orders).*

*In addition, certain statutes provide for appeals as a matter of right, even though Rule 103.03 does not expressly provide. See, e.g., Minnesota Statutes, section 572.26, subdivision 1 (listing*

*appealable orders in arbitration proceedings, which are not "special" proceedings under Rule 103.03), Pulju v. Metropolitan Property & Cas., 535 N.W.2d 608 (Minn. 1995).*

*These examples are not intended to be exhaustive, but rather to emphasize that there are limited grounds for appeal other than those set forth in Rule 103.03. See generally Scott W. Johnson, Common Law Appellate Jurisdiction, BENCH & BAR OF MINN., Sept. 1997, at 31.*

***Advisory Committee Comment - 2000 Amendments***

*Rule 103.03 is amended to add a new subdivision (h) and renumber existing paragraphs (h) and (i) to become (i) and (j). The purpose of this amendment is to clarify that orders that grant or deny modification of custody, visitation, maintenance, and support provisions are appealable in accordance with Angelos v. Angelos, 367 N.W.2d 518 (Minn. 1985). These orders are appealable under paragraph (g) (final order in a special proceeding), but because of the volume of such orders, as well as the frequent involvement of pro se litigants, the Committee believes an explicit provision will minimize confusion. This change is not intended to expand appealability of otherwise unappealable orders, but rather, is meant to have the rule correctly identify these orders as appealable.*

**103.04 Scope of Review**

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. They may review any other matter as the interest of justice may require. The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.

(Amended effective January 1, 1999.)

***Advisory Committee Comment - 1998 Amendments***

*The rule has been changed to make clear that the scope of review can and often does depend upon the scope of the trial proceedings. As a general proposition, appellate review is limited to review of the facts and legal arguments that are contained in the trial record. The conduct of the trial proceedings will affect the scope of review on appeal. See Sauter v. Wasemiller, 389 N.W.2d 200 (Minn. 1986); Northwestern State Bank v. Foss, 287 Minn. 508, 511, 177 N.W.2d 292, 294 (1970). This is true notwithstanding the broad statement of the appellate courts' scope of review contained in Rule 103.04. See Minnesota Constitution, article 6, section 2.*

*Litigants often fail to recognize the importance of post-trial motions, and the sometimes dramatic failure to bring them. Though commentators have alerted lawyers to this issue, see 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED, section 103.17 (3d ed. 1996), problems associated with failure to file appropriate post-trial motions continues to be a significant, recurring problem. This rule amendment is intended to ameliorate the problem.*

## Rule 104. Time for Filing and Service of Notice of Appeal and Notice of Related Appeal

### 104.01 Time for Filing and Service

**Subdivision 1. Time for Appeal.** Unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry, and from an appealable order within 60 days after service by any party of written notice of its filing.

An appeal may be taken from a judgment entered pursuant to Minn. R. Civ. P. 54.02, within 60 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

**Subd. 2. Effect of Post-Decision Motions.** Unless otherwise provided by law, if any party serves and files a proper and timely motion of a type specified immediately below, the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding. This provision applies to a proper and timely motion:

(a) for judgment as a matter of law under Minn. R. Civ. P. 50.02;

(b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;

(c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;

(d) for a new trial under Minn. R. Civ. P. 59;

(e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time for a motion for new trial; or

(f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)-(e).

**Subd. 3. Premature Appeal.** A notice of appeal filed before the disposition of any of the above motions is premature and of no effect, and does not divest the trial court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the time prescribed to appeal the underlying order or judgment, measured from the service of notice of filing of the order disposing of the outstanding motion. If a party has already paid a filing fee in connection with a premature appeal, no additional fee shall be required from that party for the filing of a new notice of appeal or notice of related appeal pursuant to Rule 103.02, subd. 2.

**Subd. 4. Multiple Appeals.** After one party timely files a notice of appeal, any other party may serve and file a notice of related appeal within 14 days after service of the first notice of appeal, or within the time otherwise prescribed by subdivisions 1 and 2 of this rule, whichever period ends later.

(Amended effective January 1, 1999; amended effective January 1, 2006; amended effective January 1, 2010.)

***Comment - 1983***

*The time for taking an appeal from a final judgment or an order remains unchanged.*

*The clerk of the appellate courts is authorized to reject the filing of a notice of appeal from a judgment after the expiration of the 90-day period.*

*The second paragraph follows federal practice with respect to judgments ordered pursuant to Minn. R. Civil P. 54.02. An early right of appeal is provided as to those summary judgments that dispose of less than all claims against all parties if, but only if, the trial court expressly determines that there is no just reason for delay and expressly directs the entry of judgment. If an appeal is not taken within 90 days after entry of such a judgment, it becomes final and is not subject to later review. A judgment disposing of less than all claims against all parties entered pursuant to an order which does not contain the express determination and directions prescribed by Rule 54.02 is not appealable until entry of the final judgment disposing of all remaining claims of all parties.*

*This limited right of appeal recognizes that the trial court's use of the language prescribed by Rule 54.02 is likely to be confined to two situations: (1) where early review of the applicability of a rule of law may obviate a retrial, or (2) where the party obtaining judgment should not be required to await the conclusion of the case as to other parties and issues before the time for appeal begins to run.*

### *Advisory Committee Comment - 1998 Amendments*

*The 1998 amendments to this rule will significantly affect appellate practice. The rule is intended to simplify practice by establishing a 60-day period to effect appeals from both final judgments and appealable orders. This 60-day period will not necessarily result in an identical period to appeal from both an order and judgment, as the event that begins the running of the respective 60-day appeal periods usually will differ. However, the amendment will result in less confusion regarding the time period for appeal.*

*Subdivision 2 is new and enumerates the post-trial motions that will toll the running of the time to appeal. The rule serves two equally important purposes: to make it clear that an appeal is not necessary until the proper motion is decided, and to avoid a party's erroneous assumption that an improper or unauthorized motion would prevent the running of an appeal deadline. The list is intended to be exhaustive for civil actions in the district courts. Rule 104.01, subd. 2(f), provides that the procedural counterparts of these motions will also prevent the running of the time to appeal until the motion is decided. The motions enumerated in this subdivision exclude "motions for reconsideration" because these motions are never required by the rules and are considered only if the trial court permits the motion to be filed. See Minn. Gen. R. Prac. 115.11, amended in 1997, effective January 1, 1998.*

*Counsel must carefully determine whether post-trial motions are authorized in certain proceedings. See Schiltz v. City of Duluth, 449 N.W.2d 439 (Minn. 1990) (in special proceedings there must be statutory authority for new trial motions, and in the absence of such provision, a "new trial" motion, even if considered by the trial court on the merits and denied, may not result in an appealable order) and Steeves v. Campbell, 508 N.W.2d 817 (Minn. App. 1993) (new trial motion in order for protection proceedings not authorized, and order denying such motion is not appealable). Subdivision 2 of Rule 104.01 replaces Rule 104.04 concerning post-trial and modification motions in marital dissolutions. Modification motions no longer extend the time in which to appeal. The affect of post-trial motions is clarified in subdivisions 2 and 3.*

### *Advisory Committee Comment - 2006 Amendments*

*Rule 104.01, subd. 2(a) is amended to reflect the new name for a motion challenging the legal sufficiency of a verdict under Minn. R. Civ. P. 50.02. As a result of the amendment to Minn. R. Civ. P. 50.02, the former "motion for directed verdict" and "motion for judgment notwithstanding the verdict" are both now referred to as motions for "judgment as a matter of law." Rule 104.01, subd. 2(a) is amended to reflect this nomenclature. During the short transition period during which timely appeals might be taken from cases where either motions for judgment notwithstanding the verdict*

*or motions for judgment as a matter of law may have been filed after the trial court decision, the court should consider the two motions fungible in determining whether an appeal is timely.*

***Advisory Committee Comment - 2008 Amendments***

*The absence of motions for reconsideration or rehearing in the list of motions given tolling effect in Rule 104.01, subd. 2, is intentional. Neither requesting leave to file such a motion (as contemplated by Minn. Gen. R. Prac. 115.11), the granting of that request so the motion can be filed, nor the actual filing of the motion will toll or extend the time to appeal. A party seeking to proceed with a motion for reconsideration should pay attention to the appellate calendar and must perfect the appeal regardless of what progress has occurred with the reconsideration motion.*

*Failure to file a timely appeal may be fatal to later review. If a timely appeal is filed notwithstanding the pendency of a request for reconsideration in the trial court, the Court of Appeals can accept the appeal as timely, but stay it to permit consideration of the reconsideration motion. See Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 (Minn. 1998), where the court stated:*

*We note that requiring parties to file a timely appeal while a post-trial motion is pending does not deny the parties the opportunity to have the district court decide their motions. Rather, the parties may apply to the appellate court for a stay on the appeal to give the district court time to decide the pending post-trial motion. This procedure not only preserves the time limitation on appeals, but also helps to ensure that the district court hears and rules on the motion in an expedient manner. This is particularly important when the case involves a special proceeding. In such cases, the time for appeal is abbreviated to ensure a "speedy and summary determination of matters passed upon by the court[.]"*

*(Footnotes omitted.)*

***Advisory Committee Comment - 2009 Amendments***

*Subdivision 4 of Rule 104.01 is a new provision. It is modeled on Fed. R. App. P. 4(a)(3) and, for respondents, replaces the notice of review under former Rule 106 of these rules. The amended rule explicitly recognizes that a party may elect to appeal an issue only after learning that another party has appealed. Where a prior appeal has been filed and remains pending, a subsequent notice of appeal should be denominated "Notice of Related Appeal" and will suffice to raise any issue arising from the same trial court action. See Appendix for form of Notice of Related Appeal (Form 103C). The rule permits a party to serve and file a subsequent notice of related appeal within 14 days of the service of the first notice of appeal by another party, even if that occurs on the last day to appeal; it does not shorten the normal appeal period even if a party serves and files an appeal on the first possible day.*

### 104.02 Effect of Entry of Judgment and Insertion of Costs into the Judgment

No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment pursuant to this section shall not be extended by the subsequent insertion therein of costs and disbursements.

(Amended effective January 1, 1999.)

### 104.03 and 104.04 (Deleted effective January 1, 1999.)

# MINNESOTA JUDICIAL BRANCH

**Face coverings required in court facilities.**
**The response to COVID-19 has impacted access to courthouses and may change the way cases are handled.**
Learn more »

## Court of Appeals Help Topics

The Minnesota Court of Appeals Help Topics answer some of the frequently asked questions about appeals and petitions to the Minnesota Court of Appeals.

Court of Appeals
Clerk of Appellate Courts
Court Rules

Overview | Civil Appeal | Criminal Appeal | Postconviction Appeal | Eviction Appeal | Unemployment Benefits Appeal | Proof of Service | Family Law Appellate Mediation Program

### Filing an Eviction Appeal

If the district court has entered judgment in an eviction case against you, you can appeal your eviction in the Court of Appeals. The party who files an eviction appeal is called the "appellant." The party or parties who won in the district court are called the "respondent" or "respondents." This tab will help parties without an attorney understand how to appeal an eviction judgment.

In addition to the information in this tab, the **Eviction Appeal Packet and Checklist** includes forms and instructions for filing your appeal. If you choose to file an appeal without an attorney, it is important that you read all of the instructions carefully before you try to appeal, and that you fill out the forms completely.

### Steps of the Eviction Process

In an eviction proceeding, the *only* decision that can be appealed is the eviction "judgment" entered by the court administrator, after the judge has ruled on the case. No appeal can be taken from the judge's "order for judgment." No appeal can be taken from the "writ of recovery of the premises and order to vacate" issued to the sheriff. These steps of the eviction process are described in more detail below.

#### Order for Judgment

An order for judgment is the judge's written decision telling the court administrator to enter a judgment in the eviction case. The order for judgment is not appealable, but the Court of Appeals will review the order for judgment if you serve and file a timely appeal from the judgment once it has been entered.

#### Entry of Judgment

After the district judge issues an order deciding the eviction case, the court administrator will enter a judgment. To enter judgment, the court administrator may prepare a separate document titled "judgment" or "judgment roll," or the court administrator may add a sentence to the order, after the judge's signature, that says something like: "The above conclusions of law and order constitute the judgment of the court." The court administrator will sign and date this

statement (or the separate judgment document) and will record this action. **It is this action which constitutes entry of the judgment.**

The order for judgment from the judge is *not* appealable; once the court administrator enters judgment, that judgment is appealable.

**Writ of Recovery of the Premises**
Once judgment is entered, the next step is for the district court to issue a "writ of recovery of the premises and order to vacate" (often referred to as "the writ of recovery" or just "the writ"). The writ authorizes the sheriff or other officials to remove the occupant(s) from the property. The writ cannot be issued until the judge issues an order and the court administrator enters a judgment.

The appeal *must* be taken from the judgment; *not* from the writ of recovery, and *not* from the judge's order.

**Notice of Appeal**
The notice of appeal is the document that an appellant files with the Clerk of the Appellate Courts and the court administrator in the district court, and also serves on each respondent, to start the appeal process.

## Deadline to Appeal an Eviction

To appeal an eviction judgment, you must:

- file a notice of appeal form with the **Clerk of the Appellate Courts** within 15 days of the date that the district court administrator entered a judgment on the eviction order, and
- serve the notice of appeal on the attorneys for the respondents (or on the respondents themselves, if the respondents do not have an attorney) within that 15-day period.

**If you do not file a notice of appeal with the Clerk of the Appellate Courts regarding the eviction judgment within 15 days of the date that the court administrator in the district entered judgment in the case, your appeal will be dismissed. If you do not serve the notice of appeal on the attorneys for each of the respondents (or on the respondents themselves, if the respondents do not have an attorney) within 15 days after the court administrator entered the judgment, your appeal will be dismissed.**

The 15-day appeal period starts to run when the district court enters the eviction judgment *whether or not you are notified of the judgment*. **The Court of Appeals *cannot* extend the time to serve and file an eviction appeal, no matter how good the reasons for doing so.**

## Filing Fees

The appellant in an eviction matter must either:

- pay a $550 filing fee to the Clerk of the Appellate Courts; or
- obtain an order from the district court waiving the filing fee. An order waiving the filing fee is sometimes referred to as an order granting the appellant permission to proceed on appeal "in forma pauperis," or as an order granting permission to proceed "IFP."

*See* Minn. R. Civ. App. P. 103.01, subd. 1; 109 (filing fee, in forma pauperis motions).
If you make a motion and qualify, the judge whose decision you are appealing can waive the filing fee. For additional information about filing fees and requesting a waiver of fees, see **What if I Can't Afford an Appeal? FAQs**.

## Options for Stopping Eviction During your Appeal

Filing an appeal *does not* automatically stay enforcement of an eviction judgment, and it *does not* automatically stay enforcement of the writ of recovery.

If an appellant in an eviction proceeding wants to remain in or at the property while the appeal is being decided, the appellant must make a motion *in the district court* to stay enforcement of the judgment.

If the appellant makes a motion in the district court for a stay, the district court will decide *whether* to grant the stay and on what conditions. Often the district court will require the appellant to continue paying rent or other amounts while the appeal is being decided. **Note that even when an appellant is granted leave to proceed in forma pauperis on appeal, if that appellant asks to stay on the property while the appeal is pending, the district court can still require that appellant to pay rent or other amounts** (usually to the landlord or the district court) **while the appeal is pending**. If the appellant does not satisfy the conditions set by the district court for the stay, the appellant can be evicted even though an appeal is pending, and even though the appellant has been granted permission to proceed in forma pauperis in that appeal.

If any party thinks that the district court improperly decided the question of whether to grant a stay, or incorrectly set the conditions for a stay, that party may file a motion with the court of appeals (and serve the motion on the other parties to the appeal) seeking relief from the district court's decision regarding the stay.

The motion should be accompanied by:

- a copy of the district court's order addressing the stay question;
- a memorandum explaining why the party believes he or she is entitled to a different decision; and
- copies of all documents that the parties submitted to the district court regarding the request for a stay.

If additional facts are necessary for the court of appeals to fully understand the challenge to the district court's stay decision, those facts should be submitted to the court of appeals in the form of an affidavit, keeping in mind that the court of appeals generally does not consider evidence or arguments that were not first presented to the district court.

A response to a motion challenging a district court decision regarding a stay pending appeal must be served and filed within five days after service of the motion. Any reply in support of the motion must be served and filed by the moving party within three days after service of the response.

The court of appeals usually decides a motion challenging a district court's decision on a request for a stay pending appeal soon after a response is received.

If an appellant is being evicted soon, and the district court has denied a stay pending appeal (or set conditions for a stay pending appeal that the appellant cannot satisfy), an appellant who has filed a motion in the court of appeals challenging the district court's stay decision should ask the district court for a *temporary* stay, so the court of appeals can decide the appellant's motion for relief. The district court's ruling on a request for a temporary stay can also be reviewed by the court of appeals.

The parties may be able to reach an agreement for the occupant to remain on the property while the appeal is pending. For example, the parties might agree that the sheriff will not enforce the writ of recovery for several days to allow the parties to make a motion for a stay in the district court and to seek review from the court of appeals, if needed. Be sure to tell the court of appeals about any such agreement if you file a motion for a stay.

Even if a writ of recovery has been issued by the court administrator, the sheriff may have other duties that will delay enforcement of the writ in a particular case. Be sure to give the court of appeals any information you have about when the sheriff is scheduled to enforce the writ if you file a motion for a stay.

### Additional Information Relevant to Eviction Appeals

For definitions of other terms related to eviction proceedings, consult **Minn. Stat. § 504B.001**.

For further information about eviction appeals, please review **Minn. Stat. § 504B.371** and the **Minnesota Rules of Civil Appellate Procedure** (abbreviated "Minn. R. Civ. App. P.").

For additional information applicable to eviction appeals, including the stages of an appeal, how to calculate deadlines in an appeal, the record, the transcript, briefs, and motions, click the **Overview** tab, above.

For additional information about filing and serving documents in an appeal, click the **Proof of Service** tab, above.

FAQs

What if I can't Afford an Appeal? »

# Filing an Eviction Appeal at the Minnesota Court of Appeals

This packet is provided as a general guide to the process of appealing from an eviction judgment. These instructions explain the steps to start an appeal and answer common questions, but are not a full guide to the law.

Please read this entire packet carefully. If you do not understand any of the steps or do not know if these forms are right for your situation, you should speak with an attorney for legal advice. Court employees are able to give general information about court rules and procedures, but they cannot give legal advice.

**This packet includes:**

- Step-by-Step Instructions for Filing an Eviction Appeal
- Form: Notice of Appeal
- Form: Statement of the Case of Appellant
- Form: Appellant's Certificate of Service by Mail of the Notice of Appeal, Statement of the Case, and Judgment
- Form: Appellant's Certificate of Service by Personal Delivery of the Notice of Appeal, Statement of the Case, and Judgment
- Form: Appellant's Certificate of Filing of Notice of Appeal
- Form: Appellant's Certificate of Service by Mail of Brief
- Form: Appellant's Certificate of Service by Personal Delivery of Brief

**For Additional Assistance:**

Additional helpful materials, including example briefs, can be found on the Minnesota State Law Library website (https://mn.gov/law-library/).

The State Law Library also hosts an Appeals Self-Help Clinic (https://mn.gov/law-library/services/clinics/appealsclinic.jsp) where you can get brief free legal advice about your case from a volunteer attorney or get help filling out forms. The Appeals Self-Help Clinic is on the third Thursday of the month from 1:30-4:30 p.m. It is a walk-in clinic, so no appointments are taken. For more information about the Appeals Self-Help Clinic, call (651) 297-7651.

# Important Information about your Appeal

## Court of Appeals Opinions are Available to the Public

Once your appeal is decided, the Court of Appeals will issue a written decision, called an "opinion," which will describe your case and the reasons for the court's decision. **The opinion will be available to the public on the Minnesota Judicial Branch's website.** After an opinion is filed, it cannot be removed from the internet. This means that anyone who searches for your name on the internet may be able to find and read the opinion, including any reasons you may have been evicted.

## Parties in an Eviction Appeal

The party who files the appeal is called the "appellant." The party or parties who "won" in district court ruled are called the "respondents."

## Laws that Apply to your Appeal

Your appeal is governed by the Minnesota Rules of Civil Appellate Procedure, the Special Rules of Practice for the Minnesota Court of Appeals, and the Minnesota Statutes. Minnesota Statute section 504B.371 applies specifically to eviction appeals.

This packet includes simplified instructions, but you should read the rules and statutes yourself for more information. **If you are representing yourself, you are responsible for researching court rules, case law, and statutes that govern your case.**

You can find the rules and statutes at the Minnesota State Law Library (Room G25, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, or call 651-297-7651), and at public libraries. You can also find the rules at the Minnesota Judicial Branch's website: http://www.mncourts.gov/About-The-Courts/SupremeCourt/CourtRules.aspx.

## Filing Fees

The appellant in an eviction matter must either pay a $550 filing fee to the Clerk of the Appellate Courts, or obtain an order from the district court waiving the filing fee for the appeal. An order waiving the filing fee is sometimes referred to as an order granting permission to proceed "in forma pauperis (IFP)." *See* Minn. R. Civ. App. P. 103.01, subd. 1; 109.

To get an order waiving the filing fee for the appeal, you must request it in district court. You must request an order waiving the filing fee for the appeal, even if the district court already waived district court fees. Your request can also ask to waive the cost of preparing a transcript for your appeal. If the district court denies your request to waive the filing fee for the appeal, you may then file a motion with the Court of Appeals to review the district court's denial of your request.

Instructions and forms for requesting an order waiving fees for your appeal are found on the Minnesota Judicial Branch Website: http://www.mncourts.gov/GetForms.aspx?c=19&p=70

# Step-by-Step Instructions for Filing an Eviction Appeal

## Step 1: Calculate your appeal deadline

You have 15 days from the date that the district court administrator entered a judgment on the eviction order to file and serve your appeal. **The 15-day appeal period starts to run when the district court *enters* the eviction judgment whether or not you are notified of the entry of judgment on that date.**

**General Information about "Entry of Judgment"**

An ***Order for Judgment*** is the judge's written decision telling the court administrator to enter a ***Judgment***. After the district judge issues an ***Order for Judgment***, the court administrator will take a separate step called "Entry of Judgment." The court administrator may prepare a separate document titled "Judgment" or "Judgment Roll," or the court administrator may add a sentence to the order, after the judge's signature, that says something like "The above conclusions of law and order constitute the judgment of the court." The court administrator will sign and date this statement (or the separate ***Judgment*** document) and will record this action. It is this action which constitutes entry of the ***Judgment*** and starts the 15-day deadline to file and serve your appeal.

After Judgment is entered, the next step in the district court proceedings is usually that the district court issues a ***Writ of Recovery of the Premises and Order to Vacate*** (often referred to as the "Writ of Recovery" or just "the Writ"). The ***Writ*** tells the sheriff or other officials to remove the occupant(s) from the property. The ***Writ*** is not appealable.

The only decision that can be appealed in an eviction proceeding is the eviction ***Judgment***. The ***Order for Judgment*** is not appealable, but the Court of Appeals will review it as part of your appeal.

☐ The date the district court administrator entered judgment was _____.

Follow the instructions on the next page to calculate your deadline.

**General Instructions for Calculating Court of Appeals Deadlines**

- Appellate court staff cannot calculate your deadline for you. You are responsible for knowing the events that start the time periods for your deadlines and you are responsible for keeping track of all deadlines that apply to your appeal.

- Do not count the day of the event that starts the time period (for example, the date the eviction judgment was entered). Instead, start counting the next day.

- Continue counting calendar days. Do not skip weekends or legal holidays.

- If the last day of the period falls on a Saturday, Sunday, or legal holiday, then the deadline is the next business day. For the purpose of calculating deadlines, legal holidays for the appellate courts are:
  - New Year's Day (January 1);
  - Martin Luther King, Jr.'s birthday (the third Monday in January);
  - Presidents' Day (the third Monday in February);
  - Memorial Day (the last Monday in May);
  - Independence Day (July 4);
  - Labor Day (the first Monday in September);
  - Columbus Day (the second Monday in October), even though the appellate courts are open on Columbus Day;
  - Veterans' Day (November 11);
  - Thanksgiving Day (the fourth Thursday in November);
  - The Friday after Thanksgiving; and
  - Christmas Day (December 25).

☐ The deadline for starting my appeal is _____.

**Note: The Court of Appeals cannot extend the deadline for appeal.** Before the deadline you calculated in this step, the ***Notice of Appeal*** must be **filed** with the Clerk of the Appellate Courts and **served** on all respondents (steps 2-5 provide instructions for filing and serving documents).

**If you do not file and serve the *Notice of Appeal* by the deadline, your appeal will be dismissed.**

## Step 2: Fill out the *Notice of Appeal* and *Statement of the Case*

☐ Fill out the ***Notice of Appeal***, which is the document that starts the appeal process in an eviction case. It tells the court and the other party or parties that you intend to appeal. A ***Notice of Appeal*** form is attached to this packet.

☐ Fill out the ***Statement of the Case***, which should *briefly summarize* the reasons you think the district court's decision was incorrect. A ***Statement of the Case*** form is attached to this packet. You do not need to make detailed arguments in the ***Statement of the Case***, because you will make detailed arguments later in your ***Brief***. Do not attach any additional documents to your ***Statement of the Case.***

The party who files the appeal is called the "appellant." The party or parties who "won" in district court ruled are called the "respondents."

The ***Statement of the Case*** asks you to indicate which format you will use when you file your ***brief***: formal, informal, or memorandum of law with a short letter argument. Refer to Step 9 on page 15 for information about the different format options for your ***brief***.

Fill in all of the blanks on the forms. If you do not fill out all of the blanks, the Clerk of the Appellate Courts may have to return the forms to you, and it may cause you to miss your deadline to appeal.

## Step 3:
## File the *Notice of Appeal*, *Statement of the Case*, and a copy of the *Judgment*

"Filing" means submitting or delivering documents to the Office of the Clerk of the Appellate Courts. The first step in your appeal at the Court of Appeals is to file the ***Notice of Appeal***.

☐ Choose your method of filing (see instructions below):

**General Instructions for "Filing"**

Parties **without an attorney** may file documents by any of the following three methods:

1) By **hand-delivering** them to the Clerk of the Appellate Courts during business hours (8:00 a.m. to 4:30 p.m. weekdays, excluding holidays).

2) By **mailing** the documents to the Clerk of the Appellate Courts, addressed to:

Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

For filing by postal mail, a document will be considered filed "on time" if it is deposited in the U.S. Mail by the deadline with correct postage and the correct address, even though the Clerk of the Appellate Courts will not receive the document on the day you deposit it in the mail.

3) By **submitting them electronically** through the appellate courts' e-filing system, E-MACS. Parties who do not have an attorney may use E-MACS, but they do not have to. Once you start to e-file in an appellate case, you must continue to e-file throughout the case – you cannot choose later to file in person or by mail (**Note: All attorneys are required to use E-MACS and cannot file documents by mail or by hand-delivery to the Clerk of the Appellate Courts**).

For information about electronic filing and to submit documents electronically, go to the Clerk of the Appellate Courts' webpage (www.mncourts.gov/Clerk-of-Appellate-Courts.aspx#tab05AppellateeFiling).

**The Clerk's Office cannot accept your filing by fax or email**. For additional instructions on filing, see Minn. R. Civ. App. P. 125.01.

☐ If you are filing your documents by hand-delivery or by mail, make copies of the ***Notice of Appeal***, ***Statement of the Case***, and the ***Judgment*** that you are appealing. Make enough copies so that there will be a copy of each document for each respondent, as well as one copy of each for yourself. Keep one copy of each document for your records.

☐ File the original ***Notice of Appeal*** and ***Statement of the Case***, along with a copy of the ***Judgment***, with the Clerk of the Appellate Courts.

## Step 4: Serve the documents on respondents

Any time you submit a document to the Clerk of the Appellate Courts for filing, a copy must also be provided to all other parties at or before the time of filing. This is called "service."

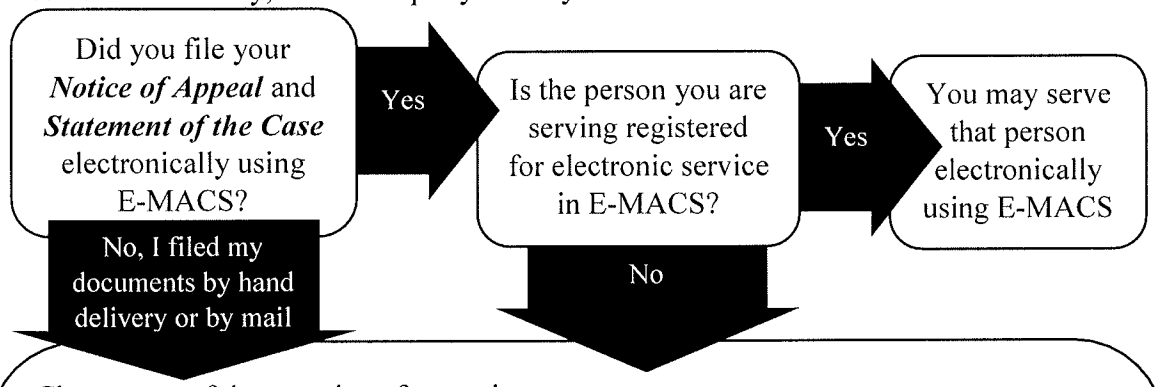
You must also file proof that you have served the document ("proof of service") with the Clerk of the Appellate Courts. Instructions for proof of service are at Step 5.

**Important: You must file the *Notice of Appeal* and serve it on the respondents by the deadline you calculated in Step 1, or your appeal will be dismissed.**

☐ Choose your method(s) of service. For each party who you need to serve documents on, follow these steps to decide how to serve that party:

**General Instructions for "Service"**

If a party has an attorney, you must serve the attorney rather than the party. If a party does not have an attorney, serve that party directly.




Choose one of these options for service:

**(1) In person** ("personal service"): Have another person hand-deliver the document. The person who hand-delivers the document must be 18 years or older and not a party to the appeal. **You cannot serve a party in person yourself.**

**(2) By mail:** Deposit the documents, correctly addressed, in the U.S. Mail, with adequate first-class postage. You may serve documents by mail yourself.

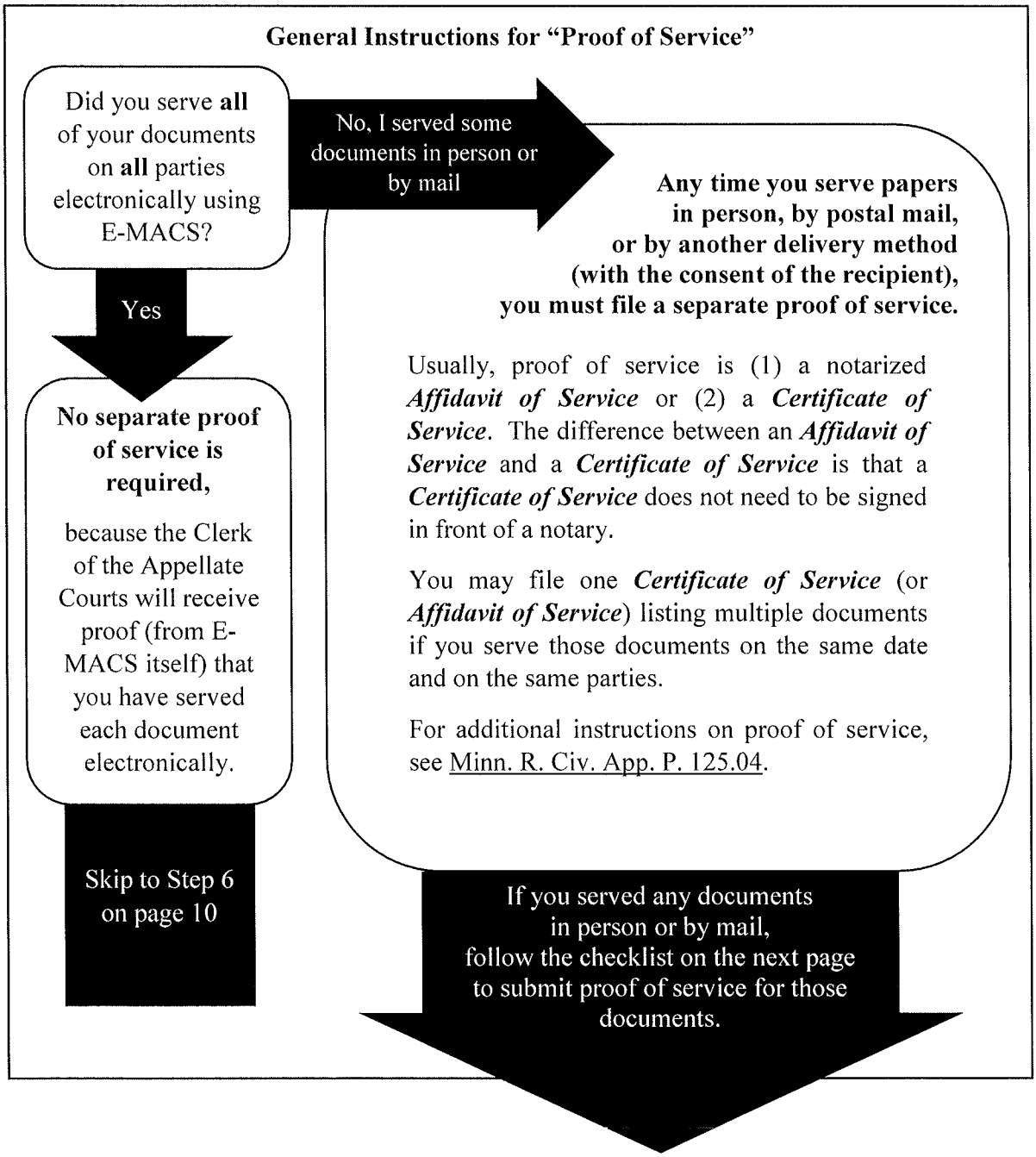
If the recipient consents to another method of delivery, such as email or fax, you could also use that method for service. For additional instructions on service, see Minn. R. Civ. App. P. 125.02 and 125.03.

☐ Serve each respondent with a copy of the (1) ***Notice of Appeal***, (2) ***Statement of the Case***, and (3) ***Judgment***.

## Step 5: If you served any documents in person or by mail:

## Fill out and file the *Certificate of Service*

**Every** document submitted to the Clerk of the Appellate Courts for filing must be accompanied by proof that the document was served on the other parties to the appeal. This is called "proof of service." Documents served electronically do not require a separate document showing proof of service.



☐ The person who served the documents must complete and sign either:

- the form titled ***Appellant's Certificate of Service by Mail of the Notice of Appeal, Statement of the Case, and Judgment***, OR
- the form titled ***Appellant's Certificate of Service by Personal Delivery of the Notice of Appeal, Statement of the Case, and Judgment***.

The ***Certificate of Service*** must include, from top to bottom:

1. The parties' names and case file number;
2. County where the form was signed;
3. The name of the person who served the documents;
4. The titles of the documents that were served (on the forms included with this packet, the titles of the document are already filled in);
5. The date the documents were served;
6. The names of the parties who were served and the addresses to which the documents were mailed or delivered to those parties;
7. The signature of the person who served the documents, the date the form was signed, and the county and state where the form was signed.

**Note: You will need different *Certificate of Service* forms at different steps in the process. Do not fill out or file all of the *Certificate of Service* forms at the same time.**

☐ File the signed ***Certificate of Service*** with the Clerk of the Appellate Courts.

- If you used E-MACS to electronically file your ***Notice of Appeal***, ***Statement of the Case***, and ***Judgment***, you will also file your ***Certificate of Service*** electronically using E-MACS (even if you served your documents by mail or in person). The ***Certificate of Service*** must be uploaded as a separate PDF or Word document – do not combine with one of your other documents into a single PDF or Word document.

- If you filed your ***Notice of Appeal***, ***Statement of the Case***, and ***Judgment*** documents by hand delivery or by mail, you may also file your ***Certificate of Service*** by hand delivery or by mail.

- See Step 3 on page 6 for additional instructions on how to file documents.

## Step 6: File a copy of the *Notice of Appeal* with the district court

This step lets the district court know that you have started an appeal with the Court of Appeals.

Like the Court of Appeals, the district courts also allow parties without an attorney to file by mail or hand-delivery to the district court where your case took place. But, the district courts use a different system for electronic filing (called "eFS"), and different district courts may have specific instructions for filing. For more information about filing in district court, contact court administration for the district court where your eviction case was decided.

☐ File a copy of the ***Notice of Appeal*** with the district court that entered your ***Judgment.***

☐ To show that you filed the ***Notice of Appeal*** in district court, choose one of the following options:

(1) Fill out the attached form titled ***Appellant's Certificate of Filing of Notice of Appeal,***

OR

(2) Obtain a copy of the ***Notice of Appeal*** that has the district court administrator's filing stamp on it,

OR

(3) Obtain a copy of the receipt from eFS showing that you filed the ***Notice of Appeal*** electronically in the district court.

☐ File one of the documents above with the Clerk of the Appellate Courts (see Step 3 on page 6 for instructions on filing documents in the appellate courts).

☐ If you want to request to waive the fees for your appeal (by filing a ***Motion to Proceed In Forma Pauperis*** in district court), you should file this request now. Instructions and forms for requesting an order waiving fees for your appeal are found on the Minnesota Judicial Branch Website: http://www.mncourts.gov/GetForms.aspx?c=19&p=70

Note: If the district court grants your request to waive the filing fees for your appeal, it is your responsibility to forward a copy of the district court's order waiving your fees to the Clerk of the Appellate Courts.

## Step 7: Order your *Transcript* (optional)

In addition to the parties' briefs, the "district court record" is the only information that the Court of Appeals considers in an appeal. The district court record includes documents filed in the district court and evidence used in the hearings before the district court judge or housing court referee.

The district court record might also include a ***transcript*** of the hearing(s) before the district court judge. A ***transcript*** is a typed copy of what all of the witnesses, parties, and the judge said at your hearing. If a district court hearing was held in your case, you can order a ***transcript*** of the hearing. A ***transcript*** is not automatically prepared unless it is requested. If you need a transcript for your appeal, you must order it within 14 days from when you filed the ***Notice of Appeal.*** Minn. R. Civ. App. P. 110.02.

If you can't afford the transcript preparation fees, you can request that they be waived, by filing a ***Motion to Proceed In Forma Pauperis*** in district court. Call court administration at the district court to request instructions for having the district court waive your transcript fees.

☐ Decide whether you need a transcript of a district court hearing. If you want the Court of Appeals to consider what was said at a district court hearing as part of the record in your appeal, you will need a transcript of each hearing you want the Court of Appeals to consider.

If you decide you **do NOT** need a transcript for your appeal, skip to Step 8 on page 12

If you **DO** need a transcript, follow the checklist on the next page.

☐ For each hearing you are requesting a transcript of, gather this information:

(1) District court case file number for your eviction case:_____
(2) Names of the parties:_____
(3) Date of the hearing(s):_____
(4) Name of the judge at the hearing(s):_____

You will need to provide this information when you request the transcript.

☐ Call court administration at the district court where your eviction hearing took place for instructions on how to request a transcript. You can find contact information for the district court at http://www.mncourts.gov/Find-Courts.aspx.

☐ Follow court administration's instructions to request a transcript.

☐ Pay the fee for the transcript. After you submit your transcript request, the court reporter will contact you and will provide you with an estimated cost to prepare the transcript and the estimated date when the transcript will be complete. Payment must be made before the transcript is prepared. If you are unable to afford the transcript fee, call court administration at the district court and request instructions for having the district court waive your transcript fee.

☐ Provide the court reporter with the names and contact information for the other parties involved with the appeal, so that the court reporter can provide them with copies of the transcript. **It is the appellant's responsibility to order copies of any transcript being prepared for appeal for all the other parties to the appeal.**

☐ The court reporter will fill out a ***Certificate as to Transcript***, which you and the court reporter both sign. The ***Certificate as to Transcript*** tells the Court of Appeals that you have requested the transcript and will pay the court reporter. See Minn. R. Civ. App. P. 110.02. The ***Certificate as to Transcript*** must include:

(1) The date you requested the transcript from the court reporter
(2) An estimated date that the court reporter will complete the transcript, deliver it to the parties, and file it with the district court;
(3) Your signature (if you are acting as your own attorney); and
(4) The signature of the court reporter.

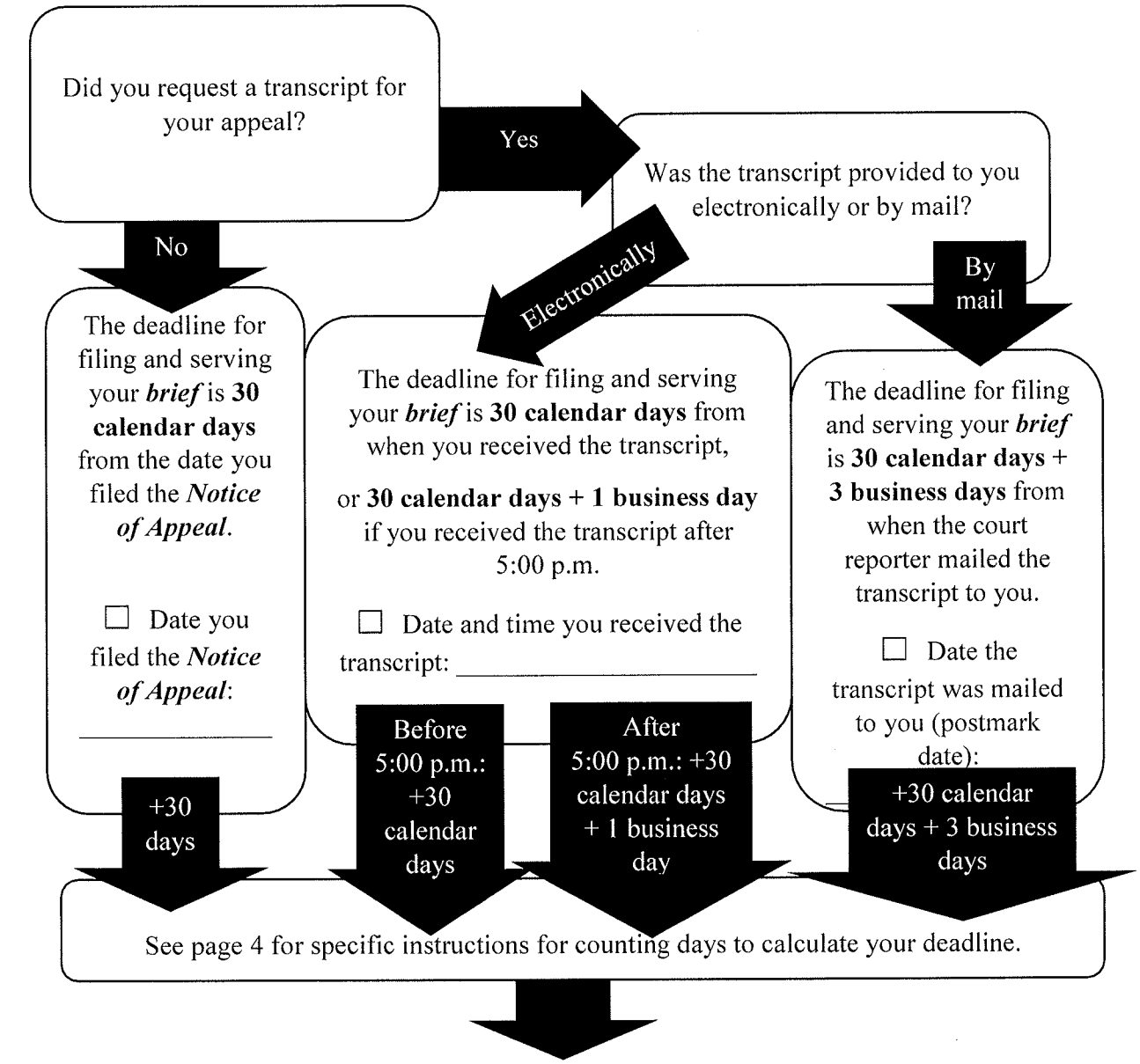
☐ File and serve the ***Certificate as to Transcript*** with the Clerk of the Appellate Courts, or verify that the court reporter plans to file and serve it for you.

After the court reporter receives payment, they will prepare the transcript and provide it to you and the other parties electronically or by mail. The court reporter will also file a copy of the transcript in the district court and will file a ***Transcript Delivery Certificate*** with the Clerk of the Appellate Courts verifying that the transcript was filed in district court.

## Step 8: Calculate the Deadline for your Brief

Your written argument on appeal is called a "brief." As the appellant (appealing party), **you must file a brief by the deadline and serve it on the other parties, or your appeal will be dismissed.** See Minn. R. Civ. App. P. 142.02. You are responsible for calculating and keeping track of your own deadlines – appellate court staff cannot do it for you.

The deadline for your ***brief*** depends on whether you requested a transcript (See Minn. R. Civ. App. P. 131.01, subd. 1):




☐ The deadline for my brief is _____.

## Step 9: Prepare your Brief

In an eviction appeal, you have three options for the format of your ***brief***:

(1) **Formal *Brief*:** A formal brief includes a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, and an addendum. See Minn. R. Civ. App. P. 128.02. A formal brief must be bound in a specific way, and can't just be stapled. A list of approved binding methods under Minn. R. Civ. App. P. 132.01 is available at http://mncourts.gov/Clerk-of-Appellate-Courts.aspx#ApprovedBriefBindingMethods.

(2) **Informal *Brief*:** An informal brief may be stapled and must include a written argument and addendum. See Minn. R. Civ. App. P. 128.01, subd. 1.

(3) ***Memorandum of Law* and *Short Letter Argument*:** If you filed a written ***Memorandum of Law*** in the district court, you may file that Memorandum as your brief, along with a short letter argument that addresses the district court judge's decision. This may be stapled and must include an addendum. See Minn. R. Civ. App. P. 128.01, subd. 2.

☐ Choose the format for your ***brief*** (formal, informal, or short letter argument). Note: This should match the format option you marked in your ***Statement of the Case***.

☐ Write your ***brief***. The Minnesota State Law Library website has helpful information about writing briefs and example briefs you can read (http://mncourts.libguides.com/appeals/briefs).

☐ Prepare the addendum to your ***brief***. No matter what type of ***brief*** you file, your ***brief*** must include an addendum that contains a copy of the district court ***Judgment*** that you are appealing. See Minn. R. Civ. App. P. 128.02 and 130.02. Your addendum may also contain up to 50 additional pages of documents from the record or statutes, rules, cases or other authorities that would be helpful to the court when reading your brief. However, **you cannot include any new evidence that was not presented to the district court judge.**

## Step 10: Prepare paper copies of your *brief*

Even if you e-file and e-serve your ***brief*** using the appellate courts' E-MACS system, you will still need to file and serve **paper** copies of your ***brief***. See Minn. R. Civ. App. P. 131.03.

☐ Make eight paper copies of your brief. If you are filing a formal brief, make sure your copies are bound according to the instructions in Minn. R. Civ. App. P. 132.01. A list of approved binding methods is available at http://mncourts.gov/Clerk-of-Appellate-Courts.aspx# ApprovedBriefBindingMethods.

**If there is more than one respondent, you will need two additional copies for each respondent.** Keep one copy of your brief for your records.

## Step 11: File and serve paper copies of your *brief*

☐ File five paper copies of the brief (four bound copies and one unbound copy) with the Clerk of the Appellate Courts, by hand delivery or mail (see Step 3 on page 6 for instructions on how to file documents).

**Note: Briefs are the only document type that must be filed and served in paper *even after the document has been e-filed and e-served.* Do not mail paper copies of any other e-filed documents to the court or to the other parties involved in the appeal.**

☐ Serve two paper copies of the brief on each respondent (see Step 4 on page 7 for instructions about service).

☐ The person who served the documents must complete and sign either:

- the form titled ***Appellant's Certificate of Service by Mail of Brief***, OR
- the form titled ***Appellant's Certificate of Service by Personal Delivery of Brief.***

(see Step 5 on page 9 for instructions about proof of service).

☐ File the ***Certificate of Service*** with the Clerk of the Appellate Courts (see Step 3 on page 6 for instructions on how to file documents).

☐ Keep the eighth copy of your brief for your records.

**General Information about "Motions"**

If you cannot serve and file your brief by the deadline you calculated and you need more time, or if you want to make any other request of the court, you must serve and file a signed, written request asking the court for the relief you need. This formal request is called a "motion."

The motion must state (1) what you are requesting and (2) the reason(s) for that request. The requirements for a motion are found in Minn. R. Civ. App. P. 127 and specific instructions for requesting a briefing extension are found in Minn. R. Civ. App. P. 131.02.

You must serve the written motion on the respondents. When you file your motion with the Clerk of the Appellate Courts, you must also file proof of service (such as a Certificate of Service). See Steps 4 & 5 for more instructions about service and proof of service.

If you are requesting a deadline extension, your motion should be served and filed before the deadline you wish to extend. **Reminder: the Court of Appeals cannot extend the deadline to serve and file the *Notice of Appeal.***

## What Happens Next?

### Court of Appeals Receives the Evidentiary Record and Briefs

The district court sends the record from your case to the Court of Appeals, including any transcript you requested.

The respondent(s) also have the opportunity to submit a brief to the Court of Appeals. If a respondent's brief raises a new topic that your brief did not address, you may (but do not have to) file a reply brief. A reply brief is not required and is not commonly filed in eviction appeals. If you choose to file a reply brief, your deadline for filing and serving the reply brief is as follows:

- If the respondent's brief was served on you in person or electronically via E-MACS, the deadline for your reply brief is 14 days after the date the respondent's brief was served on you.
- If the respondent's brief was served on you by mail, the deadline for your reply brief is 14 calendar days + 3 business days from the date the respondent's brief was mailed to you (not when you received it).

### Oral Argument or Non-Oral Consideration

After the parties have filed their briefs, your appeal will be submitted to a panel of three Court of Appeals judges for either oral argument or non-oral consideration. If you are not represented by an attorney, the Court of Appeals will not hold an oral argument. Minn. R. Civ. App. P. 134.01.

You will receive a ***Notice*** of the date of oral argument or non-oral consideration by the panel. This notice will also include the names of the judges assigned to decide your case.

### Opinion is Issued

The Court of Appeals will issue a written decision, called an "opinion," within 90 days after the oral argument or non-oral conference date. **All appellate court opinions are public and will be available on the Judicial Branch website.**

If you wish to appeal the Court of Appeals decision, you have 30 days after the opinion is issued to file a ***petition for further review (PFR)*** by the Minnesota Supreme Court. See Minn. R. Civ. App. P. 117. After an appeal has been decided, the party who prevailed may be able to ask the court to order the party that lost the appeal to pay the winning party's costs related to the appeal. See Minn. R. Civ. App. P. 139.01-139.03.

## How to Stop ("Stay") Eviction during your Appeal

Filing an appeal does not automatically stop or delay ("stay") enforcement of the eviction judgment. This means you can be removed from the property even if you are in the middle of appealing your eviction. If you want to remain in or at the property while the eviction appeal is being decided, you will need to file a ***motion to stay enforcement of the eviction judgment*** in the district court.

For help with a ***motion to stay enforcement of the eviction judgment***, contact court administration in the district court where your eviction case took place, or contact the Minnesota Courts' Statewide Self-Help Center at (651) 259-3888.

**FORM 103A. NOTICE OF APPEAL**
**(COURT OF APPEALS)**

STATE OF MINNESOTA
COUNTY OF_____

DISTRICT COURT
_____JUDICIAL DISTRICT

CASE TITLE:

_____,
**Plaintiff**

vs.

_____
**Defendant**

**NOTICE OF APPEAL**
**TO COURT OF APPEALS**

**DISTRICT COURT CASE NUMBER:**

_____

**DATE JUDGMENT ENTERED:**

_____

TO: Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Please take notice that the above-named ☐plaintiff ☐defendant appeals to the Court of Appeals of the State of Minnesota from an entry of judgment in an eviction action, dated as shown as above.

Name of party appealing:_____
Attorney name (if represented):_____
Address:_____
Email address:_____
Telephone:_____
Attorney Registration License Number (if applicable):_____

Signature:_____ Dated:_____
(appellant, or attorney, if represented)

(The district court caption is used on the notice of appeal. Subsequent documents shall bear the appropriate appellate court caption. RCAP 103.01, subd. 1 specifies the contents of the notice of appeal and filings required to perfect an appeal, including filing fees. RCAP 103.03 sets forth judgments and orders which are appealable to the Court of Appeals. RCAP 104.01 specifies time limits for filing and service of the notice of appeal. RCAP 108.01 provides for a supersedeas bond. This document must be accompanied by a completed statement of the case. RCAP 133.03.)

**STATE OF MINNESOTA**
**IN THE COURT OF APPEALS**

CASE TITLE:
(The lines below should match the names in the case title on your district court paperwork.)

_____,

COURT OF APPEALS CASE #_____

vs.

**STATEMENT OF THE CASE OF APPELLANT**

_____

*This form is provided for the benefit of self-represented litigants, and conforms to the Statement of the Case form required by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure and to Form 133, found at the end of the Minnesota Rules of Civil Appellate Procedure. Some questions on this form may require you to complete some basic legal research about your appeal before you can complete them. Instructions for completing this form are available at http://mncourts.gov/CourtOfAppeals.aspx#Tab08Resources.*

1. **Court of case origination:** _____ County District Court
(county name)

   Name of presiding judge: _____

2. **Jurisdictional Statement:** Appeal from district court.

   a. Statute, rule, or other authority authorizing appeal: Minn. R. Civ. App. P. 103.03(a); Minn. Stat. § 504B.371, subd. 2.

   b. Date of entry of judgment, or date of service of notice of filing of order from which appeal is taken: _____

   c. Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): Minn. Stat. § 504B.371, subd. 2.

   d. Date of filing any motion that tolls appeal time: _____
   e. Date of filing of order deciding tolling motion: _____
   f. Date of service of notice of filing of order deciding tolling motion: _____

3. **State type of litigation and designate any statues at issue:**
   a. Type of litigation: Eviction

   b. Statute(s) at issue: _____

4. **Short description of issues that were raised in the district court, and how the district court judge decided those issues:**

_____
_____
_____

5. **Short description of the issues you are raising in this appeal** (Summarize why you are appealing in a sentence or two. You can make a detailed argument in the brief that you will be filing later):

_____
_____
_____
_____
_____
_____

6. **Related appeals:**
   a. List any prior or pending appeals arising from the same district court case as this appeal (write appeal numbers, or write "none"):

   _____

   b. List any pending appeals arising from different district court cases that raise similar issues to this appeal (write appeal numbers, or write "none known"):

   _____

7. **Contents of record:**
   a. Is a transcript necessary to review the issues on appeal? ☐ Yes ☐ No

   b. If yes, is it a full transcript of the hearing(s) before the district court judge or housing court referee, or a partial transcript? ☐ Full transcript ☐ Partial transcript

   c. Has the transcript already been delivered to the parties and filed with the district court administrator? ☐ Yes ☐ No

   d. If not, has it been ordered from the court reporter? ☐ Yes ☐ No

   e. If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? ☐ Yes ☐ No

   f. In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? ☐ Yes ☐ No

8. **Oral argument** (Only attorneys can make oral argument. If you do not have an attorney, neither you nor respondents will have oral argument):

a. If you have an attorney, is oral argument requested? ☐ Yes ☐ No
☐ I do not have an attorney

b. If yes, where is oral argument requested:
☐ Minnesota Judicial Center in St. Paul
☐ Other: _____

**9. Type of brief to be filed (choose one):**

☐ Formal brief under Rule 128.02

*(A formal brief includes a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, and an addendum.* A formal brief must be bound in a specific way, and **cannot just be stapled**. A list of approved binding methods under Minn. R. Civ. App. P. 132.01 is available at http://mncourts.gov/Clerk-of-Appellate-Courts.aspx# ApprovedBriefBindingMethods.)*

☐ Informal brief under Rule 128.01, subd. 1.

*(Before filing an informal brief, you must file a motion requesting permission to do so. An informal brief contains a concise statement of your argument and an addendum.* It may be stapled.)*

☐ Trial memoranda, supplemented by a short letter argument under Rule 128.01, subd. 2, and an addendum.

*(If you filed a written Memorandum of Law in the district court, you may file that Memorandum as your brief in this court, along with a short argument in letter format that addresses the decision of the district court judge. This may be stapled and must include an addendum.*)*

** No matter what type of brief an appellant files, the appellant's brief **must** include an addendum. Respondents **may**, but do not have to, include an addendum with their brief. The requirements for an addendum are listed in Minn. R. Civ. App. P. 130.02. In addition to the documents that rule 130.02 **requires** be included in an addendum, an addendum may contain up to 50 additional pages of documents from the record or statutes, rules, cases or other authorities that would be helpful to the court when reading your brief. **An addendum cannot include new evidence that was not presented to the district court judge.***

**10. Names, addresses, and telephone numbers of appellant and respondent (or attorneys, if any):**

Appellant or appellant's attorney:
Print name: _____
Address: _____
Email address: _____
Telephone: _____
Signature: _____

Respondent or respondent's attorney:
Print name: _____
Address: _____
Email address: _____
Telephone: _____

**STATE OF MINNESOTA**

**IN THE COURT OF APPEALS**

CASE TITLE:

_____,

COURT OF APPEALS CASE #_____

vs.

_____

**APPELLANT'S CERTIFICATE OF SERVICE BY MAIL OF NOTICE OF APPEAL, STATEMENT OF THE CASE, AND JUDGMENT**

**STATE OF MINNESOTA**
**COUNTY OF _____**

I, _____(**Name**), certify that on _____(**Date**), I served the attached **Notice of Appeal**, **Statement of the Case**, and **Judgment** on the following parties by mailing to each of them a copy thereof, enclosed in an envelope, postage pre-paid, and by depositing the same in the United States Mail, directed to each party as follows (**List the name and address of each party to whom the documents were mailed**):

1. _____
   _____
   _____
   _____

2. _____
   _____
   _____
   _____

3. _____
   _____
   _____
   _____

I declare under penalty of perjury that everything I have stated in this document is true and correct.

_____ _____
(Signature) (County where certificate was signed)

_____ _____
(Date of signature) (State where certificate was signed)

**STATE OF MINNESOTA**
**IN THE COURT OF APPEALS**

CASE TITLE:

_____,
**Appellant**

vs.

_____

**Respondent**

COURT OF APPEALS CASE #_____

**APPELLANT'S CERTIFICATE OF SERVICE BY PERSONAL DELIVERY OF NOTICE OF APPEAL, STATEMENT OF THE CASE, AND JUDGMENT**

**STATE OF MINNESOTA**
**COUNTY OF** _____

I, _____(**Name**), certify that on _____(**Date**), I served the attached **Notice of Appeal**, **Statement of the Case**, and **Judgment** in the above entitled case, by personally handing to and leaving with the following person(s) (**List the name of each person who received documents and their address**):

1. _____
   _____
   _____
   _____

2. _____
   _____
   _____
   _____

3. _____
   _____
   _____
   _____

I declare under penalty of perjury that everything I have stated in this document is true and correct.

_____ _____
(Signature) (County where certificate was signed)

_____ _____
(Date of signature) (State where certificate was signed)

**STATE OF MINNESOTA**
**IN THE COURT OF APPEALS**

CASE TITLE:

_____,

COURT OF APPEALS CASE #_____

vs.

_____

**APPELLANT'S CERTIFICATE OF FILING OF NOTICE OF APPEAL IN THE DISTRICT COURT**

**STATE OF MINNESOTA**
**COUNTY OF _____**

I, _____(**Name**), certify that on _____(**Date**), I filed the attached **Notice of Appeal** in the _____(County name) District Court by (choose one):

☐ mailing a copy of the **Notice of Appeal**, enclosed in an envelope, postage pre-paid, and by depositing the same in the United States Mail, directed to the district court at the following address:

_____
_____
_____
_____

☐ delivering a copy of the **Notice of Appeal** in person to district court administration.

☐ electronically filing the **Notice of Appeal** using the district court e-filing system.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

_____ _____
(Signature) (County where certificate was signed)

_____ _____
(Date of signature) (State where certificate was signed)

**STATE OF MINNESOTA**
**IN THE COURT OF APPEALS**

CASE TITLE:

_____,

COURT OF APPEALS CASE #_____

vs.

_____

**APPELLANT'S CERTIFICATE OF SERVICE BY MAIL OF BRIEF**

**STATE OF MINNESOTA**
**COUNTY OF** _____

I, _____(**Name**), certify that on _____(**Date**), I served the attached **Brief** on the following parties by mailing to each of them a copy thereof, enclosed in an envelope, postage pre-paid, and by depositing the same in the United States Mail, directed to each party as follows (**List the name and address of each party to whom the brief was mailed**):

1. _____
   _____
   _____
   _____

2. _____
   _____
   _____
   _____

3. _____
   _____
   _____
   _____

I declare under penalty of perjury that everything I have stated in this document is true and correct.

_____ _____
(Signature) (County where certificate was signed)

_____ _____
(Date of signature) (State where certificate was signed)

**STATE OF MINNESOTA**
**IN THE COURT OF APPEALS**

CASE TITLE:

_____,

vs.

_____

COURT OF APPEALS CASE #_____

**APPELLANT'S CERTIFICATE OF SERVICE BY PERSONAL DELIVERY OF BRIEF**

**STATE OF MINNESOTA**
**COUNTY OF** _____

I, _____(**Name**), certify that on _____(**Date**), I served the attached **Brief** in the above entitled case, by personally handing to and leaving with the following person(s) (**List the name of each person who received documents and their address**):

1. _____
   _____
   _____
   _____

2. _____
   _____
   _____
   _____

3. _____
   _____
   _____
   _____

I declare under penalty of perjury that everything I have stated in this document is true and correct.

_____ _____
(Signature) (County where certificate was signed)

_____ _____
(Date of signature) (State where certificate was signed)

Last updated: June 25, 2020

MINNESOTA JUDICIAL BRANCH

# Alternative Dispute Resolution (ADR) / Mediation

Retrieved from mncourts.gov. Go to "Help Topics" then select "Alternative Dispute Resolution (ADR)/Mediation." The below information can be found under the following tabs located on this page: "Overview," "FAQs," and "Contact Us."

## Overview

### Why Use ADR?

Rule 114.01 of the Minnesota General Rules of Practice requires that most civil cases types filed in district court are subject to ADR processes. Solving your differences outside of court can provide greater satisfaction to the parties. ADR can have many advantages as well, such as:

- It can save you time.
- It can save you money.
- It can be less stressful.
- It is confidential and private.
- It gives you more control over the outcome of your case.
- It can produce more lasting agreements.
- It may preserve or improve relationships. This is especially important in conflict involving families in which it is critical to preserve the relationship and foster ongoing communication.

### Where Can I Find Information About the ADR Processes Used in the Minnesota Court System?

- Information about ADR in the Minnesota State Court System

### What Is the Alternative Dispute Resolution (ADR) Roster of Rule 114 Qualified Neutrals?

The ADR Program maintains a roster of Qualified Neutrals who are licensed professionals consisting of attorneys, social workers, psychologists and other mental health professionals, along with other non-licensed subject matter experts who are willing to provide ADR services. All Neutrals on the roster are Qualified Neutrals and must comply with the Rule 114 - Appendix - Code of Ethics.

### How Do I Search the Roster of Qualified Neutrals?

The ADR Qualified Neutrals roster is broken down into two case types: Civil or Family.

To find a provider of family ADR services, select the **Family** roster and follow these steps:

- If you need a **Mediator**, select Mediation under the drop down menu on the **Process** filter.
- If you need a **Parenting Time Expeditor (PTE)**, select Parenting Time Expeditor under the drop down menu on the **Experience** filter.
- If you need a **Social Early Neutral Evaluation (SENE)** and/or a **Financial Early Neutral Evaluation (FENE)**, select Evaluation under the drop down menu on the **Process** filter.
- If you need an **Arbitrator**, select Arbitration under the drop down menu on the **Process** filter.

To find a provider of civil ADR services, select the **Civil** roster and follow these steps:

- If you need a **Mediator**, select Mediation under the drop down menu on the **Process** filter.
- If you need an **Arbitrator** or an **Evaluator (ENE)**, select Arbitration/Evaluation under the drop down menu on the **Process** filter.

## Search the roster of Qualified Neutrals

**Roster Disclaimer:** *Neutrals on this roster are considered "Qualified" under Rule 114 of the Minnesota General Rules of Practice for the District Courts. Qualified Neutrals are not certified or licensed in the field of ADR. Areas of experience are supplied by the individual Neutral, and have not been independently verified by the Minnesota Judicial Branch. In choosing an ADR provider, you should inquire about the qualifications and experience of the Neutral. Roster information is current up to the publication date displayed at the top of this document.*

## FAQs:

### Alternative Dispute Resolution (ADR)

#### What is ADR?

Alternative Dispute Resolution (ADR) processes are alternative methods to help people resolve legal problems before going to court. ADR involves an independent third person, called a "Neutral" who tries to help resolve or narrow the areas of conflict. A great majority of the civil cases, including marital dissolutions (divorces), filed in Minnesota State courts are settled by using ADR. The parties must consider whether to use ADR to help resolve the dispute.

#### What are the advantages and disadvantages of using ADR?

Some of the advantages to using ADR to resolve your dispute include:

- ADR can be speedier. A dispute often can be resolved in a matter of months, even weeks, through ADR; whereas, a lawsuit can take years.
- ADR is often less expensive.
- ADR allows more control of the outcome to a dispute.
- The process is confidential and private.
- ADR fosters cooperation between parties by allowing the parties to work together to resolve the dispute. This can produce more lasting agreements.
- ADR is often less stressful than going to trial.

Some of the disadvantages to using ADR to resolve your dispute include:

- ADR may not be suitable for every dispute.

- If the process is binding, the parties normally give up more court protections, including a decision by a judge or jury, and appellate review.
- ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The Neutral may charge a fee for services. If the dispute is not resolved through an ADR process, the parties may then face the usual costs of going to court.
- Parties should be mindful to not let a Statute of Limitation (sets the maximum time after an event during which legal proceedings may begin) run while a dispute is in an ADR process.

### What is a Neutral?

A "Neutral" is an individual or organization who provides an ADR service. Neutrals who are on the State Court Administrator's Rule 114 Neutral Roster are "Qualified Neutrals" and have attended training certified by the State Court Administrator's office. Neutrals are mostly licensed professionals with a wide variety of backgrounds, such as attorneys, social workers, psychologists and other mental health professionals, along with other non-licensed subject matter experts. Neutrals will not represent you or provide legal advice, nor offer therapy when acting as a Neutral.

### How Do I Find a Qualified Neutral?

To find a Qualified Neutral, search the Rule 114 Roster of Qualified Neutrals. You may search the roster by choosing family or civil. You may filter your search by experience, ADR process, and by county. Once you have a list, you may contact any of the providers to find out about fees and experience.

When choosing a Neutral for your ADR process, you should review the Neutral's professional background and style of practice. Credentials that are often important in choosing a Neutral include the following:

- Professional background (law, accounting, counseling, etc.);
- Training in the ADR process for which you need assistance;
- Experience in conducting ADR processes; and
- Knowledge in the area of the dispute (e.g., custody issues, real estate, employment).

### What is the fee for a Neutral and who pays the fee?

Parties are responsible for paying the Neutral for their services. Typically, fees are based on an hourly rate established by the Neutral. ADR services provided by some organizations have established a sliding fee scale based on the parties' incomes. It is assumed that the parties will split the cost of the ADR process equally, unless they agree otherwise. Parties should be sure to discuss fees and payments prior to entering into an ADR agreement.

### What are the most common types of ADR used in Minnesota?

The most common forms of ADR are mediation (facilitative process), arbitration (adjudicative process) and case evaluation (evaluative process). There are also other types of ADR besides those listed above that are used in Minnesota.

The following is a list of descriptions of the different types of ADR processes used in Minnesota state courts:

**Adjudicative Processes**

- **Arbitration**. A process in which a Neutral (arbitrator) or panel renders a decision (award) after reviewing the evidence and hearing arguments by each party or attorneys. The award may be binding or nonbinding, pursuant to the agreement of the parties.
  - **Binding Arbitration** is when the arbitrator's decision (award) is final and there will not be an appeal of that decision.
  - **Non-Binding Arbitration** is when a party may file a request for an appeal of the arbitrator's decision (award) within a certain amount of time.
- **Consensual Special Magistrate**. A process in which a Neutral decides issues after the parties have presented their evidence and arguments in the same manner as a civil lawsuit is presented to a judge. This process is binding and parties have the right of appeal.
- **Summary Jury Trial.** A process in which a Neutral presides over the parties' short presentation of their evidence and arguments to a jury. The jury issues a verdict which may be binding or non-binding, according to the agreement of the parties.

**Evaluative Processes**

- **Early Neutral Evaluation. (ENE).** A process in which one or more Neutrals (evaluators), with experience in the subject matter of the dispute, reviews information from the parties or their attorneys after the case is filed but before discovery (the formal process of gathering information relevant to the pending litigation, which may include written interrogatories, document production and depositions) is conducted. The Neutral(s) may give an assessment of the strengths and weaknesses of a claim, case, or defense; an opinion of settlement value; and, an opinion as to how the parties should expect the court to rule on the case or issue(s) presented. The parties negotiate after hearing the Neutrals' evaluation. The Neutral(s) may help narrow the dispute and suggest guidelines for managing discovery.

  ENE may be used in civil and family law cases. In family law cases, there are two types of ENE processes:

- **Financial Early Neutral Evaluation (FENE)** involves financial issues, such as child support.
- **Social Early Neutral Evaluation (SENE)** involves custody and parenting time issues and is generally conducted by a team of two Neutrals unless agreed otherwise by the parties.

  To learn more about family early case management and early neutral evaluation, please visit the ENE page on this website by following the link below.

Early Case Management (ECM)/Early Neutral Evaluation (ENE)

- **Non-Binding Advisory Opinion.** A process in which the parties and their counsel present their positions before one or more Neutral(s). The Neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages, or both.
- **Neutral Fact-Finding**. A process in which a Neutral investigates and analyzes a factual dispute and issues findings that are non-binding unless the parties agree to be bound by them.
- **Moderated Settlement Conference (MSC)**. A process in which an experienced Neutral offers evaluative impressions to parties to assist in the settlement process in the later stages of family court matters.

**Facilitative Processes**

- **Mediation**. A process in which a Neutral (mediator) facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute. A mediator may not impose his or her own judgment on the issues. The parties decide upon how the dispute should be resolved.

**Hybrid Processes**

- **Mini-Trial.** A process in which each party and their attorney, if any, present their positions before a selected representative for each party (i.e., the president of a company), before a Neutral third party, or both, to develop a basis for settlement negotiations. A Neutral may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.
- **Mediation-Arbitration. (Med-Arb).** A process in which a Neutral first mediates the parties' dispute and then, in the event of an impasse, serves as arbitrator of the dispute. The decision may be binding or non-binding, pursuant to the agreement of the parties.
- **Arbitration-Mediation (Arb-Med).** A process in which the Neutral first serves as an arbitrator of the parties' dispute. Prior to issuing the decision, the Neutral will mediate. In the event of an impasse, the Neutral discloses the decision which may be binding or non-binding, pursuant to the agreements of the parties.
- **Parenting Time Expediting (PTE).** A process in which a Neutral is appointed by the court pursuant to Minn. Stat. § 518.1751. The Parenting Time Expeditor (PTE) is limited to addressing the following:
    - Parenting time disputes not addressed in court orders;
    - Interpreting court orders; and
    - Determining if violations of court orders occurred.
- This process is a hybrid of mediation/arbitration and begins with Neutral facilitation (mediation) of parenting time disputes. If parties are unable to agree, the PTE will make a decision (arbitration), which is binding unless modified or vacated by the court.
- **Parenting Consulting (PC).** A process in which the Neutral (PC) incorporates Neutral facilitation (mediation), coaching, and decision making. Terms of the process are defined by the agreement of the parties and incorporated into a court order.
- **Other.** Parties may by agreement create an ADR process. They shall explain their process in the civil cover sheet that is filed with the court.

Information about ADR in the Minnesota State Court System »

## What does confidentiality in ADR mean?

Confidentiality is the bedrock principle of most ADR processes. Rule 114.08(a) of the Minnesota General Rules of Practice provides that:

Without the consent of all parties and an order of the court, or except as provided in Rule 114.09(e)(4), no evidence that there has been an ADR proceeding or any fact concerning the proceeding may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the proceeding.

## What can the Neutral report back to the court?

During the ADR process, as provided in the Minnesota Rule of Practice, Rule 114.10(c), Neutrals can only report the following to the Court:

- Failure of a party to comply with a court order to attend the process;
- Any requests by the parties for additional time;
- With written consent of the parties, any procedural action by the court to facilitate the process;
- Neutral's assessment that the case is inappropriate for that particular ADR process.

Last updated: June 25, 2020

Following the ADR process, as provided in the Minnesota General Rules of Practice, Rule 114.10(d), Neutrals can only report the following:

- Lack of agreement without additional comments or recommendations;
- If agreement is reached, requirement that its terms be reported to court should be consistent with the jurisdiction's policies governing settlements; and
- With written consent of parties, Neutral may report any pending motions or outstanding legal issues, discovery process, or any other action by any other party, which if resolved or completed, would facilitate the possibility of a settlement.

### What is the effect of an agreement reached in an ADR process?

If agreement is reached between the parties, it should be put in writing and the terms should be communicated to the court. Any agreement reached in mediation is enforceable as a contract and may be entered by the court as an order dismissing the case, if consistent with law and public policy.

**Rule 114 ADR Roster Qualification**

### How does a person become a Qualified Neutral in Minnesota?

In order to become a Qualified Neutral you must take an ADR training certified through State Court Administration. The training must meet the requirements enumerated in Rule 114.13. You must complete an **Individual Application** (individual applications can be found under the tab **Applications** on this page) after you have completed the required training to become a Qualified Neutral to be listed on the Rule 114 Neutral Roster. The application fee is $70.00.

### Where can I find the required training to be included on the Rule 114 roster?

A list of frequent sponsors of certified ADR training can be found under the tab **Course Petitions**. You can contact any one of the sponsors to ask about upcoming certified trainings in your area. To verify if a course has been reviewed and certified by the State Court Administrator's office, contact the ADR Program via the contact form.

### How soon after completion of a certified ADR training must one submit an Individual Application in order to be approved to be placed on the roster?

There is no specified time frame from when you take a certified training to when you may apply to be placed on the roster.

### Does a person become a "Qualified Neutral" in Minnesota upon completion of a certified training, or is there an application process?

No. A person must first submit and receive confirmation of approval of an Individual Application in order to be considered a Qualified Neutral in Minnesota.

A Neutral must be currently active on the MN State Court Administrator's Qualified Neutral roster to say or advertise that they are a "Qualified Neutral under Rule 114 of the Minnesota General Rules of Practice." *See* Rule 114 Code of Ethics, Rule VI Advertising and Solicitation.

### How can I submit a training waiver request pursuant to Rule 114.14 of the Minnesota General Rules of Practice?

The ADR Ethics Board may waive or partially waive training based on an applicant's background and experience. Waivers may be granted only when, with the discretion of the Board, the waiver will not

undermine the high standard of competence and ethical responsibility required of Qualified Rule 114 Neutrals.

An applicant for qualification who was certified, licensed or qualified as a mediator in another state or country and who desires to have all or part of the training requirements waived on the basis of previous training and experience, or an applicant who believes that they have sufficient training and experience, may request such a waiver by submitting the following:

- A completed and signed Individual Application without payment.
- A cover letter demonstrating equivalent number of hours of training as required to be qualified under Rule 114.13; and
- Evidence of relevant experience in the processes you are requesting to waived onto.

Upon approval, you will be asked to submit the $70 application fee. Waiver requests submitted without evidence of relevant training and experience will be denied.

### How do I add an additional roster to the one(s) I am already approved for?

You can add an additional roster by submitting another **Individual Application** form and only completing the sections pertaining to the roster(s) you are now applying for. The $70.00 administrative fee is required for each form submitted.

### What are the requirements to stay on the roster?

There are two compliance requirements that must be met in order to maintain your "active" status on the roster.

1. **Qualified Neutrals must submit a $50.00 renewal fee and affidavit *annually*.**
2. **Qualified Neutrals providing facilitative or hybrid services must complete 18 hours of ADR related continuing education within a three-year reporting period. Qualified Neutrals providing exclusively adjudicative or evaluative services must complete nine hours of ADR related continuing education within a three-year reporting period. Qualified Neutrals providing services on both the facilitative/hybrid and evaluative and/or adjudicative panels need only complete 18 total hours of CE every three years.**

State Court Administration will email the **Annual Renewal Invoice and Affidavit** and an ADR **Continuing Education Report Form** approximately 90 days prior to the due date. If you need to obtain another copy of these documents, please send an e-mail via the contact form.

**Continuing Education (CE) for Qualified Neutrals**

### Where can I find ADR related CE courses?

ADR related CEs can be found throughout the state. The ADR Program maintains a document that lists frequent sponsors of ADR programming. You may reach out to any of the sponsors on the list to find out about available trainings.

ADR Training Provider List (the judicial branch is not endorsing or recommending these providers due to their inclusion on this list).

Last updated: June 25, 2020

Can CEs be attended on-demand? If so, how many credits can be attended on-demand?
Yes, CEs can be attended on demand. There is no limit to the number CEs you can attend on-demand.

Can I report the same training I took to be placed on a roster for CE credit?
Only if you were already approved for and placed on the roster prior to the training, *and* you attended the certified training in order to be added to an additional roster *or* to refresh your ADR skills.

All CEs must be attended during the Neutral's reporting period. Reporting periods begin on the day that your initial application is approved.

Can pro bono mediations or ride-alongs be used towards CE?
No, only trainings that meet the guidelines published on this site can be used towards CE.

My interest is in mediating business disputes. Do business law CLEs count toward the 18 hours or do I have to keep taking the same basic ADR classes over and over again every cycle?
According to the guidelines for CE that are published on this site, you may attend a course as long as it is materially related to the subject matter of the Neutral's ADR practice. If you are listed on the family mediation roster, then courses on business law will not be applicable towards ADR CE. However, a course about how to resolve conflicts involving families would be applicable.

Is there a way to report my trainings online immediately after I attend them, similar to how lawyers report CLEs, or do I have to keep track and report them at the end of my reporting cycle?
No, you must maintain a list of the CEs you attend during your reporting period. A CE report form will be emailed to you on or around April 1st during the you are required to report your trainings. You will be able to report your trainings on the form that is emailed to you.

Where can I obtain another copy of my continuing education report that was emailed to me?
If you need another copy of your CE report, please submit a request via the contact form under the **Contact Us** tab on this page. CE report forms are not posted online since they are specific to each Neutral.

Are there any published guidelines for what qualifies as Continuing Education (CE) for ADR?
Yes. Learn more about Continuing Education (CE) Guidelines for Qualified Neutrals.

**Complaints**

How can I find out if a complaint has been filed against a Neutral?
All information related to complaints filed against a Neutral is confidential. If a Neutral has been publically sanctioned by the ADR Ethics Board, information about that can be found on the **Complaint**

**Process** section of this webpage. There have been no public sanctions leveled against a Neutral by the ADR Ethics Board since 2016.

## How do I file a complaint against a Neutral? What is the process for reviewing and handling a complaint?

The complaint process is summarized on the **Complaint Process** tab on this webpage.

ADR Ethics Board Complaint Process Flowchart »

## At what point is the Neutral notified that a complaint has been received? If a complaint is unfounded, is the Neutral still notified?

The ADR Ethics Board determines whether the allegation(s) of a complaint constitute a violation of the Rule 114 Code of Ethics. If the allegations constitute a violation, the Neutral is notified that there will be an investigation and has twenty-eight (28) days to respond. If the allegations do not constitute a violation, the Neutral is notified of the complaint and its dismissal.

## Can a complaint be submitted about someone practicing ADR, but not on the list of Qualified Neutrals?

The ADR Ethics Board only considers complaints against any individual or organization (neutral) placed on the roster of Qualified Neutrals pursuant to Rule 114.12 *or* serving as a court appointed Neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.

## What are the most common complaints received by the Board regarding ADR Neutrals? Of those filed, how many are dismissed as unfounded?

Between 2013 and 2018:

- 3 complaints were filed against Neutrals on the civil facilitative (mediation) roster.
- 6 complaints were filed against Neutrals on the civil adjudicative/evaluative (arbitration and evaluation) roster.
- 3 complaints were filed against Neutrals on the family arbitration roster.
- 2 complaints were filed against Neutrals on the family evaluative (SENE, FENE, MSC) roster.
- 86 complaints were filed against Neutrals on the family facilitative (mediation) roster. Of those 80, 47 were complaints against parenting consultants (PCs) and 32 were complaints against parenting time expeditors (PTEs).

Between 2013 and 2018:

- Of the 111 complaints received, 43 were dismissed without investigation, 57 were investigated, and 11 were dismissed for lack of jurisdiction.
- Of the 57 complaints that were investigated, 26 were determined to be ethical violations and 31 were dismissed.

## What is the breakdown of the number of ethics complaints by each Rule 114 Code of Ethics rule number?

Total complaints of alleged ethical rule violation by rule (2013 - 2018):

- Rule I. Impartiality 83

- Rule II. Conflicts of Interest 33
- Rule III. Competence 42
- Rule IV. Confidentiality 24
- Rule V. Quality of Process 89
- Rule VI. Advertising and Solicitation 7
- Rule VII. Fees 47
- Mediation Rule I. Self-Determination 11

### Is the ADR Ethics Board able to get my money back from a Neutral or change a decision made by a Neutral?

No, the ADR Ethics Board is not able to get the money back that you paid to the Neutral nor change a decision made by a Neutral.

### Of the complaints that have merit, what is a "typical" resolution?

The Board may impose sanctions if doing so is supported by clear and convincing evidence. (Code of Ethics Enforcement Procedure Rule III, Sanctions, Part B.) The Code of Ethics Enforcement Procedure Rule III, Sanctions, Part A includes, but is not limited to, the following:

- Issue a private reprimand.
- Designate the corrective action necessary for the Neutral to remain on the roster.
- Notify the appointing court and any professional licensing authority with which the Neutral is affiliated of the complaint and its disposition.
- Publish the Neutral's name, a summary of the violation, and any sanctions imposed.
- Remove the Neutral from the roster of Qualified Neutrals, and set conditions for reinstatement if appropriate.

## The ADR Ethics Board

### Who serves on the ADR Ethics Board?

The thirteen-member board includes representatives of:

- Judiciary (6)
- Non-Judiciary (7)

Current board members are listed on the **ADR Ethics Board Members** tab.

### What are the criteria for selection/appointment?

Non-judicial representatives serving on the ADR Ethics Board must be Qualified Neutrals under Rule 114, *and* be on the Rule 114 Roster of Qualified Neutrals maintained by the State Court Administrator.

### How are Board members selected/appointed?

The State Court Administrator solicits applications for Board members. The Minnesota Supreme Court appoints members to the ADR Ethics Board.

The ADR Ethics Board makes recommendations to the Minnesota Supreme Court, which appoints members. The Ethics Board considers applicants' professional experiences and commitment to the importance of ADR in the MN court system. It also seeks to represent broad ADR backgrounds in its membership, and gender, racial, ethnic and geographic diversity, with members from throughout Minnesota. The Board also recommends applicants who contribute special expertise or knowledge on

some aspect of policy that the Board expects to face in the near future.

What other responsibilities does the ADR Ethics Board have beyond monitoring ADR practice and practitioners?

The Minnesota Supreme Court adopted the current ADR Ethics Board priorities in an Order dated November 8, 2007.

**Contact Information:**

If you have any questions, please contact the Alternative Dispute Resolution Program.

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## § 2.1 GENERAL INTRODUCTION; HISTORICAL OVERVIEW

Alternative dispute resolution (ADR) has become a major means of resolving disputes in Minnesota, and its use has greatly increased since 1994. With this increase in popularity, new forms of ADR have developed in an effort to resolve even more disputes outside of the judicial system. In fact, ADR is a useful and efficient tool for resolving disputes at any stage and may be effectively utilized before litigation has commenced, during pending litigation, and even after a case has been litigated and is on appeal.

Despite the growing popularity of ADR, many cases are still filed each year in Minnesota courts. For example, in fiscal year 2018, 30,979 major civil cases and 41,669 family cases were filed in total across the state. Minn. Judicial Branch, *Performance Measures, Key Results and Measures Annual Report*, at 11–12 (Sept. 2018) <http://www.mncourts.gov/mncourtsgov/media/PublicationReports/Annual-Report-2018-Perf-Measures-Jud-Cncl.pdf>. And on the appellate level, the Minnesota Court of Appeals (with 19 judges) had 1,911 appeals filed in fiscal year 2018, with approximately half of them constituting criminal matters, and the Minnesota Supreme Court had approximately 600 petitions for review filed. *Id.* at 24–27. A small percent of cases filed are actually tried and, of those, many are appealed. Accordingly, while ADR has grown and evolved into an integral part of our system of justice, the traditional adversarial system is still adjudicating numerous cases and developing the common law in the process.

The use of ADR, however, was never meant to replace the judicial system, which is the constitutional forum established as a peaceful means of resolving disputes. Instead, the growing use of ADR has been welcomed by citizens and reflects the support of the legislature and judiciary. It has grown in use, in part because the traditional judicial decision-making model may not provide the most comprehensive, cost-effective, or timely solution to ongoing problems or needs. Many companies have inserted mediation and arbitration provisions in most contracts for goods, services, and employment. ADR provides an alternative for resolving disputes, allows for greater utilization of fairness and equity principles, and provides more flexibility and creativity in crafting resolutions because, in part, mediation is a voluntary process and an arbitrator is not bound by the common law.



### JUDICIAL CONSIDERATION

It is often productive to discuss ADR before the lawsuit is commenced. Mediation, for example, can be very fruitful when the parties have not yet become too polarized by the adversarial process and attorneys are not under the pressure of a scheduling order.



## ETHICAL CONSIDERATIONS

Each lawyer serving as a neutral must give consideration to how the Minnesota Rules of Professional Conduct apply to their activities in that role. The Minnesota Lawyers Professional Responsibility Board has not as yet directly applied its rules to neutrals, but there is no known rule or case that precludes the Board from taking that position. For instance, the Code of Ethics regarding conflicts of interest is less onerous and restrictive for neutrals than the Minnesota Rules of Professional Conduct for attorneys. If the neutral is an attorney, an unanswered question is "which rules apply to the attorney working in the role of a neutral?"

### A. Early Statutes and Case Law Authority for Arbitration

ADR has been used in Minnesota since 1851, when the territorial laws included arbitration provisions. *See* MINN. TERR. REV. STAT. ch. 96, §§ 1–4 & 19. When Minnesota achieved statehood and the first legislature of the state of Minnesota convened, arbitration provisions from the territorial laws were incorporated into statute. *See* MINN. STAT. ch. 89 (1858). And when the Minnesota Supreme Court was first faced with a case involving arbitration in 1860, it firmly endorsed the concept. *See Washburne v. Lufkin*, 4 Minn. 466, 471–72 (1860) (encouraging "the settlement of differences by arbitration"). In the 1889 case of *Goddard v. King*, 41 N.W. 659, 661 (Minn. 1889), the Minnesota Supreme Court showed its reluctance to interfere with arbitral awards, holding:

> Where the parties have by their agreement made the arbitrators judges between them of the law and the fact, they are bound by the decision, if fairly and honestly made, even though the arbitrators have erred in their conclusions of fact, or in the law which they have applied to them.

Minnesota adopted the Uniform Arbitration Act in 1957. It was later replaced by the Revised Uniform Arbitration Act in 2010. *See* MINN. STAT. ch. 572B.

### B. Statutorily Mandated ADR – MINN. STAT. § 484.76

In 1991, the Minnesota Legislature determined that all civil cases, subject to specific exceptions, shall be subject to non-binding alternative dispute resolution processes. MINN. STAT. § 484.76. The legislature provided a different standard for medical malpractice cases, directing only that "the court shall require the parties to discuss and determine whether a form of alternate dispute resolution would be appropriate or likely to resolve some or all of the issues in the case." MINN. STAT. § 604.11, SUBD. 2. The enactment of Minnesota Statutes section 484.76 received enthusiastic support from the judiciary and general acceptance from attorneys and parties to litigation. The legislature officially sanctioned ADR in response to the increased expense of litigation and out of a desire to eliminate some of the delays, uncertainties, and dissatisfaction with the traditional adversarial system. The Minnesota Supreme Court followed suit in 1993 by adopting Minnesota General Rule of Practice 114. The courts now require parties to mediate their differences in civil cases with an ADR neutral and to attempt to resolve their disputes prior to a trial. In 1999, the legislature further showed its commitment to ADR with the enactment of Minnesota Statutes section 543.22, which requires that "[w]hen a civil case is commenced against a party, the summons must include a statement that provides the opposing party with information about the alternative dispute resolution process as set forth in the Minnesota General Rules of Practice." *See infra* Appendix A. A 2013 amendment to the General Rules of Practice, "aimed at facilitating more cost effective and efficient civil case processing," now requires that after the parties' case-manage-

ment conference following the service of a complaint or petition, the parties shall include information regarding the ADR process in a civil cover sheet pursuant to Minnesota General Rule of Practice 104.

The legislature further provided immunity for presiding ADR neutrals "except for injury caused by malice, bad faith, or reckless conduct." MINN. STAT. § 604A.32; *see also Owens v. Am. Arbitration Ass'n*, No. 16-1055, 2016 WL 6818858, at *2 (8th Cir. 2016) (recognizing that immunity protects an arbitration sponsoring organization from civil liability during the arbitration process and concluding that "removal of arbitrators is similarly protected by arbitral immunity because it is just as much a part of the arbitration process as the appointment of arbitrators"). Presiding ADR neutrals also have general privileges and immunity from being compelled to testify except for conduct that may constitute a crime, disqualification proceedings, or unprofessional conduct. MINN. STAT. § 595.02, SUBD. 1a.



### ETHICAL CONSIDERATIONS

In all forms of ADR, the neutral must be impartial and serve "only in those matters in which she or he can remain impartial and even-handed." MINN. GEN. R. PRAC. 114, App., Rule I. At any time during the process, if a neutral feels unable to act impartially, the neutral must withdraw. This requires self-assessment by the neutral. Attorneys and judges must be mindful of the need for neutrality in the selection or appointment of a neutral to any ADR process. MINN. GEN. R. PRAC. 114, App., Code of Ethics, Rule I. (References to the Code of Ethics refer to the Rule 114 Appendix, which applies to individuals and organizations who are qualified under Rule 114 to act as neutrals in court-referred cases and to those neutrals who seek qualification by the Minnesota Supreme Court. The comments to the rule are guides to interpretation and are not authoritative. The introduction to the Code of Ethics provides a general orientation to it.)

Any neutral has an independent duty to disclose all actual and potential conflicts of interest "reasonably known to the neutral." This includes the appearance of any conflict of interest. Once the potential conflict has been disclosed, all parties may choose to retain the neutral, provided that the waiver of the conflict or potential conflict is in writing. After an ADR process has been completed, a neutral may not, under certain circumstances, establish another professional relationship with any of the parties "for a reasonable time under the particular circumstances ... in a substantially factually related manner." This rule may preclude another attorney in a neutral's law firm from representing a client for which the neutral has served in an ADR process. The parties and their attorneys are allowed to make independent judgments to determine whether a particular neutral is not suitable for a particular case and process. MINN. GEN. R. PRAC. 114, App., Code of Ethics, Rule II.

## § 2.2 MINNESOTA GENERAL RULE OF PRACTICE 114

Minnesota General Rule of Practice 114 provides attorneys and parties with a framework regarding the various ADR processes, including mediation and arbitration, in the context of pending civil cases in the court system. Minnesota General Rule of Practice 114 describes the steps involved in the selection of an ADR process and a neutral, the process involved in selecting a time and place for ADR proceedings, the parties' communications with the

neutral, confidentiality, various aspects regarding the neutral's fee, where the roster of neutrals may be obtained, and the required neutral training.

The Minnesota Supreme Court Alternative Dispute Resolution Ethics Board has recently recommended to the Minnesota Supreme Court numerous substantive amendments to Minnesota General Rule of Practice 114, which was originally created in 1993. Specific proposed changes include:

- expanding the jurisdiction of Minnesota General Rule of Practice 114 to apply to neutrals in family law cases, as well as in civil cases;
- expanding and clarifying ADR processes and definitions;
- removing organizations from the state court administrator's roster of neutrals;
- requiring the court administrator to provide a copy of the order of appointment to the neutral to eliminate potential conflicts and ethical concerns between the rule of the neutral, as agreed by the parties, and the neutral's role, as set forth in the order;
- requiring signed written agreements for all ADR services in civil or family court, which include a description of the role the neutral is providing, an explanation of confidentiality and admissibility of evidence, compensation details, and procedures to be followed;
- creating a simplified process for the neutral to seek relief for non-payment;
- requiring the neutral to provide written qualifications;
- integrating the Code of Ethics into Minnesota General Rule of Practice 114, rather than having it as a separate appendix; and
- incorporating the enforcement procedure for the Code of Ethics into the rule.

As stated in the Report of the Minnesota Supreme Court Alternative Dispute Resolution Ethics Board, the amendments were recommended because of the "changing world of ADR in the courts and the increase in complaints against neutrals." Minnesota Supreme Court Alternative Dispute Resolution Ethics Board, *Recommendations of Minnesota Supreme Court Alternative Dispute Resolution Ethics Board* (July 14, 2017), *available at* <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/News%20and%20Public%20Notices/Orders/Administrative-Order-Comment-periodHearing.pdf>. Currently, the Minnesota Supreme Court is gathering input regarding the proposed changes.

### A. How to Select an ADR Neutral

Minnesota General Rule of Practice 114.04(a) requires the parties, upon commencement of litigation, to "promptly confer regarding case management issues, including the selection and timing of the ADR process." (Proposed Rule 114.04(b) provides that "[t]he parties, after service of the complaint, petition, or motion, shall promptly confer regarding selection and timing of the ADR process and selection of a Qualified Neutral.") Functioning as a neutral is a quasi-judicial function and a conditional privilege. "Neutrals have a responsibility not only to the parties and to the court, but also to the continuing improvement of ADR processes." MINN. GEN. R. PRAC. 114, App., Code of Ethics, Introduction. (This language is included in Proposed Rule 114.15(a)(3).)

### 1. Roster of Neutrals – Minn. Gen. R. Prac. 114.12

The state court administrator is required to establish civil and family Rule 114 rosters. Individuals desiring to be placed on the roster need to apply to be listed. The list shall include those who have received the required training established by Minnesota General Rule of Practice 114.13 or received a waiver under Minnesota General Rule of Practice 114.14. The roster of qualified neutrals may be obtained online at the state court website for ADR at <http://adr.courts.state.mn.us/adr/Adr_query.asp>. (Proposed Rule 114.02(f) eliminates organizations from the roster of qualified neutrals.)



#### ETHICAL CONSIDERATIONS

"A neutral shall serve as a neutral only when she/he has the necessary qualifications to satisfy the reasonable expectations of the parties." Minn. Gen. R. Prac. 114, App., Code of Ethics, Rule III. This applies to neutrals in all processes. The neutral must provide the parties with information regarding his or her relative training, education, and experience, and even if the parties want to retain a particular neutral, that person should decline appointment if, in the neutral's own judgment, he or she believes that the dispute is beyond his or her competence. Minn. Gen. R. Prac. 114, App., Code of Ethics, Rule III.

### 2. Court Appointed Neutrals – Minn. Gen. R. Prac. 114.05(a)

If the parties cannot agree on how to select a neutral, the court has authority to make the selection under Minnesota General Rule of Practice 114.05(a) and may do so at the time of the scheduling order. (Proposed Rule 114.04(b) provides that "[i]n the event that the parties are unable to agree on a Qualified Neutral, the court shall make the selection of a Qualified Neutral. If the parties decide on a process and cannot decide on a Neutral, the court should not substitute its judgment on process. The court shall, with the advice of the parties, establish a deadline for completion of the ADR process.")

### 3. General Expertise Roster Exceptions – Minn. Gen. R. Prac. 114.13(f)

The parties may select fact finders and other ADR practitioners based on their experience, even though they are not listed on the neutral roster maintained by state court administration. (Proposed Rule 114 strikes this language, and provides in Minnesota General Rule of Practice 114.04(b) that "[a]ny individual providing ADR services under Rule 114 must be a Qualified Neutral, except for ... Neutral Fact Finders; ... a Neutral who does not qualify under Rule 114.13 of these rules may be selected by the parties for appointment by the court for an adjudicative ADR process based on unique legal or other professional training or experience; or ... when parties consent to an ADR process that is not required.")

## B. Fee Agreements for ADR Services – Minn. Gen. R. Prac. 114.11

A neutral's fees for ADR services are required to be fair and reasonable. The neutral is required to disclose and explain to the parties at the outset the costs associated with ADR, including the neutral's compensation. Minn. Gen. R. Prac. 114 App., Code of Ethics, Rule VII. Neutrals may not receive contingency or referral fees. *Id.* (This

language is included in Proposed Rule 114.15(h), which also provides that the "fee agreement shall be included in the written agreement and shall be consistent with a court order appointing the Neutral.")

The parties and their counsel are responsible for the neutral's fees and typically evenly share the cost. If a party is unable to afford ADR service and free or low-cost services are unavailable, the district court will not require the parties to participate in ADR before proceeding with the court. MINN. GEN. R. PRAC. 114.11(d). (Proposed Rule 114.11 simplifies the process for a neutral to seek judicial relief for non-payment by eliminating the requirement to seek relief by motion. The amendment provides that a neutral can submit an affidavit to the court for relief without bringing a motion or intervening as a party.) If the parties cannot reach an agreement on how to pay for the ADR fees, the court has the power to determine a final and equitable allocation of costs in the ADR process.



### ETHICAL CONSIDERATIONS

There must be full disclosure and explanation of the basis for compensation, fees, and charges in advance of the mediation. Contingent fee agreements are not permitted. A neutral cannot give a referral fee in receipt of any matter for which he or she will be a neutral. Where a neutral withdraws from a case, any unearned fees are to be returned to the parties. MINN. GEN. R. PRAC. 114.



### PRACTICE TIP

The allocation of the ADR fee should be agreed to in writing in advance of the ADR session. Attorneys are usually required to be responsible for the payment along with their clients because ADR service providers do not have knowledge of the parties' financial conditions and, thus do not want to have a separate and/or sole financial arrangement with them.

In arbitration proceedings, an estimated fee amount is commonly collected in advance before the hearing or before a decision.

## § 2.3 MEDIATION

### A. Minnesota Civil Mediation Act, MINN. STAT. §§ 572.31–572.40

The Minnesota Civil Mediation Act, first adopted in 1984, provides parties involved in the mediation of disputes with standards intended to protect the parties' rights. The Act defines mediation terms, explains the effect of a mediated settlement agreement, provides the process for setting aside or reforming a mediated settlement agreement, outlines a mediator's presentation of credentials to the public, describes the statute of limitations, and outlines the scope of its application to various proceedings. The Act provides that the agreement to mediate must be in writing, identify the controversy, and provide for termination. MINN. STAT. § 572.33, SUBD. 3.

Minnesota General Rule of Practice 114 recognizes that mediation is based on the principle of self-determination by the parties. The mediation process relies upon the ability of the parties to reach a voluntary, uncoerced

agreement. The primary responsibility for the resolution of a dispute and the shaping of a settlement agreement rests with the parties. A mediator shall not require a party to stay in the mediation against the party's will. MINN. GEN. R. PRAC. 114 App., Code of Ethics, Rule I. (Proposed Rule 114.15 continues to recognize the principle of self-determination by the parties, providing that, "[a] Neutral shall not require a party to stay in the ADR process or attempt to coerce an agreement between the parties.")

If the parties reach a settlement, the written agreement detailing the mediated settlement is not enforceable unless it states that it is binding. For a mediated settlement agreement to be binding, Minnesota Statutes section 572.35, subdivision 1(1) requires that:

> [I]t contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights.

In one of the few appellate cases addressing mediation, the Minnesota Supreme Court held in *Haghighi v. Russian-American Broadcasting Co.*, 577 N.W.2d 927, 930 (Minn. 1998) that Minnesota Statutes section 572.35 precluded enforcement of a handwritten agreement prepared by the parties' attorneys following a mediation session because it failed to state that it was binding. As a practical point, it is usually the preferred practice to have the parties sign the agreement at the mediation session. Further, for a settlement agreement to operate as a release, it must express intent to discharge claims. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010).



### ETHICAL CONSIDERATIONS

There is a separate ethical rule applicable only to mediation, which states, "a mediator shall recognize that mediation is based on the principal of self-determination by the parties." MINN. GEN. R. PRAC. Rule 114, App., Mediation, Rule I. That means that it is up to the parties to be the decision-makers, not the mediator. The mediator cannot compel any party to remain in the mediation process at any time against his or her will, even if the court has ordered the mediation. The Code of Ethics does allow for mediators to make suggestions and to offer opinions, so long as the decision-making remains with the parties. *See* MINN. GEN. R. PRAC. 114, App., Code of Ethics.

## B. Practical Pointers on Selecting a Mediator

The vast majority of attorneys and parties select their mediators on their own without the court or court administration's involvement. These decisions are based in large part upon the expertise and reputation of the neutral, time, type of ADR process, and, sometimes, hourly fees. Numerous neutrals practice in Minnesota and information about them can be obtained from the Rule 114 roster of ADR neutrals, the MSBA directory, and Minnesota Lawyer.

- Selecting the right mediator does make a difference in the success of the mediation. Experience, timing, cost, location, and reputation of the mediator should all be taken into consideration in selecting a mediator. Mediators are generally trained in the mediation process and experienced in a wide variety of cases. Successful mediators are good listeners, careful communicators, patient, adept at

understanding the issues, and committed to the mediation process in search of a voluntary and fair resolution.

- When deciding on a mediator, it is also important to take into consideration how the mediator will be received by the parties. The lawyer should make an assessment as to whether his or her client will listen to and respect the mediator. Sometimes it is even more important to choose a mediator whom the opposing party recommended in that they may be more prone to listen, especially in difficult or complex cases where strong opinions have been formed by the parties.



### JUDICIAL CONSIDERATION

Work with counsel in the case early on about the who, what, and when of the chosen ADR process. The mediator or arbitrator the attorneys wish to retain may be booked out some time, and the attorneys will find themselves in a scramble as the deadline for ADR in the scheduling order approaches.



### ETHICAL CONSIDERATIONS

If and when a mediator determines from a direct statement of a decision-maker or the representing attorney that the purpose of participating in the mediation process is to merely discover the others' "bottom lines" with no intention of reaching settlement, ethical considerations come into play. Good-faith negotiations and the reasonable expectations of the process by all parties must be considered. Arguably, if the strategy of a party is not to settle but to discover, then a person with authority to settle is not present, as required by Rule 114. The mediator cannot communicate whatever statement is made about the intentions to the other side(s). Serious consideration must be given to terminating the mediation in order for the mediation to comply with Minnesota General Rule of Practice 114, Appendix, Code of Ethics, Rule V.

## C. Practical Pointers in Preparing for Mediation

### 1. Lawyer Preparation

- Preparation of a thorough, confidential mediation statement is crucial. The mediation statement should contain a short statement or summary of the facts, theories of recovery, damage claims, and defenses. It should be submitted to the mediator in a timely manner so that the mediator can adequately prepare for the mediation. A candid assessment of the strengths and weaknesses of the case are important for the mediator, along with disclosures of settlement offers made to date by the parties. If court orders or memorandums have already been issued, those could also be attached for informational purposes, along with some of the pleadings, if the lawyers think that would be instructive to the mediator. This confidential statement not only helps the lawyer focus on the case, but also assists the mediator in preparing for the mediation session so he or

she will have an understanding of the case as the mediator contemplates strategies for resolution.

- Timing of mediation. If additional information or discovery by way of deposition or documents or motions is deemed necessary, that should be completed before the mediation. However, often at a mediation this information can also be discussed on an informal basis to avoid some of the costs and expense of discovery.

- If strong precedents supporting or opposing various positions exist, provide those to the mediator for review.

- The parties should be aware of the attorney fees and costs incurred to date on their behalf, because often those costs become an issue in the mediation.

- Discuss with clients the general economics of the situation concerning the opposing party's ability to pay, the difficulties involved in collecting on a judgment, funding ongoing litigation, time delays, and the true cost of victory. The merits of the parties' positions sometimes are secondary, considering the economics of the situation.

- Tax ramifications. If there are going to be tax ramifications for the structuring of various settlements and the deductibility of payments, consult with a certified public accountant beforehand or have one available over the telephone to assist in the structuring and allocation of settlement proceeds. Treatment of tax issues for personal injury and emotional distress claims, and W-2 and 1099 income should be considered ahead of the mediation.

- If subrogation claims are in issue, bring appropriate contact information to the mediation and provide prior notice to those other interested parties.

- If payment terms are contemplated as part of a settlement, what terms are reasonable, including possible sanctions on default, procedures for collections, notices, interest and attorney fees for enforcement, and confession of judgment, etc.?

- Also consider the importance of non-monetary terms, and of confidentiality, non-disparagement, no admission of liability, settlement enforcement (including recovery of attorney fees for breach), and other terms that may be important to the client.

## 2. Preparation of Client

- The attorney should work with the client beforehand to inform the client of the importance of the mediation, the role it plays in the system of justice, and the risks, delays, and costs of a trial and appeal. Historically, very few civil cases are tried, and many of these are appealed. The attorney should encourage the client to come to the mediation with an open mind and to be flexible and creative in trying to reach a mediated settlement. Individuals with full settlement authority should be physically present at all mediation sessions. When insurers are involved, they should be present as well if the parties expect that insurance will be material to the settlement.

- Opening demand offer. Think through and discuss what the opening demand and offer should be, while leaving some room to move and taking into consideration some of the risks of litigation, the uncertainties, the delays, and the costs of proceeding forward.
- Share with the client the amount of attorney's fees and costs incurred to date and an estimate of what it is going to cost to complete the litigation through trial and possible appeal.
- Remind the client to be patient, keep an open mind, and learn from the exchange of information and positions.
- Prepare and discuss a best day/worse day scenario of case outcomes.
- Creative solutions. Make a list of significant nonmonetary conditions that might facilitate a mediated settlement.
- Discuss confidentiality provisions, general releases, mutual or unilateral agreements, arbitration of later disagreements, and finality.
- Prepare for down time during the mediation and think about how to avoid it. This includes conducting initial meetings with the mediator in advance of the mediation so that the morning is not spent waiting around for the purely informative part of the process to conclude.

## D. Process: Voluntary Decision-Making

### 1. What Works

Mediation is based on the principle of self-determination because the parties, rather than a third-party decision-maker, determine whether a settlement is reached and the contents of any settlement. Mediators are primarily facilitators who communicate information about the process and the case to the parties and relay offers of settlement. Although resolution is the main goal, mediators must use care not to impose their preferences or judgments on the issues on the parties and must be cautious about their representations to the parties. *See* MINN. STAT. § 572.33, SUBD. 2; MINN. GEN. R. PRAC. 114.02(a)(7) (proposed MINN. GEN. R. PRAC. 114.15(j)). Thus, although mediators are performing a judicially-sanctioned service, an agreement to mediate should discuss the mediator's limited role.



### ETHICAL CONSIDERATIONS

A neutral has a duty to ensure that the process is of high quality, which requires a commitment by the neutral to "diligence and procedural fairness." That means that the neutral cannot make any misstatement of fact or law, must expedite the process, must meet the reasonable expectations of the parties, shall not provide therapy to any party, and shall withdraw from the process if he or she is incapable of serving or unable to remain neutral. This list is not all inclusive. MINN. GEN. R. PRAC. 114, App., Code of Ethics, Rule V.



### ETHICAL CONSIDERATIONS

A pro se litigant may be at a disadvantage if the other side is represented by an attorney. The attorney has a duty to his or her client to represent the client vigorously. The mediator cannot give legal advice to the pro se litigant without violating the ethical duty of neutrality. When the imbalance of the negotiations becomes "unfair," a mediator may terminate the mediation in order to protect the quality of the process. *See* MINN. GEN. R. PRAC. 114.

It is the duty of the attorneys, not the neutral, to determine whether all of the parties to a mediation are competent to participate in mediation and to execute a mediated settlement agreement. If the neutral questions a decision-maker's competency, he or she should seriously consider terminating the process until competency is established.

Although participation in ADR in Minnesota is mandatory by rule for most civil cases, resolution of the dispute is voluntary, and a successful mediation involves give-and-take by all the parties. Instead of seeking a perfect settlement or total victory, the parties seeking resolution often compromise so that a fair—or "win-win"—situation may be achieved for all. Sometimes, this means simply limiting losses or obtaining whatever is available.

The traditional judicial decision-making model is a formal process governed by specific rules of procedure, evidence, and the law. A judge's or jury's decision is based on the testimony and exhibits received at trial, and decisions are rendered after the record has been closed. With either a judge or a jury, the final decision-making power has been delegated by the parties to a third-party tribunal. In such cases when the dispute is under advisement for decision by the judicial decision-maker after the close of the record, there is generally no more room for bargaining or an opportunity for the judge or jury to further clarify, inquire, or compromise; ADR, however, allows for these flexible and creative options. Moreover, a trial produces a winner and a loser in a final and binding judgment and decree that the parties must abide by, subject to possible appellate rights.



### ETHICAL CONSIDERATIONS

The rule regarding confidentiality is extremely important because it prevents the neutral from disclosing substantive discussions and evidence to the court in some of the ADR processes. It further prevents the court from being advised of settlement negotiations and discussions during the mediation process. Minnesota General Rules of Practice 114.08 and 114.10 specifically address confidentiality based upon the nature of the ADR process being used. There have been efforts to erode this rule in other states, but it has not been significantly tested in Minnesota. There is nothing to prevent disclosure to the court of what otherwise would be confidential information if all parties agree to disclose. It is recommended that such an agreement be in writing or made on the record. MINN. GEN. R. PRAC. 114.

In contrast, mediation is an interactive process that provides an opportunity for the parties to express their views, vent, and assess their claims' strengths and weaknesses. On a practical note, mediation also gives the parties a chance to reassess the internal and external costs of going forward with litigation, including the costs of pre-trial discovery, experts, motions, trial preparation, trial, possible appeal, and the stress and uncertainty of outcomes. Initial demands and offers often reflect the hopes of the parties, and reassessment of these hopes occurs each time a new proposal is advanced.

Parties that have had previous litigation experience generally take into account in their settlement analysis the significant costs and disruption of supporting ongoing litigation. Document production, preservation, spoliation issues, e-discovery, privilege-log issues, discovery disputes, delays, time away from the office, and deflection of focus from the main core business and family issues are significant tangible and intangible costs and expenses that need to be taken into consideration when assessing the true costs of litigating to victory in court.

Mediation allows the parties the opportunity to take all of these factors into consideration before proceeding with a trial. It provides a time out for an informal exchange of information, arguments, and feelings. Mediation also provides an opportunity to clarify comments while information is being exchanged in a voluntary, educational, and decision-making mode. It further provides for greater flexibility in structuring a settlement than a court would generally have, which can be important in moving towards resolution and providing finality to all types of disputes.



**JUDICIAL CONSIDERATION**

Prepare clients for the mediation process. Clients new to the process can easily become frustrated, impatient, and angry by the process. The better prepared clients are, the more likely the mediation will be a success.

### 2. Hindrances to Settlement

While mediation is a valuable tool for resolving disputes, certain situations may make achieving resolution difficult.

#### a. Absence of Individual with Settlement Authority

The main reason for an unsuccessful mediation is often the absence of the decision-maker. Therefore, success for mediation requires that individuals with settlement authority must be present at the mediation, and most court pretrial orders require this attendance. It is important to remember that mediation is an interactive, real-time process. It involves give and take on various issues, the exchange of information, and the assessment of strengths and weaknesses that come to light during the mediation process. When insurance adjusters, senior management, or other parties who are the actual decision-makers are not present at the mediation session, a void in the mediation process is created. The absence of such individuals may indicate that one side may have made a final settlement decision before the mediation and that the parties present do not have flexibility to deviate from that decision. Even though individuals in attendance at mediation may have "full settlement authority," the absent decision-maker misses out on the process of exchanging information, positions, and offers. Detachment from this process impairs resolution prospects. Thus, if the CEO of a major company is the actual decision-maker or an insurance adjuster has the final say, that individual should be present at the mediation. Otherwise, the process may end up being an expensive waste of time and effort.



## JUDICIAL CONSIDERATION

Pay close attention to the scheduling order. Often, the judge has ordered that a person with full authority to settle, specifically including an adjustor, be present. Any relief from that requirement has to come from the judge, not the mediator. Moreover, Minnesota General Rule of Practice 114.07(d) requires attendance of the individuals with authority to settle.



## ETHICAL CONSIDERATIONS

When a person with authority to settle is not present, or when an indispensable party to the execution of an enforceable settlement agreement is not present, the mediator is in a dilemma. If the parties present wish to proceed despite court-ordered mediation, the integrity of the process may be in jeopardy until the court approves the process. If one party objects to proceeding with the mediation until a decision-maker is present for the scheduled mediation, the mediator is without authority to compel the mediation process.

### b. Line in the Sand

It is important that the parties keep an open mind coming into mediation, be receptive, and learn from all of the information and offers being exchanged. When people and parties decide ahead of time that their maximum demand or offer will be a certain amount, the entire process is severely impeded. Flexibility of thinking throughout the process is imperative for success because whenever there is movement towards acceptable common ground and resolution, there is hope of a mediated settlement. Also, when individuals come to a mediation with time constraints as to when they have to leave the mediation, the value that may be obtained from a full mediation process, especially for complex cases, is nullified.

### c. Carriers of Bad News

Often at mediation, middle managers, sole representatives of companies or government agencies, and insurance adjusters do not want to take "bad news" back to headquarters from the mediation. They may find comfort or safety in having someone else, like a judge or jury, make the decision even though it may produce a worse result. Therefore, they may forego settlement opportunities, even though the risks of doing so are great. Thus, for a successful mediation, it is helpful for the participants to have experience in risk assessment and a willingness to make a candid recommendation and have "full settlement authority" for a decision on settlement.

### d. More Information First

Missing information may create another barrier to settlement, especially for more complex cases. Parties sometimes think that they cannot settle until they have all of the information that they feel they need. Additional testimony, documents, financial information relating to profits or lost profits, e-discovery, and contemplated or pend-

ing summary judgment motions for relief are the most significant missing pieces of information that mediators hear complaints about. Some of this information may be provided at the mediation. However, mediation may be the appropriate forum to discuss the substance of the information, the need for it, and the costs and delays that would be required to obtain it. In many cases, the economics of the situation is the dominant factor.

### e. Face-to-Face Meetings with the Parties

In some cases, having the parties meet face-to-face may create an additional impediment to resolution. This impediment is especially prevalent in employment, family law, probate, partner, and shareowner disputes. In these types of disputes where emotions run high, separating the parties from the outset is usually the wiser course of action. There is a split of authority regarding opening mediations with all present in the same room versus "shuttle diplomacy" from the start with the mediator going back and forth between the parties in separate rooms. When emotions are high, which is in most cases, joint sessions oftentimes needlessly increase the emotions and prolong the mediation process. If there is concern about joint sessions, the attorneys should discuss the issue with the mediator before the session. A neutral setting for the mediation is also highly preferred by most parties.



**JUDICIAL CONSIDERATION**

Classic mediation training encourages joint sessions at the beginning of the mediation. Attorneys should let the mediator know if they believe this will be helpful or harmful to a productive session.

### f. "Stuck Points"

Successful mediation requires patience and works best when conducted over time and in incremental steps. As long as there is some movement towards common ground, there is a chance of success, even if the end goal seems impossible to achieve. An impasse occurs only when movement stops. The focus of the parties should be on what they are willing to do, not what they expect the other party "should" do. Bracket suggestions where a party or the mediator suggest new ranges of negotiations for all of the parties sometimes help move the process towards resolution. Sometimes, the parties' final "secret numbers" revealed to the mediator on a confidential basis near the end of the process produce a surprisingly close range, which can be helpful in moving past a "stuck point" and toward resolution.

### g. Not Quite There

In complex cases involving many parties, multiple mediation sessions are usually necessary. In fact, it is not uncommon for such mediations to take multiple days for progress to be made, with breaks between the daily sessions. During adjournment, the mediator and the various attorneys may continue to exchange information and positions and communicate through email and by telephone.



### ETHICAL CONSIDERATIONS

Ex parte communications between a party (or the attorney) and the mediator are permissible with the consent of the neutral and so long as the communication encourages or facilitates settlement. There is nothing to prohibit an attorney from contacting the mediator to discuss the case, but the mediator must make the determination whether the contact will encourage settlement and will not interfere with the quality of the process. MINN. GEN. R. PRAC. 114.10(b).

## § 2.4 ARBITRATION AND AWARDS

### A. Minnesota Revised Uniform Arbitration Act – MINN. STAT. §§ 572B.01–572B.31

#### 1. General Discussion

Arbitration is an adjudicative process consisting of a forum presided over by a "neutral third party [who] renders a specific award after presiding over an adversarial hearing ...." MINN. GEN. R. PRAC. 114.02(a)(1). (Proposed Rule 114.02(a)(1) provides that arbitration is a "process in which a Neutral or panel renders an award after consideration of the evidence and presentation by each party or counsel. The award may be binding or non-binding, pursuant to the agreement of the parties.") The Minnesota Supreme Court has held that the basic intent of the Uniform Arbitration Act is to "discourage litigation and to foster voluntary resolution of disputes in a forum created and controlled by the written agreement of the contracting parties." *Eric A. Carlstrom Constr. Co. v. Indep. Sch. Dist. No. 77*, 256 N.W.2d 479, 483 (Minn. 1977). The emphasis in arbitration is on voluntary, informal, timely, and relatively inexpensive procedures designed to resolve disputes. In 2010, Minnesota adopted the Revised Uniform Arbitration Act, MINN. STAT. §§ 572B.01–572B.31, to govern arbitration procedures, which replaced the Uniform Arbitration Act that had been in place in Minnesota since 1957. However, when the arbitration agreement involves interstate commerce, the Federal Arbitration Act (FAA), which is applicable in both state and federal court proceedings, preempts inconsistent provisions of Minnesota law. *See* 9 U.S.C. § 2; *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006); *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003). For additional information, see *infra* section 2.4.C.1.



### JUDICIAL CONSIDERATION

Counsel should have an early meeting with the arbitrator(s) to work out and memorialize the details of the arbitration agreement. It is important to clearly define the responsibilities and duties of the arbitrator(s).

##### a. Agreed Terms

Contracting parties have considerable discretion in defining what is included within their arbitration agreement. They may choose to narrowly limit arbitration of future controversies or to comprehensively provide

that all disputes, whether relating to the contract or growing out of the relationship of the parties, should be included. *Layne-Minn. Co. v. Regents of the Univ. of Minn.*, 123 N.W.2d 371, 375 (Minn. 1963).

An arbitration agreement may also take into account any number of issues and the manner of resolution. Because courts continue to view arbitrators as having broad power under general arbitration clauses, attorneys drafting arbitration agreements would be wise to include specific provisions addressing some recurring issues that arise on appeal. In addition to establishing the number of arbitrators, venue, and choice of law, these could include:

- discovery parameters;
- hearing procedure and location;
- time limits;
- motion practice;
- arbitrator authority on issues such as sanctions and remedies;
- rules of evidence;
- procedure;
- liquidated damages;
- allowance or disallowance for punitive damages;
- provision for attorney fees;
- modification of statute of limitations;
- allocation of the arbitration fee;
- valuation and appraisal methodology (may also be determined by the parties up front to avoid some of the future delays and disputes that often time accompany these issues);
- findings, reasoned decision, simple answer, or award; and
- use of transcripts.

An award issued following an arbitration in which an arbitrator has not followed the parties' agreed-upon arbitration terms may be vacated because the arbitrator exceeded his or her powers. *See* MINN. STAT. § 572B.23(a)(4); *Children's Hosp., Inc. v. Minn. Nurses Ass'n*, 265 N.W.2d 649, 652 (Minn. 1978) (determining that an arbitration award may be set aside when an arbitrator has exceeded the power granted to him in the arbitration agreement). The terms for vacatur are similar under the FAA; for example the Fifth Circuit held that when an arbitrator acted contrary to the express provisions of an arbitration agreement, the arbitrator exceeded his powers and vacatur of the award was appropriate. *PoolRe Ins. Corp. v. Organizational Strategies, Inc.*, 783 F.3d 256, 262–65 (5th Cir. 2015).

### b. Pre-Arbitration Meeting

Rules, timing, and arbitration protocol should be reduced to writing by the arbitrator after agreed to by the parties so that the hearing runs smoothly.

statement or tape recording may help lock them in and preserve their current version of the facts. Will the witness be available at a later time? For example, are they moving away, likely to die, or some other similar scenario? Their statement might be helpful. If so, it is important to consider the elements that will make this statement admissible should it be needed in a later proceeding.

## § 3.5 PLAN FOR RESOLUTION

The lawyer should now develop a plan of how to resolve the case. It is helpful in many instances to consult the applicable jury instructions (CIVJIGs) from state or federal court to ensure that the plan for establishing liability and damages through the pleadings and discovery phases of the litigation are effective.

### A. Pre-Suit Settlement

Is this case one that might settle before suit? The opposing side might benefit from early resolution and may be willing to attempt to resolve the case early on. For example, if the injury is a large one, the liability is clear, and the insurance coverage falls within the damages projected, an insurance company might want to settle to avoid bad-faith claims or litigation expenses. Sometimes, the adjuster is someone the lawyer has worked with in the past and the lawyer has been able to resolve the issues without forcing the lawyer to go through all the steps of litigation. Sometimes, the adjuster takes a posture that makes it apparent that he or she will not take the lawyer's case seriously. In that case, using the early resolution route will not work and the lawyer must move to prepare the case for litigation.

1. *Time issues.* The lawyer must determine if sufficient time exists to spend time trying to resolve the case. Is there a statute of limitations coming up soon, a change in the law that will be less favorable if sued out later, or a question of solvency for the responsible side that might deteriorate in the time litigation would require?

2. *Status of the case.* Does the case need to mature, i.e., are the damages not yet fully developed?

3. *Definition of issues.* Are issues well enough defined that it is amenable to early resolution?

4. *Client's expectations.* Will the client resist early resolution? Has the client been talking with other attorneys or family and friends, who may be counseling the client contrary to the lawyer's advice?

5. *Attitude of other party or insurer.* What is the attitude of other party or their insurer?

6. *Alternative dispute resolution.* Is there a good ADR process that will assist the parties to fully evaluate the case at this point?

### B. Decision to Start Suit

This section discusses what to do if the lawyer decides it is time to start suit or commence an action.

#### 1. Client Considerations

The lawyer will consider asking the client's permission to initiate suit, including an explanation of what the case will involve, order of discovery, what will be disclosed (e.g., medical records, corporate work-product), discussion of need for protective orders, and the effect the lawsuit will have on existing personal, professional, and business relationships, etc. A memorandum or letter to the client summarizing these points is a good practice.

### 2. Pre-Litigation Settlement Discussions

The lawyer needs to always consider whether it might be profitable for the parties to discuss settlement before starting the lawsuit. Will the other party agree to a "tolling" agreement (i.e., an agreement to toll the running of any statute of limitation pending resolution of settlement discussion)? A tolling agreement may also be appropriate to stay any eventual need to file the complaint within the one-year filing requirement set forth in Minnesota Rule of Civil Procedure 5.04. If so, then the other party may be signaling a serious willingness to discuss settlement. In some instances, drafting the complaint and sending it along with the demand letter informs the defendant(s) that the client is serious about starting the lawsuit. It also tells the defendant's counsel that it will not take much more work to file the pleading and start the action in federal court or serve it upon the defendant in state court.

### 3. In Minnesota State Court, Consider "Hip Pocket" Service of Process and Temporarily Postponing Filing the Complaint With the Court

Minnesota has one of the most unusual "commencements of an action" systems in the country. In Minnesota, a civil action is commenced not on the filing of the complaint, but upon service of process upon the defendant. This gives the lawyer who commences a lawsuit in Minnesota state court the opportunity to keep the commencement and existence of the lawsuit a private matter. More than one defendant has elected to settle a dispute—even after serving an answer and possibly undertaking initial discovery—rather than to make the dispute public. Proper and timely service of the complaint tolls all statutes of limitation, without any requirement that a pleading be immediately filed with the court.

As of July 1, 2013, the rules governing the filing of the initial compliant have been amended to require, in all non-family cases, that the complaint be filed within one year of commencement against any party or be subject to dismissal with prejudice. The paragraphs that follow discuss these rule changes and best practices to comply with them. The 2013 rules, however, do not change the ability of a party to commence an action in private—at least for one year. If settlement discussions break down or if motion practice is necessary, or if the opposing party refuses to answer discovery requests, either party can proceed to file their pleading with the court and involve the judge sooner than the one-year deadline. Once a pleading is filed, however, the matter is then public, and pulling it back from the public's eye and from the court, or asking the court to seal the record, is problematic and generally unavailing. Many a lawyer and client would have been better served by simply serving the complaint and/or answer and postponing filing the pleading with the court. Always consider this avenue of service, as there is no downside so long as counsel keeps in mind the one-year filing deadline, unless it is necessary to get the court involved from day one—such as with a TRO or other injunction.

### 4. New Rules Regarding Mandatory Filing of Non-Family Complaints Within One Year, of Commencement in Minnesota State Court

The Minnesota Supreme Court, in an order dated February 4, 2013, adopted proposed amendments to Minnesota Rules of Civil Procedure 3 and 5, instituting a new filing deadline of a non-family complaint. The rules governing service of process and commencement of a lawsuit in Minnesota remain unchanged, but a deadline for filing the complaint once it has been properly commenced (i.e., served) has been imposed. In short, the rule change states that unless the parties agree otherwise, or unless the action is one excluded under Rule 3 (i.e., a family case), the complaint must be filed with the court within one year of commencement against *any party* or be subject to dismissal with prejudice.

In 2015, the Minnesota Court of Appeals held that a party may seek relief under Minnesota Rule of Civil Procedure 60.02 from a judgment entered based on a party's noncompliance with Minnesota Rule of Civil

Procedure 5.04(a). *See Gams v. Houghton*, 869 N.W.2d 60 (Minn. Ct. App. 2015). Later in 2015, the Minnesota Court of Appeals went further and ruled on the proper procedures to be followed when a complaint is filed untimely under Rule 5.04(a) and the plaintiff opposes the defendant's motion for dismissal and entry of judgment, holding:

> In the default-judgment context, the supreme court has held that dismissal is inappropriate when a plaintiff has established a basis for relief under MINN. R. CIV. P. 60.02. *See Coller v. Guardian Angels Roman Catholic Church*, 294 N.W.2d 712, 715 (Minn. 1980); *Kosloski v. Jones*, 295 Minn. 177, 179–80, 203 N.W.2d 401, 403 (1973). Similarly here, we hold that, when a plaintiff fails to comply with rule 5.04(a) by filing a complaint more than one year after service but opposes the defendant's dismissal motion and addresses the factors for relief under MINN. R. CIV. P. 60.02, a district court errs by ordering judgment of dismissal in the action if relief is appropriate under MINN. R. CIV. P. 60.02.
>
> Courts addressing requests for relief under MINN. R. CIV. P. 60.02 must consider the following factors (rule-60.02 factors): (1) whether the party seeking relief has a reasonable claim or defense on the merits; (2) whether the party has a reasonable excuse for the neglect; (3) whether the party acted diligently after the entry of judgment; and (4) whether the party has demonstrated that no prejudice will occur to the opposing party. *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). "Importantly, a party seeking relief from a judgment need not categorically establish all four of the rule 60.02 factors." *Gams*, slip op. at 8. Generally the decision whether to grant relief under rule 60.02 is discretionary, but the district court must grant relief if all of the rule-60.02 factors favor the party seeking relief. *Northland Temps.*, 744 N.W.2d at 402; *see also Finden v. Klaas*, 268 Minn. 268, 271–73, 128 N.W.2d 748, 750–51 (1964) (reversing district court's denial of relief when all factors met); *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 455–56 (1952) (same).2
>
> ****
>
> Fn. 2 As we recently explained in *Gams*, the rule-60.02 factors are not elements to be proven, but rather factors to be weighed in the individual circumstances of the case for a determination of whether relief is appropriate. Slip op. at 8–9

*Cole v. Wutzke*, 868 N.W.2d 925, 928–30 (Minn. Ct. App. 2015) ("Because all of the rule-60.02 factors favor a grant of relief, we conclude that the district court abused its discretion by ordering entry of judgment dismissing the action with prejudice for noncompliance with MINN. R. CIV. P. 5.04(a)."). In short, the Minnesota Court of Appeals has interpreted the rules of civil procedure to allow an "excusable neglect" defense under Rule 60.02 to the dismissal with prejudice rule contained in Rule 5. As the *Cole* opinion notes, "Minnesota courts have been careful not to burden unwitting clients with the consequences of attorney error. Minnesota courts have consistently held that default caused by a party's attorney rather than by the party himself should be excused." *Id.* at 929 (citations omitted).

It is worth noting the case of *Johnson v. City of Duluth*, 903 N.W.2d 1, 2 (Minn. Ct. App. 2017), *rev. denied* (Minn. Dec. 19, 2017), where the Minnesota Court of Appeals reversed the district court's granting of relief under Minnesota Rule of Civil Procedure 60.02 because Johnson's motion for relief from the dismissal missed the one-year Rule 60.02 motion-filing deadline—even though it was the attorney's error. It is also worth noting that

Johnson made a catchall argument that would not be subject to the one-year rule, but failed to raise that issue at the trial court so that it was an issue for the court of appeals to consider. Here is the court's summary of that argument:

> Johnson offers alternatively that his rule-60.02 motion fits a catchall provision, which is not subject to the one-year deadline. A court may relieve a party from a final proceeding for any reason other than the specifically listed reasons of "excusable neglect" and others, so long as the party files the motion for relief "within a reasonable time." MINN. R. CIV. P. 60.02. Johnson maintained at oral argument that his former attorney had strung him along more than a year and that this constitutes a catchall circumstance to which the one-year deadline does not apply. But Johnson did not present this argument in the district court. There, he argued only that his motion met the one-year deadline because the district court's dismissal order (rather than the automatic dismissal under rule 5.04) began the one-year motion-filing period. The district court therefore did not classify Johnson's motion and decided only whether he filed it within the one-year deadline that applies to 60.02(a). Because Johnson did not make the catchall-provision argument to the district court, we decline to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

*Johnson*, 903 N.W.2d at 5.

Under Rule 5, must the stipulation to extend the time for filing be for a definite period with a fixed date (e.g., the parties agree to extend the time for filing of the complaint until [month, date, year]), or may an indefinite extension to extend the time to file be acceptable? Presumably, the stipulation would come into play if one of the parties sought to have the case dismissed after one year from the commencement of the action, and the other party would file the signed stipulation with the court to avoid the action being dismissed with prejudice. Notice that under Minnesota Rule of Civil Procedure 5.04, the stipulation only needs to be signed, but not filed within one year from the commencement of the action.



**PRACTICE TIP**

To be safe and come squarely within the new filing rules, counsel should file the complaint within one year from commencement on *any* party to the action. The clock begins ticking when the action is commenced against any party, and not all parties. Presumably, for those parties not yet added to the action, the court and parties may address those procedural timing issues as a part of the Rule 26 initial disclosures, the Rule 26.06 discovery conference and plan, and any other Rule 16 pretrial conference.

### C. Venue

What is the proper venue? Selecting the proper venue is important, in part, because the time period in which to change or transfer venue is generally very limited.

### 1. State Court

#### a. Where Must the Action Be Commenced?

The general venue statute, Minnesota Statutes section 542.01, reads in pertinent part:

> Except as provided in section 542.02, every civil action shall be tried in the county in which it was begun, unless the place of trial be changed as hereinafter prescribed; and when so changed all subsequent papers in the action shall be entitled and filed in the county to which such transfer has been made.

#### b. Minnesota Defendant

In the case of a Minnesota defendant, the case may be venued where the cause of action accrued or where the defendant lives. The defendant, if acting within the permitted time period, can remove to his, her, or its county of residence.

#### c. Non-Minnesota Defendant

In the case of a non-Minnesota-resident defendant, assuming that there are sufficient minimum contacts, the suit may be brought in any county in the state. This is useful and can lead to advantageous forum-shopping.

#### d. Minimum Contacts

Each party in a lawsuit needs to have enough minimum contacts with the state of Minnesota such that the court will conclude that, under the long-arm statute, Minnesota is an appropriate forum from a jurisdictional standpoint for the lawsuit to proceed:

> Subdivision 1. Personal jurisdiction. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or the individual's personal representative, in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:
>
> (1) owns, uses, or possesses any real or personal property situated in this state; or
>
> (2) transacts any business within the state; or
>
> (3) commits any act in Minnesota causing injury or property damage; or
>
> (4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
>
> (i) Minnesota has no substantial interest in providing a forum; or
>
> (ii) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.

MINN. STAT. § 543.19, SUBD. 1.

#### e. Advantages

There are clear advantages to the case being tried in Minnesota or in a county where the client resides. The case can often be tried close to home. State courts also tend to give attorneys more latitude in discovery and timing of the litigation through the informational statements.

#### f. Disadvantages

Sometimes, complex cases exceed the capabilities of the state courts. Some very specialized cases may fall outside the expertise of the local district court judge; this varies greatly from judge to judge. The lawyer should check out the venue ahead of time and this may answer any concerns that he or she might have.

### 2. Federal Court

#### a. Diversity of Citizenship or Federal Question

A civil action may be commenced in federal district court when there is diversity of citizenship and the amount in controversy exceeds $75,000 or when there is federal question jurisdiction. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.
>
> (b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

28 U.S.C. § 1332(a)–(b).

b. Advantages

Federal judges are usually very experienced. They have the resources to handle complex cases, and significant authority to fashion remedies state judges might not be able or willing to accomplish. For complex commercial cases, getting a well-reasoned and thoughtful order or decision may be important to the client, sometimes even more important than whether the client prevails on the motion or case.

c. Disadvantages

The federal system has many rules and procedures, including significant disclosures that need to be made at the beginning of the case. The lawyer's failure to comply with the many rules and procedures may result in sanctions, refusals to admit evidence, and possibly even dismissal of the case. The timelines imposed by the court are strict and must be complied with absent a motion and order permitting extensions. This extends to such minor matters as stipulations by counsel to extend the deadlines set for deponents to read and sign their depositions. In short, the lawyer may not assume that business as usual in state court will work in federal court. Federal judges and magistrates are not reluctant to grant motions for summary judgment for various grounds, including technical pleading or evidence grounds. Depending upon the judge and the lawyer's style, the lawyer may feel that federal judges are less apt to permit the lawyer to "try" his or her case, and will closely monitor and control the proceedings. For complex commercial and business matters, this type of attention to detail and the rules is usually welcomed. In the case of a more routine personal injury lawsuit, it may seem like overkill to the lawyer more experienced in trying his or her case in state court, especially for lawyers practicing outside Hennepin or Ramsey Counties. If the lawyer has any doubts concerning his or her case, federal court is probably not the place to be innovative or experimental. However, in most cases, association with a lawyer who primarily practices in federal court will suffice.

### 3. State or Federal Court

If the lawyer can sue in either state or federal court, then consider the following practice points:

(1) If the lawyer decides the case can be brought in either state or federal court and is leaning towards state court, be prepared for the defendant to remove to federal court. Is the lawyer admitted in federal court? If not, what does the lawyer do? The lawyer could get admitted in that forum and the Local Rules for the United States District Court for the District of Minnesota outline the procedure to be used. The lawyer might need to prepare to refer or associate with another lawyer who has experience in federal court.

(2) In both state and federal court, the lawyer, or his or her staff, will need to become educated on the nuances of electronic filing. Assume that for each filing of any size, it will take the lawyer or their assistant at least one hour to complete the filing and may result in a follow up call or a rejection notice from the clerk of courts to clarify or have a document refiled properly.

(3) If the lawyer is an out-of-state lawyer considering a claim against a Minnesota defendant, the lawyer should have Minnesota counsel provide legal advice regarding in which court (state or federal) the action should be commenced. This is especially the case if the plaintiff is a non-Minnesota resident or corporation. Sometimes it makes sense to commence the action in federal court (if the amount in controversy exceeds the basic jurisdictional requirement of $75,000 or a federal question is involved).

d. By filing in state court against a Minnesota defendant, one can, in some instances, preclude the defendant from being able to remove the case to federal court. This is called the forum defendant rule. *See* 28 U.S.C. § 1441(b) ("Any [action other than one founded on a claim arising under federal law] shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."); *see also Hurt v. Dow Chemical Co.*, 963 F.2d 1142 (8th Cir. 1992).

e. If the defendant is a non-Minnesota resident or business entity and the plaintiff is a Minnesota resident or business entity, then consider commencing the action in state court (rather than federal court) because out-of-state lawyers and clients are more likely to try to settle the dispute, rather than to face a Minnesota state court judge or jury.

## D. Final Pre-Filing Strategies in Addition to the Drafting the Complaint

### 1. Strategies to Consider

Is there any trigger or disqualifying insurance coverage at issue in the case? If so, concurrent or subsequent pre-litigation actions may be necessary. Also, there may be a need for the client to tender the defense to its insurance carrier—be it a directors and officers liability, general commercial liability, homeowners, or umbrella/excess carrier.

### 2. Other Discovery

What discovery and other pleading preparations should be prepared simultaneously with the complaint? Some lawyers prepare initial discovery to move the process along (e.g., requests for admissions, interrogatories, and/or document requests) when drafting the complaint, but as in federal court, there is a delay in when the initial discovery documents may be served. Filing discovery concurrent with the complaint is not currently a viable option in either state or federal courts in Minnesota.

### 3. Minnesota State Court Informational Statement Has Been Replaced With a Cover Sheet and Pretrial Rule 26 Disclosures and Discovery Plan

As of July 2013, an information statement is no longer used. Instead, a civil cover sheet has been adopted. The parties will file at the outset of the case a civil cover sheet setting forth the name, postal address, email address, and telephone number of all counsel and unrepresented parties, along with a certificate of representation and parties. Scheduling information, previously reserved for the informational statement, may now be submitted in the civil cover sheet (as well as in the pretrial discovery plan). *See* MINN. GEN. R. PRAC. 104.

In short, Minnesota Rule of Civil Procedure 26 has been changed to mirror the federal rules. The parties must provide initial discovery disclosures within 60 days after the answer's required due date. *See* MINN. R. CIV. P. 26.01(a)(3).

Under the revised Rule 26, the parties are to disclose the name, and if known, the address and telephone number, of each individual likely to have discoverable information, along with a listing of the subjects known by each person, save those categories solely reserved for impeachment. *See* MINN. R. CIV. P. 26.01(a)(1)(A). These rules are very similar to the early discovery process currently used in the federal courts. The parties must also disclose a copy, or a description by category and location, of all documents, electronically stored information, or tangible things that the parties have in their possession and which each party may use to support their claims or defenses, unless the

document's use would be used solely for impeachment. *See* MINN. R. CIV. P. 26.01(a)(1)(B). In addition, Rule 26 now requires each party to provide a computation of each category of damages claimed by the disclosing party, and that party must also make available for inspection and copying those documents that support the damages claimed. *See* MINN. R. CIV. P. 26.01(a)(1)(C). In that regard, relevant insurance agreements must also be produced. *See* MINN. R. CIV. P. 26.01(a)(1)(D).

Finally, and probably most important for pre-complaint considerations, the parties and the court will now use a "proportionality test" for the scope, methods, and limits of discovery. The parties and the court—utilizing a "costs/benefits" analysis—will have the discretion to weigh whether a party's discovery efforts have comported with the proportionality factors (the burden or expense of the proposed discovery weighed against its likely benefit, the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues). *See* MINN. R. CIV. P. 26.02(b).

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Tenant Rights
14th ed Revised
2017

- A reserved parking spot close to the apartment door if you have trouble walking. You can ask for a reserved spot even if parking is usually on a first come, first served basis and there are other spots in the lot with "handicapped parking" signs.

If you feel that you have been discriminated against by a landlord, contact a lawyer. Here are some agencies that may be able to help you

- Housing Discrimination Law Project of the Legal Aid Society of Minneapolis (612-334-5970)
- Housing Equality Law Project of Southern Minnesota Regional Legal Services (651-222-4731)
- US Department of Housing and Urban Development (HUD) Housing Discrimination Hotline (800-669-9777, TTY: 800-927-9275)
- Minnesota Department of Human Rights
  (800-657-3704, TTY: 612-296-1283)



**TENANT SCREENING**

Landlords often use tenant screening companies to find out about a tenant before renting to them. Screening companies report information like rental history, unlawful detainers (evictions), credit history, and criminal records. State and federal laws control these companies. **You may have the right to sue the tenant screening company if it does not follow the law.** Contact a lawyer or your local legal services office if you are having problems with a tenant screening company.

**TENANT SCREENING REPORT**

You have a right to a copy of your tenant screening report. A tenant screening company has to give you a copy of your tenant screening report when you ask for it. The tenant screening company may make you pay for a copy of the report, but they cannot charge you more than $9. **If you have been turned down for housing in the past 30 days because of information in the report, your copy of the report is free.**

It is a good idea to see the written information a tenant screening company may have about you. If the tenant screening information is bad, it could make it hard to find a landlord to rent to you.

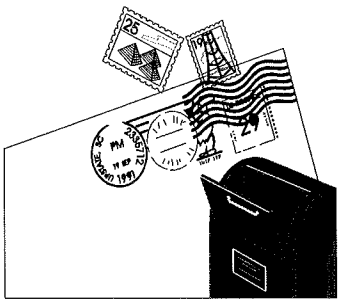
A tenant screening report must be correct. Sometimes they have wrong information about a tenant. This may happen for many reasons. The most common reason is that a tenant may have

a common name (for example, George Jones). In this case, information about other people with similar names might show up on your tenant screening report. A report may also be wrong because it gives information that came from unreliable sources. Tenant screening reports have to list a date of birth and the full name of the tenant if available. This helps cut down on the number of mistakes.

You have a right to challenge any information in your screening report. If you think your screening report has things that are wrong, the tenant screening company has to investigate your claims. If their investigation shows that the information is wrong, or if the information cannot be reconfirmed, the tenant screening company must correct or erase it. You also have the right to explain things in the report and why you disagree with them.

**WHAT IF I WAS TURNED DOWN BECAUSE OF A TENANT SCREENING REPORT?**

If the landlord charged you an application fee, they have to give you the name, address and telephone number of the tenant screening company they use. If you are turned down because of your tenant screening report you should check what is on it.



- Go to or write the tenant screening company and ask for a written copy of the report. Remember, if you ask within 30 days of being turned down for housing, the copy is free. Otherwise, you must pay for a copy of the report.

- You have to show identification when you ask for a copy of your tenant screening report. If you are sending your request by mail, make sure you send a copy of your ID card or license with your letter.

- The tenant screening company must act promptly when you ask for a copy of your report. This means that if you appear in person at the office during normal business hours, the tenant screening company must give you a copy of the report at that time.

  If you mail your request and ask that it be sent to you, the tenant screening company must mail you a copy of your report **within 5 business days**.

You can also ask for a "phone disclosure." This means they will read your report to you on the phone. To ask for a telephone disclosure, send a written request, along with a copy of your ID. Your request should state a day that you will call, and that you want the report read to you that day. If you ask for phone disclosure, the tenant screening company has to read the report to you by phone on the day you stated in your written request. Remember, phone disclosure does not protect your rights to get a free written copy of the report. You should get a written copy of the report.

## 504B.173 APPLICANT SCREENING FEE.

Subdivision 1. **Limitations.** A landlord may not:

(1) charge an applicant a screening fee when the landlord knows or should have known that no rental unit is available at that time or will be available within a reasonable future time;

(2) collect or hold an applicant screening fee without giving the applicant a written receipt for the fee, which may be incorporated into the application form, upon request of the applicant; or

(3) use, cash, or deposit an applicant screening fee until all prior applicants have either been screened and rejected, or offered the unit and declined to enter into a rental agreement.

Subd. 2. **Return of applicant screening fee.** (a) The landlord must return the applicant screening fee if:

(1) the applicant is rejected for any reason not listed in the disclosure required under subdivision 3; or

(2) a prior applicant is offered the unit and agrees to enter into a rental agreement.

(b) If the landlord does not perform a personal reference check or does not obtain a consumer credit report or tenant screening report, the landlord must return any amount of the applicant screening fee that is not used for those purposes.

(c) The applicant screening fee may be returned by mail, may be destroyed upon the applicant's request if paid by check, or may be made available for the applicant to retrieve.

Subd. 3. **Disclosures to applicant.** If a landlord accepts an applicant screening fee from a prospective tenant, the landlord must:

(1) disclose in writing prior to accepting the applicant screening fee:

(i) the name, address, and telephone number of the tenant screening service the landlord will use, unless the landlord does not use a tenant screening service; and

(ii) the criteria on which the decision to rent to the prospective tenant will be based; and

(2) notify the applicant within 14 days of rejecting a rental application, identifying the criteria the applicant failed to meet.

Subd. 4. **Remedies.** (a) In addition to any other remedies, a landlord who violates this section is liable to the applicant for the applicant screening fee plus a civil penalty of up to $100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

(b) A prospective tenant who provides materially false information on the application or omits material information requested is liable to the landlord for damages, plus a civil penalty of up to $500, civil court filing costs, and reasonable attorney fees.

**History:** *1999 c 150 s 1; 1999 c 199 art 1 s 174; 2010 c 315 s 4*

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**504B.235 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 504B.235 to 504B.245.

Subd. 2. **Proper identification.** "Proper identification" means information generally considered sufficient to identify a person, including a Minnesota driver's license, a Minnesota identification card, other forms of identification provided by a unit of government, a notarized statement of identity with a specimen signature of the person, or other reasonable form of identification.

Subd. 3. **Residential tenant report.** "Residential tenant report" means a written, oral, or other communication by a residential tenant screening service that includes information concerning an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and that is collected, used, or expected to be used for the purpose of making decisions relating to residential tenancies or residential tenancy applications.

Subd. 4. **Residential tenant screening service.** "Residential tenant screening service" means a person or business regularly engaged in the practice of gathering, storing, or disseminating information about tenants or assembling tenant reports for monetary fees, dues, or on a cooperative nonprofit basis.

**History:** *1999 c 199 art 1 s 28*

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**504B.245 TENANT REPORT; REMEDIES.**

The remedies provided in section 8.31 apply to a violation of section 504B.241. A residential tenant screening service or landlord in compliance with the provisions of the Fair Credit Reporting Act, United States Code, title 15, section 1681, et seq., is considered to be in compliance with section 504B.241.

**History:** *1999 c 199 art 1 s 30*

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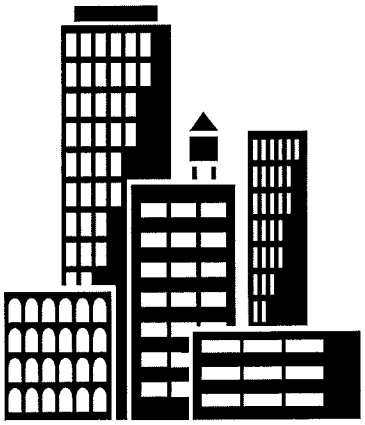
# Housing Discrimination

## What kinds of discrimination are illegal?

In Minnesota, no one connected to your housing should treat you differently because of:

- Race
- Sex
- Color
- Religion
- Family Status (having kids or being pregnant)
- Public Assistance (MFIP, GA, SSI, etc.)
- Sexual Orientation
- Gender identity
- Marital Status (being single or divorced)
- Disability
- National Origin
- Age (St. Paul only)
- Creed (beliefs)

## What are signs of possible discrimination?



### Application Denials

- When you call on the phone, the apartment is available. But when the landlord sees the color of your skin, it is "already rented."
- The landlord says "no MFIP" or "no emergency assistance."
- You get turned down because you have a disability, even though your disability would not keep you from following the lease. See our fact sheet *Reasonable Accommodations: Do You Need Your Landlord to Make a Change Because of Your Disability?*
- The landlord says "no kids," but it is not a seniors-only building.
- The apartment manager treats the people who apply differently. For example, they tell people who get MFIP they need an income of 3 times the rent, but they don't tell that to people who don't get public benefits.
- Your application is never processed because of your religion.

**Different Treatment**

- The caretaker makes repairs for white tenants before Latino tenants.
- The manager punishes lease violations more strictly when they are made by people of color.
- The landlord won't make a simple change in the rules to let a person with a disability live there successfully. For example, allowing a companion animal. See our fact sheet *Can I Keep a Pet?*
- A townhome association refuses to let you install a ramp for your wheelchair. See our fact sheet *Reasonable Accommodations*.
- There are special rules for children or the manager only rents first floor apartments to families with children.



**Harassment**

- The caretaker pressures you to date him, and lets himself into your apartment. See our fact sheet *Sexual Harassment in Housing*.
- The security guard treats your visitors differently because they are American Indian.
- The neighbors try to force you out of the neighborhood with racial insults or threats.

**What can I do about it?**

If you are turned down for an apartment and you suspect discrimination, call the numbers below for help right away.

You can also have someone you know call the landlord and apply, and see how the landlord treats that person. For example: if you suspect discrimination based on race, see if a person of another race gets treated better. Keep notes on what happened each time and who you and your friend each talked to.

If you are being treated badly or harassed where you live, write a letter to the owner. Keep a copy of it and of any evidence of the discrimination. Try to have witnesses who have seen or heard it and keep their contact information. Write down notes every time something happens. If you are in danger, call for help.

**Lawsuits and Agency Complaints**

You can start a lawsuit to stop the discrimination and sometimes get money damages. If you need quick action to get an apartment you were denied, to stop harassment, or to avoid an eviction, a lawsuit may be your best bet. If you have a low income, call your legal aid office.



**If you have a low income, call:**

**The Housing Discrimination Law Project (612) 334-5970**

**Or**

**Housing Equality Law Project (651) 222-4731**

You can also look for help from government agencies that enforce housing discrimination laws. They investigate at no charge to you. If they find discrimination, they will see if an agreement can be reached. If no agreement is reached, the agency may file a case against the person who discriminated against you. These agencies are:

**MN Department of Human Rights**
Freeman Building
625 Robert St North
St. Paul, MN 55155

Phone: (651) 539-1100 or 1(800) 657-3704
TTY: (651) 296-1283

**MN Department of Human Rights – St Cloud**
City Hall
400 Second St South
St. Cloud, MN 56301

Phone: (320) 650-3133

www.mn.gov/mdhr/

**Housing and Urban Development (HUD)**
77 West Jackson Boulevard
Chicago, IL 60604-3507
Phone: (800) 765-9372

www.hud.gov

**Whatever you do, act fast. In most cases, you need to file a complaint or lawsuit within 1 or sometimes 2 years.**

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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## 363A.09 UNFAIR DISCRIMINATORY PRACTICES RELATING TO REAL PROPERTY.

Subdivision 1. **Real property interest; action by owner, lessee, and others.** It is an unfair discriminatory practice for an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent of any of these:

(1) to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(2) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith, except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of the real property or any facilities or services furnished in connection therewith; or

(3) in any transaction involving real property, to print, circulate or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental or lease of real property, or make any record or inquiry in connection with the prospective purchase, rental, or lease of real property which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status, or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this section prohibiting discrimination because of familial status do not apply to the dwelling unit.

Subd. 2. **Real property interest; action by brokers, agents, and others.** It is an unfair discriminatory practice for a real estate broker, real estate salesperson, or employee, or agent thereof:

(1) to refuse to sell, rent, or lease or to offer for sale, rental, or lease any real property to any person or group of persons or to negotiate for the sale, rental, or lease of any real property to any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(2) to discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith; or

(3) to print, circulate, or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental, or lease of any real property or make any record or inquiry in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the

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person placing the advertisement reasonably believes that the provisions of this section prohibiting discrimination because of familial status do not apply to the dwelling unit.

Subd. 3. **Real property interest; action by financial institution.** It is an unfair discriminatory practice for a person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any real property or any agent or employee thereof:

(1) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status of the person or group of persons or of the prospective occupants or tenants of the real property in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith; or

(2) to use any form of application for the financial assistance or make any record or inquiry in connection with applications for the financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination; or

(3) to discriminate against any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair, or maintain real property in a specific urban or rural area or any part thereof solely because of the social, economic, or environmental conditions of the area in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith.

Subd. 4. **Real property transaction.** It is an unfair discriminatory practice for any real estate broker or real estate salesperson, for the purpose of inducing a real property transaction from which the person, the person's firm, or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sex, marital status, status with regard to public assistance, sexual orientation, or disability of the owners or occupants in the block, neighborhood, or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood, or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other public facilities.

Subd. 5. **Real property full and equal access.** It is an unfair discriminatory practice for a person to deny full and equal access to real property provided for in sections 363A.08 to 363A.19, and 363A.28, subdivision 10, to a person who is totally or partially blind, deaf, or has a physical or sensory disability and who uses a service animal, if the service animal can be properly identified as being from a recognized program which trains service animals to aid persons who are totally or partially blind or deaf or have physical or sensory disabilities. The person may not be required to pay extra compensation for the service animal but is liable for damage done to the premises by the service animal.

Subd. 6. **Real property interest; interference with.** It is an unfair discriminatory practice for a person to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged a third person in the exercise or enjoyment of, any right granted or protected by this section.

**History:** *1955 c 516 s 5; 1961 c 428 s 5; 1965 c 585 s 2; 1965 c 586 s 1; 1967 c 897 s 12-16; 1969 c 9 s 80; 1969 c 975 s 3-5; 1973 c 296 s 1; 1973 c 729 s 3,16; 1974 c 354 s 1; 1975 c 206 s 2-5; 1977 c 351 s*

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*5-7; 1977 c 408 s 3; 1980 c 531 s 4; 1980 c 540 s 1,2; 1981 c 330 s 1; 1982 c 517 s 8; 1983 c 216 art 1 s 59; 1983 c 276 s 7-10; 1984 c 533 s 2,3; 1985 c 248 s 70; 1986 c 444; 1987 c 23 s 3; 1987 c 129 s 3; 1987 c 141 s 2; 1987 c 245 s 1; 1988 c 660 s 4; 1989 c 280 s 9-14,21; 1990 c 567 s 3-6; 1992 c 527 s 12-16; 1993 c 22 s 8-15; 1993 c 277 s 5-7; 1994 c 630 art 12 s 1; 1995 c 212 art 2 s 10; 1997 c 171 s 1; 2001 c 186 s 1; 2001 c 194 s 2*

**NOTE:** Any statutory exemptions to this section are covered under sections 363A.21, 363A.22, and 363A.26.

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## 363A.10 REAL PROPERTY; DISABILITY DISCRIMINATION.

Subdivision 1. **Reasonable modifications/accommodations.** For purposes of section 363A.09, discrimination includes:

(1) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person if modifications may be necessary to afford the disabled person full enjoyment of the premises; a landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, excluding reasonable wear and tear;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

(i) the public use and common use portions are readily accessible to and usable by a disabled person;

(ii) all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(iii) all premises contain the following features of adaptive design: an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

Subd. 2. **Covered multifamily dwellings; definition.** As used in this section, the term "covered multifamily dwellings" means:

(1) a building consisting of four or more units if the building has one or more elevators; and

(2) ground floor units in other buildings consisting of four or more units.

Subd. 3. **Applicability.** This section does not invalidate or limit any law of the state or political subdivision of the state, or other jurisdiction in which this section applies, that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this section.

Subd. 4. **Limitations on compliance.** This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**History:** *1955 c 516 s 5; 1961 c 428 s 5; 1965 c 585 s 2; 1965 c 586 s 1; 1967 c 897 s 12-16; 1969 c 9 s 80; 1969 c 975 s 3-5; 1973 c 296 s 1; 1973 c 729 s 3,16; 1974 c 354 s 1; 1975 c 206 s 2-5; 1977 c 351 s 5-7; 1977 c 408 s 3; 1980 c 531 s 4; 1980 c 540 s 1,2; 1981 c 330 s 1; 1982 c 517 s 8; 1983 c 216 art 1 s 59; 1983 c 276 s 7-10; 1984 c 533 s 2,3; 1985 c 248 s 70; 1986 c 444; 1987 c 23 s 3; 1987 c 129 s 3; 1987 c 141 s 2; 1987 c 245 s 1; 1988 c 660 s 4; 1989 c 280 s 9-14,21; 1990 c 567 s 3-6; 1992 c 527 s 12-16; 1993 c 22 s 8-15; 1993 c 277 s 5-7; 1994 c 630 art 12 s 1; 1995 c 212 art 2 s 10; 1997 c 171 s 1; 2001 c 186 s 1; 2001 c 194 s 2*

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**NOTE:** Any statutory exemptions to this section are covered under sections 363A.21, 363A.22, and 363A.26.

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KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimitation Recognized by Saunders v. Farmers Ins. Exchange, 8th Cir.(Mo.), Aug. 12, 2008

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 45. Fair Housing (Refs & Annos)
Subchapter I. Generally (Refs & Annos)

42 U.S.C.A. § 3601

# § 3601. Declaration of policy

Currentness

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

**CREDIT(S)**

(Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.)

42 U.S.C.A. § 3601, 42 USCA § 3601
Current through P.L. 116-145.

End of Document

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KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimitation Recognized by Saunders v. Farmers Ins. Exchange, W.D.Mo., Mar. 16, 2007

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 45. Fair Housing (Refs & Annos)
Subchapter I. Generally (Refs & Annos)

42 U.S.C.A. § 3604

# § 3604. Discrimination in the sale or rental of housing and other prohibited practices

Currentness

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

**(a)** To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

**(b)** To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

**(c)** To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

**(d)** To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

**(e)** For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

**(f)(1)** To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

**(A)** that buyer or renter, [1]

**(B)** a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

**(C)** any person associated with that buyer or renter.

**(2)** To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

**(A)** that person; or

**(B)** a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

**(C)** any person associated with that person.

**(3)** For purposes of this subsection, discrimination includes--

**(A)** a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [2]

**(B)** a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

**(C)** in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that--

**(i)** the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

**(ii)** all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

**(iii)** all premises within such dwellings contain the following features of adaptive design:

**(I)** an accessible route into and through the dwelling;

**(II)** light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

**(III)** reinforcements in bathroom walls to allow later installation of grab bars; and

**(IV)** usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

**(4)** Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

**(5)(A)** If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

**(B)** A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

**(C)** The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

**(D)** Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

**(6)(A)** Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

**(B)** Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

**(7)** As used in this subsection, the term "covered multifamily dwellings" means--

**(A)** buildings consisting of 4 or more units if such buildings have one or more elevators; and

**(B)** ground floor units in other buildings consisting of 4 or more units.

**(8)** Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

**(9)** Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**CREDIT(S)**

(Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub.L. 93-383, Title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub.L. 100-430, §§ 6(a)-(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

Footnotes

1 So in original. The comma probably should be a semicolon.

2 So in original. The period probably should be a semicolon.

42 U.S.C.A. § 3604, 42 USCA § 3604

Current through P.L. 116-145.

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 45. Fair Housing (Refs & Annos)
Subchapter I. Generally (Refs & Annos)

42 U.S.C.A. § 3616

# § 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

Currentness

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

**CREDIT(S)**

(Pub.L. 90-284, Title VIII, § 817, formerly § 816, Apr. 11, 1968, 82 Stat. 89; renumbered § 817, Pub.L. 100-430, § 8(1), Sept. 13, 1988, 102 Stat. 1625.)

42 U.S.C.A. § 3616, 42 USCA § 3616
Current through P.L. 116-145.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 45. Fair Housing (Refs & Annos)
Subchapter I. Generally (Refs & Annos)

42 U.S.C.A. § 3616a

# § 3616a. Fair housing initiatives program

Currentness

**(a) In general**

The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") may make grants to, or (to the extent of amounts provided in appropriation Acts) enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private nonprofit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate--

**(1)** programs or activities designed to obtain enforcement of the rights granted by title VIII of the Act of April 11, 1968 (commonly referred to as the Civil Rights Act of 1968), or by State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in such title VIII, through such appropriate judicial or administrative proceedings (including informal methods of conference, conciliation, and persuasion) as are available therefor; and

**(2)** education and outreach programs designed to inform the public concerning rights and obligations under the laws referred to in paragraph (1).

**(b) Private enforcement initiatives**

**(1) In general**

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, investigations of violations of the rights granted under title VIII of the Civil Rights Act of 1968, and such enforcement activities as appropriate to remedy such violations. The Secretary may enter into multiyear contracts and take such other action as is appropriate to enhance the effectiveness of such investigations and enforcement activities.

**(2) Activities**

The Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, a range of investigative and enforcement activities designed to--

**(A)** carry out testing and other investigative activities in accordance with subsection (b)(1), including building the capacity for housing investigative activities in unserved or underserved areas;

**(B)** discover and remedy discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising;

**(C)** carry out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII of the Civil Rights Act of 1968;

**(D)** provide technical assistance to local fair housing organizations, and assist in the formation and development of new fair housing organizations; and

**(E)** provide funds for the costs and expenses of litigation, including expert witness fees.

**(c) Funding of fair housing organizations**

**(1) In general**

The Secretary shall use funds made available under this section to enter into contracts or cooperative agreements with qualified fair housing enforcement organizations, other private nonprofit fair housing enforcement organizations, and nonprofit groups organizing to build their capacity to provide fair housing enforcement, for the purpose of supporting the continued development or implementation of initiatives which enforce the rights granted under title VIII of the Civil Rights Act of 1968, as amended. Contracts or cooperative agreements may not provide more than 50 percent of the operating budget of the recipient organization for any one year.

**(2) Capacity enhancement**

The Secretary shall use funds made available under this section to help establish, organize, and build the capacity of fair housing enforcement organizations, particularly in those areas of the country which are currently underserved by fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. For purposes of meeting the objectives of this paragraph, the Secretary may enter into contracts or cooperative agreements with qualified fair housing enforcement organizations. The Secretary shall establish annual goals which reflect the national need for private fair housing enforcement organizations.

**(d) Education and outreach**

**(1) In general**

The Secretary, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, shall establish a national education and outreach program. The national program shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products, including--

**(A)** public service announcements, both audio and video;

**(B)** television, radio and print advertisements;

**(C)** posters; and

**(D)** pamphlets and brochures.

The Secretary shall designate a portion of the amounts provided in subsection (g)(4) for a national program specifically for activities related to the annual national fair housing month. The Secretary shall encourage cooperation with real estate industry organizations in the national education and outreach program. The Secretary shall also encourage the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Act Amendments of 1988.

**(2) Regional and local programs**

The Secretary, through contracts with fair housing enforcement organizations, other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, State and local agencies certified by the Secretary under section 810(f) of the Fair Housing Act, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, shall establish or support education and outreach programs at the regional and local levels.

**(3) Community-based programs**

The Secretary shall provide funding to fair housing organizations and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices, to support community-based education and outreach activities, including school, church, and community presentations, conferences, and other educational activities.

**(e) Program administration**

**(1)** Not less than 30 days before providing a grant or entering into any contract or cooperative agreement to carry out activities authorized by this section, the Secretary shall submit notification of such proposed grant, contract, or cooperative agreement (including a description of the geographical distribution of such contracts) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

**(2)** Repealed. Pub.L. 104-66, Title I, § 1071(d), Dec. 21, 1995, 109 Stat. 720

**(f) Regulations**

**(1)** The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

**(2)** The Secretary shall, for use during the demonstration authorized in this section, establish guidelines for testing activities funded under the private enforcement initiative of the fair housing initiatives program. The purpose of such guidelines shall be to ensure that investigations in support of fair housing enforcement efforts described in subsection (a)(1) of this section shall develop credible and objective evidence of discriminatory housing practices. Such guidelines shall apply only to activities funded under this section, shall not be construed to limit or otherwise restrict the use of facts secured through testing not funded under this section in any legal proceeding under Federal fair housing laws, and shall not be used to restrict individuals or entities, including those participating in the fair housing initiatives program, from pursuing any right or remedy guaranteed by Federal law. Not later than 6 months after the end of the demonstration period authorized in this section, the Secretary shall submit to Congress the evaluation of the Secretary of the effectiveness of such guidelines in achieving the purposes of this section.

**(3)** Such regulations shall include provisions governing applications for assistance under this section, and shall require each such application to contain--

**(A)** a description of the assisted activities proposed to be undertaken by the applicant, together with the estimated costs and schedule for completion of such activities;

**(B)** a description of the experience of the applicant in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

**(C)** available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of such activities to such practices;

**(D)** an estimate of such other public or private resources as may be available to assist the proposed activities;

**(E)** a description of proposed procedures to be used by the applicant for monitoring conduct and evaluating results of the proposed activities; and

**(F)** any additional information required by the Secretary.

**(4)** Regulations issued under this subsection shall not become effective prior to the expiration of 90 days after the Secretary transmits such regulations, in the form such regulations are intended to be published, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

**(5)** The Secretary shall not obligate or expend any amount under this section before the effective date of the regulations required under this subsection.

**(g) Authorization of appropriations**

There are authorized to be appropriated to carry out the provisions of this section, [1] $21,000,000 for fiscal year 1993 and $26,000,000 for fiscal year 1994, of which--

**(1)** not less than $3,820,000 for fiscal year 1993 and $8,500,000 for fiscal year 1994 shall be for private enforcement initiatives authorized under subsection (b) of this section, divided equally between activities specified under subsection (b)(1) of this section and those specified under subsection (b)(2) of this section;

**(2)** not less than $2,230,000 for fiscal year 1993 and $8,500,000 for fiscal year 1994 shall be for qualified fair housing enforcement organizations authorized under subsection (c)(1) of this section;

**(3)** not less than $2,010,000 for fiscal year 1993 and $4,000,000 for fiscal year 1994 shall be for the creation of new fair housing enforcement organizations authorized under subsection (c)(2) of this section; and

**(4)** not less than $2,540,000 for fiscal year 1993 and $5,000,000 for fiscal year 1994 shall be for education and outreach programs authorized under subsection (d) of this section, to be divided equally between activities specified under subsection (d)(1) of this section and those specified under subsections (d)(2) and (d)(3) of this section.

Any amount appropriated under this section shall remain available until expended.

**(h) Qualified fair housing enforcement organization**

**(1)** The term "qualified fair housing enforcement organization" means any organization that--

**(A)** is organized as a private, tax-exempt, nonprofit, charitable organization;

**(B)** has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

**(C)** is engaged in all the activities listed in paragraph (1)(B) at the time of application for assistance under this section.

An organization which is not solely engaged in fair housing enforcement activities may qualify as a qualified fair housing enforcement organization, provided that the organization is actively engaged in each of the activities listed in subparagraph (B).

**(2)** The term "fair housing enforcement organization" means any organization that--

**(A)** meets the requirements specified in paragraph (1)(A);

**(B)** is currently engaged in the activities specified in paragraph (1)(B);

**(C)** upon the receipt of funds under this section will become engaged in all of the activities specified in paragraph (1)(B); and

**(D)** for purposes of funding under subsection (b) of this section, has at least 1 year of experience in the activities specified in paragraph (1)(B).

**(i) Prohibition on use of funds**

None of the funds authorized under this section may be used by the Secretary for purposes of settling claims, satisfying judgments or fulfilling court orders in any litigation action involving either the Department or housing providers funded by the Department. None of the funds authorized under this section may be used by the Department for administrative costs.

**(j) Reporting requirements**

Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall prepare and submit to the Congress a comprehensive report which shall contain--

**(1)** a description of the progress made in accomplishing the objectives of this section;

**(2)** a summary of all the private enforcement activities carried out under this section and the use of such funds during the preceding fiscal year;

**(3)** a list of all fair housing enforcement organizations funded under this section during the preceding fiscal year, identified on a State-by-State basis;

**(4)** a summary of all education and outreach activities funded under this section and the use of such funds during the preceding fiscal year; and

**(5)** any findings, conclusions, or recommendations of the Secretary as a result of the funded activities.

**CREDIT(S)**

(Pub.L. 100-242, Title V, § 561, Feb. 5, 1988, 101 Stat. 1942; Pub.L. 101-625, Title IX, § 953, Nov. 28, 1990, 104 Stat. 4419; Pub.L. 102-550, Title IX, § 905(b), Oct. 28, 1992, 106 Stat. 3869; Pub.L. 104-66, Title I, § 1071(d), Dec. 21, 1995, 109 Stat. 720.)

Footnotes

1 So in original. Comma probably should not appear.

42 U.S.C.A. § 3616a, 42 USCA § 3616a

Current through P.L. 116-145.

End of Document

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# Public Housing in Minnesota

For information to give to clients who have questions about public housing, please consult *A Guide to Public Housing in Minnesota,* published by Legal Services State Support. You can get to the content via the LawHelpMN page, or through LSSS.

To find the most current edition of this PDF on LawHelpMN, go to www.lawhelpmn.org. In the search box (the magnifying glass in the upper right corner) and search for "Guide to Public Housing". The first link should be the text of the pamphlet.

The Library also has a copy of the pamphlet. LSSS also sells the pamphlets for $7.00 Some information from the pamphlet is printed below. The full table of contents from the pamphlet is at the end of this section.

## Basic Information about public housing:

Public housing is a program that helps low income families rent a home at a price they can afford. The federal government and the U.S. Department of Housing and Urban Development, (HUD), give money to Public Housing Authorities (PHAs). PHAs run public housing programs. The money pays for some of the expenses of running the housing program so that the price of rent stays low.

## Are you eligible for public housing?

PHAs look at different things to see if you are eligible. Some of these are

- your income level
- citizenship status
- criminal background
- drug and alcohol use

If you are eligible that doesn't mean you will automatically get into public housing. Most public housing programs have waiting lists, some very long. Sometimes a PHA will close its waiting list and won't even take new applications. The PHA who runs the public housing in your

community sets guidelines to decide how people are chosen from the waiting lists when new units open up.

## Can you be evicted from public housing?

In Minnesota, you can only be evicted if there is a legal case started against you in court. In Minnesota, the local courts where evictions are filed are called the District Courts. The legal case is called an "eviction action." It used to be called an "unlawful detainer" or UD. If you think you have a good defense (reason that you shouldn't be evicted), make sure you respond to the PHA's court papers. This is called an "Answer." There is more information on Answers later in this booklet.

The PHA can only evict you for "good cause." "Good cause" can mean many different things. It can mean:

- that you broke an important part of the lease or
- that you did something less important a number of times or
- you didn't pay your rent after being given a chance to pay

Your lease will tell you what you have promised to do and not do in your public housing unit.

Before the PHA can file an eviction action against you in court, the PHA must

1. Send you a Notice of Lease Termination
2. Let you know how to argue the lease termination through their grievance process or explain why you are not entitled to the grievance process.

If you want to go through the grievance process, the PHA can't file an eviction action in District Court until the grievance process is done. Even if you are unsuccessful in the grievance process, the PHA still must win the case in District Court in order to have you removed from the property.

## Notice of Lease Termination

The PHA has to send you a written notice explaining the reasons why it wants to evict you. The Notice must

- Be translated if you do not understand English. Note: If you have a disability that makes it hard to read, the PHA must give you the notice in a way that you will know what it says as a reasonable accommodation.
- Say if you can ask for a grievance process or not. If the PHA thinks you do not get to use the grievance process, it must say why not.
- Tell you the reasons for the termination. The notice has to give specific reasons, including
    - The rules in the lease that you violated and

    - How they think you violated those rules. The notice has to give enough information so that you can prepare a defense.

- Say you have the right to make a reply to the termination notice
- Say you have a right to examine any documents that relate to the lease termination or eviction. You have the right to see and copy all of the information in your PHA file. You should ask for ALL of the file. The PHA can't hide part of your file from you. You might have to pay for any copies.
- Tell you the date the lease terminates. Usually you will get
    - 14 days for not paying rent
    - Different amounts of time for other things. The PHA looks at how serious the situation is. It looks at things like
        - Health and safety of other residents and staff
        - If someone in your household has been a part of violent or drug-related criminal activity
        - If anyone in your household has been convicted of a felony

The time will be shorter for serious things and longer, up to 30 days, for less serious things. The PHA decides the amount of time before the lease terminates.

If the PHA says you have the right to a grievance hearing, it should not terminate your lease until the time period to ask for the hearing has passed.

If you ask for a grievance hearing, the PHA should not terminate your lease until the grievance process is over.

You can avoid eviction by just leaving before the given date. Make sure to tell the PHA if you leave. You may be able to negotiate a move-out date later than the date on the termination notice, but you will probably give up your right to fight the eviction if you do.

Contact the person who wrote the termination notice to talk about this. You should talk about your case with a lawyer before admitting to any facts or making any agreements.

If you sign an agreement to move out, you will be expected to follow it. If you don't move out, the PHA will probably go to eviction court using the agreement you did not follow as a reason

## Grievance Process

Unless the case is for a reason that is exempt from the grievance process, or you have waived your grievance, or missed the deadline to ask for a grievance, the PHA must go through all of the steps of the grievance process before it can file an eviction action in court.

For lease terminations, the grievance process includes

1. Notice of Lease Termination
2. Informal Settlement Conference

3. Formal Hearing
4. Decision

For more information, see the section called "Housing Authority Grievance Process."

**If a settlement agreement is signed, or you win your grievance hearing,** the process ends here before any court action.

**If no settlement agreement is signed and**

- You did not have the right to a grievance hearing OR
- You did not ask for a grievance hearing OR
- You lost your grievance hearing

the PHA will give you a final move-out date in writing when it gives you the papers from the grievance hearing decision. If you do not move out of your apartment by the final move-out date, the PHA will file an Eviction Action in District Court to have you removed from the property.

If you decide to move out before an eviction action is filed against you in court, but sure to

- tell the PHA that you are moving
- remove all of your possessions from the property
- clean your apartment and
- turn over the keys to the property manager or another worker (make sure you get a receipt for the keys)

If you don't move by the final move-out date, the PHA will file an eviction action against you in District Court. You may be able to negotiate with the PHA for more time to move out, and a good or neutral reference, if you agree to move out without fighting the eviction in court.

The information from the pamphlet is printed in full on the website, with navigation links on the left side. You can also access the information in a complete pdf doc.

The table of contents for the booklet:

**Introduction**
What is the public housing program?
HUD Programs that are NOT Public Housing
How do I know if I live in public housing?
"Mixed Income" Developments
**How do I know if I'm eligible?**
Who can I live with in public housing?
Immigration status and public housing.

**Occupancy**
- Family Size
- Children and Seniors
- Overcrowding
- Income
- Criminal Background

**Applying for Public Housing**
- What if I need help with the application process?
- Discrimination and Fair Housing
- What does the PHA have to ask me when I apply?
- What other questions could the PHA ask me?
- Tenant Screening Reports
- Are there things the PHA can't ask me?
- I am done with the Application Process. What happens next?

**What if my public housing application is denied?**
- What if I am denied because of something related to my disability?
- What if I am denied because of being a victim of domestic violence or sexual assault?
- Do I have the right to a hearing about the denial of my application?
- What are my rights in the hearing?
- What information has to be in a hearing decision?
- Can I ask a court to review the PHA's decision?
- Can I reapply?

**I have been accepted into public housing**

**How does the PHA decide what my rent will be?**
- Earned Income Disallowance
- Are there any other income adjustments?
- Utility Allowance
- What happens to my rent if my income changes?
- Will my rent change if I lose some welfare benefits?
- Other Ways Your Rent Might Be Calculated

**Do I have to pay a security deposit in public housing?**
- Do I have to pay any extra charges?
- Life in public housing
- Household Changes
- Adding Children
- Adding Adults
- Can I have a pet?

**Security and Safety**
- What else can I do?

**Maintenance and Repairs**
- What can I do if my home needs repairs?
- Legal Action to get repairs
- Can the PHA charge me for repairs?

**The Community Service / Economic Self-Sufficiency Requirement**
- What does "community service" mean?
- What does "economic self-sufficiency program" mean?
- Does everyone have to do this?
- What if adults in my household do not complete the requirement?

**Evictions from Public Housing**
- Violence Against Women Act (VAWA)
- Notice of Lease Termination
- Grievance Process
- What happens in an Eviction Action?
- Can the PHA take my tax refund for money they say I owe?
- What is an eviction expungement?

**Housing Authority Grievance Process**
- What is a grievance?
- Who can make a grievance complaint?
- Who cannot make a grievance complaint?
- How does the grievance process work?

**How can residents and community advocates be involved in the PHA?**
- What is the purpose of the Resident Advisory Board (RAB)? What does it do?
- What are PHA Plans and what is the PHA plan process?
- How should RABs be set up?

**Legal Services Offices Listed by County**
**Request for a Tenant Screening Report**
**Rent Calculation Worksheet**
**Move-in Inspection and Lease Addendum**
**VAWA Notice**
**Request for Informal/Formal Conference with the PHA**

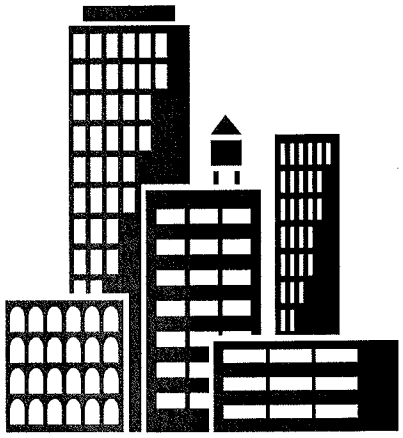
# Public Housing Evictions

This fact sheet is for **public housing tenants** who get a Lease Termination Notice. "Public housing" means rental housing operated by or paid for by a Public Housing Authority. This is not a private landlord or Section 8 housing.

Public housing evictions follow State court procedures for evictions BUT also have some of their own special steps. Read this fact sheet **and** our fact sheet *Evictions.*

Some of the things in this fact sheet may not apply to you if you live in public housing run by the Minneapolis Public Housing Authority (MPHA). This is because MPHA is a Moving to Work (MTW) agency that is run differently than every other housing authority in Minnesota. If you live in MPHA housing and have questions about this, call the Minneapolis legal aid office at (612) 334-5970.

**If you get a Lease Termination Notice, it is a good idea to call your local legal aid office for help right away.**



## Lease Violation

The Housing Authority may only terminate your lease for serious or repeated violations or other good reasons. The Housing Authority sends you a written lease termination notice telling you what parts of the lease they think you violated. The notice also tells you the date they want you to leave.

You have the right to review the documents the Housing Authority has that relate to the lease termination. If you did not do what the Housing Authority claims or if you do not think it was serious enough for an eviction, you can appeal the termination of your lease.

You must send the Housing Authority a written note asking for an appeal.

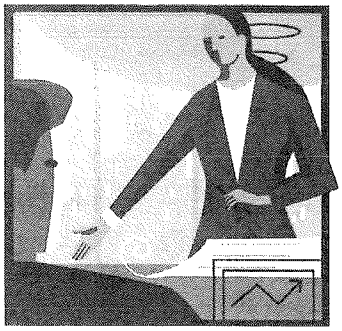
There are usually 2 stages to an appeal. The first stage is the Informal Conference. If the problem is not resolved there, you can ask for a Formal Hearing.

Some Housing Authorities do not offer appeals in some cases. See the section "Safety Risk and Criminal Activity" below for more information.

## Informal Conference:

- You can bring an advocate or lawyer to help you state your case. If you need an interpreter for the meeting, tell the Housing Authority. The Housing Authority has to pay for the interpreter.

- If you did not violate your lease, try to bring evidence to the conference. Evidence can be things like documents, letters, or statements from witnesses who will support you.



- If you did violate the lease, try to present a clear plan to keep problems from happening again. This could be an agreement that you won't let someone who makes trouble visit you any more, or a plan to get help for a problem that caused the lease violation.

  If your lease violations were the result of domestic violence or sexual assault, see our fact sheet *Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault*.

  If your lease violations were the result of a disability, see our fact sheet *Reasonable Accommodations: Do You Need Your Landlord to Make a Change Because of Your Disability?*

- Whether you violated the lease or not, be careful what you say at an Informal Conference. Anything you say could be used against you later in the case.

- If you think you have a losing case, you can agree to move, but ask for the time you need and a good tenant reference from the Housing Authority. This is a serious decision. Think about it carefully before agreeing to move out. Once you make an agreement, you have to keep it!

- Ask the Housing Authority to put any agreement you make into writing. If the agreement does NOT include everything you agreed to, write to the Housing Authority again and ask them to make the changes. **Do not sign anything or agree to anything you don't want to do or can't do.**

- Even if you don't reach an agreement, the Housing Authority must give you a written summary of what happened at the informal conference.

If you can't work out a solution at the Informal Conference you can ask for a Formal Hearing.

## Formal Hearing:

A Formal Hearing is like a mini-trial. You have to prepare your own case.

- You can bring an advocate or lawyer. Call your local legal aid office for help.

- Your case may be heard by a hearing officer or by a hearing panel. The people on the hearing panel may be other public housing tenants and public housing staff.

- You have a right to an interpreter at the hearing. If you need one, tell the Housing Authority. The Housing Authority has to pay for the interpreter.

- At the hearing, you and the Housing Authority will take turns telling what happened. You have the right to be treated with respect at a hearing. You must also treat others with respect.

- Bring evidence and witnesses to prove that you did not violate your lease. Bring proof to show that claims against you are wrong. Bring proof to explain any incomplete parts of the story told.

by the Housing Authority. Bring evidence and witnesses to help prove that you are a good tenant. Bring copies of your evidence to show everyone. Make copies for your own records

**Note:** Some Housing Authorities have rules about evidence for the Formal Hearing. For example: you may have to say by a certain date ahead of time what evidence and witnesses you have. And they may have to tell you what evidence and witnesses they have. Ask the Housing Authority for the hearing rules if you didn't get them. Read and follow them carefully.

- If your lease violations were the result of domestic violence or sexual assault, see our fact sheet *Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault*.

  If your lease violations were the result of a disability, see our fact sheet *Reasonable Accommodations: Do You Need Your Landlord to Make a Change Because of Your Disability?*

- If there are respected people in the community or neighbors who support you, ask them to come to the hearing, to speak on your behalf.

- You will get a written decision from the Formal Hearing. The decision will tell you if you won or lost. The decision must be based on evidence from the hearing and it will give the reasons for the decision.



### What happens if I lose the Formal Hearing?

If you lose the Formal Hearing, the Housing Authority sends you a notice with a final move-out date. If you do not move by that date, the Housing Authority can file an eviction case against you in State court.

You can ask the judge for a trial in state court. Call your legal aid office right away for help. You can also ask the Housing Authority for more time to move out, and for a good reference, in exchange for moving out and not fighting it in court.

If an eviction is filed, it becomes public record. Think carefully about whether you want to fight the eviction or agree to move. Get any agreement you make with the Housing Authority in writing. Once you make an agreement, you have to keep it.

### Reasonable Accommodations

If the Housing Authority is terminating your lease because of something in the lease or another rule that you or a family member didn't follow because of a disability, you can ask for a reasonable accommodation to be able to stay in your home.

See our fact sheet *Reasonable Accommodations: Do You Need Your Landlord to Make a Change Because of Your Disability?*

### Safety Risk and Criminal Activity

If you, someone in your household or a guest are using drugs, doing other crimes or are being a risk to the safety of other tenants or staff, the Housing Authority does not have to give you an Informal Conference or a Formal Hearing. Your termination notice tells you if the Housing Authority is skipping

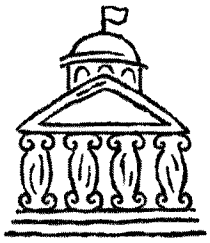
these procedures. If the Housing Authority skips these procedures and you do not move out, the Housing Authority will file an eviction case in state court.

- If you are being evicted for drugs or other criminal activity, do not make any statements about the matter to anyone. Do not admit to a drug-related or criminal act in an agreement with the Housing Authority. If you are evicted for drug use or crime, you won't be able to get public or subsidized housing for 3 years or more.

- Your lease termination can't be based on only an arrest. The Housing Authority has to investigate and prove that it is more likely than not that you did the illegal activity that led to your arrest. If the Housing Authority can prove this, then your lease can be terminated even if you are not charged by the police or convicted of a crime in court.

- If you think the Housing Authority is wrong, you need to explain why. Bring proof that they are wrong to court.

- If you think you will lose in court, you can sometimes work out an agreement for more time to move. If you make an agreement you HAVE to keep it - so make sure you can.



## Rules If You Are the Victim of Domestic Violence

The Housing Authority can't evict you if problems happened because of domestic violence, stalking, dating violence, or sexual assault against you or a member of your household. You can't be evicted for calling the police. In Minnesota, domestic violence may include violence or threats by children, relatives, or other family members.

Tell the Housing Authority if you think the lease violation happened for one of these reasons. See our fact sheet, *Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault*.

The Housing Authority can ask you to show evidence of an incident of domestic violence or sexual assault within 14 days. They have to ask you in writing. Sometimes getting a court order is a good way to prove the domestic violence. But the Housing Authority cannot **make** you get a court order. There are also other ways to prove it. Get help from legal aid or a domestic violence or sexual assault advocate if you need help to prove your case.

## Non-Payment of Rent

If you do not pay your rent on time, the Housing Authority will send you a notice saying you have to pay in 14 days or move.

- If you don't have the money, call the Housing Authority right away to see if you can work out a payment plan. Keep track of who you talk to and what you are told to do. Also, talk to the county welfare department about getting Emergency Assistance.

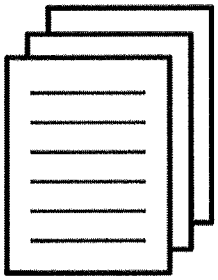
- If you do not owe rent, talk to the Housing Authority about why they think you do. Keep track of who you talk to and what they tell you. If you still disagree, call your manager and ask for an Informal Conference. Write a letter so you have a record that you asked.

- You have the right to an Informal Conference with the manager. If that does not solve the problem, you can ask for a Formal Hearing.

- If you did not pay the rent because of repair problems, ask for an Informal Conference or Formal Hearing to talk about the repairs needed.

- If you agree to repay the Housing Authority, the agreement must be written.

  **Note:** The amount you have to pay each month in a repayment agreement is limited by HUD rules. Your rent plus the repayment amount should not be more than 40% of your monthly income. If you have problems contact your local legal aid office.



If you do not pay the rent, work out an agreement, or ask for a hearing within 14 days, the Housing Authority can file an eviction case. You will be served with court papers telling you when to go to court. **Be on the lookout for these papers.**

You have the right under Minnesota state law to pay the rent at court, plus court costs, and keep your home.

## Minimum Rent

Many housing authorities have a "minimum rent" that tenants have to pay even if their income is very, very low. If you can't pay the minimum rent, you may be able to get a temporary or permanent "hardship exemption." Ask the manager for an exemption right away. Keep track of who you talk to and what you are told to do.

You should get an exemption if the reason you cannot pay is because:

- you lost your job

- you are waiting for public benefits, or you lost public benefits (but not if you lost them because you violated the rules)

- there was a recent death in the family or

- you would be evicted if the Housing Authority insists on the rent, or you have another financial problem.

A hardship exemption is effective the month after you ask for it. If the exemption reason is temporary (lasts 90 days or less) the Housing Authority will put off eviction proceedings but bill you for the minimum rent and ask you to pay at some time in the future. You can ask for a repayment plan and pay the rent over time.

If the reason you can't pay rent is permanent (lasts longer than 90 days), you should be exempt from paying until your money situation changes. If the Housing Authority won't do these things, or if you are already being evicted, call your legal aid office for help.

## Job Income and Rent

When you live in public housing, your rent is set at 30% of your counted income. This rule may be different if you live in public housing run by the Minneapolis Public Housing Authority. There are important exceptions to this rule. *Sometimes* changes in household income because of a job do not *immediately* affect the amount of rent. These situations are called **earned income disallowances.** Some of these are:

- Money you earned from a job that you got within 6 months of being on MFIP.
- If you are unemployed or underemployed for a year before you get a job. Underemployed means you earn less than $4,075 a year.
- If you are in a job training program.

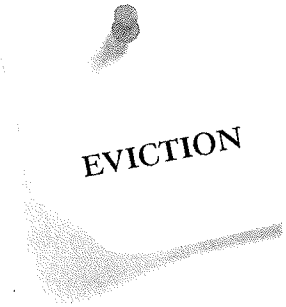
Tell the Housing Authority or judge if any of these situations apply to you. The disallowance applies for 24 months after you are hired. The rules on earned income disallowance are complicated, and the law in this area is changing soon. If you have problems or questions, contact your legal aid office.

## Welfare and Rent

The Housing Authority must lower your rent if you lost welfare income because you used up your 60 months of MFIP. But they will not lower your rent if you lost welfare benefits because of fraud or violation of welfare rules (sanction). Sometimes, the Housing Authority can be wrong about reasons for a sanction. Not all sanctions count for this purpose. Call your legal aid office if you have this problem.

## Try to Avoid Eviction

It is always good to avoid eviction. An eviction case is a public record that other landlords can check. It will make it harder to find a new place. So, if you think you would lose in court, try to move out before the Housing Authority files an eviction case. Tell the Housing Authority if you are moving so that they do not file an eviction against you before or after you leave. See our fact sheets *Evictions* and *Expunging Evictions*.




***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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agency required under section 1437c(e)(2) of this title, or (iii) is due to failure of a local public body or bodies other than the public housing agency to perform any obligation under such agreement. If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no contributions by the Secretary shall be made available for such project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the shelter rents charged in such project.

**(e) Repealed. Pub.L. 105-276, Title V, § 529(2), Oct. 21, 1998, 112 Stat. 2569**

**(f) Housing quality requirements**

**(1) In general**

Each contract for contributions for a public housing agency shall require that the agency maintain its public housing in a condition that complies with standards which meet or exceed the housing quality standards established under paragraph (2).

**(2) Federal standards**

The Secretary shall establish housing quality standards under this paragraph that ensure that public housing dwelling units are safe and habitable. Such standards shall include requirements relating to habitability, including maintenance, health and sanitation factors, condition, and construction of dwellings, and shall, to the greatest extent practicable, be consistent with the standards established under section 1437f(o)(8)(B)(i) of this title. The Secretary may determine whether the laws, regulations, standards, or codes of any State or local jurisdiction meet or exceed these standards, for purposes of this subsection.

**(3) Annual inspections**

Each public housing agency that owns or operates public housing shall make an annual inspection of each public housing project to determine whether units in the project are maintained in accordance with the requirements under paragraph (1). The agency shall retain the results of such inspections and, upon the request of the Secretary, the Inspector General for the Department of Housing and Urban Development, or any auditor conducting an audit under section 1437c(h) of this title, shall make such results available.

**(g) Substantial default; conveyance of title and delivery of possession; reconveyance and redelivery; payments for outstanding obligations**

Every contract for contributions (including contracts which amend or supersede contracts previously made) may provide

that--

**(1)** upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Secretary either to convey title in any case where, in the determination of the Secretary (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this chapter, or to deliver to the Secretary possession of the project, as then constituted, to which such contract relates; and

**(2)** the Secretary shall be obligated to reconvey or redeliver possession of the project as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract, and as soon as practicable (i) after the Secretary is satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this chapter, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the public housing agency to the Secretary which are then in default. Any prior conveyances and reconveyances or deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary pursuant to subparagraph (1) upon the subsequent occurrence of a substantial default.

Whenever such a contract for annual contributions includes provisions which the Secretary in such contract determines are in accordance with this subsection, and the portion of the annual contribution payable for debt service requirements pursuant to such contract has been pledged by the public housing agency as security for the payment of the principal and interest on any of its obligations, the Secretary (notwithstanding any other provisions of this chapter) shall continue to make such annual contributions available for the project so long as any of such obligations remain outstanding, and may covenant in such contract that in any event such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the project for the purpose at the time such annual contribution is made, will suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the obligations for which the annual contributions provided for in the contract shall have been pledged as security. In no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

**(h) New construction contracts**

On or after October 1, 1983, the Secretary may enter into a contract involving new construction only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the public housing agency determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood, including any reserve fund under subsection (i), would be.

**(i) Reserve fund; major repairs**

The Secretary may, upon application by a public housing agency in connection with the acquisition of housing for use as public housing, establish and set aside a reserve fund in an amount not to exceed 30 per centum of the acquisition cost which shall be available for use for major repairs to such housing.

**(7)** The Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies.

**(k) Administrative grievance procedure regulations: grounds of adverse action, hearing, examination of documents, representation, evidence, decision; judicial hearing; eviction and termination procedures**

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will--

**(1)** be advised of the specific grounds of any proposed adverse public housing agency action;

**(2)** have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (l);

**(3)** have an opportunity to examine any documents or records or regulations related to the proposed action;

**(4)** be entitled to be represented by another person of their choice at any hearing;

**(5)** be entitled to ask questions of witnesses and have others make statements on their behalf; and

**(6)** be entitled to receive a written decision by the public housing agency on the proposed action.

For any grievance concerning an eviction or termination of tenancy that involves any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any violent or drug-related criminal activity on or off such premises, or any activity resulting in a felony conviction, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of Title 5, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of Title 5). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

**(l) Leases; terms and conditions; maintenance; termination**

Each public housing agency shall utilize leases which--

**(1)** have a term of 12 months and shall be automatically renewed for all purposes except for noncompliance with the requirements under section 1437j(c) of this title (relating to community service requirements); except that nothing in this subchapter shall prevent a resident from seeking timely redress in court for failure to renew based on such noncompliance;

**(2)** do not contain unreasonable terms and conditions;

**(3)** obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

**(4)** require the public housing agency to give adequate written notice of termination of the lease which shall not be less than--

**(A)** a reasonable period of time, but not to exceed 30 days--

**(i)** if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

**(ii)** in the event of any drug-related or violent criminal activity or any felony conviction;

**(B)** 14 days in the case of nonpayment of rent; and

**(C)** 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

**(5)** require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause;

**(6)** provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

**(7)**[6] specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

**(7)**[6] provide that any occupancy in violation of section 13661(b) of this title (relating to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any false or misleading information pursuant to section 13662 of this title (relating to termination of tenancy and assistance for illegal drug users and alcohol abusers) shall be cause for termination of tenancy;[7]

**(9)** provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant--

**(A)** is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

**(2)**[8] is violating a condition of probation or parole imposed under Federal or State law.

For purposes of paragraph (5),[9] the term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of Title 21).

**(m) Reporting requirements; limitation**

The Secretary shall not impose any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies assisted under this chapter.

**(n) Notice to post office regarding eviction for criminal activity**

When a public housing agency evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the public housing agency shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit.

**(o) Public housing assistance for foster care children**

In providing housing in low-income housing projects, each public housing agency may coordinate with any local public agencies involved in providing for the welfare of children to make available dwelling units to--

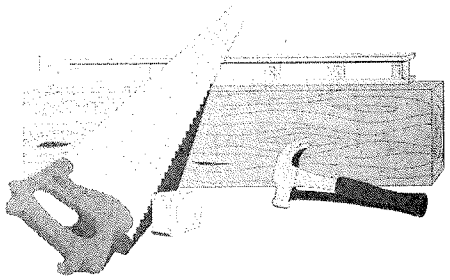
# Getting a Landlord To Make Repairs

A tenant has the right to live in a home that is in reasonable repair, fit for use as a proper home, meets local housing codes and is reasonably energy efficient. The landlord has the responsibility to make sure your home is fit to live in. If your landlord does not make repairs, there are things you can do to make the landlord fix the problems. If it is not an emergency, do the things below.

***If it is an emergency, call your legal aid office right away. Emergencies are things like no power, no heat, no stove or oven, no working plumbing, no hot water, or an intent-to-condemn notice.***

## Make a List of What Needs to be Fixed

Make a list or fill out the attached repair list and mail it to your landlord. Keep a copy. It is best to send a list like this or a letter. Send it to the address where you pay rent. Some judges are ok with texts and emails asking for repairs. If you send a text or email, make sure you can print them out with date and time stamp. Your landlord has 14 days to fix the problems after getting the written request from you.



## Call a Housing Inspector

You don't have to call an inspector but if your city has housing inspectors, call them. They can back up what you put on your list. When they come, show them your list so that they do not miss anything. Ask for a copy of their report.

In Minneapolis, call 3-1-1. In St. Paul, call (651) 266-8989. In other parts of the state you can call 2-1-1, or 1- (800) 543-7709 to see if your city has a housing inspector.

Housing inspectors may find problems that you missed. If the problems are bad enough, they can condemn the building if repairs aren't made. If problems are not emergencies, inspectors usually give landlords 30 days to fix them.

## Can my landlord kick me out for calling an inspector?

A landlord cannot evict you for asking for repairs or calling a housing inspector. But a landlord can try to evict you if you don't pay rent because of repair problems. If you have part of your rent and a landlord tries to evict you only because you asked for repairs, you can ask the court to dismiss the eviction and "expunge" it, which means erasing it from public records. See our fact sheet *Evictions.*

## What if my landlord doesn't do the repairs?

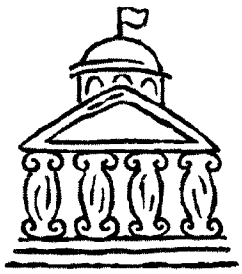
If the landlord still does not make the repairs after you write a letter or call the inspector, file a Rent Escrow action. This means you pay your rent to the court to start a case against the landlord. The case is to get a court to order repairs. You can also use the case to make your landlord follow the things in your lease if they have been violated. You can file one if:

- It has been 14 days since you sent the landlord a letter about repairs and/or other lease violations by your landlord **or**

- A deadline given by housing inspectors has passed or the housing inspector gave the landlord too much time to make repairs.

If you have a low income, call your legal aid office. You can find yours at: http://www.lawhelpmn.org/providers-and-clinics. They can represent you, refer you to another agency, or give you advice. If you can't get a lawyer, you can do it yourself.

**Until you file your Rent Escrow action, pay your rent to the landlord as soon as the rent is due.** If you do not pay, your landlord can file an eviction against you. You may have defenses because of the repair problems, but it is better and safer to use a Rent Escrow action than to defend an eviction.



## Does it cost to file a Rent Escrow Action?

There is a filing fee. If you have a low income, fill out a court fee waiver form (IFP) to ask the court to let you skip paying the fee. The court has these forms or you can create one online using a step-by-step interview.
Go to: http://www.lawhelpmn.org/forms. Click on *Court Fee Waiver (IFP).*

When you file your IFP make sure you have proof of your low income, like pay stubs, or proof of government assistance.

## How do I file a Rent Escrow Action?

To file a Rent Escrow action, go to the county courthouse. Take with you:

1. a Rent Escrow Affidavit (form attached)

2. a copy of the written repair request you made to your landlord or the inspection orders made by the city inspector, and

3. **all the rent due** (cash or certified check). You don't need to wait until your rent is due to file a Rent Escrow. But you must pay **all** the rent into court when it is due.

   For example: you can file a Rent Escrow after paying your rent for the month to the landlord. Then you don't have to pay the rent into court. But if you owe any rent when you file the Rent Escrow, you need to pay it into court when you file the case.

**If you don't pay all of the unpaid rent into court when you file a Rent Escrow, your landlord could ask the judge to evict you.**

The clerk usually schedules a hearing for you within 10-14 days from when you file the Rent Escrow.

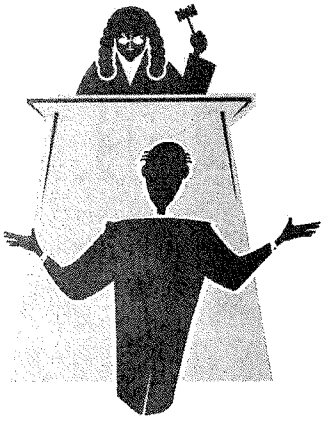
## What do I need for the hearing?

Gather evidence. Bring your evidence to the hearing. Evidence can be things like:

- Photos that show the problems. Label and date them for the court.
- If an inspector has been to the property, go to the inspections office and get a **certified** copy of the Inspection Report. If the inspector knows more than is in the report, you can "subpoena" (make) them come to court. Ask the court clerk how to do this.
- Emails, text messages, and other things showing you asked the landlord to make the repairs.
- Other witnesses, like a neighbor who has seen the repair problems.

For each repair problem, you want to be able to show the court:

- How long it's been a problem.
- How long the landlord knew about it.
- How the problem has affected you and made your life worse. Give details!



## What can I ask the court to do?

You can ask the court to:

- Order repairs.
- Reduce your rent until the repairs are done.
- Give you back rent money for the months you lived there with the repair problems.
- Let you get the repairs made and deduct the cost from your rent.

Here is an example:

It is now June. You moved in January 1. The plumbing was bad when you moved in. You told your landlord in writing about the bad plumbing right away. The roof has leaked since March, and you told the landlord in writing as soon as it started to leak.

If you have not paid June rent, you can start a Rent Escrow case by putting the unpaid June rent into court along with the attached Rent Escrow affidavit and a copy of your letters from January and March. You can ask the judge to make the landlord fix the problems. You can also ask for some money off the rent for January and February because of the bad plumbing and a larger amount off for March, April, May and June, because of the second problem, the leaky roof.

So, out of the money you paid into court, some of it should go back to you because of the repair problems that were not fixed. Also, ask the judge to lower your future rent until the landlord makes all of the repairs.

**It is important to note** that the judge has a lot of power to decide how much of a rent reduction you should get. Different judges give different values to repair issues, so the amount of rent reduction can be very different depending on who decides your case or where you live.

**Remember:** The main point of a rent escrow case is to get repairs made, not to get rent back. This is why it is important for you to show how each problem affected you and made your life worse in the rental home. Proving how each problem made your life worse can help convince a judge to give you a rent reduction along with ordering repairs.

## Is there anything else I can do?

If you don't file a Rent Escrow, you can sue in Conciliation Court to get rent money back. You can do this while you live there or after you move out.

In Conciliation Court, you can't ask for repairs to be made – just for money damages. You do not need a lawyer. For evidence, it helps to have things like letters, inspection reports, and photos. See our fact sheet, *Conciliation Court.*



***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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# TENANT'S REPAIR LIST – Request for Repairs

**Dear** _____ **Date:**_____

Please make the following repairs within the next 14 days.

| √ | PROBLEM | WHEN IT STARTED | DESCRIPTION |
|---|---|---|---|
| | **INFESTATIONS** | | |
| | Mice | | |
| | Cockroaches | | |
| | Bed bugs | | |
| | Other | | |
| | **ELECTRICAL** | | |
| | No/ broken smoke detector | | |
| | Exposed Wiring | | |
| | Short Circuits | | |
| | No cover plates on outlets | | |
| | Other | | |
| | **PLUMBING** | | |
| | No hot water | | |
| | Clogged pipes/toilet | | |
| | Bad water pressure | | |
| | Dripping faucets | | |
| | Leaks | | |
| | Other | | |
| | **WINDOWS** | | |
| | Missing/torn screens | | |
| | Missing/broken storm windows | | |
| | Broken/cracked glass | | |
| | Missing/ broken locks | | |
| | Other | | |
| | **DOORS** | | |
| | No deadbolt locks | | |
| | Broken locks | | |
| | Missing/broken door knobs | | |
| | Other | | |

| √ | PROBLEM | WHEN IT STARTED | DESCRIPTION |
|---|---|---|---|
| | **WALLS / CEILINGS/ FLOORS** | | |
| | Chipped / flaking paint | | |
| | Holes or cracks in walls | | |
| | Leaky roof or ceiling | | |
| | Holes in carpet | | |
| | Missing/broken tiles or linoleum | | |
| | Other | | |
| | **FURNACE** | | |
| | Not enough heat | | |
| | Gas leaks | | |
| | Other | | |
| | **APPLIANCES** | | |
| | Broken stove/oven | | |
| | Broken refrigerator | | |
| | Other | | |
| | **SECURITY / PRIVACY** | | |
| | Illegal entries by landlord | | |
| | Disturbance by other tenants | | |
| | Break-ins, vandalism | | |
| | Other | | |
| | **OTHER AREAS** | | |
| | Bare patches in yard | | |
| | Trash from previous tenant | | |
| | Problem with garage | | |
| | Leaky basement | | |
| | Pay utility bills | | |
| | Other | | |
| | | | |
| | | | |

**Tenant's Name:** _____

**Tenant's Address:** _____

**Tenant's Signature:** _____

**DISTRICT COURT**

**STATE OF MINNESOTA**

**COUNTY OF** _____ _____ **JUDICIAL DISTRICT**

_____

**Plaintiff (tenant)**

**vs.**

_____

**Defendant (Landlord)**

**RENT ESCROW AFFIDAVIT**

**FILE NO:**

Plaintiff states under oath:

1) My address is _____

2) My landlord's name is _____

3) My landlord's address is _____

4) The monthly rent is $ _____

5) ☐ I sent the landlord a written notice describing the repair problems or violations of the lease. The landlord did not fix them within 14 days. A copy of my letter or other written communication is attached.

and / or

☐ An inspector ordered the landlord to make repairs. The inspector's deadline has passed, and the landlord has not made all the repairs. A copy of the inspector's orders is attached.

6) As of today, the amount of rent that I owe is $ _____ I am depositing that amount with the court.

7) My best estimate is that it would cost $ _____ for the landlord to make all the repairs.

8) The landlord has known about these repair problems since approximately the following date or dates _____

9) Since these repair problems have existed, my apartment has not been worth the amount of rent I pay. It has only been worth $ _____ per month.

10) I respectfully ask the court to issue an order including the following:

a. Order the landlord to make all of the repairs right away.

b. Reduce my rent to $ _____ per month until the month after all of the repairs are completed. For any repairs that the landlord does not complete by the Court's deadline, authorize me to pay for the repairs myself and deduct the payments from future rent.

c. Of the money I deposited with the court, order that $ _____ be returned to me, for the rent that I have paid while the landlord did not make the repairs.

d. If I am entitled to more rent money back for the repair problems in the past months, enter a judgment against the landlord for $ _____ and authorize me to collect the judgment by taking it out of future months' rent.

e. If I have used an attorney, enter a judgment in my favor for reasonable attorney fees. Authorize me to collect the judgment by taking it out of future months' rent.

f. Set a follow-up hearing to make sure the landlord has made the repairs ordered.

g. Other: _____

11) To the best of my knowledge, I am not filing this case for an improper reason, such as harassment or delay; my claims are supported by the law, and there is evidence for them. I know that I can be fined or sanctioned by the court if this statement is false.

**I declare under penalty of perjury that everything I have stated in this document is true and correct.**

Dated: _____ _____

*Signature*

Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

E-mail: _____

**For the court to fill out**

Total rent deposited: $ _____ + $16.00 filing fee = $ _____ total paid.

Set for _____ at __ M, in _____ Notice sent _____

Continued to _____ at __ M ,in _____ Notice sent _____

## 504B.375 UNLAWFUL EXCLUSION OR REMOVAL; ACTION FOR RECOVERY OF POSSESSION.

Subdivision 1. **Unlawful exclusion or removal.** (a) This section applies to actual or constructive removal or exclusion of a residential tenant which may include the termination of utilities or the removal of doors, windows, or locks. A residential tenant to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e).

(b) The residential tenant shall present a verified petition to the district court of the judicial district of the county in which the premises are located that:

(1) describes the premises and the landlord;

(2) specifically states the facts and grounds that demonstrate that the exclusion or removal was unlawful, including a statement that no writ of recovery of the premises and order to vacate has been issued under section 504B.345 in favor of the landlord and against the residential tenant and executed in accordance with section 504B.365; and

(3) asks for possession.

(c) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the residential tenant or the residential tenant's attorney or agent that the exclusion or removal was unlawful, the court shall immediately order that the residential tenant have possession of the premises.

(d) The residential tenant shall furnish security, if any, that the court finds is appropriate under the circumstances for payment of all costs and damages the landlord may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of security, the court shall consider the residential tenant's ability to afford monetary security.

(e) The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises. If the landlord, the landlord's agent, or other person in control of the premises cannot be found and if there is no person in charge, the officer shall immediately enter into and place the residential tenant in possession of the premises. The officer shall also serve the order and verified petition or affidavit immediately upon the landlord or agent, in the same manner as a summons is required to be served in a civil action in district court.

Subd. 2. **Motion for dissolution or modification of order.** The landlord may, by written motion and notice served by mail or personally on the residential tenant or the residential tenant's attorney at least two days before the hearing date on the motion, obtain dissolution or modification of the order for possession issued under subdivision 1, paragraph (c), unless the residential tenant proves the facts and grounds on which the order is issued. A landlord bringing a motion under this subdivision may recover possession of the premises only by an eviction action or otherwise provided by law. Upon the dissolution of the order, the court shall assess costs against the residential tenant, subject to the provisions of section 563.01, and may allow damages and reasonable attorney fees for the wrongful granting of the order for possession. If the order is affirmed, the court shall tax costs against the landlord and may allow the residential tenant reasonable attorney's fees.

Subd. 3. **Finality of order.** An order issued under subdivision 1, paragraph (c), or affirmed, modified, or dissolved under subdivision 2, is a final order for purposes of appeal. Either party may appeal the order

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within ten days after entry. If the party appealing remains in possession of the premises, bond must be given to:

(1) pay all costs of the appeal;

(2) obey the court's order; and

(3) pay all rent and other damages that justly accrue to the party excluded from possession during the pendency of the appeal.

Subd. 4. **Waiver not allowed.** A provision of an oral or written lease or other agreement in which a residential tenant waives this section is contrary to public policy and void.

Subd. 5. **Purpose.** The purpose of this section is to provide an additional and summary remedy for residential tenants unlawfully excluded or removed from rental property and, except where expressly provided in this section, sections 504B.285 to 504B.371 do not apply to proceedings under this section.

Subd. 6. **Application.** In addition to residential tenants and landlords, this section applies to:

(1) occupants and owners of residential real property that is the subject of a mortgage foreclosure or contract for deed cancellation for which the period for redemption or reinstatement of the contract has expired; and

(2) mortgagees and contract for deed vendors.

**History:** *1999 c 199 art 1 s 55; 2005 c 10 art 2 s 4*

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## 504B.385 RENT ESCROW ACTION TO REMEDY VIOLATIONS.

Subdivision 1. **Escrow of rent.** (a) If a violation exists in a residential building, a residential tenant may deposit the amount of rent due to the landlord with the court administrator using the procedures described in paragraphs (b) to (d).

(b) For a violation as defined in section 504B.001, subdivision 14, clause (1), the residential tenant may deposit with the court administrator the rent due to the landlord along with a copy of the written notice of the code violation as provided in section 504B.185, subdivision 2. The residential tenant may not deposit the rent or file the written notice of the code violation until the time granted to make repairs has expired without satisfactory repairs being made, unless the residential tenant alleges that the time granted is excessive.

(c) For a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation. The court must provide a simplified form affidavit for use under this paragraph.

(d) The residential tenant need not deposit rent if none is due to the landlord at the time the residential tenant files the notice required by paragraph (b) or (c). All rent which becomes due to the landlord after that time but before the hearing under subdivision 6 must be deposited with the court administrator. As long as proceedings are pending under this section, the residential tenant must pay rent to the landlord or as directed by the court and may not withhold rent to remedy a violation.

Subd. 2. **Counterclaim for possession.** (a) The landlord may file a counterclaim for possession of the property in cases where the landlord alleges that the residential tenant did not deposit the full amount of rent with the court administrator.

(b) The court must set the date for a hearing on the counterclaim not less than seven nor more than 14 days from the day of filing the counterclaim. If the rent escrow hearing and the hearing on the counterclaim for possession cannot be heard on the same day, the matters must be consolidated and heard on the date scheduled for the hearing on the counterclaim.

(c) The contents of the counterclaim for possession must meet the requirements for a complaint under section 504B.321.

(d) The landlord must serve the counterclaim as provided in section 504B.331, except that the affidavit of service or mailing may be brought to the hearing rather than filed with the court before the hearing.

(e) The court must provide a simplified form for use under this section.

Subd. 3. **Defenses.** The defenses provided in section 504B.415 are defenses to an action brought under this section.

Subd. 4. **Filing fee.** The court administrator may charge a filing fee in the amount set for complaints and counterclaims in conciliation court, subject to the filing of an inability to pay affidavit.

Subd. 5. **Notice of hearing.** (a) A hearing must be held within ten to 14 days from the day a residential tenant:

(1) deposits rent with the court administrator; or

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(2) files the notice required under subdivision 1, paragraph (b) or (c), if the tenant is not required to deposit rent with the court administrator under subdivision 1, paragraph (d).

Nothing in this subdivision relieves the tenant of the obligation to deposit rent that becomes due to the landlord after the filing but before the hearing with the court administrator.

(b) If the cost of remedying the violation, as estimated by the residential tenant, is within the jurisdictional limit for conciliation court, the court administrator shall notify the landlord and the residential tenant of the time and place of the hearing by first class mail.

(c) The residential tenant must provide the court administrator with the landlord's name and address. If the landlord has disclosed a post office box as the landlord's address under section 504B.181, notice of the hearing may be mailed to the post office box.

(d) If the cost of remedying the violation, as estimated by the tenant, is above the jurisdictional limit for conciliation court, the tenant must serve the notice of hearing according to the Minnesota Rules of Civil Procedure.

(e) The notice of hearing must specify the amount the residential tenant has deposited with the court administrator and must inform the landlord that possession of the premises will not be in issue at the hearing unless the landlord files a counterclaim for possession or an eviction action.

Subd. 6. **Hearing.** The hearing shall be conducted by a court without a jury. A certified copy of an inspection report meets the requirements of rule 803(8) of the Minnesota Rules of Evidence as an exception to the rule against hearsay, and meets the requirements of rules 901 and 902 of the Minnesota Rules of Evidence as to authentication.

Subd. 7. **Release of rent prior to hearing.** If the residential tenant gives written notice to the court administrator that the violation has been remedied, the court administrator must release the rent to the landlord and, unless the hearing has been consolidated with another action, must cancel the hearing. If the residential tenant and the landlord enter into a written agreement signed by both parties apportioning the rent between them, the court administrator must release the rent in accordance with the written agreement and cancel the hearing.

Subd. 8. **Consolidation with an eviction action.** Actions under this section and eviction actions which involve the same parties must be consolidated and heard on the date scheduled for the eviction action.

Subd. 9. **Judgment.** (a) Upon finding that a violation exists, the court may, in its discretion, do any or all of the following:

(1) order relief as provided in section 504B.425, including retroactive rent abatement;

(2) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation;

(3) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or

(4) impose fines as required in section 504B.391.

(b) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action, and the landlord prevails, the residential tenant may redeem the tenancy as provided in section 504B.291.

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(c) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action on the grounds of nonpayment, the court may not require the residential tenant to pay the landlord's filing fee as a condition of retaining possession of the property when the residential tenant has deposited with the court the full amount of money found by the court to be owed to the landlord.

Subd. 10. **Release of rent after hearing.** If the court finds, after a hearing on the matter has been held, that no violation exists in the building or that the residential tenant did not deposit the full amount of rent due with the court administrator, it shall order the immediate release of the rent to the landlord. If the court finds that a violation existed, but was remedied between the commencement of the action and the hearing, it may order rent abatement and must release the rent to the parties accordingly. Any rent found to be owed to the residential tenant must be released to the tenant.

Subd. 11. **Retaliation; waiver not allowed.** Section 504B.441 applies to proceedings under this section. The residential tenant rights under this section may not be waived or modified and are in addition to and do not limit other rights or remedies which may be available to the residential tenant and landlord, except as provided in subdivision 1.

**History:** *1999 c 199 art 1 s 57; 2013 c 100 s 5*

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# RENT ESCROW INSTRUCTIONS

**Minnesota Statutes § 504B.385**

Please read the complete instructions before you begin. If you do not understand these instructions, you may need to contact an attorney.

## IMPORTANT INFORMATION

- A rent escrow action is a legal way for a residential tenant to bring a claim that requires the landlord to make needed repairs or to comply with the terms of the lease.
- The court can only hear cases involving residential property located in its own county.
- A tenant cannot be evicted on the basis of demanding repairs, calling a Housing Inspector or starting a rent escrow action. The tenant can be evicted for not paying the rent due to the landlord up to the time of filing the rent escrow action or not depositing the full amount with the court at the time the action is filed. The landlord may allege that there are other reasons the tenant should be evicted.
- The tenant must reside in the problem property. The tenant cannot file a rent escrow action after they have moved.
- The tenant can ask the court to order the landlord to make repairs, reduce the rent until repairs are complete, refund a portion of past rent when repairs were not made and other relief.

One of the following must have occurred before the tenant may file:

- The tenant must provide the landlord with written notice listing the needed repairs or describing what part of the lease the landlord has not completed. The notice must have been personally delivered to the landlord or mailed to the place where rent is usually paid. If it has been at least 14 days since the tenant provided the landlord with a written notice, then the tenant may file.
- A local housing inspector completed a code violation report and the deadline the inspector gave the landlord to make repairs has passed without the repairs being completed. The tenant must ask the inspector for a copy of the report.
- A local housing inspector completed a code violation report and the tenant believes the inspector gave the landlord too much time to complete the repairs. The tenant must ask the inspector for a copy of the report.

## REQUIREMENTS TO FILE A RENT ESCROW

- Complete an Affidavit of Rent Escrow (available at the Court Administrator/Housing Court office or online at www.mncourts.gov/forms ).
- Attach a copy of the Code Inspection Report by the inspector OR the tenant's letter to the landlord requesting repairs (Case can be filed if the tenant does not have a copy).
- Pay the filing fee or obtain an order from the court waiving the fee.
- Deposit any rent that is owed with the court. Personal checks are not accepted. Cash or cashier's check is acceptable. Check with the Court Administrator/Housing Court for acceptable forms of payment.

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

## COMPLETING THE AFFIDAVIT OF RENT ESCROW

*Remember as you answer the questions on the affidavit, you are under oath and must tell the truth.*

Caption of the Affidavit:

- The tenant(s) is the plaintiff.
- The landlord is the defendant. The landlord may be a corporation or an individual. Be sure to list the landlord, not their agent.

Body of the Affidavit:

1. Fill in your complete address including your apartment number, city, state, ZIP, county and phone number including area code.
2. Fill in the landlord's name, complete address, city, state, ZIP and phone number including area code.
3. If the property manager is different from the landlord, fill in their name, address, city, state, ZIP and phone number including area code.
4. List all problems or violations with your housing that have NOT been repair. Attach additional pages if needed.
5. Give an estimate of how much it would cost to repair the problems or violations listed in #4. If you don't know, contact someone to give you a professional estimate.
6. If the inspector issued a code violation report, complete "a". If you mailed or personally delivered a letter requesting repairs, complete "b".
7. Fill in the amount of your monthly rent and when it is due. If rent is paid in full to date, check "a". If rent is due, check "b" and be prepared to deposit that amount with the court. Check with Court Administrator/Housing Court for acceptable forms of payment.
8. If there is something you would like the court to do, indicate by checking the appropriate box(es). You may leave this question blank.
9. Read and understand

Signing the Affidavit:

- By signing the Affidavit under penalty of perjury, you are stating that the information in the document is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth.
- Fill in today's date
- Print your name, address, city, state, ZIP and phone number including area code.

## GETTING A COURT DATE

- Once your Affidavit has been filed with the court, the clerk will prepare a Notice of Hearing for Rent Escrow and attach a copy of the Affidavit of Rent Escrow and either the code violation report or your letter to the landlord requesting repairs.
- A court date will be set within 10 to 14 days after the rent is deposited with the court unless there is a pending eviction action. If so, both the eviction and the rent escrow will be set for the same date (Minn. Stat. § 504B.385, subd. 8).

## NOTIFYING (SERVING) THE LANDLORD OF THE COURT DATE (Minn. Stat. § 504B.385, subd. 5)

Cost of Repairs is $15,000 or Less:

- The court clerk will serve the landlord at the address provided by the tenant. Service will be by first class mail.

Cost of Repairs is More than $15,000:

- The tenant is responsible for arranging for personal service on the landlord(s). Service may be done by any one 18 years of age or older who is not a party to the case. The tenant can not serve the landlord. Service must be made at least five days but not more

than ten days before the date of the hearing. The person doing the service must complete an Affidavit of Personal Service. The tenant must file this affidavit with the court at least three days prior to the court date.

**AT THE HEARING**

Once the case is decided, the judicial officer will issue a Decision and Order. The Decision and Order will address who is to receive the rent that is deposited with the court. The court may order a portion to the landlord and a portion to the tenant or may order all the monies to one party. The court may schedule a future date to ensure the landlord has complied with its court.

**IF THE REPAIRS ARE MADE PRIOR TO THE COURT DATE**

The tenant notifies the court in writing that the needed repairs have been made, the clerk will release the rent to the landlord. The hearing will be cancelled. If the tenant and landlord enter into a written agreement signed by all parties distributing the rent between them, the clerk must release the rent in accordance with the written agreement.

**WHAT CAN HAPPEN IF RENT DUE IS NOT DEPOSITED WITH THE COURT** (Minn. Stat. § 504B.385, subd. 2)

The landlord may file a Counterclaim for Possession of the Premises or a separate eviction action if the tenant did not or does not deposit all rent due.

# Emergency Repair Problems

## What is an emergency repair problem?

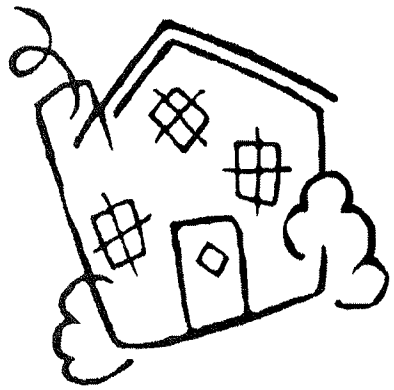
An emergency repair problem means you have no:

- Running water
- Hot water
- Heat
- Stove or oven
- Electricity
- Bathroom use
- Basic services or facilities, like a missing front or back door or lock, or missing windows.

A condemnation or intent-to-condemn notice is an emergency, since it means that the whole home is unlivable. Any order to move from an inspector in the city where you live can be an emergency, including if you are told to move because your landlord does not have a rental license.

## What should I do?

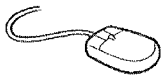
Call the landlord right away. If the landlord will not make the repair or fix the problem causing the emergency, you can file an **Emergency Tenant Remedies Action (ETRA)**. An ETRA is also called an emergency relief action. It is good to have a lawyer help you file an ETRA, but you can also do it on your own. Call your legal aid office for help or advice.



## How do I file an Emergency Tenant Remedies Action (ETRA)?

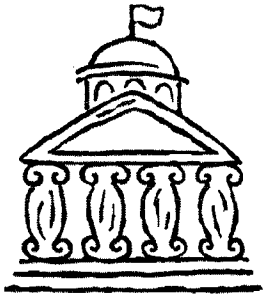
To file an ETRA, fill out the attached form or get one from the court. You must try to tell the landlord 24 hours before you file. If you can't reach the landlord, you can leave a message to give the 24-hour notice. In your 24-hour notice, tell your landlord what your housing emergency is. You have to tell your landlord in your 24-hour notice to fix the emergency within 24 hours or you will file an ETRA. It is important you tell your landlord that you will file. If the landlord does not fix the emergency within 24 hours of your notice, you can file the ETRA. If you try to reach your landlord to give the 24-hour notice, but can't get a hold of them, go ahead and file.

There is a filing fee. If you have a low income, you can fill out a court fee waiver form (IFP) to ask the court to let you skip paying. The court has these forms or you can create one online using a step-by-step interview at http://www.lawhelpmn.org/forms.

 → Click on *Court Fee Waiver (IFP)*

Bring proof of your low income, like pay stubs, or proof of government assistance.

With an ETRA, you can get a court hearing very fast, usually within 3-7 business days. The court is likely to order the landlord to do the repairs, to make sure the repairs get done, and to set a later court date to deal with rent and money damages.



## What can the court order?

You can ask the court to:

- Order the landlord to make the repairs right away.
- Let you make the repairs and take the cost off the rent.
- Choose someone else to make repairs or manage the property.
- Reduce the rent until repairs are made.
- Make the landlord pay for a motel, or pay you back, if you need to stay somewhere else.
- Make the landlord give you a different place to stay or pay your costs to move somewhere else.

You can ask the court for money damages like:

- Money back for rent you paid while the repair problems existed.
- Attorney's fees.
- Any money you lost because of the problem, like paying to stay somewhere else. Bring proof, like receipts or cancelled checks of what you paid.

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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**STATE OF MINNESOTA** **DISTRICT COURT**

**COUNTY OF** _____ _____ **JUDICIAL DISRICT**

_____

**Plaintiff (tenant)**

**vs.**

_____

**Defendant (Landlord)**

**EMERGENCY TENANT REMEDIES ACTION PETITION**

Minn. Stat. 504B.381

**FILE NO:**

Plaintiff states under oath:

1) My address is _____

2) My landlord's name is _____

3) My landlord's address is _____

4) The monthly rent is $ _____

5) ☐ I notified the landlord that I was filing this action at least 24 hours before I filed.

**or**

☐ I tried to notify the landlord that I was filing this action by: _____

_____

6) I have an emergency involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services the landlord is responsible for. My emergency is:

_____

_____

7) Besides the emergency, my rental unit also has the following repair problems:

_____

_____

_____

_____

8) I respectfully ask the court to issue an order including the following:

a. Order the landlord to take care of the emergency right away.

b. Set a hearing to check on the landlord's compliance with this order and to consider this other relief:

i. Give me a refund of rent I paid to cover the time period of the emergency.

ii. For any repairs the landlord doesn't get done by the court's deadline, fine the landlord as provided in MN Statute Section 504B.391.

iii. Order the landlord to make all the other necessary repairs.

iv. Lower my rent to $ _____ per month until the month after all the repairs are done. For any repairs that the landlord does not get done by the Court's deadline, authorize me to pay for the repairs myself and take it off future rent.

v. Enter a judgment in my favor for $ _____ to compensate me for rent paid while there were repair problems, including attorney's fees. Let me collect the judgment by taking it off my rent.

vi. If I am forced to move, order the landlord to put me into another apartment or to pay for temporary shelter and moving costs and to return my security deposit right away.

vii. Other: _____

_____

9) To the best of my knowledge, I am not filing this case for an improper reason, such as harassment or delay; my claims are supported by the law, and there is evidence for them. I know that I can be fined or sanctioned by the court if this statement is false.

**I declare under penalty of perjury that everything I have stated in this document is true and correct.**

Dated: _____ _____

*Signature*

Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

E-mail: _____

**504B.395 PROCEDURE.**

Subdivision 1. **Who may bring action.** An action may be brought in district court by:

(1) a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, is alleged to exist;

(2) any housing-related neighborhood organization with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist;

(3) a housing-related neighborhood organization that has within its geographical area an unoccupied residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist; or

(4) a state, county, or local department or authority, charged with the enforcement of codes relating to health, housing, or building maintenance.

Subd. 2. **Venue.** The venue of the action authorized by this section is the county where the residential building alleged to contain violations is located.

Subd. 3. **When action may be brought.** (a) After a residential building inspection has been made under section 504B.185, an action may not be brought under sections 504B.381, 504B.385, or 504B.395 to 504B.451 until the time granted under section 504B.185, subdivision 2, has expired and satisfactory repairs to remove the code violations have not been made.

(b) Notwithstanding paragraph (a), an action may be brought if the residential tenant, or neighborhood organization with the written permission of a tenant, alleges the time granted under section 504B.185, subdivision 2, is excessive.

Subd. 4. **Landlord must be informed.** A landlord must be informed in writing of an alleged violation at least 14 days before an action is brought by:

(1) a residential tenant of a residential building in which a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), is alleged to exist; or

(2) a housing-related neighborhood organization, with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (2), is alleged to exist. The notice requirement may be waived if the court finds that the landlord cannot be located despite diligent efforts.

Subd. 5. **Summons and complaint required.** The action must be started by service of a complaint and summons. The summons may be issued only by a judge or court administrator.

Subd. 6. **Contents of complaint.** (a) The complaint must be verified and must:

(1) allege material facts showing that a violation or violations exist in the residential building;

(2) state the relief sought; and

(3) list the rent due each month from each dwelling unit within the residential building, if known.

(b) If the violation is a violation as defined in section 504B.001, subdivision 14, clause (1), the complaint must be accompanied by:

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(1) a copy of the official report of inspection by a department of health, housing, or buildings, certified by the custodian of records of that department stating:

(i) when and by whom the residential building concerned was inspected;

(ii) what code violations were recorded; and

(iii) that notice of the code violations has been given to the landlord; or

(2) a statement that a request for inspection was made to the appropriate state, county, or municipal department, that demand was made on the landlord to correct the alleged code violation, and that a reasonable period of time has elapsed since the demand or request was made.

**History:** *1999 c 199 art 1 s 59*

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## 504B.381 EMERGENCY TENANT REMEDIES ACTION.

Subdivision 1. **Petition.** A person authorized to bring an action under section 504B.395, subdivision 1, may petition the court for relief in cases of emergency involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing.

Subd. 2. **Venue.** The venue of the action authorized by this section is the county where the residential building alleged to contain the emergency condition is located.

Subd. 3. **Petition information.** The petitioner must present a verified petition to the district court that contains:

(1) a description of the premises and the identity of the landlord;

(2) a statement of the facts and grounds that demonstrate the existence of an emergency caused by the loss of essential services or facilities; and

(3) a request for relief.

Subd. 4. **Notice.** The petitioner must attempt to notify the landlord, at least 24 hours before application to the court, of the petitioner's intent to seek emergency relief. An order may be granted without notice to the landlord if the court finds that reasonable efforts, as set forth in the petition or by separate affidavit, were made to notify the landlord but that the efforts were unsuccessful.

Subd. 5. **Relief; service of order.** The court may order relief as provided in section 504B.425. The petitioner shall serve the order on the landlord personally or by mail as soon as practicable.

Subd. 6. **Limitation.** This section does not extend to emergencies that are the result of the deliberate or negligent act or omission of a residential tenant or anyone acting under the direction or control of the residential tenant.

Subd. 7. **Effect of other laws.** Section 504B.395, subdivisions 3 and 4, do not apply to a petition for emergency relief under this section.

**History:** *1999 c 199 art 1 s 56*

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Last updated: August 10, 2017

Contents from *Tenants' Rights in Minnesota.* To find the most current edition of this PDF, go to www.lawhelpmn.org. Scroll down to chose "Housing" on the main page. From there click any of the subjects and scroll until you find *Tenants' Rights in Minnesota* from Legal Services State Support. Chapter 4 includes a discussion about Inspections, reprinted below.

# Inspections

It is a good idea to have an inspection of your apartment if there is an inspector in your area. Even if you write a letter to your landlord asking for repairs, you still may want to call the housing inspector. Keep in mind that the inspector may give your landlord more than 2 weeks to fix the problems.

To ask for an inspection you should do the following

1. Contact the local housing inspector and ask for an inspection.
2. During the inspection, walk through your place, room by room, with the inspector. Ask if there are state or local code violations in your place.
3. Get a copy of the inspections report from the inspector. Also get a copy of the Order to Repair, if it is separate from the inspection report.
4. Ask the inspector how long the landlord has to make the repairs ordered.
5. If you are not satisfied with the inspection, complain to the inspector's supervisor. Ask the inspector for the name of his or her boss and their phone number. Call the number as soon as you can and tell them your concern.
6. **If repairs are not made as ordered, you can ask for another inspection to help prove the repairs were not made.**

   Depending on where you live, the inspections department may follow up with your landlord to see that repairs are properly made. Your landlord could face fines or other problems if he does not make the repairs. You may want to call the inspector back to inspect again if the repairs are not made by the deadline. Or you can use the inspection report to start a Rent Escrow case.

## 504B.185 INSPECTION; NOTICE.

Subdivision 1. **Who may request.** If requested by a residential tenant, a housing-related neighborhood organization with the written permission of a residential tenant, or, if a residential building is unoccupied, by a housing-related neighborhood organization, an inspection shall be made by the local authority charged with enforcing a code claimed to be violated.

Subd. 2. **Notice.** (a) After the local authority has inspected the residential building under subdivision 1, the inspector shall inform the landlord or the landlord's agent and the residential tenant or housing-related neighborhood organization in writing of any code violations discovered.

(b) A reasonable period of time must be allowed in which to correct the violations.

**History:** *1999 c 199 art 1 s 18*

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## 504B.195 DISCLOSURE REQUIRED FOR OUTSTANDING INSPECTION AND CONDEMNATION ORDERS.

Subdivision 1. **Disclosure to tenant.** (a) Except as provided in subdivision 3, a landlord, agent, or person acting under the landlord's direction or control shall provide a copy of all outstanding inspection orders for which a citation has been issued, pertaining to a rental unit or common area, specifying code violations issued under section 504B.185, that the housing inspector identifies as requiring notice because the violations threaten the health or safety of the tenant, and all outstanding condemnation orders and declarations that the premises are unfit for human habitation to:

(1) a tenant, either by delivery or by United States mail, postage prepaid, within 72 hours after issuance of the citation;

(2) a person before signing a lease or paying rent or a security deposit to begin a new tenancy; and

(3) a person prior to obtaining new ownership of the property subject to the order or declaration. The housing inspector shall indicate on the inspection order whether the violation threatens the health or safety of a tenant or prospective tenant.

(b) If an inspection order, for which a citation has been issued, does not involve code violations that threaten the health or safety of the tenants, the landlord, agent, or person acting under the landlord's control shall post a summary of the inspection order in a conspicuous place in each building affected by the inspection order, along with a notice that the inspection order will be made available by the landlord for review, upon a request of a tenant or prospective tenant. The landlord shall provide a copy of the inspection order for review by a tenant or a prospective tenant as required under this subdivision.

Subd. 2. **Penalty.** If the landlord, agent, or person acting under the landlord's direction or control violates this section, the tenant is entitled to remedies provided by section 8.31, subdivision 3a, and other equitable relief as determined by the court.

Subd. 3. **Exception.** A landlord, agent, or person acting under the landlord's direction or control is not in violation of this section if:

(1) the landlord, agent, or person acting under the landlord's direction or control has received only an initial order to repair;

(2) the time allowed to complete the repairs, including any extension of the deadline, has not yet expired, or less than 60 days has elapsed since the expiration date of repair orders and any extension or no citation has been issued; or

(3) the landlord, agent, or person acting under the landlord's direction or control completes the repairs within the time given to repair, including any extension of the deadline.

Subd. 4. **Landlord's defense.** It is an affirmative defense in an action brought under this section for the landlord, agent, or person acting under the landlord's control to prove that disclosure was made as required under subdivision 1.

Subd. 5. **Remedies additional.** The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 20*

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## 504B.204 ACTION FOR RENTAL OF CONDEMNED RESIDENTIAL PREMISES.

(a) A landlord, agent, or person acting under the landlord's direction or control may not accept rent or a security deposit for residential rental property from a tenant after the leased premises have been condemned or declared unfit for human habitation by the applicable state or local authority, if the tenancy commenced after the premises were condemned or declared unfit for human habitation. If a landlord, agent, or a person acting under the landlord's direction or control violates this section, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant after date of condemnation or declaration, plus costs and attorney fees.

(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

**History:** *1999 c 199 art 1 s 21*

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Last updated: July 29, 2020

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# SECURITY DEPOSITS

Landlords usually ask tenants to pay a security or damage deposit when the tenant moves in. If the landlord wants to increase the amount of the damage deposit while you are living there, the same written notice is required as is required for raising the rent (see Rent Increases in Chapter 7. Changing or Ending the Lease Agreement). If you don't agree to the increase, you should answer the notice promptly with a written refusal, rather than pay the increase. You may be required to leave the apartment if you don't want to pay the increase.

Tenants are **not** allowed to use the security deposit to pay the last month's rent. You should pay the last month's rent, move out, and wait for the return of the security deposit from the landlord after you move. **Remember to give your landlord your new mailing address.**

If your apartment is sold during the time you are renting, the deposit must be given to the new owner or the tenant within 60 days. However, the new owner is responsible for returning the deposit even if the deposit was not transferred to them.

When you leave the apartment, the landlord must return your security or damage deposit with interest. The interest amount changed so you get 3% annual interest on the deposit up until August 1, 2003 and 1% each year after that. The interest on your security deposit does not begin to build up until you pay all of the security deposit to the landlord. When you have paid the entire security deposit, the interest starts to build up the next month.

For example, if you move into an apartment in January that requires a $600 security deposit and the landlord allows you to pay the security deposit at a rate of $200 per month for January, February and March, the interest on the security deposit does not begin to build up until April (assuming the security deposit is fully paid by March).

The landlord must return the deposit with interest to you or send a written explanation for keeping any part of the security deposit within **3 weeks (21 days)** after the end of the tenancy and after getting your new

mailing address. If you moved out because the **building was condemned**, the landlord must return the security deposit **within 5 days** after you move (see Condemnation in Chapter 5. Minnesota Tenant Remedies Act).

If there is any unpaid rent the landlord can take that amount out of the security deposit. If there are costs of getting the property back to the condition it was in when you moved in, the landlord can also take that cost out of the security deposit. This is things like cleaning, painting, new carpeting, etc. But, you do not have to pay for "normal wear and tear." Usually, "normal wear and tear" depends on the circumstances.

For example, if you lived in a place for 3 years and it needs repainting when you move, you can argue that this is normal wear and tear and you are not responsible.

But, if the home was freshly painted when you moved in 6 months ago and it needs repainting now, that probably will not be considered "normal wear and tear." So, you may have to pay.

If the landlord does not send back your security deposit or a written explanation of why the security deposit is not being returned, **you can sue your landlord for 2 times the amount of the deposit withheld plus interest.** Also, if your landlord withheld part of your deposit in "bad faith", you can be awarded up to $200 in "punitive damages." "Bad faith" means that the landlord knew that withholding the money was wrong, but did it anyway.

If you got a written explanation and you disagree with your landlord's reasons for keeping the deposit, you can sue your landlord for return of the deposit. Your landlord will have to prove that the money was used for repairs. You can bring these types of cases in Conciliation Court if your claim is for $10,000 or less. For cases started on or after **August 1, 2014**, the limit will be raised to $15,000. There is a filing fee to start the court case, but the court can waive (excuse) the fee if you cannot afford it. Ask the court clerk for the papers to waive the fee.

To protect yourself, make a list of everything that is wrong with the apartment before moving out and have the landlord sign it. Compare this list with the list you prepared when moving into the apartment. Remember, it is very important to make a list before you move in and after you move out. To see a sample lease, click the link in Minnesota Standard Residential Lease in the Other Resources section of this booklet.

## 504B.178 INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES; LIMIT ON WITHHOLDING LAST MONTH'S RENT.

Subdivision 1. **Applicability.** Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. **Interest.** Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.55, subdivision 26, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple noncompounded interest at the rate of three percent per annum until August 1, 2003, and one percent per annum thereafter, computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than $1 shall be excluded from the provisions of this section.

Subd. 3. **Return of security deposit.** (a) Every landlord shall:

(1) within three weeks after termination of the tenancy; or

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant,

and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

(b) It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

(1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(c) In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

Subd. 4. **Damages.** Any landlord who fails to:

(1) provide a written statement within three weeks of termination of the tenancy;

(2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant; or

(3) transfer or return a deposit as required by subdivision 5,

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after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Subd. 5. **Return of deposit.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(1) transfer the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of the transfer and of the transferee's name and address; or

(2) return the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. **Successor in interest.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to the deposit, except that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. **Bad faith retention.** The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $500 for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

Subd. 8. **Withholding rent.** No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, or for the last month of a contract for deed cancellation period under section 559.21 or a mortgage foreclosure redemption period under chapter 580, 581, or 582, on the grounds that the deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that the deposit should serve as payment for the rent. Any tenant who remains in violation of this subdivision after written demand and notice of this subdivision shall be liable to the landlord for the following:

(1) a penalty in an amount equal to the portion of the deposit which the landlord is entitled to withhold under subdivision 3 other than to remedy the tenant's default in the payment of rent; and

(2) interest on the whole deposit as provided in subdivision 2, in addition to the amount of rent withheld by the tenant in violation of this subdivision.

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Subd. 9. **Action to recover deposit.** An action, including an action in conciliation court, for the recovery of a deposit on rental property may be brought in the county where the rental property is located, or at the option of the tenant, in the county of the landlord's residence.

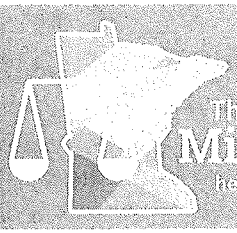
Subd. 10. **Waiver.** Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.

Subd. 11. **Tenancies after July 1, 1973.** The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

**History:** *1999 c 199 art 1 s 16; 2000 c 282 s 1; 2003 c 52 s 2; 2004 c 203 art 2 s 61; 2008 c 177 s 2; 2009 c 123 s 4; 2010 c 315 s 6*

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# Vacating Your Apartment



The Office of the
Minnesota Attorney General
Helping people afford their lives and live with dignity and respect

Vacating an apartment or house brings with it a number of issues that every tenant should consider. To avoid a sticky landlord/tenant dispute, tenants are encouraged to fully understand their rights and responsibilities before moving out of, or "vacating," an apartment or house.

## Know Your Lease

Two types of housing leases—"periodic" and "definite" —are recognized in Minnesota. A "periodic" lease is renewed every payment period, typically each month, at the time rent is due. Such leases are often referred to as "month-to-month" leases. By contrast, "definite" leases, such as a one-year lease, end on a specific date. You should review your lease to determine which type of lease you have. If you do not have a copy of your lease, ask for a copy from your landlord. If you have a written lease, the landlord is required to give you a copy of it. It is important for you to fully understand all of the terms and conditions of your lease, because once you sign the lease, you agree to honor all of its terms.

## Ending the Lease

The terms and conditions in a lease generally govern the rights and responsibilities for ending it. For example, some month-to-month leases may include a provision requiring you to notify the landlord within a certain time prior to moving (e.g. 60 days). The lease should define the notification responsibilities. If a month-to-month lease does not include specific provisions for notifying the landlord, you must notify the landlord, at least one full rental period before the last rent payment is due, that you plan to end the lease.

In a definite term lease, such as a year-long lease, the ending date of the lease and your notification responsibilities are often specifically defined, listing the final day of tenancy. Some year-long leases may include automatic renewal provisions, however, whereby the lease transfers to a month-to-month lease at the end of the year, unless you specifically notify the landlord that you plan to move. If you have questions about your rights under your lease you may call the Minnesota Attorney General's Office at (651) 296-3353 (Twin Cities Calling Area) or (800) 657-3787 (Outside the Twin Cities).

## Breaking the Lease

Tenants who break a lease by moving out early, or prior to giving appropriate notification, are generally responsible for paying the rest of the money owed on the lease and may also be penalized by "break lease" fees or other charges defined in the lease. Breaking a lease may cost you more in the long run, because the landlord may hire a collection agency to collect the debt, which in turn may add interest or other fees in addition to the original debt. Furthermore, breaking a lease or failing to make rent payments may damage your credit rating and adversely affect your ability to obtain credit for other purchases. A negative credit history may also make it harder to find rental housing in the future.

If you are in jeopardy of breaking your lease, you should contact your landlord directly to attempt to resolve the situation amicably. In some cases, a landlord may agree to allow you to break the lease early if you are able to find other tenants who agree to pay rent and maintain the property under the terms of the lease. This practice is sometimes referred to as "subleasing." Subleasing, however, can create problems if the new tenants do not honor the terms of the lease by failing to pay rent or damaging the property. In those cases, you may be responsible for such damage or unpaid rent. If you wish to sublet your apartment you should consult your landlord, examine your lease, and put any subleasing agreement between yourself, the landlord, and the subletting tenants in writing. Remember, leases may specifically state that subleasing is not allowed, and landlords are generally not required to allow you to terminate a lease early.

## Moving Out

Once a move-out date has been set, you should clean the unit in whatever fashion the lease stipulates. Tenants are typically responsible to have the unit clean prior to the move-out date. Tenants sometimes complain that they were charged for unreasonable or unnecessary cleaning costs, or that their damage deposit was withheld. For instance, disputes may arise regarding the state of any carpeting in a given unit. Although landlords are not allowed to charge tenants for normal "wear and tear," the perception of "acceptable damage" to a carpet may vary between a tenant and a landlord.

Some landlords may file lawsuits to collect payments for unpaid rent or cleaning costs. The following steps may help you avoid such problems:

1. **Request a walk though.** You may ask your landlord or manager to review the unit on the move out day to clarify any outstanding repairs or cleaning that may need to be done to the unit. You should ask the landlord/manager to put in writing any agreement that the unit is acceptable and sign the document.

2. **Take photographs or video footage of the unit.** Some tenants document the state of the unit on move out day with photographs or video footage. Such material may provide evidence in the event that you or the landlord later files a claim in court.

3. **Read the lease.** You should closely examine the lease to make sure you have fully completed your responsibilities prior to vacating the unit.

4. **Move out on time.** Tenants who do not honor the move out date may be charged fees stipulated in the lease.

5. **Leave a forwarding address with the landlord or manager.** Landlords are required by law to return the damage deposit (plus one percent interest) to the tenants, or submit written notification explaining why the deposit is being withheld within 21 days of the end of the lease.

A landlord may be unable to meet these requirements, however, if they are unable to locate the former tenant.

To obtain free copies of consumer brochures drafted by this Office, entitled *Landlords and Tenants: Rights and Responsibilities* and *Conciliation Court: A User's Guide to Small Claims Court*, or to learn more about other consumer issues, contact the Minnesota Attorney General's Office as follows:

**Office of Minnesota Attorney General Keith Ellison**
445 Minnesota Street, Suite 1400
St. Paul, MN 55101
(651) 296-3353 (Twin Cities Calling Area)
(800) 657-3787 (Outside the Twin Cities)
(800) 627-3529 (Minnesota Relay)
*www.ag.state.mn.us*

This document is available in alternative formats to individuals with disabilities by calling
(651) 296-3353 (Twin Cities Calling Area), (800) 657-3787 (Outside the Twin Cities), or through the Minnesota Relay Service at (800) 627-3529.

The Minnesota Attorney General's Office values diversity and is an equal opportunity employer.

**504B.135 TERMINATING TENANCY AT WILL.**

(a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

**History:** *1999 c 199 art 1 s 8*

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## 504B.145 RESTRICTION ON AUTOMATIC RENEWALS OF LEASES.

Notwithstanding the provisions of any residential lease, in order to enforce any automatic renewal clause of a lease of an original term of two months or more which states, in effect, that the term shall be deemed renewed for a specified additional period of time of two months or more unless the tenant gives notice to the landlord of an intention to quit the premises at the expiration of the term due to expire, the landlord must give notice to the tenant as provided in this section. The notice must be in writing and direct the tenant's attention to the automatic renewal provision of the lease. The notice must be served personally or mailed by certified mail at least 15 days, but not more than 30 days prior to the time that the tenant is required to furnish notice of an intention to quit.

**History:** *1999 c 199 art 1 s 10*

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## 504B.178 INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES; LIMIT ON WITHHOLDING LAST MONTH'S RENT.

Subdivision 1. **Applicability.** Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. **Interest.** Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.55, subdivision 26, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple noncompounded interest at the rate of three percent per annum until August 1, 2003, and one percent per annum thereafter, computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than $1 shall be excluded from the provisions of this section.

Subd. 3. **Return of security deposit.** (a) Every landlord shall:

(1) within three weeks after termination of the tenancy; or

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant,

and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

(b) It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

(1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(c) In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

Subd. 4. **Damages.** Any landlord who fails to:

(1) provide a written statement within three weeks of termination of the tenancy;

(2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant; or

(3) transfer or return a deposit as required by subdivision 5,

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after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Subd. 5. **Return of deposit.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(1) transfer the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of the transfer and of the transferee's name and address; or

(2) return the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. **Successor in interest.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to the deposit, except that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. **Bad faith retention.** The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $500 for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

Subd. 8. **Withholding rent.** No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, or for the last month of a contract for deed cancellation period under section 559.21 or a mortgage foreclosure redemption period under chapter 580, 581, or 582, on the grounds that the deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that the deposit should serve as payment for the rent. Any tenant who remains in violation of this subdivision after written demand and notice of this subdivision shall be liable to the landlord for the following:

(1) a penalty in an amount equal to the portion of the deposit which the landlord is entitled to withhold under subdivision 3 other than to remedy the tenant's default in the payment of rent; and

(2) interest on the whole deposit as provided in subdivision 2, in addition to the amount of rent withheld by the tenant in violation of this subdivision.

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Subd. 9. **Action to recover deposit.** An action, including an action in conciliation court, for the recovery of a deposit on rental property may be brought in the county where the rental property is located, or at the option of the tenant, in the county of the landlord's residence.

Subd. 10. **Waiver.** Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.

Subd. 11. **Tenancies after July 1, 1973.** The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

**History:** *1999 c 199 art 1 s 16; 2000 c 282 s 1; 2003 c 52 s 2; 2004 c 203 art 2 s 61; 2008 c 177 s 2; 2009 c 123 s 4; 2010 c 315 s 6*

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## 504B.206 RIGHT OF VICTIMS OF VIOLENCE TO TERMINATE LEASE.

Subdivision 1. **Right to terminate; procedure.** (a) A tenant to a residential lease may terminate a lease agreement in the manner provided in this section without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to:

(1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;

(2) criminal sexual conduct under sections 609.342 to 609.3451; or

(3) harass, as that term is defined under section 609.749, subdivision 1.

(b) The tenant must provide signed and dated advance written notice to the landlord:

(1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;

(2) stating that the tenant needs to terminate the tenancy;

(3) providing the date by which the tenant will vacate; and

(4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

(c) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a qualifying document.

(d) The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons. Disclosure shall not be a precondition of terminating the lease.

(e) The tenancy terminates, including the right of possession of the premises, as provided in subdivision 3.

Subd. 2. **Treatment of information.** (a) A landlord must not disclose:

(1) any information provided to the landlord by a tenant in the written notice required under subdivision 1, paragraph (b);

(2) any information contained in the qualifying document;

(3) the address or location to which the tenant has relocated; or

(4) the status of the tenant as a victim of violence.

(b) The information referenced in paragraph (a) must not be entered into any shared database or provided to any person or entity but may be used when required as evidence in an eviction proceeding, action for unpaid rent or damages arising out of the tenancy, claims under section 504B.178, with the consent of the tenant, or as otherwise required by law.

Subd. 3. **Liability for rent; termination of tenancy.** (a) A tenant who is a sole tenant and is terminating a lease under subdivision 1 is responsible for the rent payment for the full month in which the tenancy terminates. The tenant forfeits all claims for the return of the security deposit under section 504B.178 and is relieved of any other contractual obligation for payment of rent or any other charges for the remaining

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term of the lease, except as provided in this section. In a sole tenancy, the tenancy terminates on the date specified in the notice provided to the landlord as required under subdivision 1.

(b) In a tenancy with multiple tenants, one of whom is terminating the lease under subdivision 1, any lease governing all tenants is terminated at the later of the end of the month or the end of the rent interval in which one tenant terminates the lease under subdivision 1. All tenants are responsible for the rent payment for the full month in which the tenancy terminates. Upon termination, all tenants forfeit all claims for the return of the security deposit under section 504B.178 and are relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. Any tenant whose tenancy was terminated under this paragraph may reapply to enter into a new lease with the landlord.

(c) This section does not affect a tenant's liability for delinquent, unpaid rent or other amounts owed to the landlord before the lease was terminated by the tenant under this section.

Subd. 4. [Repealed by amendment, 2014 c 188 s 2]

Subd. 5. **Waiver prohibited.** A residential tenant may not waive, and a landlord may not require the residential tenant to waive, the tenant's rights under this section.

Subd. 6. **Definitions.** For purposes of this section, the following terms have the meanings given:

(1) "court official" means a judge, referee, court administrator, prosecutor, probation officer, or victim's advocate, whether employed by or under contract with the court, who is authorized to act on behalf of the court;

(2) "qualified third party" means a person, acting in an official capacity, who has had in-person contact with the tenant and is:

(i) a licensed health care professional operating within the scope of the license;

(ii) a domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l); or

(iii) a sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k);

(3) "qualifying document" means:

(i) a valid order for protection issued under chapter 518B;

(ii) a no contact order currently in effect, issued under section 629.75 or chapter 609;

(iii) a writing produced and signed by a court official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known;

(iv) a writing produced and signed by a city, county, state, or tribal law enforcement official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known; or

(v) a statement by a qualified third party, in the following form:

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STATEMENT BY QUALIFIED THIRD PARTY

I, ..... (name of qualified third party), do hereby verify as follows:

1. I am a licensed health care professional, domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l), or sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k), who has had in-person contact with ..... (name of victim(s)).

2. I have a reasonable basis to believe ..... (name of victim(s)) is a victim/are victims of domestic abuse, criminal sexual conduct, or harassment and fear(s) imminent violence against the individual or authorized occupant if the individual remains (the individuals remain) in the leased premises.

3. I understand that the person(s) listed above may use this document as a basis for gaining a release from the lease.

I attest that the foregoing is true and correct.

(Printed name of qualified third party)

(Signature of qualified third party)

(Business address and business telephone)

(Date)

Subd. 7. **Conflicts with other laws.** If a federal statute, regulation, or handbook permitting termination of a residential tenancy subsidized under a federal program conflicts with any provision of this section, then the landlord must comply with the federal statute, regulation, or handbook.

**History:** *2007 c 54 art 4 s 3; 2010 c 299 s 14; 2014 c 188 s 2; 1Sp2019 c 1 art 6 s 59; 1Sp2019 c 5 art 2 s 29*

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## 504B.155 TENANT MUST GIVE COLD WEATHER NOTICE BEFORE VACATION OF BUILDING.

Except upon the termination of the tenancy, a tenant who, between November 15 and April 15, removes from, abandons, or vacates a building or any part thereof that contains plumbing, water, steam, or other pipes liable to injury from freezing, without first giving to the landlord three days' notice of intention so to remove is guilty of a misdemeanor.

**History:** *1999 c 199 art 1 s 12*

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From Larry McDonald, *Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020.* Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_495 on July 30, 2020.

f. *Condemned housing*

*See* discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions. For more information on habitability claims regarding condemned housing as defenses to eviction actions, *see* discussion at VI.E.1.g.(3).

Where the premises have been condemned as uninhabitable or are condemnable, the present value is $0.00 and no rent is due to the landlord. *See Hamre v. Wu*, No. 797483 at 7 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1983) (three judge appellate panel) (Appendix 8). *See also Zeman v. Smith*, Nos. UD-1840504512, UD-1840605520 at 5-6 (Henn. Cty. Mun. Ct., July 11, 1984) (Appendix 9) (tenant also owes no rent for period prior to condemnation where premises were in condemnable condition; inspection occurred after rent was due, and inspection orders warning of condemnation were placed on the property during the time period and were not obeyed, leading to condemnation).

If a landlord, agent, or person acting under the landlord's direction or control rents out residential housing after the premises were condemned or declared unfit for human habitation, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant, including rent and security deposits, after the date of condemnation or declaration, plus costs and attorney's fees. Minn. Stat. § 504B.204 (formerly § 504.245). The provisions of § 504B.204 (formerly § 504.245) may not be waived.

In *Dellmore v. IPM Realty,* No. CX-06-2688 (Minn. Dist. Ct. 2nd June 29, 2006) (Appendix 641), in a tenant remedies action, the court made extensive findings on habitability and use and enjoyment of the property and concluded that the subsidized housing tenant's habitability damages were not limited to tenant's share of rent especially where housing authority did not seek repayment of subsidy from landlord, and collection of rent after condemnation entitled tenant to treble damages. The court awarded the tenant rent abatement trebled and reimbursement of expenses resulting from habitability violations and condemnation for total of $28,000, and order the landlord ordered to prepay hotel expenses for displaced tenants. *See Lara v. Recalde,* No. HC #1020927900 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2002) (Appendix 661) (rent escrow action; tenant awarded $3000 in treble damages, costs and disbursements where landlord collected and returned $1000 in rent for condemned property).

f1. *Lack of rental license*

(1) As a defense in eviction actions

For more information on lack of rental license claims as defenses to eviction actions, *see* discussion at VI.E.2.c.

(2) In damages actions

In *Young v. Holzer-Steil,* No. 27-CV-14-19681 (Minn. Dist. Ct. 4th Dist. July 28, 2015) (Judge Bratvold) (Appendix 775), in an action by former tenant against former landlord, partial summary judgment was granted for the defendants landlord and management company, concluding that (1) while the lack of a required rental license rendered the lease illegal, rent abatement was not available because the lease was fully executed, and (2) the management company was not liable since it did enter into the lease or collect rents. The court denied summary judgment to defendants on the issue of breach of the habitability covenants. The court also denied summary judgment on plaintiff's Minnesota Consumer Fraud Act claim that the management company falsely advertised that the property was available to rent when the landlord did not have a rental license.

The court granted full rent abatement for lack of a rental license in *Rivera v. Vasquez,* No. 27-CV-13-20840 (Minn. Dist. Ct. 4th Dist. June 24, 2014) (Judge Moore) (Appendix 777) (in appeal from conciliation court, summary judgment granted to former tenants against former landlord for $2,000 in full entire abatement for length of lease, $500 deposit, and fees and costs for lack of rental license).

(3) In rent escrow actions

To be completed.

(4) In emergency tenant remedies actions

To be completed.

(5) In tenant remedies actions

To be completed.

# Condemnations

### Was a condemnation notice posted at your home?

This fact sheet is for tenants whose apartment or rental home has been posted with a condemnation notice because of repair problems, a lack of utilities or other health dangers. In some cities, another reason for a condemnation notice is if the landlord does not have a rental license. Sometimes the notices say, "Intent to Condemn" or "Do Not Occupy."

The condemnation notice has a vacate (move-out) date on it. Unless the condemnation is stopped, you must move out by the date, or the police can remove you. You can call the city inspector to ask for more time, but they do not have to give it to you.

### How to Stop the Condemnation or Get Help to Move

Call your legal aid office right away. You can file an Emergency Tenant Remedy Action (ETRA) to get the landlord to make repairs and stop the condemnation, or to pay for motel or moving costs.

See our fact sheet, *Emergency Repair Problems.*



### If You Have to Move

If you have a lease, it automatically ends because of condemnation. That means you don't owe your landlord any money for the months after the city makes you move.

There may be agencies in your area that can help you move, get to a shelter, or find a new place. Call 2-1-1 statewide. They are an agency that keeps lists of places that help. You can also send a text message with your zip code to 898-211 to find help in your area or chat online at www.211unitedway.org.

If you do not have money to move and pay for a new place, you may be able to get Emergency Assistance (EA). Call your county's Economic Assistance Department.

**Your landlord has to return your security deposit within 5 days from the date you moved because of the condemnation.** Send the landlord a letter with an address to send your deposit. Put a date on the letter and keep a copy for yourself. See our fact sheet *Security Deposits*.

## Suing After You Move

You can sue your landlord after you move. See our fact sheet *Conciliation Court*. It is a good idea to do things like:

- Keep records to use in court like rent receipts, leases, and letters to the landlord.
- Get copies of the inspection orders and any condemnation notice from the city.
- If you can, take pictures of the repair problems before you move out. Make a list of each repair problem and when it started.
- Have a witness go through the apartment with you.
- Keep receipts for all your expenses from the move: motel, moving van, gas, food and storage.



If your apartment was *already* condemned when you moved in, you can sue your landlord and get 3 times the amount of rent and security deposit that you paid. Call your city inspector to find out when the city first condemned your apartment.

File your case as soon as possible. Go to the courthouse and ask to file a complaint in Conciliation Court. You can ask for up to $15,000 in Conciliation Court, and you do not need a lawyer.

You can sue for more than $15,000 in District Court but you might want to ask a lawyer for help.

If the repair problems caused any physical injury or illnesses, or if there was lead paint, talk to a personal injury lawyer before you file a lawsuit for rent.

You need your landlord's name and address. You can get it from the city inspection or property tax office. There is a small filing fee, but you do not have to pay it if you have a low income.

## What kinds of things can I ask the court for?

You can ask for:

- **Your security deposit:** If your landlord did not send the deposit, or a letter of explanation, within 5 days of your move-out, you can get twice the amount of the deposit. You can also ask for $500 extra for the landlord's "bad faith."

- **Your rent money:** You can get some or all of your rent money back for each month the landlord knew about the repair problems but didn't fix them. When an apartment is bad enough to be condemned, you can ask that the rent be zero. That means you should get all the rent money back that you paid for every month the apartment was condemned.

- **Moving costs:** Ask for all the extra money you had to spend because of the condemnation. You should try to have receipts for every expense to prove it. But even if you don't have receipts, you can still ask the judge for the money.

## A Sample Complaint

Here is a sample complaint for Conciliation Court:

I rented the apartment at 71 Smith St., #3, Minneapolis, MN 55405 from John Landlord for $700 a month. I moved in January 1, 2013. It was condemned on June 15th for no hot water and other repair problems. The hot water heater went out on March 2nd. The other problems were already there when I moved in.

Mr. Landlord did not give back my security deposit or send me a letter within 5 days.

My claim is for the following amounts:

| | |
|---|---|
| Security deposit: | $ 700.00 |
| Security deposit penalty: | 700.00 |
| Bad faith damages: | 500.00 |
| Repair problems: January-February | 400.00 |
| Repair problems and no hot water, March- June | $2000.00 |
| Moving costs: | 683.84 |
| **TOTAL** | $4,983.84 |

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

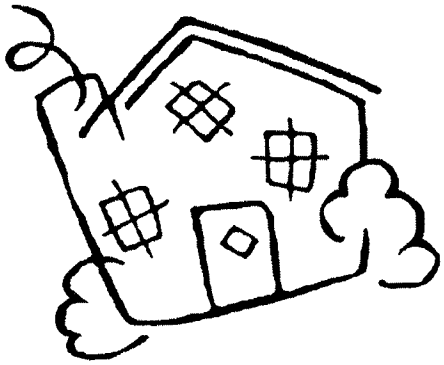
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# When Your Landlord Loses the Building:
## Mortgage Foreclosure and Contract for Deed Cancellation

### What happens if my landlord's mortgage is foreclosed?

You get a copy of a notice that your landlord's mortgage is being foreclosed. It sets a date for a sheriff's sale of the property, and other important dates in the foreclosure process. This notice also tells you about agencies and services that can give you information, answer questions, and help during this time. In many cases, you don't have to move out until about 9 months after the sheriff's sale. Usually the bank that loaned the money for the building gets the building at the sheriff's sale.

### Can I still live there?



In a typical foreclosure, the landlord has 6 months after the sheriff's sale to pay off the mortgage. This is called the "*redemption period*." During that time, you can still live there, and the landlord can still collect rent. Unless the bank (or other new owner) tells you to pay rent to them, you should still pay it to the landlord. If you don't, you can be evicted.

The landlord might ask to delay the sheriff's sale for 5 months. This is called a "postponement period." If the landlord can pay the missed payments and catch up on the mortgage, the sale can be cancelled. During the postponement period, you can still live there, and the landlord can still collect rent. If the sheriff's sale is postponed, they let you know the new date for the sale when they set it.

If the landlord doesn't catch up on the mortgage by the new sheriff's sale date, then the redemption period is shortened to 5 weeks.

### What happens if my landlord's contract for deed is cancelled?

In a contract for deed, your landlord makes payment to the person who is selling the building. That person is called the "seller" or "vendor." Cancellation of a contract for deed is **much** faster than a mortgage foreclosure. It usually takes just 60 days.

You don't always have to move out when a contract for deed is cancelled. Sometimes the seller will rent to you. Contact the seller right away to try to work out an agreement. Make sure the agreement is in writing, and signed by both you and the seller.

## Does a landlord have to tell a new tenant about foreclosure or contract cancellation?

Before the landlord can have a new tenant sign a lease or take any rent or security deposit, the landlord must give **written notice** that:

- **the property is in foreclosure** - if the sheriff's sale has already been scheduled, OR
- **the contract for deed is being cancelled** - if the landlord got a notice of contract cancellation.




The landlord must also tell the new tenant when the redemption period or contract cancellation period ends. If the landlord does not give this written notice, you can sue for a $500 civil penalty. The lease with a new tenant can only go until the end of the redemption period or the end of the contract cancellation period.

But, there is a special exception. A landlord can enter into a lease that goes past the end of the redemption period or contract cancellation period if **ALL** of the following are true:

- The bank, or new owner, agrees to let the landlord enter into a lease that is at least a year long. AND
- The lease does not require the tenant to pre-pay any rent for time periods after the redemption or cancellation period ends.

If your lease falls within this special exception then your landlord doesn't have to give you the written notice described above.

## How much notice do I get to move out if the property is in foreclosure?

**Term Lease:**

If you have a lease for a set length of time (called a term lease) and it started before the redemption period ends, your lease continues with the new owner as the landlord if you are a "bona fide" tenant. **This is true even if the new owner is a bank and not a person.** As long as you follow the lease, you can stay until the end of your lease.

You are a "bona fide" tenant if **ALL** of the following are true:

- The person whose mortgage is being foreclosed on is not you, your child, your spouse, or your mother or father.

- Your lease was an "arm's-length" transaction. This means a transaction where both sides act in their own best interests and there isn't any close relationship.

- Your rent is not far less than fair market rent for the property (unless your rent is subsidized through Section 8 or another housing subsidy).

BUT, if the new owner sells the property to someone who buys it to live in (as their primary residence) they can end your lease early. They **must** give you a 90-day notice of termination of your lease.

**Month-to-month Lease:**
If you have a month-to-month lease, your lease continues with the new owner as the landlord. The new owner is usually the bank. As long as you follow the lease, your lease continues until the new owner gives you a 90-day notice of termination of your lease. Even if you do not have a written lease, you are entitled to the 90-day notice. You may also choose to end the month-to-month lease by giving the new owner a proper written notice.

## How much notice do I get to move out if the landlord's contract for deed is cancelled?

As a tenant, you may not get a notice of cancellation of contract for deed. You might not find out until the seller sends you a notice to move out. The seller must give you at least 2 months' notice to move out.

## What happens if I don't move out?

The bank, or other new owner, can file a court case to evict you.

See our fact sheet, *Evictions*.

## Do I have to keep paying rent?

Yes, you have to keep paying rent to your landlord during the foreclosure, even after the sheriff's Sale. But the landlord can't collect rent after the end of the redemption period.

After the redemption period is over, the bank, or other new owner, can ask you to pay them rent for the rest of your lease and during the 90-day notice period. If they ask you to, you must pay, or they could file an eviction against you. If they don't ask for rent, you don't have to pay it. Many banks don't ask for rent during the 90-day notice period.

Some banks ask for rent but shouldn't because they don't have the necessary rental license that local laws say they should or are not following other local laws. If you are not sure call your legal aid office.



After a contract for deed has been cancelled, the seller can ask you to pay them rent for the notice period. If they ask you for rent, you have to pay. If they do not ask you to, then you do not have to pay rent.

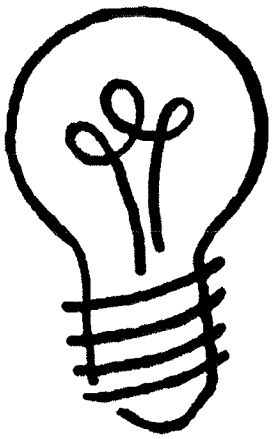
Some cities require landlords to have rental licenses to collect rent. Check with your city hall to see if your landlord is required to have a license, and if your landlord has one.

### What happens to my security deposit?

Your landlord has to give your security deposit to you or the new owner of the property. This has to be done within 60 days of when he loses the property or within 21 days after you move out, whichever is sooner.

If the new owner sends you a notice of the amount of the security deposit your landlord transferred to him, and you do not agree with it, you have 20 days to send the new owner a written letter saying you don't agree. After 20 days you lose the right to disagree.

See our fact sheet *Security Deposits*.



### What happens if utilities are shut off?

Check your lease. If you are supposed to pay the utilities under your lease, keep paying them. If you have a shared utility meter, see our fact sheet, *Shared Utility Meters*.

If the utility bill is in your landlord's name, try to contact the landlord and get them to pay the utility bills. If that does not work, you can contact the utility company and arrange to pay only for the current month's charges. If you do this, you are not responsible for the landlord's unpaid bills or late fees.

If you live in a 1-4 family building, you have the option to take over the gas and electric accounts in your name. You are NOT responsible for putting down a deposit or paying any late charges or fees that belong to the landlord. You need to send your landlord a copy of the receipt showing the amount you paid, then you can take that amount out of your next month's rent.

Another option is to file a rent escrow or emergency relief case against your landlord. Ask a judge to make your landlord pay the bill or cancel your lease. There is more information on all of these options in our fact sheet, *Utility Shutoffs When the Landlord Owes the Bill*.

The bank is sometimes interested in making sure that the property does not fall apart during the redemption period, since they are the new owner. If the building doesn't have heat, water, electricity, or other important utilities, you may be able to get the bank to pay the utility service.

Try contacting the lawyer listed on the mortgage foreclosure notice and tell them about the problem. If you paid to get the utilities turned back on, or to avoid a shut-off, make sure you send a copy of the receipt showing that you paid. You can deduct that amount from your rent.

You may also file an Emergency Tenant Remedy Action against the bank, or other new owner, once the redemption period is over. See our fact sheet *Utility Shut-Offs When the Landlord Owes the Bill*.

## What if I'm on the Section 8 program?

Section 8 Programs may have policies that affect your tenancy when a landlord goes into foreclosure. Contact your Section 8 office when you get a foreclosure notice and ask for instructions.

Do not move out before the end of your lease without getting permission in writing from your Section 8 office. You could lose your Section 8 if you move early or without telling them.

If you have a Section 8 lease, it is treated the same as term leases and month-to-month leases which are explained above. The new owner must honor your existing lease. After a foreclosure sale, the housing assistance payments (HAP) contract continues, and the new owner needs to follow the terms of the HAP contract. The new owner can't end your Section 8 lease because it might help them sell the property. The new owner can give you a 90-day notice to move BUT only if they are planning to live in the home.

You may get special waiting list preferences to get Section 8 if you lose your housing because of a foreclosure. Tell the Section 8 or public housing program in writing about a foreclosure if you are on a waitlist.

## What if I find out I have an eviction on my record?

If you find out you have an eviction on your record from a time you lived in a home in foreclosure or deed cancellation you may be able to have it expunged. This means removed from your record.

Expungement can be hard to get, but if you moved out before the eviction papers were served or did not get proper written Notice to Vacate, you may have the right to expungement. See our fact sheet *Expunging Evictions*. If you need help contact your local legal aid office.

## Where can I get more information?

Hennepin County: Mid-Minnesota Legal Aid – Minneapolis Office: 612-334-5970

Ramsey, Washington, Dakota, Carver and Scott counties:
Southern Minnesota Regional Legal Services: 651-222-4731



Anoka County: Judicare of Anoka County: 763-783-4970

Southern rural counties: 1-888-575-2954

Everywhere else in Minnesota contact HOME Line: 612-728-5767 or 1-866-866-3546

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

**ADMINISTRATIVE ORDER REGARDING THE RESUMPTION OF HOUSING COURT OPERATIONS**

**WHEREAS**, commencing in March 2020, national and state authorities imposed restrictions on filing and hearing of many residential eviction actions and issuance of writs of recovery;

**WHEREAS**, on April 14, 2020, Governor Tim Walz signed into law HF 4556. That law provides that "[t]he running of deadlines imposed by statutes governing proceedings in the district and appellate courts, including any statutes of limitations or other time periods prescribed by statute, is suspended during the peacetime emergency declared on March 13, 2020, in governor's Executive Order 20-01 . . . and for 60 days after the end of the peacetime emergency declaration." Minn. HF 4556, sec. 16(a) (2020);

**WHEREAS**, on July 14, 2020, Governor Tim Walz issued Executive Order 20-79 which attempted to "strike a balance between...maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties..." Executive Order 20-79 modified previous Executive Orders to allow evictions in certain limited circumstances, required landlords to give residential tenants a 7-day notice of intent to file an eviction to help mitigate the impact upon residential tenants, and encourage resolutions without court involvement;

**WHEREAS**, the Second Judicial District anticipates a large influx of new eviction case filings as restrictions are modified or lifted and court returns to full capacity. It also anticipates the need to process residential eviction cases which were filed prior to or during the restrictions imposed by the Governor's various Executive Orders;

**WHEREAS**, the Minnesota Supreme Court has imposed certain safety restrictions and limits on the number of individuals that may congregate in public court spaces to limit the possible transmission of COVID-19; and

**WHEREAS**, scheduling and procedures need to be modified from pre-pandemic operations which will reduce in-person calendar capacity and the availability of in-person services to litigants, in order to conform with the required safety restrictions and limits while still providing high quality services, due process, and timely administration of justice.

**IT IS ORDERED**

1. All Eviction Complaints filed after the date of this Order, must include a statement which addresses whether:

    a. The premise is a "covered dwelling' subject to Section 4024 of the CARES Act.

    b. The plaintiff is a "multifamily borrower" under forbearance subject to Section 4024 of the CARES Act; and

    c. The plaintiff has provided the defendant with 30 days' notice to vacate under Sections 4024(c) and 4023(e) of the CARES Act.

    d. The plaintiff has complied with paragraph 6 of Executive Order 20-79 requiring all property owners, mortgage holders, or other persons seeking possession to 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.

2. Judicial officers presiding in Housing Court have the authority to develop the facts of the case, including whether or not the premises is a "covered dwelling," the plaintiff is a "multifamily borrower" under forbearance subject to Sections 4024 and 4023 of the CARES Act, respectively, and whether proper notices have been given.

3. The Administrative Order Declaring Certain Housing/Eviction Matters Non-Public issued on March 31, 2020 is amended as follows:

    a. Cases and case filings categorized as non-emergency and made confidential shall be designated as Confidential2 by Court Administration.

    b. Cases and case filings categorized as non-emergency and made confidential shall be made public once the matter qualifies for a hearing, is scheduled on a court calendar, and a summons issued.

    c. Irrespective of paragraph 3b of this Order, court administration shall immediately make the following information available to **Ramsey County Emergency Assistance, Neighborhood House, the Dispute Resolution Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services** for the purpose of contacting and assisting litigants in the early resolution of their eviction action on all cases made confidential under this order:

        i. The court case number

        ii. The party and attorney names

        iii. Contact information for the parties and attorneys including:

1. Mailing address
2. Phone number
3. Email address

d. **Ramsey County Emergency Assistance, Neighborhood House, the Dispute Resolution Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services** shall only use this information to assist with the resolution of pending cases and shall not disseminate this information to any other organizations other than those listed above, a party to the case, or an attorney to a party to the case without further authorization of the court.

4. Complaints that were filed during the peacetime emergency and which did not qualify for an exception to the Executive Orders suspending eviction actions shall be set for a hearing to dismiss and notice shall be given to the Landlord. The action shall be dismissed unless, prior to the hearing, the Landlord requests that the action continue and for the court to issue a summons.

5. When Executive Order 20-79 or any successor Executive Orders expire or allow additional residential eviction actions,

   a. Cases will be scheduled on block-style calendars with specific timeframes. Parties will have the option to participate in the hearings remotely (using telephone or Zoom) or in-person. The Second Judicial District strongly encourages parties and their attorneys to attend hearings remotely, but will provide social-distancing accommodations for in-person attendance.

   b. Court administration shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons for all cases where an initial appearance has not been held.

   c. For all cases that were previously scheduled for an initial appearance and filed prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency, service of the new summons shall be made in compliance with Minn. Stat. § 504B.331.

   d. For the 60 days following the expiration of the Peacetime Emergency declared in Executive Order 20-01, the parties shall be notified of resources and clinic services available to them at the initial appearance. If parties request clinic services, including legal advice and representation, emergency rental assistance and dispute resolution, the court will recess to allow the provision of such services if possible. If it is not possible to obtain requested services at the initial appearance, the case shall be given a seven (7) day continuance. Parties shall be given contact information for all clinic services.

6. This Administrative Order remains in full force and effect until rescinded or amended by a further court order.

Dated: August 19, 2020

BY THE COURT

Leonardo Castro
Chief Judge, Second Judicial District

# Summary of Eviction Actions and Court Procedure

From Larry McDonald, Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020. Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_495 on July 30, 2020.

1. Commencing the Action

The unlawful detainer action is now called an eviction action under Minn. Stat. § 504B.001, Subd. 4. It is a summary proceeding, created by statute, to allow the landlord or owner of rental property to evict the tenant or possessor of the property. The plaintiff prepares a complaint, often using a form. The plaintiff files the case with the court administrator, who prepares a summons. The Minnesota Courts website contains the complaint and other housing forms.

http://www.mncourts.gov/GetForms.aspx?cat=Housing+-+Landlord-Tenant

The defendant must be served at least seven days before the initial hearing, either by personal or substitute service. Service should be carefully scrutinized, since Minn. Stat. § 504B.331 (formerly § 566.06) requires strict compliance in service, not merely substantial compliance. Color-Ad Packaging, Inc. v. Kapak Industries, Inc., 285 Minn. 525, 526 n.1, 172 N.W.2d 568, 569 n.1 (1969), overruled on other grounds by In re Lake Valley Twp. Bd., Traverse Cnty. v. Lewis, 305 Minn. 488, 234 N.W.2d 815 (1975); Bloom v. American Express Co., 222 Minn. 249, 253, 23 N.W.2d 570, ____(1946); Koski v. Johnson, 837 N.W.2d 739 (Minn. Ct. App. 2013); Nieszner v. St. Paul Sch. Dist. No. 625, 643 N.W.2d 645, 649–50 (Minn. Ct. App. 2002). For more information on service defenses, see discussion at VI.C.

2. Answers and defenses

There are many defenses to eviction action, although defendants may assert them orally without a written answer. The Table of Contents lists defenses. The Poverty Law website contains various answer forms.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

3. Filing, E-filing, Fees and Waivers

The base filing fee for eviction actions is $285, but it can be as high as $299, which can include local district fees. The fee applies to both plaintiffs and defendants, and landlords and tenants, for the first document filed each party in a case. The court charges a separate fee for motions. The Minnesota Courts website lists court fees.

http://www.mncourts.gov/Help-Topics/Court-Fees.aspx

If a defendant does not file anything and orally presents an answer or response to the plaintiff's complaint, the court does not assess a fee to the defendant. Low income persons can request a fee waiver by filing an in forma pauperis application.

Attorneys are required to e-file documents in eviction and other landlord and tenant actions in district court as in other actions. Minn. Gen. R. Prac. 14. It often takes several hours for an attorney e-filing to receive confirmation from the court that the submission has been accepted. The court website includes information and training on e-filing.

http://www.mncourts.gov/File-a-Case/File-in-A-District-Trial-Court.aspx

Unrepresented defendants can file documents in person. An attorney representing a defendant can file quicker by having the defendant sign the document and file in-person, rather than having the attorney e-file it.

The Hennepin County Housing Court accepts both the answer and in forma pauperis affidavit by e-filing. Counsel should be careful to list the affidavit as a confidential document, while the answer is a public document. Given the delays involved with e-filing, counsel should plan to complete e-filing the day before the arraignment.

Recently there have been a number of in forma pauperis orders issued by a referee in Hennepin County that have required defendants to pay part of the filing or sheriff service fees even though they meet the statutory requirements for a fee waiver, such as receipt of means-tested public assistance, representation by a civil legal services program or volunteer attorney program based on indigency, or family income less than 125% of the Federal Poverty Line. Low-income defendants should be as complete as possible about income and expenses, including completing the second page of the affidavit, and even attaching a more detailed list of expenses than listed in the form.

The Poverty Law website contains in forma pauperis forms, including a table of detailed debt and expenses that can be attached to the affidavit.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

4. Arraignment and First Appearance

In most courts, the initial hearing serves as an arraignment. If the defendant does not appear, the court will find for the plaintiff and issue a Writ of Recovery, formerly Writ of Restitution. If the defendant appears to contest the action, the court generally will schedule a trial for another day, usually within a week. While a written answer is not required, the courts require a filing fee if the defendant files an answer, unless the defendant obtains in forma pauperis status. If the defendant appears and does not contest the action, the court will find for the plaintiff, but might stay issuance of the Writ of Recovery for seven days.

[edited – removed non-Ramsey County References]

b. Ramsey County, Second Judicial District

In the Second Judicial District for Ramsey County, a referee presides over the arraignment. The cases are heard in St. Paul at 8:15 a.m. on Tuesday and Thursday at the Ramsey County Courthouse, 15 West Kellogg Boulevard, Saint Paul, MN 55102, on the 1st floor.

http://www.mncourts.gov/Find-Courts/Ramsey/RamseyCivilCourt.aspx

If a trial is necessary, the referee generally will schedule it for another day. The court also may schedule an evidentiary hearing if needed to resolve pre-trial motions, such as motions for dismissal for improper service. Judges and not referees usually hear all motions beyond the arraignment, and trials.

[edited – removed non-Ramsey County References]

5. Removal of the Judicial Officer

It is unclear where a party may opt out of a Housing Court referee hearing by filing a written request the day before the first hearing, and the case will be referred to a judge. Minn. R. Gen. Prac. § 602 provides this right. Removal under this rule allows a party to remove a referee have a judge assigned to the case, but still could remove the judge as discussed below.

In 2014 the Minnesota Legislature amended Minn. Stat. § 484.013, which created housing courts in Hennepin and Ramsey Counties. Subdivision 3 used to provide "Section 484.70, subdivision 6, applies to the housing calendar program." Minn. Stat. § 484.70 covers court referees in general, and provides: "Subd. 6.Objection to referee. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed." The amended § 484.013, Subd. 3 now states "Section 484.70, subdivision 6, does not apply to the housing calendar program."

While it was the intention of the Minnesota Legislature to eliminate removal of housing court referees, Minn. R. Gen. Prac. § 602 has not been amended.

A party still may remove a specific referee or judge from a case upon a written notice of removal. "The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing." Minn. R. Civ. P. 63.03. Unless the parties receive a notice of judicial assignment, which does not happen in eviction cases in the Second and Fourth Districts, the deadline for a judicial officer removal is before the hearing begins. Citizens State Bank of Clara City v. Wallace, 477 N.W.2d 741, 742 (Minn. Ct. App. 1991). Once a party appears before that officer, the party may not remove the officer. State v. Pierson, 368 N.W.2d 427, 432 (Minn. Ct. App. 1985).

When a party files a notice of removal, the court assigns the case to either another referee or a judge. The Poverty Law website contains forms.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

6. Hennepin and Ramsey Housing Courts Administration Offices

[edited – removed non-Ramsey County References]

The Ramsey County Housing Court is at Ramsey County Courthouse, Room 170, 15 West Kellogg Boulevard, Saint Paul. The website is http://www.mncourts.gov/Find-Courts/Ramsey/RamseyCivilCourt.aspx

7. Trial

The court usually schedules trials within a week of the arraignment, but the parties can agree to a later date. At trial, the plaintiff has the burden of proof by preponderance of the evidence, and the defendant may raise numerous statutory and common law defenses. If the defendant prevails, the plaintiff may not evict the defendant at this time.

8. Execution and enforcement of the writ of recovery

If the plaintiff prevails, the court may immediately issue a writ of recovery, which is a 24-hour eviction notice, or stay issuance of the writ for up to seven days. The plaintiff then must purchase the writ from the court and arrange for the sheriff or police to deliver the writ.

If the defendant does not move within 24 hours after delivery of the writ, the plaintiff must (1) schedule the sheriff or police to return to evict the tenant and (2) send a letter to the tenant stating the date and time when the sheriff will return.

When the sheriff or police return with the plaintiff, the plaintiff then can change the locks. The plaintiff must store remaining personal property. The landlord must prepare an inventory of the property in the presence of the sheriff.

The plaintiff must store the defendant's property, either on site for 28 days (formerly 60 days), or with a storage company for 60 days. If the plaintiff stores the property on-site, the defendant has 28 days to return to retrieve it without charge from the plaintiff. Afterward the plaintiff has a lien on the property for moving and storage costs. The plaintiff should send the defendant a 14 day letter stating the date, time, and location of sale or disposal of remaining property.

If the tenant removes some but not all of the property during this process, the landlord should continue and complete the process unless the landlord can confirm that the tenant has abandoned living there.

For more information, see discussion at VIII.B.

9. Judge Review and Appeal

Either party may appeal from entry of judgment, within 15 days of entry of judgment, expanded in 2013 from 10 days. If the case was heard by a referee in the Second or Fourth Judicial Districts (Ramsey and Hennepin Counties), a party may request district court judge review of the decision within 10 days of the earlier of oral announcement or service of the decision, but should request stay or vacation of entry of judgment pending review to preserve the right to appeal. Minn. Stat. § 484.013, Subd. 6; Minn. Gen. R. Prac. 611.

Outside of Ramsey and Hennepin Counties, referee decisions are governed by Minn. Stat. § 484.70, Subd. 7, providing for review with notice served and filed within ten days of effective notice of the recommended order or finding.

For more information on judge review and appeal, see discussion at IX and X. The Poverty Law website contains judge review forms.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

10. Expungement

The court has common law and statutory power of expunge or seal court files. For more information, see discussion at VIII.E.5. The Poverty Law website contains expungement forms.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

11. Housing Advice Clinics

There are several court-based housing advice clinics in Minnesota. See Referral List for Clinics.

http://povertylaw.homestead.com/files/Reading/0Referrals.htm

Professional rules allow attorneys to provide limited service at pro bono advice clinics without checking for conflicts. Minnesota Rules of Professional Conduct 6.5 provides:

Rule 6.5 Pro Bono Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program offering pro bono legal services, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by the rule.

Comment

[1] Legal services organizations, courts and various organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph(a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Minn. R. Prof'l. Cond. 6.5. Rule 1.10 governs conflicts of interest.

See L. McDonough, "Ethical Representation of Landlords and Tenants."

http://povertylaw.homestead.com/files/Reading/ETHICAL_CONCERNS_IN_REPRESENTING_LANDLORDS_AND_TENANTS_REVISED.pptx

# Evictions

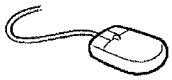
Court papers for an eviction are called a Summons and Complaint. If you get a Summons and Complaint for an eviction, these are some of the things you need to know:

1. **Get legal advice right away.** If you are low income, call your legal aid office. You can find more resources, legal aid offices and other help online at: www.LawHelpMN.org. You don't need a lawyer to fight an eviction, but it can help to know the law and your rights.

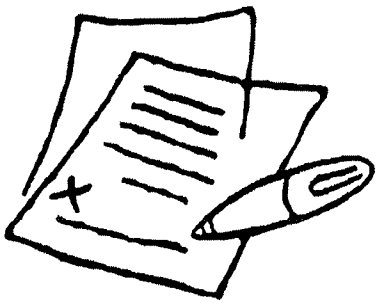
2. **Be on time for the hearing.** Don't be late or you will lose by default. Go to the hearing even if you have no defense so that you can ask the court for up to 7 days to move.

   **Go to the hearing even if your landlord says you don't need to!**

3. **Fill out an Answer form.** You can get one at your courthouse or online. For an Answer form go to www.mncourts.gov.



   → Click on "Get Forms"
   → Click on "Housing / Landlord-Tenant"
   → Click on "Eviction Answer" (choose the statewide form or Hennepin County form)

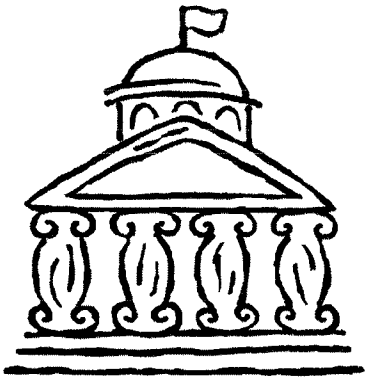


   Bring 3 copies of your Answer to court. Give 1 copy to your landlord, 1 copy to the judge and keep 1 copy for yourself.

4. **If you owe rent money,** you must bring **all** the money to court, **plus** any late fees that you owe, the landlord's filing fee and the service fee. The filing fee ranges from about $280 to $300 depending on your county. The service fee can range from $30 to a lot more- but it must be reasonable. The court might give you up to 7 days after the hearing to pay the fees, but you have to ask. You may need to have all the rent money with you.

5. **If you withheld rent because of repair problems,** you must bring **all** of the rent money to court. The court clerk will hold it until the judge makes a decision. If you deposit rent with the court clerk, it must be in cash or certified check made out to "District Court Administrator." You should not need the filing fees or late fees. Ask the court to order repairs and give you some of your rent money back for the time you lived there with the problems.

6. **Try to settle the case.** See if you can work out a deal with your landlord. If you owe rent, try to set up a payment plan. If you make a deal, put it in writing. Make sure you and your landlord sign it. Bring it to court on the hearing date. Ask the court to approve it. Do not skip court, even if you have made a deal. The landlord can still show up, and if you are not there, the judge might order the eviction.



7. **If the court orders mediation be ready for it.** In some courts there are mediators who try to help you and your landlord settle the case. If you make an agreement it will be written for you and the landlord to sign. The agreement will be part of the judge's order and can be enforced against you. Think about what you might want to happen in your case before you go to court so you are ready in case of mediation. Do not agree to anything that you cannot or will not do. You cannot change your mind about the agreement after court. If you do not follow the agreement, you can be evicted.

8. **Evictions usually stay on your record.** Eviction cases are public records. Tenant screening companies can report evictions for 7 years or more. If you lose an eviction case, it is very hard to get it expunged (erased). For more information on expungements see our fact sheet *Expunging an Eviction Case*.

9. **If a landlord had no good reason to file the eviction, ask the court to expunge the case from your record.** Expunge means to erase the public record of a case. In order to get an expungement, the court must find that:

   - the landlord's case is "sufficiently without basis in fact or law,"
   - expungement is "clearly in the interests of justice," and
   - the "interests of justice" are not outweighed by "the public's interest in knowing the record."

   The court can expunge your eviction only if the judge thinks the landlord was wrong to file the case and it would be unfair to leave it on your record. Examples might be:

   - the court papers were not given to you correctly
   - the landlord said you had not paid the rent, but you proved that you had
   - the landlord was getting back at you (retaliating) for complaining about repairs
   - the landlord said you broke the lease, but you proved that you did not
   - you were a tenant in a foreclosed property but did not get a timely notice to move. See our Fact Sheet *When Your Landlord Loses the Building*.

## Common Eviction Defenses

Tell the judge about your defenses by responding to the landlord's Complaint. Defenses are reasons to dismiss the case. You do this by filling out an Answer form. Check off the reasons that apply to your situation. Some common defenses on the Answer form are listed below:

**Getting the Court Papers (Service)**

- Minnesota law says your landlord has to give you the court papers in a specific way. If the landlord doesn't give them to you in the right way, you can ask for the case to be dismissed and expunged (removed from public view).

- Your landlord must file a paper with the court that says how they gave you the court papers. This paper is called an affidavit of service. You don't get a copy of the affidavit of service. You should ask the court clerk to show it to you.

- The landlord must follow these steps to give you the court documents:
  First, they have to try to give the court papers to you in person. They have to try at least twice on 2 different days. One try has to be between 6 PM and 10 PM. It's ok for the landlord to give the papers to someone who lives at your home, but that person has to be old enough to understand them. If the papers are delivered this way, "Service" is done.

  But if the landlord can't find you or can't deliver the papers they have to go through more steps. The landlord has to do all of these things:
  1. The landlord has to file a paper with the court called "affidavit of not found."
  2. The landlord has to mail the court papers to you at your last known address.
  3. After they mail them, they have to file an "affidavit of mailing" with the court that says they mailed the court papers to you.
  4. Then the landlord has to go to the address and post the court papers on the door.
  5. The landlord has to then file an "affidavit of posting" with the court.

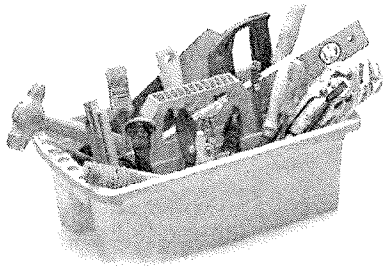
- You must get the court papers at least 7 days before the court hearing.

If your landlord did not follow any of these rules of service, you can ask for the case to be dismissed and expunged.

**Rent and Fees (Nonpayment of Rent)**

- You may disagree about how much rent is owed. You have to prove the amount. If you have any receipts, bring them to court.

- If you have repair problems, ask the court to lower the rent. Bring proof of the problems, inspector reports, photos, witnesses. Bring proof that the landlord knew about the problems. Remember that most judges will not listen to this defense unless you bring **all** the rent money to court.



- You may disagree with fees the landlord is charging. Check your lease to see what fees are listed. Unfair high fees for late rent are not legal, even if they are written in your lease. Late fees are capped at 8% of your unpaid rent.

- If your landlord took part of the rent money you owed, they may have waived (given up) the right to evict you for not paying rent. But your lease might say it is ok for the landlord to take partial rent and still evict you. Check your lease!

- Sometimes the court will give you more time to pay the rent or fees. Ask for 7 days and explain why you need the time.

**Move Out Notice ("Holding Over" After Notice to Vacate)**

If you have not broken your lease and your rent is paid up, the landlord has to send you a proper written move-out notice. If the notice was not given to you in writing in the proper time period, that is a defense.

- If you have a lease, it says how much time is "proper notice." Check it and bring it to court.

- Even if you don't have a written lease, the landlord has to give you written notice at least a month and a day before the move out date. For example, if the landlord wants you out by June 30, you must get the written notice on or before May 31. Bring the notice to court.

- A landlord can't give you a move out notice if it's retaliatory. That means trying to get back at you for something. For example, if the landlord gives you a move out notice within 90 days after you called the housing inspector about repairs, it is presumed that the notice was retaliatory.

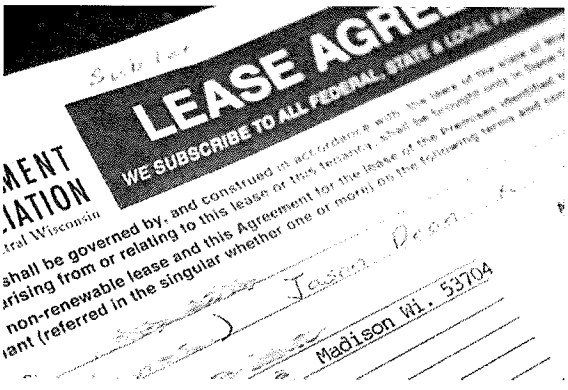
- If the landlord accepts or demands rent after the date you are supposed to move out, they may have waived the right to evict you for holding over.

**Lease Violations (Breach of Lease)**

- If the landlord says you violated the lease, they have to prove that you have an oral or written lease, that you violated the lease, and that the violation of the lease was "material" (important).

- If the landlord knew about the lease violation but took rent from you after it happened, they may have waived (given up) the right to evict you for that violation.

- If someone outside of your control caused the violation, explain why you are not responsible. But remember, you are usually responsible for what your children and guests do.



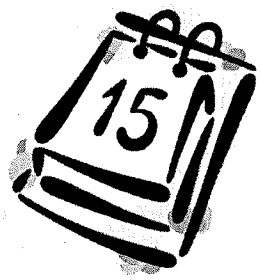
- If you have a disability that played a part in a lease violation, explain how your disability is connected to the violation. Ask the judge to order the landlord to make a "reasonable accommodation" of your disability, and dismiss the case.

- If your lease violations are because of **domestic violence, stalking, dating violence, or sexual assault** you may be able to avoid eviction.

  – **If you live in subsidized rental housing**, call your local legal services office right away! See our fact sheet *Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault.*

  – **If you don't live in subsidized housing**, your landlord can't legally evict you if the violations are because of the abuse. But, if the Complaint from the landlord also lists violations that did not happen because of domestic or sexual violence the case can continue, but only about the other lease violations. See our fact sheet *Victims of Domestic Violence, Stalking or Criminal Sexual Conduct: Your Rights in Breaking Your Lease.*

## If You Lose in Court




- **If you think the court made a mistake,** you have 15 days to file an appeal. If a referee made the decision, you also have the right to have it reviewed by a judge, but you must act quickly. Ask the court clerk for the forms. Get legal advice right away.

- **You can ask the court for up to 7 days to move out.** Tell the court why you need 7 days. Tell them if children, senior citizens or persons with disabilities live in the home. You must ask for the time to get it.

- **The landlord gets a court order called a Writ.** The landlord has to have a sheriff or police officer deliver it to you or post it on your door. The Writ gives you 24 hours to move out. If you do not leave, the landlord will set a move-out day and time with the sheriff. The sheriff has to be there to supervise if your things are packed up and put in off-site storage by the landlord. Your property can be stored on-site or at a storage place off-site.

  See our fact sheet *Getting Property Back After You Move Out.*

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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# Can I be Evicted
## during the COVID-19 crisis in Minnesota?

Updated June 19, 2020

**Why are they trying to evict you?**

**I didn't pay rent**

**Do you live in subsidized housing?**

*No

**No.**

Governor Walz declared a Peacetime Emergency. Evictions in Minnesota are on pause during this emergency.

*Yes

**No.**

If you live in subsidized housing, you can't be evicted for not paying your rent. Evictions are on pause until July 25th under the federal stimulus CARES Act. After July 25th, your landlord has to give you a 30-day notice.

**Another reason**

**No.**

Governor Walz declared a Peacetime Emergency. Evictions in Minnesota are on pause during this emergency.

I, or someone in my home, **put someone in danger** in my home, yard, or common areas

**Yes.**

If the court decides you endangered the health and safety of other residents, you can be evicted.

*If you don't live in subsidized housing or are not sure if you live in subsidized housing, you could have other protections. Contact Legal Aid for more information: www.lawhelpmn.org/providers-and-clinics.

***Our materials are legal information NOT legal advice. See a lawyer for advice.***

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# MINNESOTA JUDICIAL TRAINING UPDATE

www.PendletonUpdates.com



# HOUSING COURT - EVICTIONS: 12 BASIC RULES EVERY JUDGE MUST KNOW

**EVICTION LAWS AND PROCEDURES** are creations of statute and can be complex and confusing. Although Hennepin and Ramsey Counties have judges/referees that specialize in this area, for much of the state, judges preside over eviction cases with little or no prior experience. The following 12 basic rules apply to all landlord-initiated eviction actions.

**TYPICAL CLAIMS:** **Most eviction complaints are based on 1 of 2 claims:**

**1) Nonpayment of Rent** (504B.291); and/or **2) Breach of Lease** (504B.285).

**ONE: CORPORATIONS MUST BE REPRESENTED BY ATTORNEYS:**
An incorporated landlord must be represented by a licensed attorney when appearing in District Court for an eviction hearing. *Nicollet Restoration, Inc. v. Turnham,* 486 N.W.2d 753 (Minn.1992); *Towers v. Schwan,* No. A07-1311 (Minn.App.2008); *301 Clifton Place LLC v. 301 Clifton Place Condominium Association,* 783 N.W.2d 551 (Minn. Ct. App. 2010) (extends the "Turnham" rule to LLCs as well as corporations).

**Exception:** Footnote 2 in *Towers v. Schwan* leaves open the possibility that an incorporated landlord may appear by a non-attorney agent with a "Power of Authority" in Hennepin and Ramsey County "Housing Courts", which are governed by Minn. R. Gen. Pract. 600 et seq.

**TWO: SERVICE OF COMPLAINT – STRICT COMPLIANCE:** Service must occur 7 days BEFORE the initial hearing. If a party does not voluntarily submit to the jurisdiction of the court, the judge has NO authority to assume jurisdiction if the notice or service of process is less than 7 days. For example, if the initial hearing is set for Wed, July 20, then service must occur sometime on Wed, July 13th (Seven days BEFORE the hearing). M.S. 504B.331; *Koski v. Johnson,* 837 N.W.2d 739 (Minn.Ct.App.2013) (Minnesota law requires "strict compliance" to establish personal jurisdiction, substantial compliance is NOT sufficient.)

**THREE: STAYING EXECUTION OF THE WRIT – SUBSTANTIAL HARDSHIP:**
The court has discretion to extend the time the tenant must move out by up to 7 days. Upon a showing that immediate restitution of the premises would work a substantial hardship upon the defendant or defendant's family, the court shall stay the writ of recovery for a reasonable period, not to exceed seven days. Other than by agreement of both parties, there is no legal authority for the court to stay a writ past 7 days. Minn. Stat. 504B.345.

Hon. Alan F. Pendleton, Anoka County District Court, Anoka, Mn 55303; 763-422-7309

**Note – Substantial Hardship:** While the most common 'substantial hardship' found by a judge is a residential tenant with child(ren) having to move hurriedly, this provision could also apply to a commercial tenant (e.g. if the tenant is a restaurant and has a lot of equipment to move.)

**Note – Settlement Agreements:** The parties may settle and agree to longer periods for the tenant to pay. Landlords often agree to payment plans that run longer than seven days with the tenant agreeing that a writ may issue if a payment is missed. Landlords often make these lawful settlements if they are more interested in collecting rent than evicting that particular tenant.

## FOUR: TENANT'S RIGHT TO REDEEM POSSESSION OF PREMISES:

The tenant may, at any time before possession has been delivered (means the end of the day judgment is stayed to, not physical transfer of possession), **redeem the tenancy** and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest (rare, but occasionally a lease will include an interest clause), costs of the action (typically the filing fee plus the fee to the process server), and an attorney's fee not to exceed $5 (not a misprint, as the $5 has not been changed for over a century), and by performing any other covenants of the lease. M.S. 504B.291 subd. 1(a).

### THERE ARE 5 RULES REGARDING THE RIGHT TO REDEEM:

1) The right to redeem only exists in actions for **"nonpayment of rent"** and applies to both residential and commercial tenants.

2) **The court has no authority to deny this right**. The judge can, however, limit the tenant's ability to redeem the premises by either issuing an immediate writ or limiting how long the writ is stayed for (7 days or less). See number #3 below.

3) The court **has discretion** to allow tenant up to 7 days to redeem. However, tenant's right to redeem is only available during the time the writ is stayed. Absent an agreement by the parties, the writ cannot be stayed longer than 7 days and must be based on a finding of substantial hardship. M.S. 504B.291, subd. 1(a).

4) The right to redeem does NOT exist in actions filed ONLY for ***"breach of lease."***

5) The right to redeem MAY exist in cases involving claims of both ***nonpayment of rent and breach of lease***. For example, if the claims are contested, the court must first determine the breach of lease issue: M.S. 504B.285, subd. 5.
   (i) If landlord wins the breach of lease issue, the nonpayment issue becomes moot;
   (ii) If landlord loses the breach of lease issue, then the case becomes a standard nonpayment of rent case and the tenant would then have the right to redeem.

## FIVE: PARTIAL PAYMENT OF RENT – WAIVER OF RIGHT TO EVICT:

In nonpayment of rent cases, since each month creates a new obligation, the landlord waives the right to evict for any month that landlord accepts partial payment of rent.

a) **Exception - Written Agreement:** Once the eviction action has been filed, there should be no payments accepted by landlord UNLESS the parties agree IN WRITING that partial payment of rent accepted by landlord may be applied to the balance due and does NOT waive the landlord's right to evict for nonpayment of rent. M.S. 504B.291, subd 1(c); *Penn Oaks v. Williams*, CX-98-171 (Mn.Ct.App. Aug 11, 1998).

b) **Note:** Some landlords include similar language in their lease so the partial payment defense is not applicable to them. However, many leases do not have this language and, of course, this defense also applies to all oral leases.

## SIX: RENT ESCROW – When Should a Judge Require a Tenant to Escrow Rent?

1) **Nonpayment of Rent:** When a tenant wants to redeem but there is a contested issue over how much rent is owed, the court can order that tenant deposit any undisputed rent owed into court pending the trial. If deposit is not made, trial is waived and the Writ can issue. M.S. 504B.291 subd. 1 (a) and (b).

2) **Nonpayment of Rent & Breach of Lease:** If Landlord asserts both claims, the court cannot require a tenant to deposit rent into court until the breach of lease action has been resolved. If the court rules in favor of tenant on breach of lease, then the court must allow tenant the right to redeem. "The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due." M.S. 504B.285 subd. 5 (b).

3) **Habitability Defense:** A tenant can request a trial on habitability issues in an eviction case provided tenant deposits into court all rent due and owing to landlord under the terms of the lease. If the case continues into a new rental period, tenant can be ordered to pay future rent into court as it becomes due. In other words, tenants cannot simply assert this defense to buy more time in the leased property. *Fritz v. Warthen,* 213 N.W.2d 339 (1973) (also allows for "adequate security" other than rent due); *See* M.S. 504B.385.

## SEVEN: EVICTION TRIALS:

Eviction Cases are not pseudo-Conciliation Court cases. Although eviction actions are "summary processes," they are still District Court cases. If disputes of material fact have to be resolved to determine the case, a proper trial must be provided. The parties have a right to a court trial or a trial by jury. M.S. § 504B.335 (b).

a) **Summary Judgment:** Summary judgment is appropriate if the parties' representations or submissions indicate no material facts are in dispute. Thus, if the parties' representations at the initial hearing show no dispute of material fact, the case can be decided at that point without trial. *Case Credit Corporation v. Hydra-Mac, Inc,* File No. C5-04-662 (Minn. Ct. App. Oct. 25, 2005).

b) **Continuance of Eviction Trials:** The court, in its discretion, may grant a trial continuance for no more than six days unless all parties consent to a longer continuance. The only exception to this is if a material witness is not available, in which case the continuance can be as long as three months provided certain findings are made and a bond is posted during the pendency of the continuance. M.S. 504B.341.

**EIGHT: RETALIATION DEFENSES:** Retaliation defenses (M.S. 504B.285, subd. 2) **do not apply** to nonpayment of rent cases (tenants always have an obligation to pay rent) or breach of lease actions (e.g. smoking on a non-smoking lease, etc). This defense of retaliation only applies to **holdover cases** based on a notice to vacate (e.g. when a landlord attempts to terminate a tenancy by serving a notice to vacate on a tenant). This retaliation defense applies to both residential and commercial tenants. *Cloverdale Foods of Minnesota, Inc.,* 580 N.W.2d 46, 49 (Minn. Ct. App. 1998).

**NINE: EXPUNGEMENT:** Expungement is allowed if plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. In addition, Judges MUST find that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record. In other words, there are three parties to an expungement action, plaintiff, defendant and the public. M.S. 484.014.

**TEN: EQUITABLE RELIEF:** There may be instances where a tenant's ability to assert their rights have been interfered with by a landlord who comes into court with "unclean hands." Generally, the decision to grant equitable relief is within the sound discretion of the district court and its decision regarding such relief will not be reversed absent an abuse of that discretion. *Classen v. City of Lauderdale,* 681 N.W.2d 722, (Minn. App. 2004) (*Classen* was not an eviction case; equitable relief in eviction cases is, at best, an unclear area).

**ELEVEN: 8% LIMITATION ON LATE FEES CHARGED BY LANDLORDS:** M.S. 504B.177 (a) requires that a late fee for overdue rent for residential rental property be specified in writing. The statute also provides that "in no case may the late fee exceed eight percent of the overdue rent payment." **Note:** The provision that "in no case may the late fee exceed eight percent..." does apply to Public Housing tenancies and is not preempted by federal law. *HRA of Duluth v. Lee,* 852 N.W.2d 683, 687 (Minn.2014). The *Lee* court did not rule specifically about other federally subsidized housing programs' late fees.

**TWELVE: IF EVICTION IS DISMISSED – AWARD $200 COSTS TO TENANT:** Under M.S. 549.02, subd. 1, a district court MUST allow the defendant in an eviction action $200 in costs upon dismissal of the case. This rule applies even if the dismissal is without prejudice and is based on a procedural defect and there was no adjudication on the merits. *HNA Properties v. Moore*, 848 N.W.2d 238, 241 (Minn.Ct.App.2014).

**Note – IFP Status:** The $200 costs shall be paid to tenant even if tenant was proceeding IFP. The statute requiring that money recovered by "settlement or judgment" by an IFP defendant be paid directly to the court administrator (M.S. 563.01, subd.1) does not apply. Statutory costs are NOT considered "money recovered by settlement or judgment." Id. at 243. This same rule would also apply in those rare cases involving an IFP landlord.

**SOURCES**: Paul Birnberg, Senior Housing Attorney, HOME Line, Tenant Advocacy Organization, and Hennepin County Court Referee Mark Labine.

**Hon. Alan F. Pendleton, Anoka County District Court, Anoka, Mn 55303; 763-422-7309**

# Outline of Defenses

From Larry McDonald, Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020. Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_495 on July 30, 2020.

CHAPTER VI: DEFENSES

A. FORM ANSWERS AND MOTIONS

A1. FILING FEE WAIVERS: *IN FORMA PAUPERIS*

B. LIMITATIONS ON QUESTIONS OF TITLE OR EQUITABLE DEFENSES

1. In Municipal or County Court
2. In District Court
3. Mortgage Foreclosure and Contract for Deed Cancellation
4. Counterclaims

C. IMPROPER SERVICE (LACK OF PERSONAL JURISDICTION)

1. Requirements for personal jurisdiction

1a. Strict compliance required

2. Specific defenses

a0. *Challenges to affidavits of service*
a. *No service*
b. *Service less than seven (7) days before the initial hearing*
c. *Service on legal holidays*
d. *Service by a named plaintiff or agents*
e. *Substituted service on non-defendant defenses*
f. *Improper substitute service by mail and posting*
f1. *Improper mail and post service on commercial nonresidential tenant*
g. *If the defendant is confined to a state institution, failure to serve the institution's chief executive officer*
h. *Improper affidavit of service*
h1. *Untimely or no affidavit of service*
i. *Waiver of defense*
j. *Service before filing action*
k. *Service on business*
l. *Incomplete service*

3. It is unclear whether defendants can be designated as John Doe or Jane Doe

4. Subtenants

D. FAILURE TO SATISFY PRECONDITIONS TO RECOVERY OF THE PREMISES

0. Lack of subject matter jurisdiction

1. The plaintiff is not entitled to possession

1a. Plaintiff's agent is not authorized with a proper power of authority

1b. Power of attorney

2. Landlord address disclosure

   a. Failure to disclose
   b. Post office boxes and commercial mailbox services
   c. Changes in ownership or name
   d. Failure to plead disclosure
   e. Disclosure ordinances

2a. Disclosure of the identity of the principal of the property

3. Trade name registration

4. Foreign corporation

5. Tenant in possession for at least three years

6. Failure to state the facts that authorize recovery of the premises

   a. *Pleading compliance with statutory preconditions for the action*
   b. *Rent claims*
   c. *Breach claims*
   d. *Allegations of unlawful activity*
   e. *Litigating claims not raised in the complaint*

7. Unauthorized practice of law

   a. *Management agents for plaintiff*
   b. *Corporations*
   c. *Limited Partnerships and Limited Liability Companies*

8. Failure to attach to the complaint or provide at the initial hearing a copy of the termination notice or lease (Hennepin and Ramsey County Housing Court)

9. Failure to provide defendant with a copy of the lease before commencement of the action

10. Failure to timely file the affidavit of service (Fourth District; Hennepin and Ramsey County Housing Courts)

11. Section 8 Existing Housing Certificate and Voucher Programs: Failure to give notice to the public housing authority

12. Bankruptcy

13. Stay of eviction action pending parallel litigation

14. Failure to join an indispensable party

15. Lack of jurisdiction over Indian trust property

16. Action is inappropriate method to resolve complex claims

17. Failure to sign complaint

18. Landlord's preparation of summons

19. Premature action or claim that had not accrued

20. Plaintiff's voluntary dismissal

21. Lease Signed under Duress

22. Filing case in violation of consumer fraud order

23. Domestic abuse

    a. *Eviction Defense*
    b. *Tenant Remedies*

24. Summons content

25. Failure to use written lease

26. Mootness

27. Plaintiff's default

28. Statute of frauds

29. Tenant waiver of claims

30. Statute of limitations

31. Servicemembers Civil Relief Act

32. Accord and satisfaction

E. NONPAYMENT OF RENT DEFENSES.

1. Breach of the covenants of habitability

    a0. *Before the covenants*
    a. *The covenants*
    a1. *Waiver or modification of the covenants*
    a2. *Leases requiring tenant maintenance and repairs*
    a3. *Leases charging tenants for repairs*
    b. *The plaintiff must prove that rent was not paid*

c. *Tendering rent into court or providing adequate security*

(1) *Fritz* factors

(2) The court should not require full payment of back rent into court

(a) Fritz does not require posting of alleged back rent
(a1) The Fritz requirement is for security during the litigation
(b) Local rules do not require posting of alleged back rent
(c) Requiring the posting of back rent may violate due process
(d) Fritz allows for payment of adequate security
(e) Requiring posting back rent inhibits covenants enforcement
(f) Defending other causes of action does not require defendants to place into court the subject of the controversy

(3) Decisions requiring less than full payment into court of back rent
(4) Condemned or condemnable housing
(5) Disputed rent
(6) Law firm and agency checks
(7) Tenant's failure to comply with court's order to pay rent into court
(8) Appeal of decision ordering tenant to pay rent into court
(9) Guarantee of Payment
(10) Not applicable where tenant did not withhold rent
(11) McKnight Habitability Litigation Revolving Fund

d. *Evidence of violations*

(1) Reasonable repair and code compliance covenants
(2) Fit for use intended covenant: other conditions and conduct problems

(3) Housing code violations not concerning housing condition
(4) Disrepair caused by acts of nature or third parties
(5) Court inspection of the property
(6) Trial court discretion
(7) Use of inspection reports
(8) Lead paint
(9) Lay testimony
(10) Bed bug and other pest infestations
(11) Quiet enjoyment

e. *No written notice of violations is required*
f. *Landlord defenses*

g. *Measure of damages*

(1) Pre-Covenants of Habitability and *Fritz*
(2) Post-Covenants of Habitability and *Fritz*
(3) Condemned or condemnable housing
(4) Trial court discretion to determine rent abatement
(5) Limitation on retroactivity (back) rent abatement
(5a) Tenant awards beyond rent claimed credited against future rent
(6) Increase rent abatement for noncompliance

h. *Public and Government Subsidized Housing*
i. *Relief*
i1. *Rent abatement beyond rent claimed credited against future rent*
j. *Companion tenant's remedies and rent escrow actions*
k. *Landlord tort liability for personal injury*
k1. *Landlord's contact liability for personal injury*
l. *Consequential damages*
m. *No assessment of costs against tenant*
n. *Fines*
o. *Contempt of court*
p. *Punitive damages*
q. *Compliance hearings*
r. *Housing agency inspections and records*
s. *Studies of effects of inadequate housing conditions*
t. *Subsequent owner liability*
u. *Manufactured (mobile) home park lot tenancies*

2. Rental licenses and other housing condition defenses

a. *Illegal contracts: violation of housing code precluding action for rent*
b. *Agency housing repair orders*

c. *Rental dwelling licenses*

(1) Appellate Decisions

(2) Minneapolis

(a) 1990 ordinance
(b) 1997 amendment
(c) 2012 amendment
(c1) Finding the code and property status on-line
(d) Dismissal
(e) Rent abatement

(3) Other cities

(a) Alexandria
(b) Brooklyn Park
(c) Duluth
(d) Eagan
(d) New Hope
(e) Plymouth
(f) Saint Paul

(4) Challenges to license revocations
(5) Appeal

3. Breach of an express covenant which creates a condition precedent to payment of rent

4. Tenant payment of utility or essential services following landlord's nonpayment

5. Rent abatement for actual or constructive lockout or exclusion

6. Taxes on the land paid by the tenant

7. Improper notice to increase rent or fees

7a. Acquiescence to notice to increase rent

8. Waiver of notice to increase rent

9. Retaliatory rent increase or services decrease

   a. Statutory retaliation defenses
   b. Ordinances prohibiting retaliation
   c. Common law retaliation defense

10. Late fees

   a. *Late fees regulated by Minn. Stat. § 504B.177*

   b. *Late fees not regulated by Minn. Stat. § 504B.177*

      (1) Liquidated damages and penalties
      (2) Usurious interest

   c. *Waiver of late fees*
   d. *Public housing and subsidized housing*
   e. *Manufactured (mobile) home park lot tenancies*
   f. *No late fee is due because the tenant properly withheld rent*
   g. *Plaintiff did not prove existence of late fees*

10a. Other fees

   a. *Fees for tenants to perform habitability maintenance*
   b. *Fees in violation of statutes*
   c. *Liquidated damages and penalties*
   d. *Unconscionable provisions*
   e. *Adhesion contract*

11. Manufactured (mobile) home park lot tenancies

   a. *Breach of the covenants of habitability*
   b. *Improper notice to terminate the lease*
   c. *The arrearage includes improper fees*
   d. *Waiver of notice*
   e. *Improper rent increases*
   f. *Retaliatory rent increase or services decrease*
   h. *Redemption*
   i. *Secured parties*

12. Public housing and government subsidized housing

   a0. *Lack of cause or tenant fault*

a. *Section 8 existing housing certificate and voucher programs*

(1) Side Payments
(2) Withheld housing assistance payments

b. *Subsidized housing projects*
c. *Public housing*
d. *Bankruptcy and public housing rent*

13. Waiver of rent due by accepting partial payment

14. Waiver of past rent due by accepting rent for later months

15. Receipts, money orders, and when and how much rent is due

a. *Amount of rent*
a1. *Premature rent claim*
b. *No agreement on when the rent is due*
c. *Waiver of prompt payment of rent*
d. *Receipts required for cash*
e. *Money orders*

16. Discrimination

17. Reasonable accommodation of disabilities

18. Utilities

a. *Tenant or landlord liability under the lease*
b. *Landlord liability with shared meters*
c. *Landlord termination of utilities*
d. *Tenant payment of utility or essential services following landlord's nonpayment*

19. Combined actions for nonpayment of rent and material lease violations

20. Redemption

a. *The court may deny restitution of the premises, conditioned on the defendant's payment of the arrearage within a specific time to be determined by the court*

b. *Redemption apparently applies to more than just traditional nonpayment of rent cases*
c. *Combined actions for nonpayment of rent and material lease violations*
d. *Attorney's fees*
e. *Month-to-month tenancies*
f. *In manufactured (mobile) home park lot tenancies*
g. *No waiver of right to redeem*
h. *Landlord extension of tenant's right to redeem*
i. *Waiver of costs and service fees*
j. *Good faith effort to redeem*

21. Violation of tenant privacy

21a. Quiet enjoyment of the premises

21b. Tenant security

22. Landlord refused to accept rent

23. Rent credit for work done for the landlord by the tenant

24. Tenant financial obligations under a separate agreement with the landlord may not be rent

25. Retaliation

    a. Statutory retaliation defenses
    b. Ordinances prohibiting retaliation
    c. Common law retaliation defense

26. Notice for rent in month-to-month tenancies

27. Illegal lease provisions.

28. Manufactured (mobile) homes not in mobile home parks

29. Tenant or landlord in bankruptcy.

30. Assessment of rent from guest

31. Landlords actual or acquiescence in unlawful activities

32. Rent claims under prior leases

33. Garnishment of rent

34. Fair Debt Collection Practices Act defenses

35. Joint liability only if provided in lease

36. Right to cure under the lease

37. Notice to prospective tenants of mortgage foreclosure of residential rental property

38. Domestic violence defenses

    a. *Private housing*
    b. *Public housing and subsidized housing*

39. Premature action that had not accrued

40. Acceptance of rent before commencement of action

41. Landlord rejected rent before filing action

42. *De minimus* rent and fees

43. Laches

F. HOLDING OVER AND NOTICE TO QUIT DEFENSES

1. Improper notice to quit

a. *Periodic tenancies, month-to-month tenancies, and tenancies at will*

(1) Minn. Stat. § 504B.135
(2) Strict compliance required
(3) Service and receipt of notice
(4) Termination date
(4a) Defective notice is void and is not effective later
(5) Oral leases
(6) Oral notices are ineffective
(7) Notices of less than one month are ineffective
(8) Landlord has the burden of proof

b. *Periodic tenancies with no rent term*
b1. *Year-to-year tenancies*
c. *Term leases*
d. *Notice to tenants following mortgage foreclosure or contract for deed cancellation*

(1) State Law
(2) Federal Law

e. *Different notice lengths for landlord and tenant*

2. The lease does not provide for termination of the tenancy before expiration of the lease

3. Retaliation

a. *Protected tenant activity*
b. *Presumption of retaliation*
c. *Housing code ordinance provisions on retaliation*
d. *Litigating retaliation in a tenant initiated case*
e. *Term leases*
f. *Manufactured (mobile) home park lot tenancies*

3a. Common law retaliation defense

4. Waiver of Notice to quit by acceptance of rent

a. *In public housing and government subsidized housing*
b. *Manufactured (mobile) home park lot tenancies*
c. *Landlord not depositing the rent*
d. *Nonwaiver clause in lease*
e. *Waiver of application of a nonwaiver clause*
f. *Ongoing lease violations*

5. Waiver of notice by issuing a later notice, extending a notice or executing a new lease

6. Waiver of notice by demanding subsequent rent in an eviction (unlawful detainer) action

7. Manufactured (mobile) home park lot tenancies

8. Discrimination

9. Reasonable accommodation of disabilities

10. Public housing and other subsidized housing programs

a. *Section 8 existing housing certificate and voucher programs.*

(1) No notice required for breach cases
(2) Notice for business reasons
(3) The endless lease?
(4) State one year notice requirement
(5) Mortgage foreclosure

(6) Section 8 voucher subsidy termination

(a) Mandatory termination for *eviction for serious violation of the lease*
(b) Permissive termination
(c) Termination procedure
(d) Mitigating circumstances
(e) Judicial review and appeal
(f) Discrimination
(g) Reasonable accommodation of disabilities
(h) Domestic violence

(7) Landlord notice to the Section 8 Office

b. *Subsidized housing projects*

(1) HUD Handbook No. 4350.3 projects
(2) Moderate rehabilitation projects
(3) Rural Housing and Community Development Service (RHCDS) and Rural Housing Service (RHS), formerly Farmers Home Administration FmHA Projects
(4) Low Income Housing Tax Credit Projects
(5) Other subsidized housing programs

c. *Public housing*

(1) Notice
(2) Grievance process
(3) Bypassing the grievance process

d. *Revocation of tenant's notice to quit*

11. Contract for deed termination

11a. Purchase agreements and exercised options terminations

12. Mortgage foreclosure

a. *Mortgagor defendant*
a1. *Illegal foreclosure reconveyance*
a2. *Stays of the eviction action*
b. *Tenant of mortgagor as defendant*

13. Subtenants

14. Landlord or tenant revocation or retraction of a notice to quit

15. Lease renewal

16. Uniform Relocation Act

17. Declaratory judgment action as alternative to eviction defense

18. Premature action that had not accrued

19. Residents of nursing homes and housing for seniors and people with disabilities

G. BREACH OF LEASE DEFENSES

0. Failure to attach to the complaint or provide at the initial hearing a copy of the lease (Hennepin and Ramsey County Housing Court)

0a. Lack of a municipal rental dwelling license

1. No right of reentry clause in the lease

2. Implied modification of the lease or waiver of lease provisions

2a. Modification of the lease

3. Plaintiff unilaterally modified the lease

4. Waiver of breaches by acceptance of rent

a. *In government subsidized housing*

b. *Exceptions*

(1) Breach of a fundamental lease term
(2) *MCDA v. Powell*
(3) The lease contains an enforceable nonwaiver clause
(4) Ongoing lease violations
(5) Payment of rent into court

c. *Waiver of a nonwaiver clause*

5. Waiver of breaches by executing a new lease

6. Waiver of breaches by demanding subsequent rent in an eviction (unlawful detainer) action

6a. Laches

7. Improper late fees.

8. Discrimination

9. Reasonable Accommodation of disabilities

10. Public housing and government subsidized housing

a. *Notice and administrative process*

b. *Good cause for eviction*

(1) Tenant's conduct

(a) *Decisions holding for the tenant*

(i) Alterations
(ii) Cure
(iii) Damage
(iv) Deposit
(v) Domestic violence
(vi) Failure to prove violation
(vii) Housekeeping
(viii) ID
(ix) Invalid lease provision
(x) Noise and disturbances
(xi) Late fees
(xii) Recertification
(xiii) Rent
(xiv) Self-defense
(xv) Temporary absence
(xvi) Termination of tenant's employment
(xvii) Unauthorized resident
(xviii) Violation of settlement agreement

(b) *Minnesota decisions finding good cause for eviction*

(i) Generally
(ii) Assault and threats
(iii) Damage
(iv) Failure to report income
(v) Unauthorized resident
(vi) Noise
(vii) Other lease violations

(2) Repeated lease violations

(3) Criminal activity by tenants and third parties

(a00) Regulation prohibiting Legal Services Corporation (LSC) recipients from representing tenants in certain drug allegation public housing cases

(a0) Distinguishing between crimes and offenses: marijuana and other petty misdemeanors

(i) Marijuana possession
(ii) Medical marijuana use
(iii) Possession of drug paraphernalia

(a) Public housing

(i) Statute, regulations and legislative history
(ii) *Lor* and *Rucker*

(iii) Elements of criminal activity eviction

(a) Criminal activity
(b) Location of criminal activity not drug-related
(c) Acts by others
(d) Proof of criminal activity

(iv) Notice
(v) Waiver
(vi) Isolated incident
(vii) Coordination with criminal defense
(viii) Interplay between federal and state statutes

(b) Section 8 certificates and vouchers
(c) HUD subsidized projects
(d) Rural Housing and Community Development Service (formerly Farmers Home Administration) subsidized housing projects
(e) Search and seizure
(f) Other criminal law defenses
(g) Admissibility of plea from criminal action
(h) Crime-free ordinances

(4) Other actions of third parties
(5) Verification requirements
(6) Laundry list of allegations
(7) Tenant waiver of rights
(8) Pets

c. *Section 8 Existing Housing Certificate and Voucher Programs*
d. *Government subsidized housing projects*
e. *Public housing*
f. *Low Income Housing Tax Credit properties*
g. *Violence Against Women Act (VAWA)*

11. Manufactured (mobile) home park lot tenancies

a. *Termination of tenancy*

b. *Defenses*

(1) Inadequate notice period
(2) Notice did not specify the reasons for termination

(3) The plaintiff has not alleged or proven cause for termination

(a) Violation of manufactured (mobile) home ordinances, rules and laws, following a reasonable time after written notice of noncompliance
(b) Rule violations, after failure to cure following thirty (30) days written notice
(c) Endangerment or substantial annoyance after notice
(d) Repeated serious violations of the lease or certain laws, following written notice and warning and continued violation
(e) Material misstatement in the application, if termination occurs within one year of when the tenant first paid rent
(f) Improvement of the park, after 90 days written notice
(g) Park or lot closing, after nine months written notice. Relocation within the lot may be permitted in certain circumstances

(4) Nonpayment of rent defenses
(5) The rule is unreasonable
(6) The rule constitutes a substantial modification of the original lease or rules

(7) Improper notice to adopt or amend a rule
(8) Retaliation
(9) Waiver of notice
(10) Implied modification of the lease
(11) Defendant cured the violation
(12) Violation repeated but not serious
(13) Violation caused by owner's violation
(14) Discrimination
(15) Domestic violence
(16) In-park sales

12. Illegal lease provisions

13. Unconscionable lease term

14. Adhesion contract.

15. Oral leases

16. Allegations of unlawful activity

a. *Covenant of landlords and tenants.*

(1) Proving elements of the violation
(1a) Drug paraphernalia
(1b) Medical marijuana
(2) Lack of knowledge defense
(3) Waiver
(4) Landlord violations

b. *Seizure*
c. *Public nuisance*
c1. *Registered sex offenders*
d. *Public housing and subsidized housing.*
e. *Regulation prohibiting Legal Services Corporation (LSC) recipients from representing tenants in certain drug allegation public housing cases*
f. *Reasonable accommodation of disabilities*
g. *Informants*

h. *Search and seizure of the tenant and tenant's property*

(1) In private eviction actions
(1a) In public housing and subsidized housing eviction actions
(2) In other civil actions

(3) Criminal prosecutions concerning tenants

(a) Garages and storage units
(b) Curtilage and common areas
(c) Co-tenants
(d) Resident's unit

i. *Other criminal law defenses*
j. *Admissibility of plea from criminal action*
k. *Crime-free ordinances*

17. Subtenants and assignees

18. Retaliation

a. Statutory retaliation defenses
b. Ordinances prohibiting retaliation
c. Common law retaliation defense

19. The breach is not a material breach

a. *Subletting*
b. *Improvements*
c. *Parking*
d. *Activity not regulated by the lease*
e. *Damage*
f. *Over-occupancy*
h. *Landlord access to unit*
i. *Rental insurance*
j. *Noise*
k. *Loitering*
l. *Violence*
m. *Business activity on residential property*
n. *Utilities*
o. *Property maintenance*
p. *Housing inspector visits*
q. *Combined rent and breach cases*

20. Cure

21. Combined actions for nonpayment of rent and material lease violations

22. Tenant guest and trespass rules

23. Nonpayment of utilities and other charges

24. Nuisance or serious endangerment of safety of other residents, their property, or the landlord's property

25. Lack of clear rules or lease provisions

26. Plaintiff must prove lease violations by a preponderance of the evidence

27. Original written lease terms continue after lease expiration and extend into subsequent month-to-month tenancies

28. Equitable power to provide relief from forfeiture to avoid eviction

29. Tenant's breach was caused by landlord's breach.

30. Lease requirement for notice must be followed.

31. Eviction for emergency police calls

32. Public reports

33. Uniform Relocation Act

34. Eviction of one tenant but not the other

35. Election of remedies

36. Proof of the lease

37. Landlord's violation of covenants of habitability as defense to tenant breach

38. Domestic violence defenses

    a. *Private housing*
    b. *Public housing and other subsidized housing programs*

CHAPTER VII: REMEDIES AND REQUESTS FOR RELIEF

A. ORDINARY RELIEF
B. EXTRAORDINARY RELIEF
C. CONTEMPT OF COURT

# Writ of Recovery or Restitution.

From Larry McDonald, Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020. Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm on July 31, 2020.

1. Stay of the writ

If the court or jury finds for the plaintiff, the court shall issue a writ of recovery, formerly called a a writ of restitution. Minn. Stat. § 504B.345 (formerly § 566.09). The court shall stay the writ for a reasonable period not exceeding seven (7) days, where the defendant shows immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family. *Id.* Tenants who do not contest the action still may request the stay. However, if the tenant does not appear, it is unlikely that the writ will be stayed for more than twenty-four (24) hours. In cases where the landlord proved violations of the illegal drug covenant, or that the tenant has caused a nuisance or has seriously endangered the safety of other residents, their property, or the landlord's property, the court may not stay issuance of the Writ of Restitution. Minn. Stat. § 504B.345 (formerly § 566.09), *amended by* 1994 Minn. Laws. 502, § 6.

In manufactured (mobile) home park lot tenancies under Minn. Stat. § 327C.11, subd. 4, the court may issue a conditional writ of restitution, which allows the home to remain on the lot for sixty (60) days for an in park sale, orders the resident household to vacate the park within a reasonable period not to exceed seven (7) days, and orders the park owner to notify any secured parties known to the park owner. The resident household must move out of the park, comply with all rules relating to home and lot maintenance, and pay all rent and utility charges owed to the park owner on time. The writ becomes unconditional and absolute by court order, if the resident violates the above obligations and the park owner moves the court for such relief, following three (3) days written notice, or sixty (60) days after issuance of the conditional writ. In *Marshall Plan, Inc. v. Miller*, No. (Minn. Dist. Ct. 5th Dist. Aug. 28, 1990) (Appendix 20.E), the court denied a request for a temporary restraining order against a sheriff's sale of a manufactured (mobile) home in a lot park following execution of the writ of restitution. The court concluded that following execution of the writ, the park owner is entitled to enforce the lien against the manufactured (mobile) home and foreclose it by public sale.

In *Potvin v.* _____, No. C2-03-1604 (Minn. Dist. Ct. 9th Dist. Sep. 19, 2003) (Appendix 562), the tenant first rent manufactured home (not in a park) and land under it, then purchased home and rented land, and fell behind on rent but landlord did not deliver title to tenant. the court stayed writ for one week after landlord delivers title to tenant.

The parties may stipulate to a stay of any duration. The writ is issued by the clerk of court. The writ may be stayed pending appeal. *See* discussion, *infra* at X.E.3.

2. Unavailability of writ for nonpayment of future rent

Landlords occasionally include in settlement agreements provisions on future payments of rent. While the landlord may obtain a writ and evict the tenant for failing to make installment payments on back rent, the landlord must file a new action if future rents are not paid.

In *Erin Realty v.* _____, No. HC 030918514 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 493), the payments in the settlement agreement beyond the first payment included future rents for eight months as well as alleged past amounts due to the plaintiff. The defendant made all of the payments for five months. The plaintiff obtained a writ of recovery after the defendant made a partial payment in the sixth month, and the defendant moved to quash the writ. The court concluded that

When the parties to an eviction agree to a schedule of future payments to retire the debt alleged in the complaint, the landlord may obtain a writ of recovery if the tenant fails to make a payment. The landlord may not obtain a writ of recovery for failure to pay future rents not alleged as due in the complaint, as it would constitute a waiver of the tenant's right to the protections of the eviction process in Minn. Stat. Ch. 504B and the right to raise defenses to the landlord's claim as to nonpayment of future rents.

In the absence of factual findings by the court regarding amounts owing, a writ of recovery based on violation of a settlement agreement for future payments which do not distinguish between future rents and amounts found to be past due will not be enforced. In order to enforce rights under the agreement, the Plaintiff must file a new eviction action.

*Id. See Erin Realty v.* _____, No. HC 021008524 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 494) (motion for writ denied; "tenant cannot permanently waive the right to an unlawful detainer hearing for all future allegations of nonpayment of rent"); *Rupert House Co., Inc. v. Altmann*, 127 Misc.2d 115, 485 N.Y.S.2d 472 (1985) (stipulation which entitles a landlord to evict a residential tenant for nonpayment of amounts of rent exceeding the amount of rent sought in the petition is unconscionable and violates public policy; such a mode of coercing payments of rents not yet due would impede the tenant's ability to assert against the landlord future defenses such as a breach of the warranty of habitability).

In *Uptown Classic Properties v.* _____, No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement.

These decisions are consistent with the decision in *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996). There, the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (formerly unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord was entitled to the rent increase and the tenant was

not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues.

C. Execution of the writ

1. Service

The writ may not be enforced against a person who was not a party to the action nor named in the writ. *See* discussion, *supra* at VI.C.

The landlord must bring the writ to the sheriff or police for service on the defendant. Often, the landlord will have to schedule service on a later date. Some sheriffs or police or police require the landlord not only to prepay the sheriff or police for service, but to arrange for a bonded moving company to remove and store the tenant's possessions if they will be stored in a place other than the premises. The sheriff or police will serve the writ on the defendant, any adult member of the defendant's family holding possession of the premises, or any other person in charge of the premise. The sheriff or police will demand that the defendant and the defendant's family vacate the premises and remove their personal property within twenty-four (24) hours. In cases where the landlord prevails on claims of violations of the illegal drug covenant, or that the tenant caused a nuisance or seriously endangered the safety of other residents, their property, or the landlord's property, execution of the Writ of Restitution must receive priority. § 504B.365 (formerly § 566.17), *amended by* 1994 Minn. Laws Ch. 503, § 9.

The sheriff may have immunity from liability where the writ is enforced incorrectly. In *Pahnke v. Anderson Moving and Storage*, 720 N.W.2d 875 (Minn. Ct. App. 2006), the sheriff executed the writ of recovery at the time it was served, rather than waiting 24 hours after service, because the writ required immediate removal. The Court of Appeals affirmed summary judgment against the tenant, concluding that the officers were performing ministerial function, and because they were relying on the terms of the writ. A violation of Minn. Stat. § 504B.365, subd. 1(a), providing 24 hours for the defendant to remove personal property applies to the officer executing the writ of recovery and not the landlord. *Pahnke v. Anderson Moving and Storage*, No. A09-1738, 2010 WL 3853349 at *8 (Minn. Ct. App. Oct. 5, 2010) (unpublished), *rev. den.* (Minn. Dec. 22, 2010).

1a. Priority writs

In cases where the landlord prevails on claims of violations of the illegal drug covenant, or that the tenant caused a nuisance or seriously endangered the safety of other residents, their property, or the landlord's property, execution of the Writ of Restitution must receive priority. § 504B.365 (formerly § 566.17), amended by 1994 Minn. Laws Ch. 503, § 9. *See Andersen v.*_____, No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786) (landlord was not credible where his attorney repeatedly used leading questions; landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* oral notice did not terminate month-to-month lease;

possible future violation does not support present claim for breach of lease; priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action).

1b. 30-day Deadline for Enforcing the Writ?

The landlord might only have 30 days to enforce the writ. *DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (noted that housing court would not reissue writ of recovery which has not been executed within 30 days of original issuance).

The 30-day stems from the form that used to be part of Minn. Stat. § 504B.361. The Minnesota Legislature removed the form from the statute in 2007. Minn. Laws 2007, Chapter 54, Art. 5, §12. Several law enforcement websites require the plaintiff to secure enforcement of the writ in 30 days.
https://www.anokacounty.us/608/Unlawful-Detainer-Evictions
http://www.co.cass.mn.us/services/law_enforcement_and_corrections/civil_process.php#evictions
https://www.co.dakota.mn.us/HomeProperty/Evictions/Pages/default.aspx
https://www.ramseycounty.us/your-government/leadership/sheriffs-office/sheriffs-office-divisions/court-security-services/civil-process-services/evictions-writ-recovery
https://www.scottcountymn.gov/1538/Writ-of-Recovery-Evictions
https://co.stearns.mn.us/LawPublicSafety/SheriffServices/CivilProcess/EvictionAction

2. Removal of the defendant and property

If the defendant does not comply with the demand, the landlord will have to arrange for the sheriff or police to return to the premises and remove the defendant, defendant's family, and their personal property. The landlord may not remove the tenant. *Veard-Brooklyn Center v. _____*, No. HC 1000512508 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2000) (Appendix 590a) (landlord illegally changed locks following posting of writ; tenant awarded treble the value of lost or damaged property and $500 in attorney's fees).

a0. *Notice to defendant*

The plaintiff must send written notice to the defendant of the date and approximate time when the sheriff or police is scheduled to execute the writ. The notice must inform the defendants that they and their property will be removed if they do not vacate by the date and time stated in the notice. The notice must be mailed as soon as the plaintiff knows of the date and time for execution. The plaintiff also must attempt in good faith to notify the defendant by telephone. Minn. Stat. § 504B.365, Subd. 3(g).

Because this requirement is contained in Subdivision 3(g) of the statute, it applies to writ executions regardless of whether the plaintiff intends to store property off-site under Subdivision 3(a)-(c) or on-site under Subdivision 3(d)-(f).

a. *Storage of property off of the premises*

There are only two alternatives for removing and storing the tenant's property, under Minn. Stat. § 504B.365 (formerly § 566.17). *See Gardner v. Lambert*, No. A08-0828, 2009 WL 1311664, at *2 (Minn. Ct.

App. May 12, 2009) (unpublished) ("the two options set out in section 504B.365 are the exclusive remedies available to the [contract for deed] vendor who chooses to proceed with an eviction action under chapter 504B."). Because "section 504B.365 specifically governs the removal and storage of personal property after eviction, precisely the circumstances here, section 345.75 [governing abandoned tangible personal property that is not subject to any other provision of statute] does not apply." *Id.* at *3.

When property is to be stored in a place other than the premises, the sheriff or police shall remove the property at the plaintiff's expense. Often the sheriff or police will require the plaintiff to use a bonded moving company. The plaintiff shall have a lien upon the personal property only for the reasonable costs and expenses incurred from removing and storing the property. The plaintiff may retain possession of the personal property until payment. If the defendant does not pay such costs and expenses within sixty (60) days after execution of the writ, the plaintiff may enforce the lien by holding a sale under Minn. Stat. §§ 514.18-514.22. Minn. Stat. § 504B.365 (formerly § 566.17). *See Alexander v. Daimlerchrysler Services North America, LLC,* No. A03-351, 2003 WL 22183564 (Minn. Ct. App. Sep. 23, 2003) (unpublished) (affirmed conclusion that plaintiff properly sold defendant's remaining property); *Lang v. Terpstra*, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (Appendix 70) (notice of sale under Section 504.24 (now § 504B.271) did not amount to election of remedies precluding storage company from enforcing lien under Section 514.18 *et seq*, but notice did not comply with section 514.21 requirement of publication).

b. *Storage of property on the premises*

(1) Inventory

After the sheriff or police enters the premises, the plaintiff may remove the property. In the officer's presence, the plaintiff must prepare, sign and date an inventory, which includes a listing of the items of personal property and description of their condition; the date, signature of the plaintiff or plaintiff's agent, and the name and telephone number of the person authorized to release the property; and the name and badge number of the officer. The officer shall retain a copy of the inventory. The plaintiff must mail a copy of the inventory to an address provided by the defendant, or to the defendant's last known address.

In *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. December 7, 2015) (unpublished), following cancellation of a contract for deed and the ensuing eviction, the vendor allowed the vendees access to the premises to remove belongings for 60 days, after which the vendor denied access. The vendor never completed a written inventory of the property. The vendees sued for $3,000,000 in damages and $250,000 in punitive damages. The district court granted partial summary judgment to the vendor, concluding that the vendees presented no evidence of the value of the personal property, and awarded $500 to the vendees under Minn. Stat. § 504B.231 as an unlawful ouster for failing to prepare the inventory.

The Court of Appeals affirmed the partial summary judgment and award, noting:

A landlord who removes a tenant's property in violation of section 504B.365 is guilty of an unlawful ouster under section 504B.231. Minn. Stat. § 504B.365, subd. 5. Because the SABC did not complete an inventory of

the Follises' property required by section 504B.365, subdivision 3(d), the SABC violated section 504B.365 and was therefore guilty of an unlawful ouster under section 504B.231.

*Id.* at *4.

In *Gardner v. Lambert*, No. A08-0828, 2009 WL 1311664, at *2 (Minn. Ct. App. May 12, 2009) (unpublished), the court concluded that in a post contract for deed cancellation eviction action, because "there is no evidence in the record that respondents prepared the required inventory, nor do respondents argue that they did so, we conclude that the district court's order did not comply with the provisions of the exclusive remedy provided by statute." The court remanded "for a hearing to determine the reasonable value, as of March 1, 2008, of those items of appellants personal property that (1) were left on the premises and (2) appellants have been unable to recover by the exercise of reasonable diligence. *Id.* at *3.

(2) Removal and storage

The plaintiff is responsible for proper removal, storage and care of the property, and is liable for damages for loss of or injury to the property caused by a failure to exercise care as a reasonably careful person would exercise under the circumstances. Minn. Stat. § 504B.365, Subd. 3(f).

(3) Defendant access to personal property

If the landlord fails to allow the tenant to take possession of the property within 24 hours of the tenant's written demand, exclusive of weekends and holidays, the landlord is liable for punitive damages of the greater of double damages or $1,000 in addition to actual damages and reasonable attorney's fees. The statute states four factors for the court to consider in determining the amount of punitive damages - the nature and value of the property, the effect of deprivation of the property on the tenant, and whether the landlord or landlord's agent unlawfully took possession of the property or acted in bad faith in not allowing the tenant to retake possession. § 504B.271 (formerly § 504.24).

(4) Sale or disposal

Minn. Stat. § 504B.271 (formerly § 504.24), Subd. 1(b) provides that "The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last."

(5) Plaintiff claims v. liens

The landlord has only a claim, and not a lien, for the reasonable removal and storage costs. *Conseco Loan Finance Co. v. Boswell*, 687 N.W.2d 646, (Minn. Ct. App. 2004) (manufactured home park lot owner who stored tenant's manufactured home on the premises retained only a claim for storage costs, and not a lien); *City View v. Brooks*, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property).

(6) Notice of sale

The landlord "shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail." Minn. Stat. § 504B.271, Subd. 1(d) (formerly § 504.24).

(7) Sale proceeds

"The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand. Minn. Stat. § 504B.271, Subd. 1(c) (formerly § 504.24). The cross-reference is to the security deposit statute provisions on landlord claims, including "amounts reasonably necessary: (1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or (2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted." Minn. Stat. § 504B.178, Subd. 3(b) (formerly § 504.20).

In *Pentel v. Bakewell*, No. CX-95-1595, 1996 WL 45168 (Minn. Ct. App. Feb. 6, 1996) (Appendix 356), the prevailing unlawful detainer plaintiff executed the writ on October 15, sent notice of sale of the tenants' property on December 4, and sold the tenants' property on December 21. The tenants sent a notice to recover the property on December 26. The court affirmed the district court's conclusions that the plaintiff complied with the statute, noting that the statute allows the landlord to sell the property if it reasonably appears that the tenant abandoned the premises, and the tenants' notice came after the sale.

One court has held that the following a landlord's victory in an unlawful detainer action, not only can the tenant be removed from the property, but that the landlord can be paid costs from the seizure and sale of the tenant's property. In *Fradette v. Mettner*, No. C4-00-56 (Minn. Dist. Ct. 9th Dist. Jan. 26 and Mar. 14, 2000) (Appendix 389), the court based its conclusion on the language of the form writ in Minn. Stat. § 504B.361 (formerly § 566.16), which provides for removal of the defendant from the premises, plaintiff recovery of the premises, and payment of costs to the plaintiff from personal property seized and sold. The court rejected the argument that the more specific language regarding treatment of personal property seized in Minn. Stat. § 504B.365 (formerly § 566.17) required storage of the property with tenant rights to recover the property prior to sale. The court essentially reasoned that the landlord could seize and sell property to recover costs, with remaining property to be held under § 504B.365. However, the court noted that the tenant should be able to raise exemptions from seizure under Minn. Stat. § 550.37.

Tenants facing arguments such as those made by the court should restate the arguments made by the tenant. Section 504B.365 is very specific in the treatment of personal property held in conjunction with execution of the writ. A proper reading of § 504B.365 and § 504B.361 is that once the time period for holding the property has expired and the landlord is entitled to sell it under § 504B.365, only then can the landlord be paid for costs from the sale proceeds under § 504B.361. However, tenants should be advised of the risk that

some courts may allow the landlord to sell personal property left on the premises to satisfy a judgment for costs, notwithstanding the protections of § 504B.365.

c. *Property motions and claims*

Minn. Stat. § 504B.365 (formerly § 566.17) authorizes the housing courts in the Fourth and Second Districts (Hennepin and Ramsey Counties) or retain jurisdiction in eviction (unlawful detainer) actions to decide disputes concerning removal of property following execution of the writ of restitution.

Property motions in evictions are not common, so judges and referees have to be educated in case on their authority. There is no time limit for the motion, and the eviction court must hear the motion. "The court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property under this section." Minn. Stat. § 504B.365, Subd. 4.

The statute also specifically authorizes an award of expenses, punitive damages, and attorney's fees if the landlord refuses to return a tenant's properties after a proper demand under § 504B.271 (formerly § 504.24). For forms for motions regarding property disposition, *see* Housing Law in Minnesota http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

In *Hagle v. The Bank of New York Mellon,* No. A14-0473, 2015 WL 648300 (Minn. Ct. App. Feb. 17, 2015) (unpublished), the defendant foreclosed on the plaintiffs' mortgage and won the eviction action, afterward the plaintiffs filed this action for damages. The district court dismissed some of plaintiffs' claims and entered summary judgment against the plaintiffs on the remaining claims. The Court of Appeals held in part that the district court erred by dismissing the plaintiffs' claim regarding personal property held on the premises following the eviction action, as res judicata did not bar the claim where the court in the eviction action expressly declined to consider the personal property claims.

In *Carlson v. Masters,* No. A14-0714, 2015 WL 404619 (Minn. App. February 2, 2015), Masters was evicted, and his personal property was removed from the premises and stored elsewhere by the landlord as allowed by Minn. Stat. § 504B.365. Masters later filed a motion alleging that he was prevented from retrieving his personal property, and the district court ordered the landlord to immediately return the property and ordered that Masters had until a date certain to fully remove the property or it would be considered abandoned. After that date certain, Masters requested a telephone conference asserting continued inability to access his personal property, and in response, without the landlord being represented or heard on that issue, the district court found that the landlord had acted in bad faith and awarded punitive damages in an amount to be determined at a subsequent hearing. At the hearing, the landlord asked the district court to reconsider the earlier order and presented evidence showing the landlord's attempts to return the property. The district court then found that both parties were responsible for the problems at issue, and that Masters was entitled to return of his property, but not to punitive damages or attorney's fees. Masters appealed, and the Court of Appeals affirmed, stating that the District court has the power to reconsider its previous orders before entry of a final judgment on all claims in the case, and that the findings were supported by the record.

In *Odash v. _____*, No. 24-CV-HC-12-3214 (Minn. Dist. Ct. 4th Dist. Feb. 26, 2013) (Appendix 718) (Judge Meyer), the landlord brought an action against the tenant for unlawful detainer. The parties ultimately reached a settlement, which stated that the tenant would pay the landlord $2,500 on or before July 7, 2012 and vacate the premises on or before that date. The settlement noted that the landlord believed the tenant owed her more than $2,500 in past due rent, late fees, and court costs, but that such claims would need to be pursued separately in conciliation court. The settlement also allowed for a writ of discovery to issue if tenant broke the terms of the agreement. The tenant vacated the premises on the designated date, but a dispute arose regarding items that belong to tenant that remained at landlord's property, specifically a snow plow that remained in landlord's garage. The tenant applied for an in frorma pauper fee waiver, but the housing court referee denied the application, finding that the action was frivolous because a writ of discovery has not issued, and therefore Minn. Stat. § 504B.365 was inapplicable. The district court reversed the decision, holding that there is no requirement for a writ of execution to issue before the issue of storage and disposal requests are triggered in Section 504B.271. The court reversed the denial of the IFP application, reasoning that holding that a writ must be executed to trigger Section 504B.365 would discourage settlements in housing court and force additional writs to be issued and executed. The district court further noted that Section 504B.365, Subd. 4 does not appear to require a writ of execution to have issued for the housing court to retain jurisdiction over stored property; it only requires an eviction action to have been heard.

In *Lang v. Terpstra*, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (Appendix 70), the court entertained motion concerning disposition of property, granted motion to add storage company as a necessary party under Minn. R. Civ. P. 19, and enjoined sale of property until landlord gave proper notice under section 514.21. *See also City View v. Brooks*, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property; hearing scheduled on tenant's damages claim).

Unless the premises have been abandoned, a plaintiff or plaintiff's agent who enters the premises and removes the defendant's property in violation of the statute is guilty of a misdemeanor for wrongful ouster and is liable to the tenant up to treble damages or $500, which ever is greater, and reasonable attorney's fees. The provisions of the statute may not be waived. Minn. Stat. § 504B.365 (formerly § 566.17).

Where the tenant was wrongfully evicted, the landlord must bear the expenses of removal, storage and return of the tenant's personal property. *See Kowalenko v. Haines*, No. C6-85-1365, Order at 2 (Minn. Ct. App. July 23, 1985) (Appendix 4); *Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct. July 25, 1977) (Appendix 3).

Since this process can be expensive for both parties, the parties should consider negotiating for a mutually agreeable date for the tenant's departure. However, it is possible that the sheriff or police would not follow such an agreement, if the plaintiff delivers the writ to the sheriff or police and requests execution. The defendant should file such a written agreement with the clerk of court and the sheriff or police. The defendant should regularly verify the plaintiff's compliance with such an agreement by calling the clerk of court and the sheriff or police, respectively, to find out whether the plaintiff has obtained the writ and arranged for execution.

3. Illegal Lockouts

Unless the premises have been abandoned, a plaintiff or plaintiff's agent who enters the premises without the sheriff and lockouts out the defendant and removes defendant's property in violation of the statute is guilty of a misdemeanor for wrongful ouster and is liable to the tenant up to treble damages or $500, which ever is greater, and reasonable attorney's fees. The provisions of the statute may not be waived. Minn. Stat. § 504B.365 (formerly § 566.17).

A lockout also constitutes a misdemeanor under Minn. Stat. §§ 504B.225 (formerly § 504.25), 609.606. The tenant can call the police, although police responses to lockouts vary considerably.

In *Bass v. Equity Residential Holdings*, LLC., 849 N.W.2d 87 (Minn. Ct. App. 2014), the landlord won an eviction action for nonpayment of rent, but rather than obtain and execute a writ of recovery, the landlord locked out the tenant and put her personal property in a dumpster. The tenant filed a lockout action. The landlord did not appear at the hearing and while the landlord's attorney called the court to say he also could not attend, the court proceeded with the case since there was no certificate of representation filed. The housing court referee determined that landlord had defaulted, the tenant had been wrongfully locked out and had not abandoned the premises, the landlord acted in bad faith, and the tenant suffered damages. Both parties attended another hearing on damages, and after taking testimony, the referee awarded treble damages of $9,386.97 under Minn. Stat. § 504B.231 and$1,000 as punitive damages under Minn. Stat. § 504B.271, for a total of $10,386.97 to be paid within 60 days following the order. The landlord sought judge review, which affirmed the order. *Id.* at 89-90.

The Court of Appeals affirmed the district court, holding that housing court division of district court had jurisdiction to award damages; evidence was sufficient to support findings re-garding value of the tenant's destroyed property; the tenant was not required to mitigate damages by diving into dumpsters to retrieve water-damaged possessions; damages for belongings destroyed in rain-soaked dumpster were a direct consequence of ouster and thus were recoverable; evidence was sufficient to support finding that the landlord acted in bad faith; and the tenant could recover both treble damages and punitive damages under the two statutes. *Id.* at 90-93.

The defendant has several options to confront the illegal lockout: (1) file a lockout action, *see* discussion, *infra*, at XII.B.1; file a motion for illegal disposition of personal property, *see* discussion, *supra*, at VIII.C.2.c; or (3) file a motion to vacate the judgment and quash the writ, *see* discussion, *infra*, at VIII.E.2.

4. Contemp for failing to vacate

In *State of Minnesota v. Mehrallian,* No. A14–0032, 2014 WL 7011168 (Minn. Ct. App. Dec. 15, 2014) (unpublished), a harassment restraining order ("HRO") was entered against the defendant, ordering him to stay away from his estranged wife and her home, which they previously shared. The HRO was later amended to allow defendant to be present at the home "unless [she] was on the property, in which case he shall leave." Later, the dissolution decree awarded the marital home to defendant's former wife, but allowed

defendant exclusive use and occupancy of the home through the school year, ordering him to vacate no later than July 31, 2013.

After he failed to vacate, defendant's former wife filed an eviction action and court issued a writ of recovery for defendant to vacate the property by August 21. When the former wife heard that defendant was removing her property on August 22, she called the police. She did not serve defendant with the writ of recovery or have the sheriff enforce it.

The state filed a complaint charging defendant with violating the HRO and two counts of contempt of court based on his continued occupation of the home on August 22, 2013. A jury found him guilty of contempt for violating the eviction order, and defendant appealed from his sentence, arguing that neither the divorce decree nor the eviction order "specifically" nullified the amended HRO.

The Court of Appeals affirmed, stating that defendant (1) failed to argue the eviction order was invalid and a collateral attack on the eviction order in the criminal case was improper; (2) the eviction order did not necessarily conflict with the amended HRO where one required he vacate and no longer occupy the home as a resident, the latter allowed him to be present as a visitor unless his estranged wife was there; and (3) despite any alleged confusion, the evidence was sufficient to allow the jury to infer that defendant willfully disobeyed the eviction order.

Finally, the Court held that defendant was required to comply with the eviction order without regard for whether the sheriff executed the writ of recovery.

In his pro se supplemental brief, Mehralian appears to argue that, despite the eviction order, he was not prohibited from occupying the home on August 22, 2013, because he had not been served with a writ of recovery. The district court addressed this issue with Mehralian at his sentencing hearing; the district court explained that a writ of recovery is issued to the county sheriff, not to the person to be evicted, and is merely a means by which the person entitled to possession may enforce an eviction order. The district court is correct. Mehralian was required by law to comply with the terms of the eviction order without regard for whether the sheriff executed the writ of recovery. *See* Minn. Stat. § 504B.365, subd. 1(a); *Smith v. Park*, 31 Minn. 70, 73, 16 N.W. 490, 492 (1883). Mehralian could have forestalled the eviction and lawfully remained in possession only if he had properly appealed from the eviction judgment and posted a supersedeas bond to cover the costs of an appeal. *See* Minn. Stat. § 504B.371, subds. 1–5. (2012); *Makela v. Peters*, 425 N.W.2d 605, 605–06 (Minn.App.1988). But Mehralian did not properly lodge an appeal with this court and did not post a supersedeas bond. No. A13–1578 (Minn.App. Aug. 29, 2013) (order). Thus, his contention is without merit.

*Id.* at *4.

D. Waiver of the writ or the right to restitution

If the landlord accepts payment of rent and/or rent arrearages after receiving judgment for restitution of the premises, the landlord may waive the right to execute the writ. By accepting payment of arrearages, the landlord is allowing the tenant to redeem. While the tenant's right of redemption is

limited, *see* discussion, *supra* at VI.E.20, the landlord can agree to redemption beyond such limitations. By accepting rent as it becomes due, the landlord is (1) Waiving the notices to evict, including the complaint and the writ of restitution. *Central Brooklyn Urban Dev. Corp. v. Copeland*, 122 Misc. 2d 726, 729-30, 471 N.Y.S.2d 989, 993 (Civ. Ct., Kings Cty., 1984) (government subsidized housing: payment of government subsidy after issuance of writ waives the writ); discussion, *supra* at VI.F.4 (waiver of notice), or (2) Waiving alleged breaches which served as the basis for the action, *see* discussion, *supra* at VI.G.4 (waiver of breach).

In *Connelly v. Lewis*, No. C8-96-426 (Minn. Dist. Ct. 9th Dist. Aug. 21, 1996) (Appendix 240), the landlord filed an unlawful detainer action for non-payment of rent for May, and obtained a default judgment. The tenants paid rent to the landlord for May, June and July. In August, the landlord sought and obtained a writ of restitution. On the tenant's motion, the court first ordered an emergency stay of enforcement of the writ of restitution, and later vacated the writ and dismissed the case, based on the tenant's argument that the landlord waived the right to restitution by accepting rent for the month in question and for later months, and that the rent transactions created a new tenancy between the parties.

*See Real Assets LLC v.* _____, No. 27-CV-HC- 13-37 (Minn. Dist. Ct. 4th Dist. June 25, 2013) (Appendix 754) (motion to vacate judgment granted where landlord accepted rent after court issued writ of recovery); *Jarvi v.* _____, No. 27-CV-HC-13-1010 (Minn. Dist. Ct. 4th Dist. April 1, 2013) (Appendix 755) (motion to vacate judgment granted where landlord and tenant settled for payment plan with court approval, tenant did not comply but landlord and tenant negotiated new plan without court approval and tenant made substantial payments, and landlord obtained and enforced writ for violation of new plan); *Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Jan. 6, Jan. 15, and Mar. 14, 1997) (Appendix 257) (Writ stayed where landlord failed to execute stipulated reference, told tenants they could stay longer, and accepted rent beyond the move out date; landlord ordered to execute reference letter and tenant given extra month to move; damages and move out date settled).

The defendant should file a written agreement, receipt of payment, or copy of the check with the clerk of court and the sheriff or police, and notify the clerk and sheriff or police of the defendant's opinion on the effect of receipt of payment.

The part payment of rent statute, Minn. Stat. § 504B.291, subd. 1 (c) states "(c) Prior to or after commencement of an action to recover possession for nonpayment of rent, the parties may agree only in writing that partial payment of rent in arrears which is accepted by the landlord prior to issuance of the order granting restitution of the premises pursuant to section 504B.345 may be applied to the balance due and does not waive the landlord's action to recover possession of the premises for nonpayment of rent." A partial payment of rent received in violation of the statute after issuance of the writ should waiver the writ. *See* discussion, *supra*, at VI.E.13.

## 504B.361 FORMS OF SUMMONS AND WRIT.

Subdivision 1. **Summons and writ.** The state court administrator shall develop a uniform form for the summons and writ of recovery of premises and order to vacate.

Subd. 2. **Priority writ.** The court shall identify a writ of recovery of premises and order to vacate property that is issued pursuant to an eviction action under section 504B.171, or on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property and clearly note on the order to vacate that it is a priority order. Notice that it is a priority order must be made in a manner that is obvious to an officer who must execute the order under section 504B.365.

**History:** *1999 c 199 art 1 s 52; 2005 c 10 art 2 s 4; 2007 c 54 art 5 s 12*

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1.10

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
_____ DIVISION: _____
CASE TYPE: UNLAWFUL DETAINER (EVICTION)

_____,
Plaintiff (Landlord),

v.

_____,
Defendant (Tenant).

NOTICE OF MOTION AND MOTION TO VACATE DEFAULT JUDGMENT AND QUASH WRIT

LASM Form No. V-1 (May 2000)

Case No. _____

## NOTICE OF MOTION

TO: _____

PLEASE TAKE NOTICE that at _____ a.m./p.m. on _____, the Defendant will bring the following motion on for hearing before the Honorable _____, Referee or Judge of District Court, at the following location: _____.

## MOTION

_____, being duly sworn, moves the Court as follows:

1. Since _____, Defendant has been a residential tenant at _____ ("the premises") under ☐ written ☐ oral rental agreement with _____, providing for rental of $_____ per month.

2. Plaintiff is the _____ of the premises. Plaintiff's address is _____.

3. Plaintiff commenced this action alleging that _____

_____

_____.

4. On _____, a hearing was held before the Honorable _____. The court found that _____

_____

_____.

5. The court ordered that the Writ of Recovery of the premises and order to vacate be stayed until _____.

6. On _____, the Clerk of Court issued the Writ and entered judgement for Plaintiff.

7. Defendant was informed of the issuance of the Writ when _____

_____.

**Grounds for Relief**

9. Defendant has grounds for relief from judgment under MINN. R. CIV. P. 60.02.

10. Defendant has a reasonable defense on the merits in that _____

_____

_____.

11. Defendant has a reasonable excuse for not attending the hearing in that _____

_____

_____.

12. Defendant exercised due diligence after notice of entry of judgment in that _____

_____

_____.

13. Plaintiff will not be prejudiced by granting this motion in that _____

_____

_____.

14. Defendant has taken the following action to notify Plaintiff of Defendant's intent to bring this motion: _____

_____.

15. ☐ Plaintiff's actions constitute consumer fraud and deceptive trade practices, in violation of MINN. STAT. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).

**Defendant Requests an Order as Follows:**

1. Quashing the Writ and vacating judgment on the following grounds:

   a. ☐ Mistake, inadvertence, surprise, or excusable neglect. MINN. R. CIV. P. 60.02(a).

   b. ☐ Fraud, misrepresentation or other misconduct by Plaintiff or Plaintiff's agents. MINN. R. CIV. P. 60.02(c).

   c. ☐ The judgment is void. MINN. R. CIV. P. 60.02(d).

   d. ☐ The judgment has been satisfied, released or discharged. MINN. R. CIV. P. 60.02(5).

   e. ☐ Relief is justified because _____ _____ _____MINN. R. CIV. P. 60.02(6-).

2. Directing the _____ County Sheriff's Department not to take any action to enforce the Writ, to cease from enforcing the Writ if it already has begun to enforce the Writ, and to take all measures necessary to immediately restore possession of the premises to Defendant.

3. Directing Plaintiff to immediately restore possession of the premises to Defendant, and to cease efforts to enforce the Writ.

4. ☐ Enjoining Plaintiff from committing consumer fraud and deceptive trade practices, in violation of MINN. STAT. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).

5. Awarding Defendant costs, disbursements, and reasonable attorney's fees pursuant to:

a. ☐ The Prevention of Consumer Fraud Act, MINN. STAT. §§ 325F.68-325.70, and 8.31.

b. ☐ The Uniform Deceptive Trade Practice Act, MINN. STAT. §§ 325D.43-325D.48.

6. ☐ Other: _____

_____.

7. Granting Defendant such other and further relief as may be just and equitable in the circumstances.

8. I certify that, to the best of my knowledge:

- this document is not being filed for an improper reason, such as harassment or delay;
- my claims are supported by the law; and
- there is evidence for my claims and/or my denials.

I know that I may be fined or sanctioned by the court if this certification is false.

_____ _____

Date

Subscribed and sworn to before me on _____

_____

Notary Public

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
_____ DIVISION: _____
CASE TYPE: UNLAWFUL DETAINER
(EVICTION)

---

_____

_____,
Plaintiff (Landlord),

v.

_____

_____,
Defendant (Tenant).

**NOTICE OF MOTION AND MOTION TO VACATE JUDGMENT AND QUASH WRIT WHERE DEFENDANT COMPLIED WITH COURT'S ORDER**

LASM Form No. V-3 (May 2000)

**Case No.** _____

---

## NOTICE OF MOTION

TO: _____

PLEASE TAKE NOTICE that at _____ a.m./p.m. on _____, the Defendant will bring the following motion on for hearing before the Honorable _____, Referee or Judge of District Court, at the following location: _____

_____

_____

## MOTION

_____, being duly sworn, moves the Court as follows:

1. Since _____, Defendant has been a residential tenant at _____ ("the premises") under ☐ written ☐ oral rental agreement with _____, providing for rental of $_____ per month.

2. Plaintiff is the _____ of the premises. Plaintiff's address is _____.

3. Plaintiff commenced this action alleging that _____

_____

_____.

4. Defendant answered the complaint by alleging that _____

_____

_____

4. On _____, a hearing was held before the Honorable

_____.

5. ☐ The parties reached the following settlement _____

_____

_____.

6. The court found that _____

_____

_____.

7. The court ordered that the Writ of Recovery of the premises and order to vacate be stayed until _____, to allow Defendant to _____

_____

_____.

8. The court further ordered that if Defendant did not take such action, the Writ shall issue.

9. Defendant took the following action to comply with the Court's Order: _____

_____

_____.

10. On _____, the Clerk of Court issued the Writ and entered judgement for Plaintiff.

11. Defendant was informed of the issuance of the Writ when _____

_____.

**Grounds for Relief**

12. Defendant has grounds for relief from judgment under MINN. R. CIV. P. 60.02.

13. ☐ Defendant has a reasonable defense on the merits in that Defendant complied with the Court's Order by _____

_____

_____

_____.

14. ☐ Defendant has a reasonable excuse for not complying with the Court's Order in that _____

_____

_____.

15. ☐ Plaintiff engaged in misconduct in_____

_____

_____.

16. ☐ Defendant was a victim of accident or surprise which could not have been prevented by ordinary prudence in that _____

_____

_____.

17. Defendant exercised due diligence after notice of entry of judgment in that _____

_____

_____

18. Plaintiff will not be prejudiced by granting this motion in that _____

_____

_____

19. Defendant has taken the following action to notify Plaintiff of Defendant's intent to bring this motion: _____

_____.

20. ☐ Plaintiff's actions constitute consumer fraud and deceptive trade practices, in violation of MINN. STAT. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).

**Defendant Requests an Order as Follows:**

1. Quashing the Writ and vacating judgment on the following grounds:

   a. ☐ Mistake, inadvertence, surprise, or excusable neglect. MINN. R. CIV. P. 60.02(a).

   b. ☐ Fraud, misrepresentation or other misconduct by Plaintiff or Plaintiff's agents. MINN. R. CIV. P. 60.02(c).

   c. ☐ The judgment is void. MINN. R. CIV. P. 60.02(d).

   d. ☐ The judgment has been satisfied, released or discharged. MINN. R. CIV. P. 60.02(5).

   e. ☐ Relief is justified because _____ _____ _____ MINN. R. CIV. P. 60.02(6).

2. Directing the _____ County Sheriff's Department not to take any action to enforce the Writ, to cease from enforcing the Writ if it already has begun to enforce the Writ, and to take all measures necessary to immediately restore possession of the premises to Defendant.

3. Directing Plaintiff to immediately restore possession of the premises to Defendant, and to cease efforts to enforce the Writ.

4. ☐ Enjoining Plaintiff from committing consumer fraud and deceptive trade practices, in violation of MINN. STAT. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).

5. Awarding Defendant costs, disbursements, and reasonable attorney's fees pursuant to:

a. ☐ The Prevention of Consumer Fraud Act, MINN. STAT. §§ 325F.68-325.70, and 8.31.

b. ☐ The Uniform Deceptive Trade Practice Act, MINN. STAT. §§ 325D.43-325D.48.

6. ☐ Other: _____

_____

7. Granting Defendant such other and further relief as may be just and equitable in the circumstances.

8. I certify that, to the best of my knowledge:

- this document is not being filed for an improper reason, such as harassment or delay;
- my claims are supported by the law; and
- there is evidence for my claims and/or my denials.

I know that I may be fined or sanctioned by the court if this certification is false.

_____ _____

Date

Subscribed and sworn to before me on _____

_____

Notary Public

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
_____ DIVISION: _____
CASE TYPE: UNLAWFUL DETAINER (EVICTION)

---

_____

_____,
Plaintiff (Landlord),

v.

_____

_____,
Defendant (Tenant).

**ORDER TEMPORARILY ENJOINING ENFORCEMENT OF JUDGMENT AND WRIT**

LASM Form No. V-4 (May 2000)

Case No. _____

---

This matter came before this Court on the ___ day of _____, upon Defendant's motion for relief from judgment under MINN. R. CIV. P. 60.02. Defendant was represented by _____. Plaintiff ☐ did ☐ did not appear, and was represented by _____.

Having heard the argument of the parties, and having reviewed the file, this Court orders as follows:

1. Execution of the Writ of Restitution is stayed and Judgment is vacated until this Court issues a decision on Defendant's Motion for an Order quashing the Writ and vacating judgment.

2. The _____ County Sheriff's Department shall not take any action to enforce the Writ, shall cease from enforcing the Writ if it has already begun to enforce the Writ, and shall take all measures necessary to immediately restore possession of the premises to Defendant.

3. Plaintiff shall immediately restore possession of the premises to Defendant and cease efforts to enforce the Writ.

4. This matter is continued for hearing on the following date and time, _____ _____, and at the following location, _____ _____ _____.

5. Defendant shall serve a copy of this Order and Defendant's motion on all parties to the case under Minnesota Rules of Civil Procedure 5 by _____.

6. Defendant shall file affidavits of service with the District Court Administrator by _ _____. Failure to file these documents in a timely manner may be cause to strike the hearing.

Recommended By:

_____ _____
Date Housing Court Referee

_____ _____
Date Judge of District Court

# Expungement

From Larry McDonald, Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020. Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm on July 31, 2020.

5. Motion to Seal or Expunge Court Records

a. *At common law,* VIII.E.5.a

(1) Action should not have been filed, VIII.E.5.a.(1)
(2) Defendant not at fault, VIII.E.5.a.(2)
(3) Unique circumstances outside the defendant's control, VIII.E.5.a.(3)

a1. *Timing of expungement motion,* VIII.E.5.a1

b. *Expungement statute,* VIII.E.5.b

(1) Plaintiff's default, VIII.E.5.b.(1)
(2) Service defenses, VIII.E.5.b.(2)
(3) Precondition defenses, VIII.E.5.b.(3)
(4) Rent defenses, VIII.E.5.b.(4)
(5) Notice defenses, VIII.E.5.b.(5)
(6) Breach defenses, VIII.E.5.b.(6)
(7) Stipulation, VIII.E.5.b.(7)
(8) Mortgage foreclosures and cancelled contract for deeds, VIII.E.5.b.(8)

c. *Judge review of referee denial of expungement,* VIII.E.5.c

In some circumstances, the court may considering sealing or expunging the eviction (unlawful detainer) court records. The benefit for the tenant is keeping court records out of the reach of tenant screening agencies, since many landlords will not rent to rents who have even one case on their record, regardless of the outcome. *See* Affidavit of Sharlyn LaPlace, *Lumpkin v. Lewis*, No. 96-10295 (Minn. Dist. Ct. 4th Dist. July 12, 1996) (Appendix 184).

a00. *Expungement distinguished with amending caption*

Expungement of the eviction court file eliminates the electronic record of the action on the court's website, and leads to elimination of the records held by private tenant screening agencies that are sold to

landlords. Amending the caption does remove the party's name from the court's website, but does not necessarily lead to elimination of the records held by private tenant screening agencies.

In *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the landlord filed eviction action against tenants alleging nonpayment of rent. The tenant filed an answer denying the rent allegations and raising an affirmative defense of breach of statutory covenants of habitability because of multiple windows missing windowpanes, the second floor entrance being unusable due to repair issues, leaks and plumbing issues (such that tenants had to use a plastic tub to wash dishes) and lead hazards at the premises in need of abatement. The tenant presented evidence that her one-year-old child was diagnosed with an elevated blood lead level. The court noted that the landlord's CEO enrolled in a lead safe work course but stated that no work had been done to correct the issues and that merely signing up to participate is not the same as actually abating a significant lead hazard. The court noted that the landlord was placed on notice and held that it failed to maintain the premises in compliance with the applicable health and safety laws of the state. For those reasons, the court concluded that the condition of the premises violated the statutory covenants of habitability. The court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. The court ordered tenants to remain in possession of the premises and found that tenants were the prevailing party and were, as such, entitled to statutory costs but no attorney's fees were awarded because the lease did not provide for attorney's fees. As for the tenants' expungement request, the court reserved tenants' motion stating the court will need to monitor this case regarding the reinstatement of rent but the court decided to amend the title of the case to remove tenants' names.

In *Equity Residential Holdings LLC v. Doe,* No. 27-CV-HC-15-5665 (Minn. Dist. Ct. 4th Dist. June 30, 2016) (Appendix 738), the tenant defendant requested to have her name removed from the caption of the case (but did not ask for expungement). Court granted the motion allowing the case caption to be amended, noting the importance of the remedy given the prevalence of tenant screen reports.

In *Sumpter v.* _____, No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690), the court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption.

a0. *Expungement motion forms*

The court's expungement motion form does not include common law expungement. http://mncourts.gov/GetForms.aspx?c=23&p=83

The old Minnesota Housing Clinic website, a companion to the Poverty Law website, contains motion forms that include all of the bases for expungement, including common law, for the Fourth District in Hennepin County and the rest of the state, as well as other expungement forms. http://minnhousingclinic.homestead.com/expungementforms.html

The Poverty Law website contains slides shows on expungement and hypothetical cases. http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

a. *At common law under inherent authority*

Until the passage of an expungement statute, the issue was one of common law, based on the court's inherent power to control court functions. Since expungement was unusual in civil cases, tenants reserves this issue for special cases, such as when the tenant has not unlawful detainer cases on record and the landlord's cases is frivolous or retaliatory. *Player v. _____*, UD-1960306541 (Minn. Dist. Ct. 4th Dist. Apr. 3 & May 2, 1996) (Appendix 192) (in Emergency Tenant's Remedies and Lock-out Action, at compliance hearing, court ordered that the dismissed companion unlawful detainer action records be sealed). *See generally State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); *State v. Schultz*, 676 N.W.2d 337 (Minn. Ct. App. 2004), *State v. T.M.B.*, 590 N.W.2d 809 (Minn. Ct. App. 1999) (courts may exercise their inherent authority to issue expungement orders affecting court records; judiciary may not order expungement of criminal records maintained by executive branch agencies absent evidence of an injustice resulting from an abuse of discretion in the performance of an executive function). In *Rio Hot Properties, Inc. v. _____*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C), the court concluded that the issue of expungement should be reserved to when closure is imminent.

In 2014, the Minnesota Legislature amended Minn. Stat. § 504B.345, Subd. 1(c)(2), to provide that "the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant." The amended statute is the first legislative recognition and approval of the continued use of common law inherent authority as a basis for expungement.

In *At Home Apts., LLC v. D. B.*, No. A18-0512, 2019 Minn. App. Unpub. LEXIS 47 at *10-11, 2019 WL 178509 at *4 (Minn. Ct. App. Jan. 14, 2019) (Unpublished), the district court denied the tenant's expungement motion, discussing statutory expungement, but not addressing the tenant's alternative basis under the court's common law inherent authority. The Court of Appeals remanded for the district court to provide a written record of its findings and conclusions on whether it has inherent authority to expunge the records of the eviction action and, if it does, whether the facts support expungement.

A *non-exclusive* list of factors were stated by Judge Connolly in his concurring opinion in

(1) whether any back-rent is owed, how much is owed, and if there is a payment plan in place—although I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid; (2) a petitioner's eviction history; (3) the cause for the nonpayment of rent—whether it was due to economic hardship or a mere willful refusal; (4) the length of time since the petitioner's last eviction; (5) whether the eviction was for a material breach of the lease other than nonpayment of rent (e.g., conducting

illegal activity on the leased premises); (6) the number of evictions with the same landlord as opposed to different landlords; and (7) the term of the lease. *See State v. H.A.,* 716 N.W.2d 360, 364 (Minn. App. 2006) (describing analogous factors for criminal-record expungements).

*Id.*

(1) Action should not have been filed

The courts expunged or sealed unlawful detainer files where the court determined that the case should not have been filed. Sometimes expungement is jointly requested. *Richfield Housing Association v.* _____, Nos. UD-4990219410 (Minn. Dist. Ct. 4th Dist. Mar. 4, 1999) (Appendix 361) (Oleisky, J.: joint request for dismissal and expungement granted where landlord erroneously filed action for rent); *Geneva Village, L.P. v.* _____, No. C3-98-3358 (Minn. Dist. Ct. 10th Dist. Jul. 22, 1998) (Appendix 333) (Cass, J.: expungement ordered where parties agreed that filing action was unjust and would prevent tenants from finding decent, safe housing in the future); *Phillips Neighborhood Housing Trust, c/o Perennial Properties, Inc., v.* _____, No. UD-1960705508 (Minn. Dist. Ct. 4th Dist. Mar. 2, 1998) (Appendix 357) (expungement of name of tenant on joint motion of parties where the landlord prevailed in action for breach of lease by the co-tenant, there was no question that the tenant seeking expungement was not at fault for the breach); *Eden Park Apartments Limited Partnership v.* _____, No. UD-01980114506 (Minn. Dist. Ct. 4th Dist. Feb. 17, 1998) (Appendix 327) (Granted parties' joint request for dismissal and expungement where Section 8 office failed to notify landlord of recalculation of tenant's subsidy); *LaSalle Group, Ltd._ v.* _____, No. UD-1970326507 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 267) (Joint request for expungement); *Larson v.* _____, No. UD-1970805527 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 266).

Other times only the defendant moved for expungement. *D & D Real Estate Investment, L.L.P. v.* _____, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where there was no convincing evidence that the oral lease contained a right of re-entry clause, no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar; tenant's names expunged from file); *Hughes v.* _____, Nos. 1990208901 and UD-1990205510 (Minn. Dist. Ct. 4th Dist. Feb. 25, 1999) (Appendix 323B) (Scherer J.: rejected landlord's argument that notice to quit was not retaliatory because tenant's emergency tenant remedies actions were dismissed for non-appearance, where landlord was aware of tenant's actions in reporting disrepair and initiating court actions; notice to quit and unlawful detainer action were filed in bath faith; unlawful detainer file expunged); *Okoiye v.* _____, No. UD-01981015513 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1998) (Appendix 354B) (the court dismissed a second unlawful detainer action raising issues which had been litigated in the first one; the court also ordered that the landlord may not file another unlawful detainer action against the tenant without court approval, and ordered that the file be expunged); *Central Manor Apartments v.* _____, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (Appendix 319B) ("The ends of justice would be best served by expunging" a second unlawful detainer action where landlord could have sought relief by motion in first unlawful detainer action); *Lamb v.* _____, No. C2-98-3304 (Minn. Dist. Ct. 10th Dist. Jul. 9, 1998) (Appendix 343) (expungement if rent paid); *Morris v.* _____, No. UD-1980406518 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1998) (Appendix 352B) (dismissed Section 8

certificate unlawful detainer action for failing to serve a copy of the summons and complaint on the public housing authority, expunged name of minor as there was no reason to name him as a defendant).

(2) Defendant not at fault

Some tenants have been successful avoiding the restrictions of the expungement statute by citing *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981). *JP Morgan Case Bank v.* _____, No. HC-040115527 (Minn. Dist. Ct. 4th Dist. April 30, 2004) (Appendix 605) (common law expungement granted where homeowner defendant in mortgage foreclosure sold redemption right to third party on understanding that it would redeem, third party did not timely redeem, bank filed eviction but continued case to allow third party to redeem, and third party redeemed and rented to defendant who remained in possession of property); *Bigos Management, Inc. v.* _____, No. HC-030423531 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 469) (while tenant breached lease by failing to pay rent, subtenant of tenant did not; expungement granted for subtenants citing *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981)). *See also Bigos Management, Inc. v.* _____, No. HC-030423532 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 470); *Bigos Management, Inc. v.* _____, No. HC-030423533 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 471); *Bigos Management, Inc. v.* _____, No. HC-030423536 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 472); *Bigos Management, Inc. v.* _____, No. HC-030423537 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 473); *Bigos Management, Inc. v.* _____, No. HC-030423539 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 474); *Bigos Management, Inc. v.* _____, No. HC-030423540 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 475).

(3) Unique circumstances outside the defendant's control

The courts have based expungement on the court's common law authority where unique circumstances outside the tenant's control led to the eviction, and where neither the landlord nor the tenant were at fault. *See St. Louis Park Place, LLC v.* _____, No. HC-1031015540 (Minn. Dist. Ct. 4th Dist. Nov. 12, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenants failed to pay rent on time when they were traveling back and forth to their home town to attend the funerals of friends killed in a school shooting, and tenants later paid rent and remained tenants); *Brooklyn Park Housing Associates, LLP v.* _____, No. HC-040218503 (Minn. Dist. Ct. 4th Dist. Oct. 14, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenant failed to pay rent on time when tenant took leave from work to care for her child who was recuperating from brain surgery, and tenant later paid rent and reminded a tenant).

(4) Good faith dispute

In *54th and Penn LLC v.* _____, No. 27-CV-HC-09-6845 (Minn. Dist. Ct. 4th Dist. May 19, 2010) (Appendix 716), the tenant defendants sought expungement of the eviction after the parties reached an agreement to end the tenancy. The referee originally denied the request for expungement, determining that the defendants had not demonstrated a statutory basis for an expungement. The district court judge reversed the decision and remanded the case to the referee to determine if the expungement should be granted not on a statutory basis, but instead under the court's inherent authority. Upon remand the referee granted the motion for expungement under the "inherent authority" of the court, noting the following relevant facts: (1) it was the only eviction case against the defendants, (2) there were good faith disputes

between the parties, and (3) the public does not have a great public interest to the file and disputes between the parties.

(5) Agreement of the parties

In *Minneapolis Public Housing Authority v.* _____, No. 27-CV-HC-09-3053 (Minn. Dist. Ct. 4th Dist. July 22, 2010) (Appendix 717) (Judge Moreno), the tenant sought review of a denial of expungement by the referee. Without conceding the bases for statutory expungement, the landlord withdrew its objection to the request for expungement. Therefore, by agreement of the parties and under the court's inherent authority, the court granted the tenant's motion for expungement. *See* Minneapolis *Public Housing Authority v.* _____, No. 27-CV-HC-09-3053 (Minn. Dist. Ct. 4th Dist. July 22, 2010) (Appendix 760) (inherent authority expungement granted where parties agreed that expungement would be fair and just).

(4) File retention schedule

The Minnesota District Court Record Retention Schedule recommends file destruction by case type. Section 11(e) of the table discusses rent escrow and evictions, still called unlawful detainer actions.

| RECORD TITLE, CONTENT AND USAGE | RETENTION PERIOD | DESTRUCTION GUIDELINES |
|---|---|---|
| Unlawful Detainer and Rent Escrow | | |
| No money judgment ordered | 1 year | Destroy 1 year after file is closed |
| | FY + 3 years | If financial activity is associated destroy FY + 3 yr after final disposition |
| Money judgment ordered | 10 years | 10 years if there are no outstanding debts |

*Id.* at 9.
http://www.mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

In *Meldahl v.* _____, 27-CV-HC-13-1612 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2018) (Appendix 822), the court granted expungement of a five year old eviction file, concluding:

Expungement of this case will yield a benefit to Tenant commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing the order because

case files which are more than one year old with no money judgment, or over 10 years old even with a money judgment, the District Court Record Retention Schedule allows for destruction of all paper and electronic files without notice to the parties. This case falls within the parameters that would qualify it for summary destruction.

Similarly, in *Eddie Boyd dba Leebs Prop. v. _____*, 27-CV-HC-16–3002 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2018) (Appendix 823), the court granted expungement of a two year old eviction file, concluding:

Expungement of this case will yield a benefit to Tenant commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing the order because for case files which are more than one year old with no money judgment, or over 10 years old even with a money judgment, the District Court Record Retention Schedule allows for destruction of all paper and electronic files without notice to the parties. This case falls within the parameters that would qualify it for summary destruction. Further, Defendant has fully paid the Plaintiffs and does not owe Plaintiff any money.

a1. *Timing of expungement motion*

In 2014 the Minnesota Legislature amended Minn. Stat. § 504B.345, Subd. 1(c)(2), to provide that "the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant."

Tenants should ask for expungement as part of the request for relief in an eviction action. The court either will consider it at the time it determines the outcome of the case, or may require the tenant to bring a separate motion on the monthly calendar. *See Hamid v. _____*, 27-CV-HC-08-5349 (Minn. Dist. Ct. 4th Dist. July 8, 2008) (Appendix 604) (nonpayment of rent eviction action dismissed and expunged where landlord has no rental license); *Sun Trust Mortgage Inc. v. _____*, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); *Smith v. _____*, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement); *MJD Enterprises, Inc. v. _____*, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called herself an "independent contractor" when she handled all matters related to rental).

b. *Expungement statute*

In 1999, the Legislature enacted Minn. Stat. § 484.014. It defines "expungement" as the removal of evidence of the court file's existence from the publicly accessible records; "eviction case" as an action brought under sections 504B.281 to 504B.371; and "court file" as the court file created when an eviction case is filed with the court. The statute provides for discretionary expungement: "The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the

court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record."

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch. 174. *See* discussion, *supra*, at VI.F.1.c.

In the Fourth District (Hennepin County) the Housing Court has scheduled a monthly calendar for expungement motions. Scheduling orders often require tenants to serve the motion on all parties at least ten days before the hearing, and to file affidavits of service by 3:00 p.m. three days before the hearing.

Occasionally court personnel may be reluctant to expunge a court file where there is a settlement agreement setting out actions or events that will occur in the future. The tenant should ask the court to order that expungement occur immediately. This is especially important during a period in which the tenant is seeking new housing. *Viking Properties of MN LLC v.* _____, Nos. UD-1990714563 and UD-1990709901 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1999) (Judge Rosenbaum) (Appendix 421) (Action to be expunged immediately upon filing of order where unlawful detainer action was erroneously filed due to mistake or confusion; settlement providing that tenant would move in one and one-half months, tenant would not pay rent for two months and landlord would retain deposit plus interest, landlord would provide neutral reference, landlord would make repairs as ordered by the housing inspector, landlord would give 24 hours written notice of intention to make repairs, tenant would accommodate repair persons, landlord could contact tenant's community liaison except all repair notices would be between the parties, the agreement did not waive other rights related to nuisance, illegal or criminal conduct, privacy, or discrimination, tenant would not pursue claims for rent abatement, landlord would not pursue claims for past rent, deposit, late fees, court costs, or court fees, the parties did not admit liability).

Some court administrators have questioned whether expungement applies to public access computer records as well as hard files. The statute defines "expungement" as the removal of evidence of the court file's existence from the publicly accessible records, which should include electronic records as well as paper records. *Minneapolis Public Housing Authority v.* _____, No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (Appendix 408), (expungement granted where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant's name, but not co-tenant's name, removed from caption and computerized records).

Some courts have concluded that expungement is not appropriate if there is further court activity on the case. In _____ *v. Monanya*, N. HC 1991022901 (Minn. Dist. Ct. 4th Dist. Sep. 26, 2001) (Appendix 444) , the court lifted an expungement order in a combined emergency tenant remedies action and rent escrow action when the tenant sought to collect on the court's award.

In *Cash v. Czock*, No. C4-01-2140, 2002 WL 980078 (Minn. Ct, App. 2002) (unpublished), the court affirmed the order for expungement, based on the parties settlement, and the district court's denial of the *pro se* tenants request to include with expungement the claim of illegal lockout.

Tenants may request that a case that is not expunged be correctly categorized. *Smith v.* _____, No. HC 1000703500 (Minn. Dist. Ct. 4th Dist. Jan. 30, 2002) (Appendix 573) (summary changed from nonpayment of rent and breach of lease to holding over after notice).

(0) Eviction lacking sufficient merit

Most decisions have focused on the basis of the landlord's action and proof for it. In *Wong v.* _____, No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix( 743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

(1) Plaintiff's default

*Devonshire v.* _____, No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff); *Christopherson Properties v.* _____, No. HC 031205518 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2004) (Appendix 485) (expungement where "Plaintiff defaulted at first appearance, thereby failing to establish a legal or factual basis for the complaint"); *Huffman v.* _____, No. HC 00021522 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2000) (Appendix 517) (plaintiff did not appear or prosecute action, no evidence that service was perfected).

(2) Service defenses

(a) Improper service

*Harris v.* _____, No. HC 031014526, 031006514 (Minn. Dist. Ct. 4th Dist. Jan. 16, 2004) (Appendix 513) (expungement and two awards of costs for two cases involving improper service); *Reid v.* _____, No. 0203155000, (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 565) (expungement for defective complaint and improper service); *Stevens Community Assoc. v.* _____, No. HC 010003507 (Minn. Dist. Ct. 4th Dist. Oct. 12, and Dec. 13, 2000) (Appendix 579) (dismissal where affidavit of service claimed service before action was filed; expungement granted later); *Bratton v.* _____, No. 8C-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (Appendix 380) (parties agreed there was short service but executed move out agreement, case expunged due to short service); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(b) No proof of service

*Smith v.* _____, No. HC 031124400 (Minn. Dist. Ct. 4th Dist. Dec. 4, 2003) (Appendix 572) (expungement for no proof of service); *Huffman v.* _____, No. HC 00021522 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2000) (Appendix 517) (plaintiff did not appear or prosecute action, no evidence that service was perfected); *Greene v.* _____, No. 1000821516 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2000) (Appendix 506) (no proper affidavit of service, tenant moved before action was filed, action settled); *Okoiye v.* _____, No. UD-1990708534 (Minn. Ct. Dist. July 22, 1999) (Appendix 425) (dismissal for failure to file affidavit of service; expungement motion granted; tenant awarded costs).

(c) Service by plaintiff or employees

*MJD Enterprises, Inc. v.* _____, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called herself an "independent contractor" when she handled all matters related to rental); *Sidal Realty Company, LLP v.* _____, No. HC 030114401 (Minn. Dist. Ct. 4th Dist. Feb. 12, Feb. 24, and Apr. 7, 2003) (Appendix 569) (dismissal for service by employee of plaintiff; expungement denied by referee and on consideration, reversed by Judge Arthur).

(d) Lack of jurisdiction

*Gustafson v.* _____, No.0208030516 (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 508) (expungement granted for lack of jurisdiction); *Norby v.* _____, No. HC 010502504 (Minn. Dist. Ct. 4th Dist. June 12, 2001) (Appendix 550) (lack of jurisdiction).

(e) Improper mail and posting

In *The Freund Haus, LLC v.* _____, No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and (4) was notified via e-mail, his preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record.

*Igherighe v.* _____, No. HC 020208501 (Minn. Dist. Ct. 4th Dist. Feb. 20, 2002) (Appendix 521) (improper mail and posting service where plaintiff filed no affidavit of posting, and affidavit of not finding defendant was ambiguous of whether service was attempted in the evening; dismissed and expunged).

(f) Improper substitute service

Tri Star Developers, LLC v. _____, No. HC 010109514 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2001) (Appendix 584) (improper service on employee of business who was not an officer and not authorized to accept service; defendant business was incorrectly named; default judgment vacated and action dismissed and expunged).

(3) Precondition defenses

(a) Insufficient pleading

*Minneapolis Public Housing Authority v.* _____, No. HC-050920503 (Minn. Dist. Ct. 4th Dist. Feb. 9, 2006) (Appendix 674) (expungement granted where eviction was dismissed for an insufficient complaint and parties agreed to expungement); *Crofton v.* _____, No. HC 031120528 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 490) (expungement where complaint lacked specificity on breach, and landlord failed to attach lease or bring it to first appearance); *Reid v.* _____, No. 0203155000, (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 565) (expungement for defective complaint and improper service); *Igherighe v.* _____, No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served

Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant).

(b) Failure to attach lease or notice

*Tambornino v.* _____, No. 27-CV-HC- 12-5520 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 799) (expungement granted and referee decision reversed where plaintiff failed to attach lease to complaint or provide it to defendant at first hearing; tenant was not required to request lease at first hearing); *Crofton v.* _____, No. HC 031120528 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 490) (expungement where complaint lacked specificity on breach, and landlord failed to attach lease or bring it to first appearance); *O'Brian v.* _____, No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted).

(c) Plaintiff not entitled to possession

*Sun Trust Mortgage Inc. v.* _____, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); *Devonshire v.* _____, No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff); *Filas v.* _____, No. HC 040115532 (Minn. Dist. Ct. 4th Dist. Feb. 18, and Mar. 10, 2004) (Appendix 497) (motion to quash writ granted and eviction dismissed where "Plaintiffs were not the real parties in interest when the complaint was filed because they had executed a contract for deed, now cancelled, with another vendee", later expunged); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(d) Case is moot

In *The Freund Haus, LLC v.* _____, No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and (4) was notified via e-mail, his

preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record.

*See also Chase Home Finance, LLC v.* _____, No .62HGCV09-403, Stipulation and Order (Minn. Dist. Ct. 2nd Dist. April 7, 2009) (Appendix 602) (expungement granted on stipulation that tenant vacated property before eviction action filed); *Mortgage Electronic Registration Systems Inc. v.* _____, 27-CV-HC-08-4118 (Minn. Dist. Ct. 4th Dist. May 29, 2008) (Appendix 628) (expungement granted where parties agreed that defendant did not have possessory interest in property when action was filed); *Labarre v.* _____, No. HC051031512 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2006) (Appendix 660) (expungement granted where parties agreed that landlord did not have a rental license and that tenant vacated the property)*; 3601 13th Ave. S. Corp. v.* _____, No. HC-031230519 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2004) (Appendix 596) (expungement granted where it appeared rent was paid before action was filed); *Ukatu v.* _____, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586) (dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted); *Greene v.* _____, No. 1000821516 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2000) (Appendix 506) (no proper affidavit of service, tenant moved before action was filed, action settled); *Momanyi v.* _____, No. HC991221527 (Minn. Dist. Ct. 4th Dist. Dec. 29, 1999) (Appendix 669) (expungement granted where parties agreed that tenant did not occupy property where eviction was filed, and parties agreed to expungement)*; Banker's Trust Company of California v.* _____, No UD 198128509 (Minn. Dist. Ct. 4th Dist. July 1, 1999) (Appendix 465) (error to add name of defendant who had earlier moved).

(e) Foreign limited liability company had no state certificate of authority

*Uptown Classic Properties JV1, LLC v.* _____, No. HC 1030123529 (Minn. Dist. Ct. 4th Dist. Apr. 9, 2003) (Appendix 588) (dismissal and expungement where foreign limited liability company had no state certificate of authority under Minn. Stat. § 322B.94).

(f) Failure to notify Section 8 Office

*Bushido Management, Inc. v.* _____, No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs)*; Caberallo LLC v.* _____, No. HC 030324503 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 635) (eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs)*; SJM Properties, Inc. v.* _____, No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later); *Igherighe v.* _____, No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file

expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *McCampbell v.* _____, No. HC 000601500 (Minn. Dist. Ct. 4th Dist. July 14, 2000) (Appendix 535) (expungement granted since Section 8 landlord's failure to serve the housing authority was a jurisdictional defect, depriving the court of jurisdiction); *Williams v.* _____, No. HC-1991117529 (Minn. Dist. Ct. 4th Dist. Dec. 7, 1999) (Appendix 428) (Dismissal for failure to give notice to public housing authority under 24 C.F.R. § 982.310 (e)(2)(ii); defendants' names expunged).

(g) Failure to disclose address

*Hoskins v.* _____, No. HC 051116548 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2006) (Appendix 653) (expungement granted for violation of Minn. Stat. § 504B.181); *Igherighe v.* _____, No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *Stein v.* _____, No. HC 000804513 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 577) (violation of landlord address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22); *Gregerson v.* _____, No. HC 000908577 (Minn. Dist. Ct. 4th Dist. Dec. 13, 2000) (Appendix 507) (expungement granted for noncompliance with address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22).

(h) Premature filing

In *Uptown Classic Properties v.* _____, No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement. *See McCampbell v.* _____, No. HC 000814500 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 536) (expungement granted where case filed prematurely).

(i) Accord and satisfaction

In *Rosetree Properties LLP v.* _____, No. 62-HG-CV-16-1712 (Minn. Dist. Ct. 2nd Dist. Sept. 21, 2016) (Appendix 728), the district court issued an order expunging the landlord's eviction action after finding that the allegations in the complaint were untrue. The court found that the accord and satisfaction doctrine barred the eviction action because the landlord previously had settled the matter and was paid in full.

(j) Failure to register trade name

In *Chaney v.* _____, No. 27-CV-HC-14-2730 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 757), the court granted expungement where the landlord failed to register trade name before commencing action, the

landlord could not demonstrate a material breach of lease, and the landlord waived breach by accepting rent with knowledge of breach).

(4) Rent defenses

(a) Dispute over amount of rent

*Lewandoski v.* _____, No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded); *Busse v.* _____, No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount of rent and landlord filed action on the 6th; expungement granted; costs awarded); *Brooklyn Center Leased Housing v.* _____, No. HC 031216540 (Minn. Dist. Ct. 4th Dist. Mar. 10, 2004) (Appendix 481) (expungement granted where landlord's accounting records resulted in confusion of amount of rent due); *Brooklyn Center Leased Housing v.* _____, No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged); *Anderson v.* _____, No. HC 020611540 (Minn. Dist. Ct. 4th Dist. Aug. 16, 2002) (Appendix 464) (action had basis but not a substantial basis where there was confusion over the amount of rent due, and defendant had right to vindicate rights over the exact amount of rent due); *Drown v.* _____, No. C7-99-2863 (Minn. Dist. Ct. 7th Dist. Feb. 7, 2000) (Judge Boland) (Appendix 388) (Expungement granted where tenant said the landlord commenced the action so she could qualify for emergency assistance and the record of the action prevented her and her disabled daughter from qualifying for subsidized housing, and the landlord claimed that the tenant trashed the home).

(b) No license to rent

*Windorpski v.* _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *Hamid v.* _____, 27-CV-HC-08-5349 (Minn. Dist. Ct. 4th Dist. July 8, 2008) (Appendix 604) (nonpayment of rent eviction action dismissed and expunged where landlord has no rental license); *Taylor v.* _____, No. HC 031202508 (Minn. Dist. Ct. 4th Dist. Mar. 10, 2004) (Appendix 582b) (expungement where case brought without rental license, and facts of case are available in probate court records); *Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement); *Ukatu v.* _____, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586) (dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted); *Schudi v.* _____, No. 021112506 (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 568) (expungement for lack of rental license); *Tri Star Developers, LLC v.* _____, No. HC 1011002522 (Minn. Dist.

Ct. 4th Dist. Oct. 16, 2001) (Appendix 585) ("renting without a rental license requires dismissal;" securing license after filing the action does not purge the defect in filing without one; expungement granted).

In *Uptown Classic Properties v.* _____, No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement.

(c) Landlord waived prompt payment of rent

*Gardner Investments, Inc. v.* _____, No. HC 040102502 (Minn. Dist. Ct. 4th Dist. Jan. 15, and Mar. 10, 2004) (Appendix 504) (dismissal where landlord waived prompt payment of rent; later expunged).

(d) Landlord waived claim by accepting part payment of rent

*Sumner Field Partners 2, L.P. v.* _____, No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint); *Svendsen v.* _____, No. HC 1031006510 (Minn. Dist. Ct. 4th Dist. Dec. 3, 2003) (Appendix 582b) (expungement where tenant paid her share of rent under Section 8 lease and landlord accepted part payment of rent); *Valley Investment & Management, Inc. v.* _____, No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2000) (Appendix 589b) (dismissal of nonpayment of rent action since plaintiff accepted part payment of rent without a written agreement retaining the right to evict for the balance, under Minn. Stat. § 504B.291 (formerly 504.02)).

(e) Improper late fees

*Brooklyn Center Leased Housing v.* _____, No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged).

(f) Violation of covenants of habitability

In *Wong v.* _____, No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix( 743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part

of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

*Mar-Jil Corp. v.* _____, No. HC 1020802508 (Minn. Dist. Ct. 4th Dist. Oct. 28, 2002) (Appendix 532) (habitability defense to nonpayment of rent claim; parties settled and plaintiff agree to do repairs); _____ *v.* _____, No. _____ (Minn. Dist. Ct. 4th Dist. Jan. 22, 2001) (Judge Alexander) (Appendix 433) (tenant raised habitability defense and court abated rent; expungement granted); *Snoddy v.* _____, No. HC 1010905500 (Minn. Dist. Ct. 4th Dist. Dec. 27, 2001) (Appendix 574) (habitability defense to nonpayment of rent claim; settlement deferred rent until repairs were completing, implying that complaint was insufficient); *Huffman v.* _____, No. HC 1991119518 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 518) (settlement of nonpayment of rent case abating the rent, implying no basis for rent claim; landlord violated agreement to repair); *Harding v.* _____, No. HC 1000815508 (Minn. Dist. Ct. 4th Dist. Nov. 13, 2000) (Appendix 511) (parties agreed that plaintiff filed nonpayment of rent action in error because of outstanding habitability problems); *Brinkman v.* _____, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(g) Premature rent claim

*Busse v.* _____, No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount of rent and landlord filed action on the 6th; expungement granted; costs awarded); *Clark v.* _____, No. HC 1001005513

(Minn. Dist. Ct. 4th Dist. Oct. 23, 2000) (Appendix 486) (plaintiff filed nonpayment of rent case before rent was past due, tenant redeemed).

(h) Improper subsidized housing claims

*Real World Development LLC v.* _____, 27-CV-HC-07-8713 (Minn. Dist. Ct. 4th Dist. May 8, 2008) (Appendix 616) (expungement granted where eviction complaint was for Section 8 portion of rent); *Okeakpu v.* _____, No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted); *Beyene v.* _____, No. HC 1000818518 (Minn. Dist. Ct. 4th Dist. Nov. 10, 2000) (Appendix 468) (plaintiff claimed nonpayment of rent, but all of the rent was vendored to plaintiff through the Rental Assistance for Family Stabilization (RAFS) Program.

(i) Privacy violations

*Brinkman v.* _____, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment).

(j) Constructive eviction

*Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

(k) Rent already paid before commencement of action by service of complaint

*Sumner Field Partners 2, L.P. v.* _____, No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint); *Minneapolis Public Housing Authority v.* ____, No. 27-CV-HC-09-5431 (Minn. Dist. Ct. 4th Dist. Nov. 25, 2009) (Appendix 701) (dismissed and expunged for accepting full rent before commencement of action by service of summons and complaint); *3601 13th Ave. S. Corp. v.* _____, No. HC-031230519 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2004) (Appendix 596) (expungement granted where it appeared rent was paid before action was filed).

(5) Notice defenses

(a) Retaliation

*McCampbell v.* _____, No. HC 031002506 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2003, Jan. 22, 2004) (Appendix 537) (successful eviction defense gave rise to presumption of retaliation for subsequent notice to

vacate; landlord's evidence of prior tenant claims again the landlord did not prove claims were in bad faith; expungement granted later on judge review, reversing referee denial of expungement); *Project for Pride in Living, Inc. v.* _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement); *Okeakpu v.* _____, No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted); *Payne v.* _____, No. HC 1010801519 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2001) (Appendix 558) (presumption of retaliation applied even though tenant call for housing department inspection after notice was given, but had complained to landlord before notice was given; landlord failed to rebut presumption where rent payment history and clogged toilet problems paled in comparison to seriousness of habitability problems; expungement granted); *Boone v.* _____, No. HC 1010417504 (Minn. Dist. Ct. 4th Dist. June 4, 2001) (Appendix 477) (Judge B. Peterson) (landlord failed to rebut presumption of retaliation where he listed the property for sale with his own company but did not show the property, and he failed to prove tenant violated the lease; expungement granted); *Howard Lake Mobile Home Park v.* _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B); *Lowe v.* _____, HC000107530 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000)(Appendix 405) (expungement granted where defendant had a strong case of retaliation, even though there was no trial due to the parties' settlement; *Reis v.* _____, No. H991102507 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2000) (Appendix 417), (just because a tenant prevails may not be sufficient to expunge, however expungement is appropriate where a notice to quit was retaliatory and plaintiff's credibility was questioned); *Brinkman v. Smith*, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment).

(b) Improper notice

*Windorpski v.* _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *McCampbell v.* _____, No. HC 030804511 (Minn. Dist. Ct. 4th Dist. Aug. 12, Oct. 8, 2003) (Appendix 536A) (dismissal for untimely notice to vacate; expungement later granted); *Brinkman v. Smith*, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment); *Osuji v.* _____, No. HC-1991118524 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (Appendix 411) (Expungement granted where tenant prevailed on motion to dismiss action where landlord failed to provide notice and opportunity to cure required by the lease.; *Coker v.* _____, No. HC-1991001520 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (Appendix 384) (Expungement granted where plaintiff alleged false facts in complaint about delivery of notice to vacate, and timely notice had not been given).

(c) Improper subsidized housing notice

*Chalet v.* _____, No. HC-03026513 (Minn. Dist. Ct. 4th Dist. July 17, 2003) (Appendix 483) (expungement granted where HUD subsidized project landlord agreed that it did not give notice required by HUD Handbook No. 4350.3, citing *Housing and Redev. Auth. of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986)).

(d) Waiver of notice

*Howard Lake Mobile Home Park v.* _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(e) Premature notice claim

*Clobes v.* _____, No. HC 010301510 (Minn. Dist. Ct. 4th Dist. Mar. 15, 2001) (Appendix 487) (action dismissed as premature where notice set vacate date as March 3 and landlord filed action March 1; costs and disbursements awarded).

(f) Mortgage foreclosures

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch. 174. *See* discussion, *supra*, at VI.F.1.c.

(g) Manufactured and mobile home parks

*Tower Terrace Park v.* _____, No. HC-040206526 (Minn. Dist. Ct. 4th Dist. July 14, 2004) (Appendix 624) (expungement of tenant names but not file where mobile home park eviction was dismissed for failure to show cause for eviction, and other tenants have interest in knowing about case); *Tower Terrace Park v.* _____, No. HC-040519527 (Minn. Dist. Ct. 4th Dist. July 14, 2004) (Appendix 623) (expungement granted and costs and disbursements awarded where mobile home park dismissed eviction action and failed to give statutory 10 day notice for rent before filing action).

(6) Breach defenses

(a) Illegal activity violation not proven

*Minneapolis Public Housing Authority v.* _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and move and raised in

expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest").

(b) No right of reentry clause

*O'Brian v.* _____, No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted).

(c) Manufactured (mobile) home park lot

*Howard Lake Mobile Home Park v.* _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(d) Unenforceable lease violation

*Gray v.* _____, No. HC 000612506 (Minn. Dist. Ct. 4th Dist. July 14, 2000) (Appendix 505) (expungement granted where landlord dismissed action for breach of lease on claim that tenant signed document without landlord's permission).

(e) Tenant did not violate lease

*Minneapolis Public Housing Authority v.* _____, No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (Appendix 408), (expungement granted where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant's name, but not co-tenant's name, removed from caption and computerized records).

(7) Stipulation

*Heintzman v.* _____, No. C7-99-1772 (Minn. Dist. Ct. 10th Dist. Dec. 29, 1999) (Appendix 394) (Based upon stipulation for dismissal, dismissal of action with prejudice and expungement.

(8) Mortgage foreclosures and cancelled contract for deeds

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch. 174. *See* discussion, *supra*, at VI.F.1.c.

c. *Judge review of referee denial of expungement*

Tenants have had success challenging expungement denials on judge review.

(1) Statutory expungement

(a) Settled cases

*Minneapolis Public Housing Authority v.* _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and moved and raised in expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest").

(b) Service defenses

*Sidal Realty Company, LLP v.* _____, No. HC 030114401 (Minn. Dist. Ct. 4th Dist. Feb. 12, Feb. 24, and Apr. 7, 2003) (Appendix 569) (dismissal for service by employee of plaintiff; expungement denied by referee and on consideration, reversed by Judge Arthur).

(c) Precondition defenses

(i) Failure to attach lease or notice

*Tambornino v.* _____, No. 27-CV-HC- 12-5520 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 799) (expungement granted and referee decision reversed where plaintiff failed to attach lease to complaint or provide it to defendant at first hearing; tenant was not required to request lease at first hearing);

(ii) Section 8 vouchers

*Bushido Management, Inc. v.* _____, No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs).

(d) Nonpayment of rent cases

(i) Lack of rental license

In *Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 678) (Judge Lange), the court granted reversal of the referee decision for eviction, holding that Minneapolis landlord cannot collect rent without a license, lack of license requires dismissal, the landlord constructively locked out the tenant by obtaining restraining order in bad faith, and the tenant did not provide sufficient evidence of privacy violations. The court dismissed and expunged, and awarded the tenant $500 for constructive lockout, along with $500 in attorney's fees. *See Windorpski v.* _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist.

Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *Mlekoday v.* _____, No. 27-CV-HC-09-2436 (Minn. Dist. Ct. 4th Dist. May 25, 2010) (Judge Bransford) (Appendix 779) (referee reversed and expungement granted where landlord lacked rental license and gave written notices to terminate month-to-month tenancy of only 14 and 22 days).

(ii) Habitability

In *Wong v.* _____, No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix( 743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

*See Frenz v.* _____, No. 27-CV-HC- 051207509 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2007) (Appendix 647) (Judge Zimmerman) (referee decision reversed and expungement granted where tenants had a good faith defense to rent based on insect infestation).

(e) Holding over cases

(i) Improper notice

*Windorpski v.* _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31).

(ii) Retaliation

*McCampbell v.* _____, No. HC 031002506 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2003, Jan. 22, 2004) (Appendix 537) (successful eviction defense gave rise to presumption of retaliation for subsequent notice to vacate; landlord's evidence of prior tenant claims again the landlord did not prove claims were in bad faith; expungement granted later on judge review, reversing referee denial of expungement); *Project for Pride in Living, Inc. v.* _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement); *Aadland v.* _____, No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(iii) Waiver of notice

*Aadland v.* _____, No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(f) Breach of lease cases

*Minneapolis Public Housing Authority v.* _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and moved and raised in expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest"); *Zion Originated Outreach Ministries v.* _____, No. HC-1980909514 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2000) (Judge L. Arthur) (Appendix 431) (referee denial of expungement reversed, and expungement granted where defendant was not involved in lease violation, was made a party solely to confer jurisdiction of the lease to the court, and is unable to find housing in today's market).

(2) Common law inherent authority expungement

In *Oman v.* _____, Nos. UD-1980805513 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 314) (Arthur, J.), the referee denied the prevailing tenant's motion for expungement, concluding that "the public's right to know outweighs any benefits the tenants may derive from expungement, and informed citizenry is essential to our democracy." The referee did not apply the balancing test of *State v. C.A.*, 304 N.W. 2d 253 (Minn. 1981) and *State v. P.A.D.*, 436 N.W. 2d 808 (Minn. Ct. App. 1989). On judge review, the court vacated the referee's expungement ruling, and ordered that the District Court Administrator take all reasonable steps to remove the tenant's name permanently from computerized court records related to the case.

Common law inherent authority expungement denials reversed on judge review include *St. Louis Park Place, LLC v.* _____, No. HC-1031015540 (Minn. Dist. Ct. 4th Dist. Nov. 12, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenants failed to pay rent on time when they were traveling back and forth to their home town to attend the funerals of friends killed in a school shooting, and tenants later paid rent and remained tenants); *Brooklyn Park Housing Associates, LLP v.* _____, No. HC-040218503 (Minn. Dist. Ct. 4th Dist. Oct. 14, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenant failed to pay rent on time when tenant took leave from work to care for her child who was recuperating from brain surgery, and tenant later paid rent and reminded a tenant).

(3) Referee denial of judge review

*Aadland v.* _____, No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(4) Settlement on judge review

*Project for Pride in Living, Inc. v.* _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement).

d. *Notice to tenant screening agencies*

Upon issuance of an expungement order, the court will remove the file from http://pa.courts.state.mn.us/default.aspx, its publicly assessable data base.

The tenant then needs to send a copy of the order to all of the tenant screening agencies (TSA), which are regulated by statute. Minn. Stat. § 504B.235 provides the definitions.

504B.235 DEFINITIONS.
Subdivision 1. Applicability.

The definitions in this section apply to sections 504B.235 to 504B.245.

Subd. 2. Proper identification.

"Proper identification" means information generally considered sufficient to identify a person, including a Minnesota driver's license, a Minnesota identification card, other forms of identification provided by a unit of government, a notarized statement of identity with a specimen signature of the person, or other reasonable form of identification.

Subd. 3. Residential tenant report.

"Residential tenant report" means a written, oral, or other communication by a residential tenant screening service that includes information concerning an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and that is collected, used, or expected to be used for the purpose of making decisions relating to residential tenancies or residential tenancy applications.

Subd. 4. Residential tenant screening service.

"Residential tenant screening service" means a person or business regularly engaged in the practice of gathering, storing, or disseminating information about tenants or assembling tenant reports for monetary fees, dues, or on a cooperative nonprofit basis.

Minn. Stat. § 504B.241 regulates reports. Under Subdivision 4, it a TSA knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service. The old Minnesota Housing Clinic website, a companion to the Poverty Law website, contains form expungement letters to TSAs.
http://minnhousingclinic.homestead.com/expungementforms.html

504B.241 RESIDENTIAL TENANT REPORTS; DISCLOSURE AND CORRECTIONS.

Subdivision 1. Disclosures required.

(a) Upon request and proper identification, a residential tenant screening service must disclose the following information to an individual:

(1) the nature and substance of all information in its files on the individual at the time of the request; and

(2) the sources of the information.

(b) A residential tenant screening service must make the disclosures to an individual without charge if information in a residential tenant report has been used within the past 30 days to deny the rental or increase the security deposit or rent of a residential housing unit to the individual. If the residential tenant report has not been used to deny the rental or increase the rent or security deposit of a residential housing unit within the past 30 days, the residential tenant screening service may impose a reasonable charge for making the disclosure required under this section. The residential tenant screening service must notify the residential tenant of the amount of the charge before furnishing the information. The charge may not exceed the amount that the residential tenant screening service would impose on each designated recipient of a residential tenant report, except that no charge may be made for notifying persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

(c) Files maintained on a residential tenant must be disclosed promptly as established in paragraphs (1) to (4).

(1) A residential tenant file must be disclosed in person, during normal business hours, at the location where the residential tenant screening service maintains its files, if the residential tenant appears in person and furnishes proper identification at that time.

(2) A residential tenant file must be disclosed by mail, if the residential tenant makes a written request with proper identification for a copy of the information contained in the residential tenant report and requests that the information be sent to a specified address. A disclosure made under this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the written request for disclosure is received by the residential tenant screening service. A residential tenant screening service complying with a request for disclosure under this paragraph shall not be liable for disclosures to third parties caused by mishandling mail, provided that the residential tenant file information is mailed to the address specified by the residential tenant in the request.

(3) A summary of the information in a residential tenant file must be disclosed by telephone, if the residential tenant has made a written request with proper identification for telephone disclosure.

(4) Information in a residential tenant's file required to be disclosed in writing under this subdivision may be disclosed in any other form including electronic means if authorized by the residential tenant and available from the residential tenant screening service.

Subd. 2. Corrections.

If the completeness or accuracy of an item of information contained in an individual's file is disputed by the individual, the residential tenant screening service must reinvestigate and record the current status of the information. If the information is found to be inaccurate or can no longer be verified, the residential tenant screening service must delete the information from the individual's file and residential tenant report. At the request of the individual, the residential tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months.

Subd. 3. Explanations.

The residential tenant screening service must permit an individual to explain any eviction report or any disputed item not resolved by reinvestigation in a residential tenant report. The explanation must be included in the residential tenant report. The residential tenant screening service may limit the explanation to no more than 100 words.

Subd. 4. Court file information.

If a residential tenant screening service includes information from a court file on an individual in a residential tenant report, the report must provide the full name and date of birth of the individual in any case where the court file includes the individual's full name and date of birth, and the outcome of the court proceeding must be accurately recorded in the residential tenant report including the specific basis of the court's decision, when available. If a tenant screening service knows that a court file has been expunged, the tenant screening

service shall delete any reference to that file in any data maintained or disseminated by the screening service. Whenever the court supplies information from a court file on an individual, in whatever form, the court shall include the full name and date of birth of the individual, if that is indicated on the court file or summary, and information on the outcome of the court proceeding, including the specific basis of the court's decision, coded as provided in subdivision 5 for the type of action, when it becomes available. The residential tenant screening service is not liable under section 504B.245 if the residential tenant screening service reports complete and accurate information as provided by the court.

Subd. 5. Eviction action coding.

The court shall indicate on the court file or any summary of a court file the specific basis of the court's decision in an eviction action according to codes developed by the court that, at a minimum, indicates if the basis of the court's decision is nonpayment of rent, a violation of the covenants under section 504B.161 or 504B.171, other breach of a lease agreement, or a counterclaim for possession of the premises under section 504B.385.

Minn. Stat. § 504B.245 provides for remedies.

504B.245 TENANT REPORT; REMEDIES.

The remedies provided in section 8.31 apply to a violation of section 504B.241. A residential tenant screening service or landlord in compliance with the provisions of the Fair Credit Reporting Act, United States Code, title 15, section 1681, et seq., is considered to be in compliance with section 504B.241.

8.31ADDITIONAL DUTIES OF ATTORNEY GENERAL.

. . . .

Subd. 3a. Private remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

. . . .

e. *In the future: automatic purging of older eviction files*

The Minnesota Supreme Court now requires the purchasers of bulk court data, including tenant screening agencies, to (1) use technology that provides for installation of new data downloads and destruction of prior downloads (thus purging expunged court files without needing individual tenant requests), and (2) demonstrate compliance upon the request of the courts. Minnesota Rules of Public Access to Records of the Judicial Branch 8, Subd. 3, Advisory Committee Comment - 2016.

http://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Court%20Rules/pub_access_rules.pdf

The Minnesota District Court Record Retention Schedule recommends file destruction by case type. Section 11 of the table discusses rent escrow and evictions, still called unlawful detainer actions, recommending for file destruction in one year for most cases. http://www.mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

The courts also are developing a method for destroying records in the case management system based on the hard copy file retention schedule. When this program is effective, older eviction files that are destroyed will disappear from the court data base. With the above requirement for bulk purchasers of court data to replace old data with updated data from the court, older eviction files will fall out of the tenant screening agency reports.

# INSTRUCTIONS

## Expungement of Eviction Record

Forms you may need when asking for expungement of your eviction record case:

- Instructions (HOU503)
- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

### What You Need to Do

1. Get information about your eviction case from the court record.
2. Fill out and sign the court forms, following all of the steps in these instructions.
3. Get a hearing date from court administration in the county where the eviction took place.
4. Make copies.
5. Serve the other parties with a copy of the *Notice of Motion and Motion for Expungement of Eviction Record, Affidavit in Support of Motion for Expungement of Eviction Record*, and any documents you attached to your *Affidavit*.
6. File your forms (electronically or at the courthouse), and pay the filing fee (or ask for a fee waiver if you cannot afford to pay the fee).
7. Appear at the hearing. Each "step" here is described in more detail below.

### Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Got a question about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the MN Courts Self Help Center at (651) 435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

# General Information About Expungement of Eviction Record
## Minn. Stat. § 484.014

**The information contained in these instructions is not intended as legal advice but as a general guide to you to explain the legal process. If you do not understand any of these steps or do not know if these forms fit your situation, talk to an attorney. Court staff cannot give legal advice.**

**What is eviction expungement?**
Eviction expungement asks for a judge to seal an eviction court record (formerly known as unlawful detainer) from public view. If your eviction expungement request is granted, then a search of court records will not show your eviction case.

**Why would you ask for an expungement of your eviction court record?**
Usually, someone asks for expungement of an eviction court record because it impacts their ability to rent another property. Eviction court records can be viewed by the public, and landlords commonly use tenant screening companies to do background checks on individuals asking to rent their property.

**When can the court expunge an eviction court record?**
You can ask for an expungement when the landlord wrongly filed an eviction case and it would be unfair to keep it on your record. Minnesota law says expungements are allowed when:

- The landlord's case was "sufficiently without basis in fact or law,"
- It is "clearly in the interests of justice," **and**
- The public's interest in knowing about the case is not stronger than the justice that would be accomplished by expunging the case.

**Do you have all the information you need to fill out the forms?**
The Motion and Affidavit for Expungement of Eviction Record forms ask for the following information:

- The county, judicial district number, and the court file number where the eviction was filed.
- The name and address of the landlord and/or the attorney representing the landlord.
- Your address listed in the Eviction Complaint.
- Details about why you should have your eviction court record expunged.
- Any evidence or documentation to support your request to have your eviction court record expunged.

## Eviction Expungement Checklist

**This is a checklist of the steps you must follow to ask for an eviction expungement. You will want to carefully review steps 1-7 in the instructions below to complete the checklist.**

☐ **Get information about your eviction case from the court record. You can find contact information for the courts online starting at http://mncourts.gov/Find-Courts.aspx (Step 1A)**

☐ **Get the Eviction Expungement forms**

- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

☐ **Complete the Eviction Expungement forms (Steps 1 & 2)**

☐ **Get a hearing date (Step 3)**

☐ **Make copies (Step 4)**

☐ **Serve the other party copies of Eviction Expungement forms (Step 5)**

☐ **File the *original* Eviction Expungement forms with court administration and pay the filing fee (Step 6)**

- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

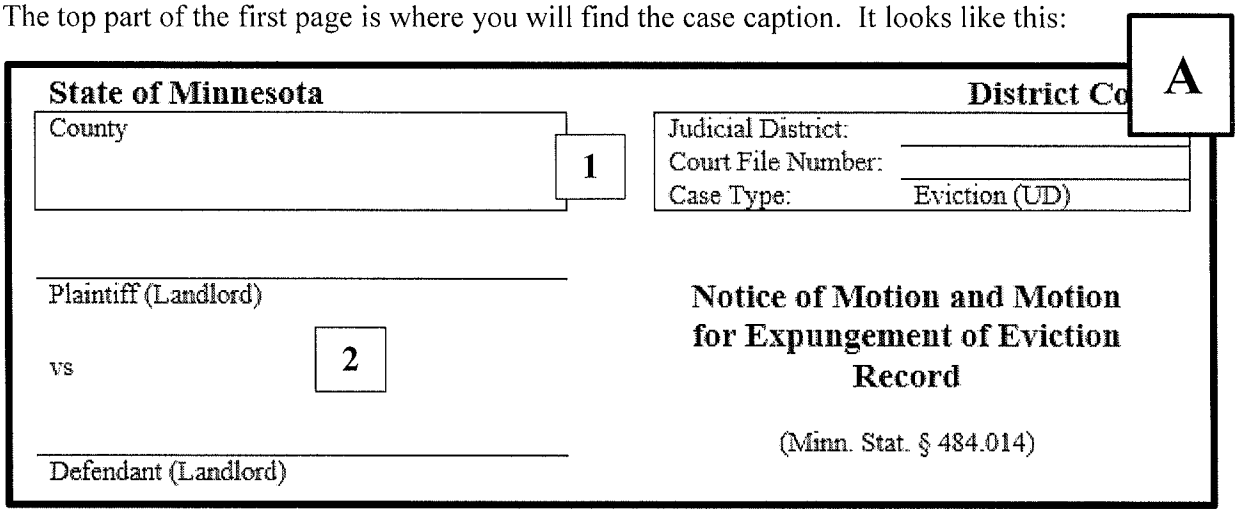
☐ **Attend the hearing (Step 7)**

## Step 1

## Fill Out the *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502)

**Section A – The Caption**

The top part of the first page is where you will find the case caption. It looks like this:



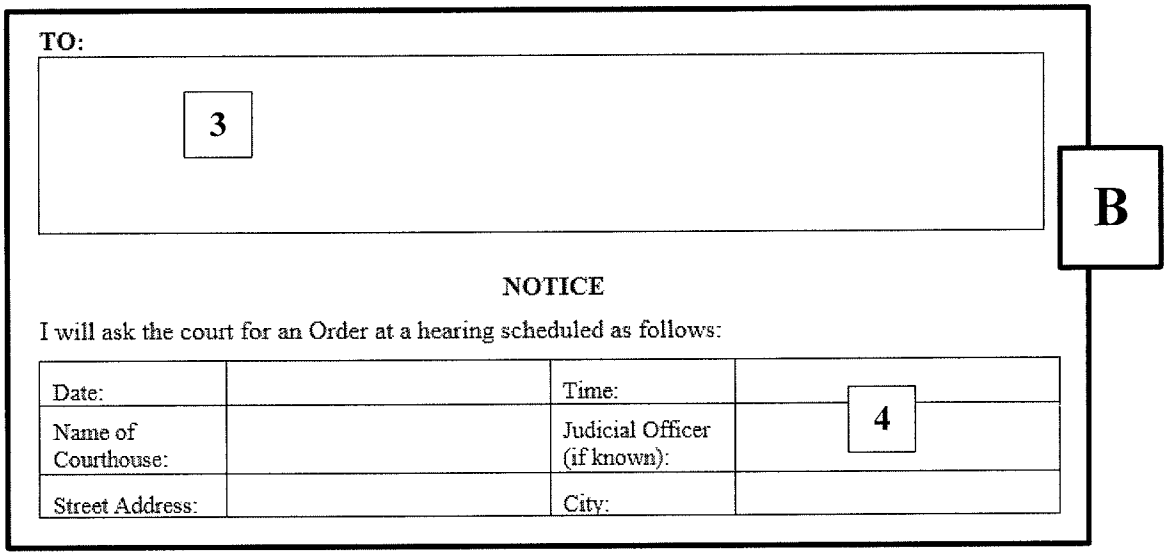

You will find the information you need to fill out the caption on the court form from your original eviction case. If you do not have any documents from your eviction case, and if you do not know the information, you will need to look in your court file.

- Some limited case records can be viewed online at www.mncourts.gov/publicaccess.
- If you cannot view your case online, you may be able to view your court file at any courthouse in Minnesota. If your eviction case is older, you may need to go to the courthouse in the county where your eviction case is located to view the paper record of your court file.

1. At the top of the page, write in the following information:
   - The **county** where the case is located;
   - The **judicial district number** (each county is located in one of ten judicial districts); and
   - Your **court file number** (this usually starts with a two-digit number, followed by letters and numbers. For example, *15-CV-17-0001*).

2. Write in the name of the **plaintiff (landlord)** as listed on the eviction complaint. Write in the name of each **defendant (tenant)** as listed on the eviction complaint. If your name is incorrect in any way, you can add "aka" (Also Known As) and then your correct name.

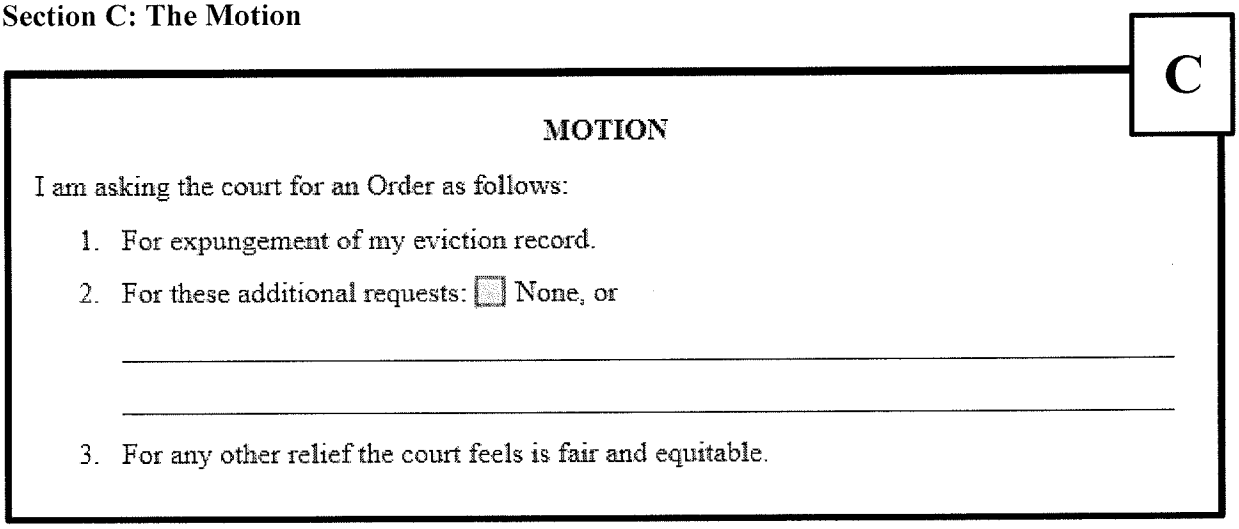
**Section B: The Notice**




3. After the word "TO," print the name and address of the landlord or the landlord's attorney if the landlord is represented in the eviction case.

4. Leave the hearing date section blank for now. You will fill in this section when you reach Step 3 below.

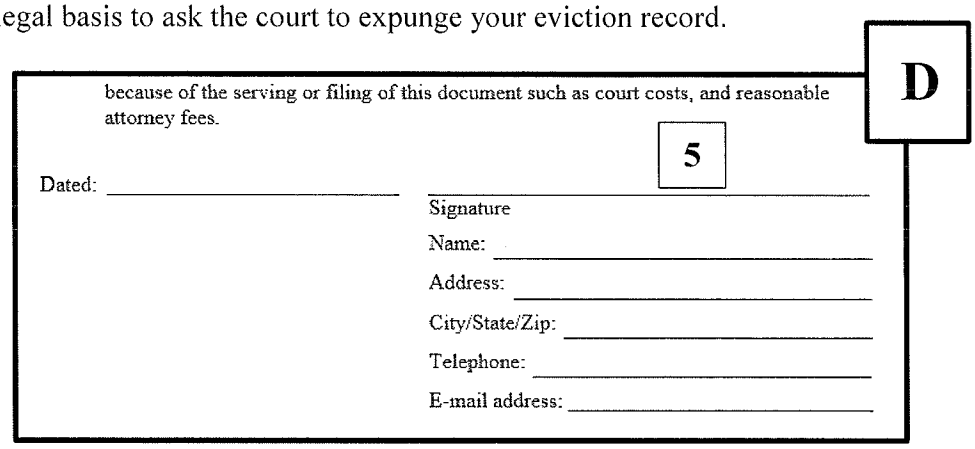
**Section C: The Motion**




You are asking the court to expunge your eviction record. List any additional requests you would like the court to grant. If you do not have any additional requests, check the box for "none."

**Section D: The Signature Block**

On page 2 of the *Notice of Motion and Motion for Expungement of Eviction Record,* please read the Verification and Acknowledgments carefully. There can be serious consequences if you do not have a legal basis to ask the court to expunge your eviction record.

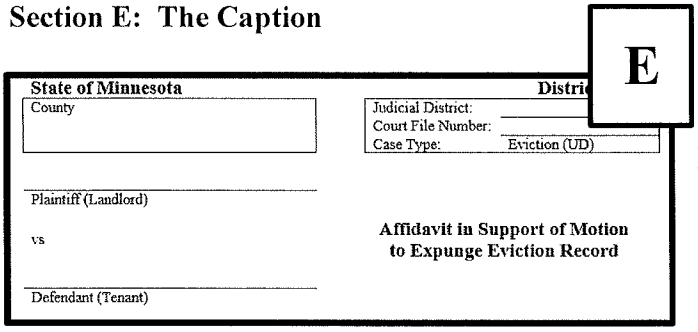



5. After you have filled out the *Notice of Motion and Motion for Expungement of Eviction Record* (except for the information about the hearing), you can date and sign the form. Then print the county and state where you signed the form and your personal contact information below your signature.

## Step 2

## Fill Out the *Affidavit in Support of Motion for Expungement of Eviction Record* (HOU503)

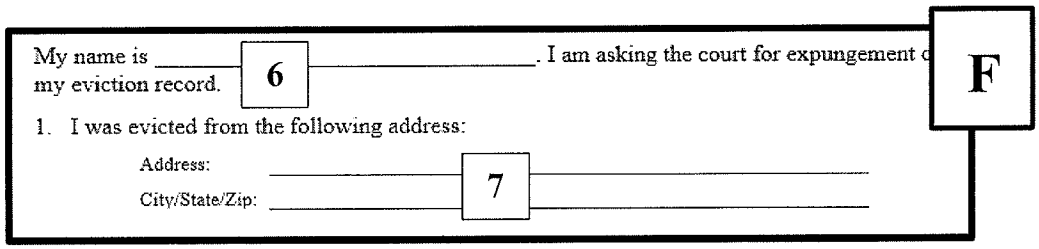
### Section E: The Caption




Fill out the case caption just like you did in Section A above.

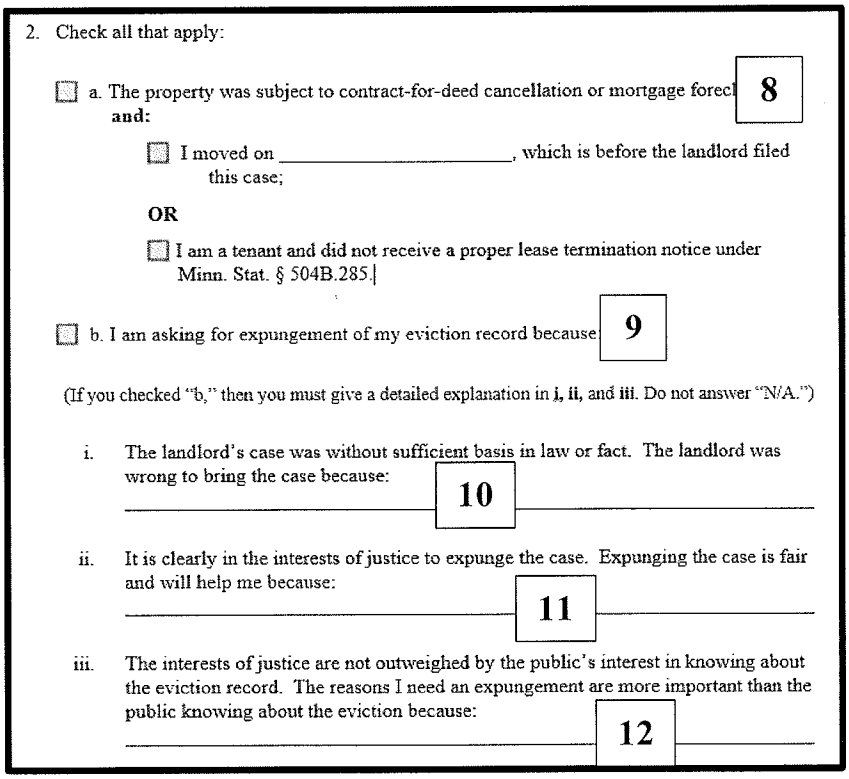
### Section F: The Statement of Facts

In the *Affidavit in Support of Motion for Expungement of Eviction Record*, write down facts that support your request to expunge your eviction record. This is where you explain why you are asking the court to expunge your eviction court record. Later on, you will sign the *Affidavit* under penalty of perjury. This is like being under oath. It means you should not write anything that you know is not true.




6. Write your full name.

7. List the address where you lived when the landlord started the eviction case.




**Your Burden of Proof.**

You must explain to the court why you are asking to expunge your eviction record. You may check the box next to "**a**," or "**b**," or both "**a**" and "**b**."

8. You may be entitled to expungement of your eviction record if the property you rented was subject to contract for deed cancellation or mortgage foreclosure. This is called mandatory eviction expungement. Check the appropriate boxes if this applies to your situation.

9. You may also be entitled to discretionary expungement of your eviction record. You must prove all of the following:

i. the landlord's eviction case was "sufficiently" without basis in fact or law;
ii. the expungement is "clearly in the interest of justice;" **AND**
iii. the "interests of justice" are not outweighed by the "public's interest in knowing the record."

Be sure to give a detailed explanation for i., ii. **and** iii. If you fail to provide an explanation for all three sections, the judge may deny your request to expunge your eviction record.

10. To prove the landlord's eviction case was without sufficient basis in law or fact, you can talk about things that were wrong with the case. For example, the court papers were not served the right way, you won the case, the parties settled the eviction with an agreement and the landlord agreed he or she did not have good legal reasons for starting the case, you moved out before the eviction was filed, or the case was about nonpayment of rent but there were things at the property that needed repairs.

11. The court also needs to know why the expungement is in the interests of justice. Describe why the expungement is important to you and how it will help you. For example, you can explain if you still live at the property the eviction was about or if the eviction was related to a hard time in your life, like job loss, medical problems, or divorce.

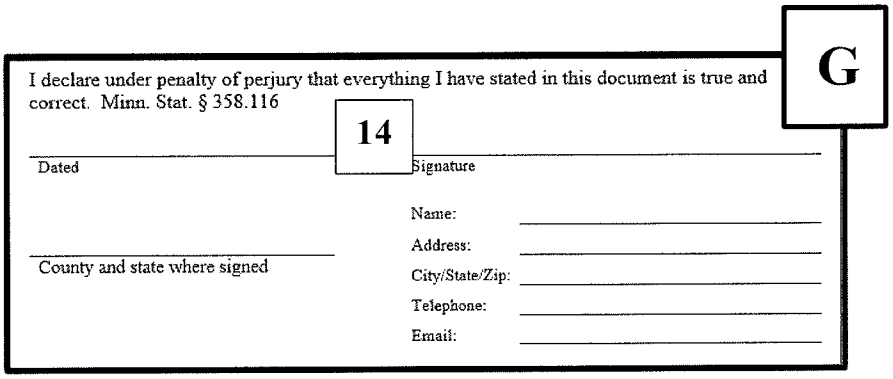
12. You also need to prove the interests of justice are not outweighed by the public knowing about the eviction. For example, you can explain if the case is old, if you have not had any recent evictions, if you are having trouble finding housing, or why safe, stable and affordable housing is important to you.

**13** I am including the following documents or affidavits, if any, that support my request and show that I met any conditions required by the court for expungement: ☐ None, OR

_____

13. If you have any documents or other evidence to support your request to expunge your eviction record, you should attach it to your *Affidavit*. List the evidence you are attaching. You may attach things like a settlement agreement, proof you moved, a letter from the landlord agreeing not to object to expungement, rental application denials, pictures of the repair problems, etc.

**Section G: The Signature Block / Penalty of Perjury**



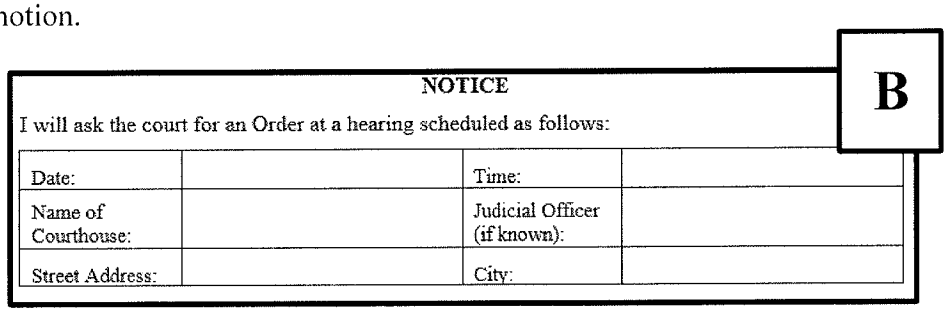

14. When you sign your *Affidavit in Support of Motion for Expungement of Eviction Record*, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in your *Affidavit* is true to the best of your knowledge.

    Date and sign the *Affidavit*. Then write the names of the county and state you are in when you signed it, and print your personal contact information below your signature.

## Step 3

## Contact Court Administration About a Hearing Date

In some districts, you need to schedule the hearing before you file your Motion for Expungement of Eviction Record. In other districts, you get a hearing date after you have filed. It is important that you check with your local Court Administration to see how to schedule a hearing for an eviction expungement motion. If you do not schedule a hearing, the court will not do anything with your motion.




***If you are able to schedule a hearing date right away:***

- Then go back to the "Notice" section (Section B: The Notice) on the first page of your *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502). Fill in the information (hearing date, time, location, and name of judicial officer).

***If your county schedules the hearing after you file:***

- Then you can write in "To Be Determined" in the "Notice" section of your *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502). Note: It is okay to fill in the name and address of the courthouse.
- Later on, once you do have a hearing date, you will need to fill out the *Notice of Hearing* form (CIV604) and serve that form on the landlord (See Step 7 below).

## Step 4

## Make Copies

Make a copy of the *Notice of Motion and Motion for Expungement of Eviction Record*, the *Affidavit in Support of Motion for Expungement of Eviction Record*, and any attachments for each party, including yourself. Be sure to bring your copy with you to court when you go to the hearing.

## Step 5

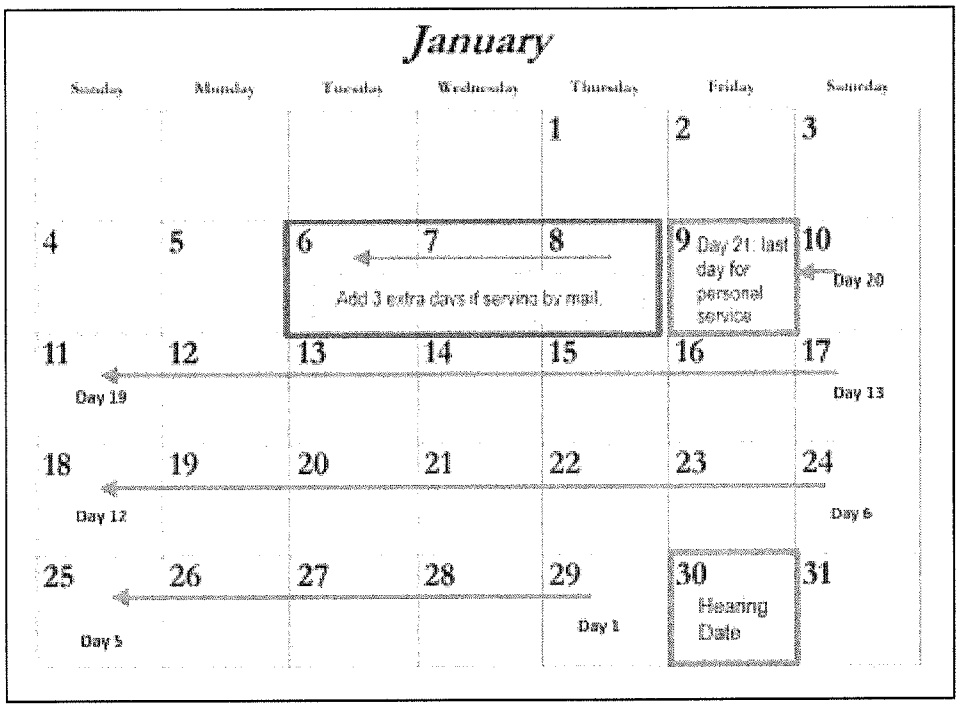
## Serve Notice on the Other Party

**Overview**
The other party must receive notice of the hearing and complete copies of all documents you have prepared for the eviction expungement hearing. This is called "service of process." The papers can be served personally (handed to the other party), or by mail. The other party must receive the papers at least 21 days before the hearing. If papers are served by mail, Court Rules require adding 3 days, so that papers must be postmarked at least 24 days before the hearing.

**If the other party is represented by an attorney, serve the other party's attorney, instead of the party directly.**

Papers CANNOT be served on legal holidays as defined in Minn. Stat. § 645.44, subd. 5 (https://www.revisor.mn.gov/statutes/cite/645.44#stat.645.44.5).

**Who Can Serve**
The forms you have prepared can be served by any of the following:
- The sheriff;
- Another adult; or
- You.




Count **backwards** from the hearing date. The day before the hearing date is **Day 1**.

**Personal Service**

**At least 21 days before the hearing date**, the server hands to the other party **one copy** of the completed *Notice of Motion and Motion for Expungement of Eviction Record*, and **one copy** of your *Affidavit in Support of Motion for Expungement of Eviction Record*, including one copy of any and all attachments. Example: If the hearing date is January 30, the papers must be served on or before January 9. If January 9 is a Saturday, Sunday, or legal holiday, keep counting backwards to the next day that is not a Saturday, Sunday, or legal holiday to determine the service deadline.

**Service by Mail**

The server places **one copy** of the completed *Notice of Motion and Motion for Expungement of Eviction Record*, and **one copy** of your *Affidavit in Support of Motion for Expungement of Eviction Record*, and one copy of any and all attachments in an envelope.

The server must mail the envelope containing the forms to the other party by first class U.S. mail **at least 24 days before the hearing date.** Example: If the hearing is January 30, the papers must be postmarked no later than January 6. If January 6 is a Saturday, Sunday, or legal holiday, keep countying backwards to the next day that is not a Saturday, Sunday, or legal holidy to determine the service deadline.

**Warning: If your forms are not personally served on the other party at least 21 days before the hearing OR mailed to the other party at least 24 days before the hearing date, you Motion may NOT be heard by the court.**

**If there is more than one plaintiff or more than one defendant, please note that ALL of the other parties must be served.**

## Step 6

## The Person Who Served the Papers Personally or By Mail Fills Out the *Affidavit of Service* form

**After** the papers are served on the other party (***not before***), either personally or by mail, the server must fill out an *Affidavit of Service* form. This form is proof for the court that the papers were served on the other party.

For more information about the *Affidavit of Service*, see the "Service of Process" Help Topic online at http://www.mncourts.gov/Help-Topics/Service-of-Process.aspx.

## Step 7

## File with Court Administration

You will need to file the following forms with Court Administration at least 21 days before the hearing:

- Original *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502);
- Original *Affidavit in Support of Motion for Expungement of Eviction Record* (HOU503);
- Original *Affidavit of Service* (SOP102, SOP104, or SOP105) (one *Affidavit of Service* for each party other than yourself).

There will be a fee when you file your paperwork. You can make checks payable to "District Court."

If you cannot afford to pay the fee, you can ask for a fee waiver by completing the forms in the In Forma Pauperis/IFP packet of forms (found online at www.mncourts.gov/forms). If a judge does not sign the fee waiver order, then you must pay the fee before Court Administration can process your forms.

## Step 8

## *Notice of Hearing* Form (CIV604)

If you filed your *Notice of Motion and Motion for Expungement of Eviction Record* and *Affidavit in Support of Motion for Expungement of Eviction Record* **without a hearing date**, then you need to use the *Notice of Hearing* form (CIV604) to let the other party know when the hearing date is scheduled.

If you use the *Notice of Hearing* form, follow these instructions to fill it out:

1. Fill out the caption like you did for the *Notice of Motion and Motion for Expungement of Eviction Record.*
2. After the word "TO," write the name and address of the landlord or the landlord's attorney if the landlord is represented in the eviction case.
3. Fill in the details of the hearing (date, time, location, name of judicial officer).
4. Fill in the date that you **filed** the original *Notice of Motion and Motion for Expungement of Eviction Record.* If you do not remember the date, you may be able to look it up online at www.mncourts.gov/publicaccess.
5. Date and sign the form, then print the requested information.
6. Make one copy of this *Notice of Hearing* form for each party (including for yourself).
7. Arrange to serve a copy of the *Notice of Hearing* form on the other party like you did with the *Notice of Motion and Motion for Expungement of Eviction Record.* See Step 5 above.
8. File the original *Notice of Hearing* form and *Affidavit of Service* form (for the other party or other party's attorney, if represented) with Court Administration.

## Step 9

## Go to Your Hearing

To prepare for your hearing, it is a good idea to look at the court rules that apply to civil cases. You can find links to these rules online at http://mncourts.gov/Help-Topics/Civil-Actions.aspx#tab06RulesAndLaws. You could also visit a law library to read the court rules.

You must go to court on the date set for the hearing. It is important to be on time. If you are even a few minutes late, the judicial officer may dismiss your motion.

Bring copies of the paperwork with you to the hearing. If you are unsure how to prepare for the hearing, or what evidence you should bring, you should get legal advice before your court date.

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Eviction (UD) |
|---|---|

_____
Plaintiff (Landlord)

vs.

_____
Defendant (Tenant)

**Notice of Motion and Motion for Expungement of Eviction Record**
(Minn. Stat. §484.014)

**TO:**

| |
|---|
| |

## NOTICE

I will ask the court for an Order at a hearing scheduled as follows:

| | | | |
|---|---|---|---|
| Date: | | Time: | |
| Name of Courthouse: | | Judicial Officer (if known): | |
| Street Address: | | City: | |

## MOTION

I am asking the court for an Order as follows:

1. For an expungement of my eviction record.
2. For these additional requests: ☐ None , or

_____

_____

_____

3. For any other relief the court feels is fair and equitable.

## Notice to Other Party

After you receive these papers, if you want to respond to anything raised by the other party in their motion and affidavit, your written response (usually called *Responsive Motion & Affidavit*) must be served on the other party:

- at least 14 days before the hearing if personally served; or
- at least 17 days before the hearing if served by mail.

Your responsive motion and affidavit must be filed with the District Court Administrator at least 14 days before the hearing.

**** If you do not serve and file a written response, the court might not look at papers you bring to the hearing and might not allow you to make a verbal response at the hearing.****

## Verification and Acknowledgments:

a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for any improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document such as court costs, and reasonable attorney fees.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Eviction (UD) |
|---|---|

_____
Plaintiff (Landlord)

vs.

_____
Defendant (Tenant)

## Affidavit in Support of Motion to Expunge Eviction Record

My name is _____. I am asking the court for expungement of my eviction record.

1. The Plaintiff filed a case to evict me from the following address:

Address: _____

City/State/Zip: _____

2. Check all that apply:

☐ a. The property was subject to contract-for-deed cancellation or mortgage foreclosure, **and:**

☐ I moved on _____, which is before the landlord filed this case;

**OR**

☐ I am the tenant and did not receive a proper lease termination notice under Minn. Stat. § 504B.285.

☐ b. I am asking for expungement of my eviction record because:

(If you checked "b," then you must give a detailed explanation in **i, ii,** and **iii.** Do not answer "N/A.")

i. The landlord's case was without sufficient basis in law or fact. The landlord was wrong to bring the case because:

_____

_____

_____

_____

ii. It is clearly in the interests of justice to expunge the case. Expunging the case is fair and will help me because:

_____

_____

_____

_____

iii. The interests of justice are not outweighed by the public's interest in knowing about the eviction record. The reasons I need an expungement are more important than the public knowing about the eviction because:

_____

_____

_____

_____

3. I am including the following documents or affidavits, if any, that support my request and show that I met any conditions required by the court for expungement: ☐ None , OR

_____

_____

_____

_____

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

# Expunging an Eviction Case

## What does "expungement" mean?

Expungement means removing the record of a court case from the public view. If your eviction court case is expunged, then someone searching court files can't find a record of your eviction case. Courts sometimes expunge eviction cases, but it can be hard to get an expungement.

Eviction cases used to be called "unlawful detainers" (UDs). Some records might show that you have UDs, this is the same thing as an eviction.

## When can the court expunge an eviction case?

A judge (or referee) decides if a case can be expunged. The law lists things you need to show for the judge to expunge a case. But, even if you show all of these things, it is still up to the judge to decide yes or no.



There are a few rare exceptions when a judge **has to** grant an expungement. They are listed in the section on the next page, *Mandatory expungement.*

There are 3 kinds of expungement you can ask for.

- "Inherent authority"
- "Statutory"
- "Mandatory"

If it fits your situation, you can ask for more than one type of expungement.

## What are examples of good cases for expungement?

- You won the case. The case was dismissed, or you won after a trial.
- You moved before the eviction case was served.
- You settled the case and you did everything in the settlement agreement.
- Your landlord agreed not to fight the expungement. Your landlord can't give you an expungement, but the landlord's agreement not to fight the expungement can help.

## The 3 Kinds of Expungements

### "Inherent Authority" Expungement

This kind of expungement comes from the court's power to manage its own case records. The court decides if expunging the case for you (the tenant) is more important than future landlords knowing about the case. The judge has the power to decide if they do or don't want to expunge the case.

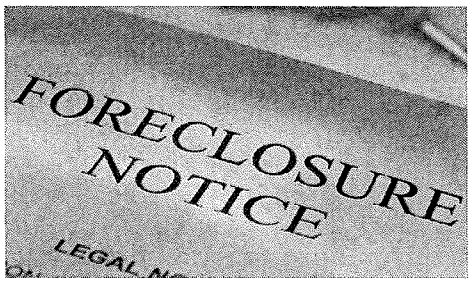
### "Statutory" Expungement

This kind of expungement comes from the law. The law says that court does the same test as it does in an "inherent authority" expungement: is expunging the case for you (the tenant) more important than future landlords knowing about the case? If the answer is yes, AND there was something wrong with the landlord's case, then the court can expunge the case. The judge has the power to decide if they do or don't want to expunge the case.

### "Mandatory" Expungement

This kind of expungement also comes from the law. The judge has to expunge your case if you prove:

- The property was in foreclosure or contract for deed cancellation
- The eviction case was only about you staying at the property too long (holdover), not about nonpayment of rent or breaking your lease (breach), and
- At least one of the following is true:
  1. The foreclosure redemption period or time for contract cancellation is over. You moved out before the eviction case was served.




  2. You were a tenant during the foreclosure redemption period or contract cancellation period. Your lease began after the landlord's mortgage or contract for deed began. You were not given proper notice to end your lease, or you were given proper notice to end your lease, but the eviction case started before the date the notice said you needed to move.

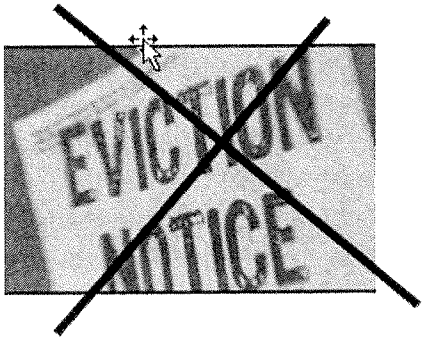
**Note:** In foreclosure cases a minimum of 90 days' notice is usually required. In contract for deed cases, a 12 months' notice is required. If you're not sure if you were given proper notice see our fact sheet, *When your Landlord Loses the Building: Mortgage Foreclosure and Contract for Deed Cancellation.*

## Which kind of expungement should I ask for?

- You should always ask for an "inherent authority" expungement.
- If there was something wrong with the landlord's case, ask for a "statutory" expungement too.
- You should only ask for a "mandatory" expungement if the case was after a foreclosure or cancellation of a contract for deed.

## How do I know if something was wrong with my landlord's case?

You should ask for a "statutory" expungement if there was something wrong with your landlord's case. Lots of things could be wrong with your landlord's case. The landlord's case could have wrong facts or wrong law, or both.




- **Wrong facts.** The landlord's case had important facts wrong. Like, the landlord said you didn't pay your rent on time or broke your lease, but you know these facts are wrong.
- **Wrong law.** The landlord's case had important laws wrong. Like, the court papers weren't served the right way, or the case was about nonpayment of rent but there were things at the property that needed repairs.

## What should I put in my expungement papers?

You need to convince the judge that you deserve an expungement. Be specific about how this case record has affected your life. **You have a better chance of getting an expungement if you give lots of details about your situation.**

Talking about these kinds of things will help your chances of getting an expungement:

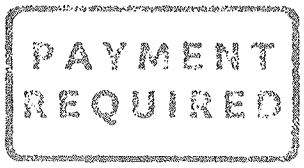
- If the eviction was because of a hard time in your life, like job loss or medical problems.
- If you still live at the property.
- If this is your only eviction.
- If the case is old.
- If you settled the case and did everything you agreed to in the settlement agreement.
- If you paid the landlord everything you owe
- How the eviction makes it hard for you to find housing
  - list how many times you have been denied housing and how much money you spent on application fees.
- Why safe, stable and affordable housing is important to you and your family, and how the eviction keeps you from finding housing.

### What if I paid the rent after the case started?

Paying what you owed does not take the case off your record. Paying what you owe does not guarantee expungement.

### What if I still owe the landlord money?

It's a lot harder to get a case expunged if you still owe the landlord money. It's usually best to wait to ask for an expungement until after you have paid back the landlord. If your current situation is really bad, the judge might expunge your case even if you still owe the landlord money.




Sometimes, the judge in the eviction case orders you to pay the landlord. This is called a money judgment. Before the landlord can ask the court to collect this money from you, they have to go to conciliation (small claims) court. This is called "docketing" or "transcribing" the judgment. They then have 10 years to collect the judgment from you. Sometimes, landlords won't do this step until the tenant asks the court to expunge a case. If you still owe the landlord money, try to talk to a lawyer first before filing your expungement motion.

Even if you get the case expunged, the debt you owe to the landlord might show up on a credit report. Many landlords check both credit reports and eviction records when they are renting someone an apartment.

### How do I ask the court for expungement?

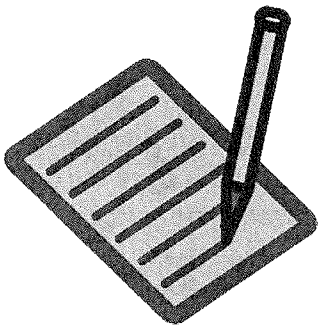
1. Look at all of the court documents in your eviction case including the court's decision. If you do not have a copy, go to the courthouse where it was filed and ask for one. There may be a cost for copies.



Does the court record show that the landlord did not have a good case? There are many defenses to an eviction case that help show the court that the landlord got the facts or law wrong. If possible, meet with a lawyer who knows about eviction cases to help you see any defenses you may have had to the eviction.

2. There is an Expungement Motion form attached to this fact sheet.
   - At the top, fill in:
     - The name of the county
     - The Plaintiff's name or names (your landlord, or the owner) and the Defendant's name or names (your name). **These have to be filled in exactly as they are on the Complaint and Court Order form in the eviction case even if the names are spelled wrong.**
     - The file number of your eviction case
   - Do not fill in the "Notice of Motion" section until the court gives you a hearing date.

- Fill out the rest of the form. Check the boxes and write in the details about your situation. You can check more than one of the boxes.



- Sign your Motion.

- Attach copies of any documents that help prove what you've said in the motion is true.

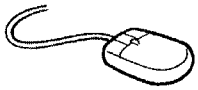
3. Go to District Court to file your Motion.
   - Ask the clerk if you need to fill in the court date on the "Notice of Motion." Some counties want you to fill in the date, and some counties don't.

   - Check with the clerk to see if a judgment was "entered" in your case. If so, some clerks also want you to fill out a motion to vacate the judgment. The clerk might tell you if you need to do this and give you a form.

   - Ask the clerk for instructions on how to serve the "Motion" on the Plaintiff. You usually can "serve" the motion by mailing it to the landlord's last known address.

4. There is a filing fee for an expungement motion. If you have a low income, you can fill out a court fee waiver form (IFP). This form asks the court to waive the fees. The court has these forms or you can create one online.

   Go to www.lawhelpmn.org/forms.



   → Click on *Court Fee Waiver (IFP)*

   Bring proof of your income, like pay stubs, or proof of government assistance.

   Go to the hearing prepared. Bring any documents that you included with your Motion, and anything else that might help you prove your case. Bring any witnesses who can support your story.

## What should I do if I get an expungement?

Check the court records to be sure that the case was removed. The court clerk will tell you when your case will be expunged and how to check the record to make sure that it was removed.
A tenant screening company can't report an eviction once the company knows it has been expunged. There is a letter attached to this fact sheet. Make 6 copies. Sign them and send one with a copy of your expungement order to each of the tenant screening agencies listed on the top of the letter. Keep the original letter or a copy for your records.

If you get turned down for an apartment, find out what tenant screening agency the landlord used. Call that screening company to make sure they are not reporting the expunged eviction case. See our fact sheet *Tenant Screening* for more information.

### What should I do if the judge says "no"?

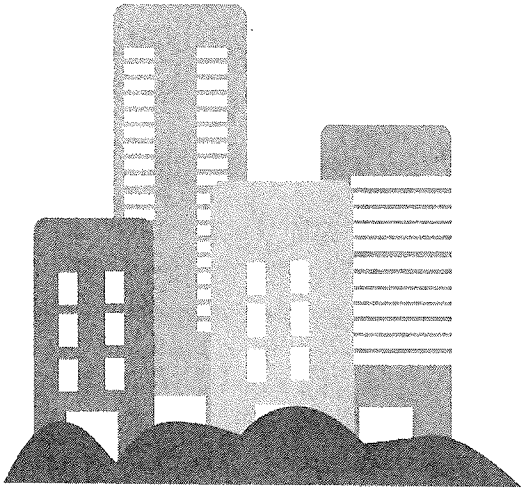
The law gives the judge a lot of power in deciding expungements. Even if you think you have a good case, the law says the judge can still say "no" if this is what they decide to do. The only time the judge has to expunge the case is if it is a "mandatory" expungement about a foreclosure or contract for deed. If you disagree with the judge's decision and want to appeal, there is a good chance that the next court up will affirm (agree with) the judge's choice. If you think the judge did not consider all of the information or did not use the law right, you should talk to a lawyer to see if you should appeal.

You can try to expunge the case again after some time has passed and there are more things that make expunging the case for you (the tenant) more important than future landlords knowing about the case. These can be things like time being homeless, money spent in application fees, or being denied housing at more places.

See our fact sheets *Looking for an Apartment* and *Tenant Screening*, about finding an apartment with an eviction on your record. Try to find landlords who don't charge application fees and don't use tenant screening services.

You have the right to add a statement to your tenant screening record explaining any evictions on your record. Make sure your tenant screening report is correct. It may have other wrong information about you.

Tenant screening companies can report evictions for 7 years, and landlords can check court files directly for as long as the court keeps records of old eviction cases. Ask the company to fix any errors in the report.



***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
CASE TYPE: EVICTION ACTION

_____

_____,

Plaintiff(s) (Landlord),

v.

_____

_____,

Defendant(s) (Tenant).

**NOTICE OF MOTION AND MOTION FOR EXPUNGEMENT**

**Case No.** _____

TO: DISTRICT COURT ADMINISTRATOR; PLAINTIFF.

## NOTICE OF MOTION

PLEASE TAKE NOTICE that at _____ a.m./p.m. on _____, Defendant will bring the following Motion on for hearing before the Honorable Presiding Referee or Judge, at the following location:_____

_____.

## MOTION

1. **I am asking the court to immediately expunge this court file.**

2. **Expungement within the Court's Inherent Authority**

Courts have inherent authority to perform a judicial action when the relief requested "is necessary to the performance of a judicial function as contemplated in [the] state constitution."[1] Courts also have inherent authority to control their own records, along with the equitable power to prevent unfairness to individuals.[2] The court "must decide whether expungement will yield a benefit to the

[1] *In re: Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 786 (Minn. 1976).
[2] *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).

petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order."[3]

I'm asking the court to expunge this file within its inherent authority for the following reasons: Expungement is necessary to the performance of the judicial function of effecting justice.[4] The burden on the court in issuing an expungement order in this action is minimal. The benefits of expungement to me are equal to, or greater than, any disadvantage to the public from elimination of the record and any burden on the court in expunging the record of this case. I explain my reasons below.

**3. These things were going on in my life when this case happened:**

☐ I had less money to pay rent because I lost my job or my hours got cut.

☐ I had less money to pay rent because of illness or a family emergency.

☐ I was the victim of domestic violence or another crime.

☐ I was having other problems in my life.

Here are the details:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

[3] *Id.*

[4] Minn. Const. Art. 1 § 8.

4. **This case record has made it harder for me to find housing**:

☐ I have been denied housing around _____ times because of this case record.

☐ I was last denied housing on _____.

☐ I have spent around $_____ in rental application fees.

☐ I have been homeless after this case happened.

☐ My children have been homeless after this case happened.

☐ This case has made it hard for me to find housing in these other ways.

Here are the details:

5. **Expunging this case record will help me find safe and stable housing. I need to find safe and stable housing now:**

☐ I live with children, seniors, or vulnerable adults.

☐ I have a disability or someone in my family has a disability.

☐ I am homeless right now.

☐ I need safe and stable housing because of other reasons.

Here are the details:

**6. There are other reasons why it would be fair to expunge this case:**

☐ There was something wrong with the landlord's case (see #7 below).

☐ I don't owe the landlord any money.

☐ This case settled, and I did everything I agreed to in the settlement agreement.

☐ This case record is old.

☐ This case record should be expunged under the Court's Retention Schedule[5] because:

- ☐ No money judgment was ordered in this case and the case file was closed over one year ago, or
- ☐ A money judgment was ordered in this case, but I do not owe money anymore and the case is over ten years old.

☐ Something has changed in my life for the better that helps me be a good tenant.

Here are the details:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

[5] Minnesota Judicial Branch Court Services Division District Court Record Retention Schedule Effective June 1, 2018. Retention Schedule available at http://www.mncourts/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

☐ **7. Statutory Expungement**[6]

*(Check Box #7 if there was something wrong with the landlord's case)*

There was something wrong with the landlord's case. The Court may order expungement upon finding that "plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record."[7]

Numbers 3 through 6 above explain why the expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

The landlord's case was sufficiently without basis in fact or law. These things were wrong with the landlord's case:

☐ The landlord did not follow the rules when they served me the court papers.

☐ The case was about nonpayment of rent and the property had pests or needed repairs.

☐ The landlord dropped their case against me before we went to court.

☐ There were other things wrong about the landlord's case.

Here are the details:

_____

_____

_____

_____

_____

_____

_____

_____

_____

[6] Minn. Stat. § 484.014, subd. 2

[7] Id

☐ **Mandatory Expungement because of Foreclosure**

**8.** The property in this case was in foreclosure. Expungement is mandatory under law.[8]

☐ a. I moved out of the property on _____, before this case started[9] on_____. The foreclosure redemption period is over.

**OR**

☐ b. The landlord said I stayed past my move out date (holdover). I was a tenant at the property during the redemption period. My lease started after the landlord's mortgage began. *Check one:*

☐ i. I did not get the notice required by law.[10]

☐ ii. I received the notice required by law[11], but this case started before the date I was supposed to move.

☐ **Mandatory Expungement because of Contract Cancellation**

**9.** The property in this case was in contract cancellation. Expungement is mandatory under law.[12]

☐ a. I moved out of the property on _____, before this case started[13] on_____. The time for contract cancellation is over.

**OR**

☐ b. The landlord said I stayed past my move out date (holdover). I was a tenant at the property during the during the contract cancellation period. My lease started after the contract for deed. *Check one:*

☐ i. I did not get the notice required by law.[14]

☐ ii. I received the notice required by law[15], but this case started before the date I was supposed to move.

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[8] Minn Stat. § 484.014, subd. 3.

[9] In Minnesota a case starts at service. Minn. R. Civ. P. 3.01(A); *Appletree Square I, Limited Partnership v. W.R. Grace & Co.*, 29 F.3d 1283, 1286 (8th Cir. 1994); *Appletree Square I Limited Partnership v. O'Connor & Hannan*, 575 N.W.2d 102, 103 (Minn. 1998).

[10] Minn. Stat. § 504B.285, subd. 1a requires minimum notice period of 90 days. Some tenants get a longer notice period.

[11] *Id.*

[12] Minn. Stat. § 484.014, subd. 3.

[13] In Minnesota a case starts at service. Minn. R. Civ. P. 3.01(A); *Appletree Square I, Limited Partnership v. W.R. Grace & Co.*, 29 F.3d 1283, 1286 (8th Cir. 1994); *Appletree Square I Limited Partnership v. O'Connor & Hannan*, 575 N.W.2d 102, 103 (Minn. 1998).

[14] Minn. Stat. § 504B.285, subd. 1a requires a minimum notice period of 90 days. Some tenants get a longer notice period.

[15] *Id.*

10. I certify that, to the best of my knowledge:

- this document is not being filed for an improper reason, such as harassment or delay,
- my claims are supported by the law, and
- there is evidence for my claims and/or my denials.

I know that I may be fined or sanctioned by the court if this certification is false.

I declare under penalty of perjury that everything I have stated in this document is true and correct.[16]

_____
Date

_____
Defendant (Tenant)

Address: _____

_____

_____

Email: _____

Phone: _____

[16] Minn. Stat. § 358.116.

**Letter to Tenant Screening Companies** (send a copy to each company on the list below)

First Check
P.O. Box 334
Wyoming, MN 55092

Rental History Reports
701 5th Street South
Hopkins, MN 55343

Screening Reports, Inc.
220 Gerry Dr.
Wooddale, IL 60191

RealPage Resident Screening
c/o Leasing Desk Screening
Consumer Relations
2201 Lakeside Blvd
Richardson, TX 75082

Multi-Housing Credit Control (MCC)
10125 Crosstown Circle, Ste 100
Eden Prairie, MN 55344

Rental Research Services, Inc.
7525 Mitchell Rd, Ste 301
Eden Prairie, MN 55344

TransUnion My Smart Move- Disputes
PO Box 800
Woodlyn, PA 19094

TenantAlert.com
23801 Calabasas Road, Ste 1022
Calabasas, CA 91302

Twin City Tenant Check
910 Ivy Avenue East
St. Paul, MN 55106

TenantReports.com, LLC
P.O. Box 450
Springfield, PA 19064

AppFolio, Inc
50 Castilian Dr
Goleta, CA 93117

Checkr.com
Attn: Legal Department
1 Montgomery St, Ste 2400
San Francisco, CA 94101

Date: _____

Dear Directors:

I am the tenant listed in the enclosed expungement order(s).

Minnesota Statutes § 504B.241, Subd. 4 says that "If a tenant screening service knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service."

Subdivision 2 states that "At the request of the individual, the residential tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months."

I am asking you to delete all of your references to this court file, and that you notify anyone who got my tenant report in the last 6 months that the eviction was expunged and deleted from my file.

Minnesota law does not permit tenant screening agencies to ask for any other information on tenants before taking this action.

Please contact me if you have any questions. Thank you.

_____ _____

(print name) (signature)

## 484.014 HOUSING RECORDS; EXPUNGEMENT OF EVICTION INFORMATION.

Subdivision 1. **Definitions.** For the purpose of this section, the following terms have the meanings given:

(1) "expungement" means the removal of evidence of the court file's existence from the publicly accessible records;

(2) "eviction case" means an action brought under sections 504B.281 to 504B.371; and

(3) "court file" means the court file created when an eviction case is filed with the court.

Subd. 2. **Discretionary expungement.** The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

Subd. 3. **Mandatory expungement.** The court shall order expungement of an eviction case commenced solely on the grounds provided in section 504B.285, subdivision 1, clause (1), if the court finds that the defendant occupied real property that was subject to contract for deed cancellation or mortgage foreclosure and:

(1) the time for contract cancellation or foreclosure redemption has expired and the defendant vacated the property prior to commencement of the eviction action; or

(2) the defendant was a tenant during the contract cancellation or foreclosure redemption period and did not receive a notice under section 504B.285, subdivision 1a, 1b, or 1c, to vacate on a date prior to commencement of the eviction case.

**History:** *1999 c 199 art 1 s 74; 1999 c 229 s 1; 2008 c 174 s 1; 2010 c 315 s 1*

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# Constructive Eviction

From Larry McDonald, Residential Eviction Defense and Tenant Claims in Minnesota, Sixteenth Edition, July 2020. Access from this link: http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm on July 31, 2020.

d. *Constructive eviction*

Minn. Stat. § 504B.131 (formerly § 504.05) provides that where the property is "destroyed or is so injured by the elements or any other cause as to be untenantable or unfit for occupancy, [the tenant] is not liable thereafter to pay rent ...." The statute generally serves as the basis for constructive eviction. In *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203), the court held that the tenant was not liable for rent where apartment is made uninhabitable due to actions of a third party and through no fault or negligence of the landlord or tenant, under Sections 504.05 (now § 504B.131) and 504.18 (now § 504B.161). *See Smith v. _____*, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

In *Delamater v. Foreman*, 184 Minn. 428, 239 N.W. 148 (1931), the Minnesota Supreme Court held for the tenants on their claims for damages and constructive eviction in a bed bug-infested apartment in a multi-unit apartment building where the lease was silent on habitability.

In _____ *v. Country Village Apartments*, C8-02-14178 (Minn. Dist. Ct. 1st Dist. July 8, 2002) (Appendix 436), the tenant obtained a restraining order against the father of her child. She called the police for subsequent incidents of threats and property damage, but did not feel safe. She gave notice to the landlord that she would vacate, claiming that the property was not fit for her use under Minn. Stat. § 504B.161 (formerly § 504.18). When the landlord did not agree to end the tenancy, she filed an rent escrow action under Minn. Stat. § 504B.385 (formerly § 566.34). The court found that she had been constructively evicted, and ordered her released from the lease, ending her rent liability, and that the landlord return her deposit minus the cost of damage beyond ordinary wear and tear. *See Person v. Torchwood Management*, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)); *Colonial Court Apartments, Inc. v. Kern*, 292 Minn. 533, 163 N.W.2d. 770 (1968) (damages action: affirmed trial court finding of constructive eviction for landlord's failure to respond to tenant's complaints about neighboring tenants).

e. Damages action

(1) Habitability

See discussion, supra, at XII.B.0. for a discussion of considerations for all tenant actions. For more information on habitability claims as defenses to eviction actions, see discussion at VI.E.1.

Prior to 1971, the landlord only had an obligation to maintain the property if the landlord agreed to take the obligation, or if the lease was silent. Delamater v. Foreman, 184 Minn. 428, 239 N.W. 148 (1931). In 1971 the Minnesota Legislature enacted Minn. Stat. § 504.18, now § 504B.161. Subdivision 1 provides that implied in every oral and written residential lease are three covenants or obligations of the landlord:

1. That the premises and all common areas are fit for the use intended by the parties.

2. To keep the premises in reasonable repair, except where the disrepair was caused by the willful, malicious or irresponsible conduct of the tenant or tenant's agent.

3. Maintain the premises in compliance with applicable state and local housing maintenance, health, and safety laws, except where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent. Included in "health and safety laws" are: (a) The weatherstripping, caulking, storm window, and storm door energy efficiency standards for rental property contained in Minn. Stat. § 216C.27, subd. 1, 3. See Minn. Stat. § 216C.30, subd. 5, Minn. R. § 7655.0400; and (b) Fire extinguisher and smoke detector installation requirements. Minn. Stat. §§ 299F.361, 299F.362.

The "fit for intended use covenant" includes the landlord's statutory obligations to be the bill payer and customer of record for utility services supplied to a building through one meter where the service covers more than one unit or the common areas. Minn. Stat. § 504B.215 (formerly § 504.185). See Utilities, infra, at VI.E.4

The statute is to be liberally construed. Id. The covenants of habitability and the covenant to pay rent are mutual and dependant, and all or part of the rent is not due when the landlord has breached the covenants. Fritz v. Warthen, 298 Minn. 48, 54, 213 N.W.2d 339, 341-42 (1973).

Three possible alternative remedies are available to enforce the statutory covenants: (1) The tenant may assert breach of the covenants as a defense to the landlord's unlawful detainer action for nonpayment of rent; (2) the tenant may continue to pay rent and bring his own action to recover damages for breach of the covenants by the landlord; (3) the tenant, after vacating the premises and suspending rent payments, may raise breach of the covenants as a defense to an action by the landlord for the rent.

Id. at 58, 213 N.W.2d at 341.

In Love v. Amsler, No. 87-14719 (Minn. Dist. Ct. 4th Dist. July 14, 1988) (TR App. 87), , aff'd Love v. Amsler, 441 N.W.2d 555 (Minn. Ct. App. 1989), the tenant withheld rent and when the landlord filed an

eviction action, the tenant settled and moved. The landlord filed an action for rent and damages in conciliation court just before the tenant vacated, after which the tenant filed an action in district court claiming habitability violations and violations of the Prevention of Consumer Fraud Act and Uniform Deceptive Trade Practices Act. The district court found the landlord required the tenant to pay utilities even though the lease required the landlord to pay; inoperable heat, a dangerous space heater, excessive soot, dangerous electrical and structural defects, serious flooding problems, trip hazards, poor drainage, inadequate foundation, defective insulation and weatherstripping, loose and rotting walls, and defective paint and roofing; and fraudulent claims in actions in conciliation court and district court against numerous tenants. The district court awarded a complete rent abatement of $3,373 for habitability violations; ordered return of the security deposit and interest along with bad faith punitive damages; order the landlord to obtain judicial approved to commence actions and awarded costs, disbursements, and attorney's fees for violations of the Prevention of Consumer Fraud Act. On appeal, the Court of Appeals affirmed, holding that trial court did not err (1) in applying the Prevention of Consumer Fraud Act applied to deceptive practices in leased housing, (2) awarding damages of previously paid rent, and (3) in its award of fees and costs or by imposing conditions on Amsler's right to file suit. Love v. Amsler, 441 N.W.2d 555 (Minn. Ct. App. 1989).

In Ghebrehiwet v. Ghneim, No. A15-0397 (Minn. Ct. App. January 11, 2016) (unpublished), landlord claimed in district court on removal from conciliation court that tenant failed to pay rent when due, held over after the lease expired, and damaged the rental unit. The tenant counterclaimed that the landlord breached the covenants of habitability due to a pervasive smell of sewage, flooding from a leaking roof, and no heat in the rental unit. The tenant also alleged privacy violations because landlord entered the rental unit without a reasonable purpose and without making a good faith effort to provide reasonable notice on several occasions, including an incident when the tenant woke up in her master bedroom to find the landlord and another male standing within feet of her, both of whom refused to leave even after several requests. The district court held that tenant owed $1,952 in unpaid rent, but that landlord was liable for damages in the amount of $3,300 (3 months' rent) for his breach the covenant of habitability and for penalties in the amount of $3,300 for numerous privacy violations.

The Court of Appeals affirmed the penalties, but reversed the damage award. For a substantial violation of the tenant's right to privacy, the statute allows for penalties that may include rent reduction up to full rescission of the lease, recovery of any damage deposit, and a maximum $100 civil penalty for each violation. The district court found that more than 10 substantial violations had occurred and awarded $1,000. The district court also awarded an additional $2,300 for the egregious master bedroom incident in the form of full rent reduction for that month ($1,100), recovery of the $1,100 damage deposit, and a $100 penalty. The Court of Appeals held that the penalties awarded to the tenant were not an abuse of discretion.

However, the Court of Appeals found that the tenant did not provide photographs or a contemporaneous record of the habitability problems, such as when they began, when complaints were made, and when each problem was fixed. Since the tenant failed to present specific proof of those damages, the district court simply abated the entire rent for the three months when the most egregious

violations occurred. This was an abuse of discretion because the statute requires a proportionate approach (the extent the violations impaired the use and enjoyment of the unit) if rent is to be retroactively abated as a remedy for the breach of habitability. The Court of Appeals found there is no precedential authority for complete abatement of rent for any month when a violation has occurred. Accordingly, the award of damages was reversed.

In Perez v. Wilson, No. C4-94-2182, 1995 WL 265018 (Minn. App. May 9, 1995) (unpublished), the former tenant sued his landlord after he vacated the apartment pursuant to a notice of eviction. The district court held that the landlord did not violate the covenants under Minn. Stat. §504.18 because health and safety violations at the building were often caused by the tenants' conduct, and the tenant did not cooperate with attempts to repair his apartment. Further, the landlord did not violate Minn. Stat. §504.20, which requires return of the security deposit or a written statement regarding why it was not being returned, within three weeks after termination of the tenancy, because the landlord did not know the tenant's new address during that time. The district court also found that the landlord did not engage in any deceptive practices because, among other things, the lease addendum that required tenants to contact the manager or owner with complaints, instead of the government inspector, was intended to give the landlord a chance to remedy the problems, not to deceive. Finally, the district court held that the landlord was entitled to the full rent for the final month of the lease, even though the tenant vacated prior to the end of the month deadline in the notice. The Court of Appeals affirmed the decisions below and also held that the district court's evidentiary rulings were either proper or lacked prejudice, and therefore, the motion for a new trial was properly denied.

In Braddick v. Marlin Manor LLC, No. 69VI-CO-15-463 (Minn. Dist. Ct. 6th Dist., St. Louis County, Mar. 22, 2016) (Appendix 736), the tenant filed a breach of implied covenant of habitability claim against landlord arguing that the water provided to the apartment was occasionally too hot (ranging from 140-215 degrees Fahrenheit) for use and requesting $200 rent abatement per month for every month the water temperature was in need of repair. The landlord argued that the case was barred by res judicata or claim preclusion. The conciliation court stated that res judicata did not apply because although the previous claim was brought under the same set of factual circumstances and between the same parties, there was no final judgment on the merits and the plaintiff did not have a full and fair opportunity to litigate the matter. The court explained that a tenant "may continue to rent and bring his own action to recover damages for breach of the covenants by the landlord" and that "[u]npredictable and unregulated hot water not only prevents a tenant from making reasonable use of a residence but, indeed, materially affects his or her health and safety." The court held that plaintiff was entitled to rent abatement as reasonable damages of $50 per month for a total of $350.

(2) Lack of rental license

See discussion, supra, at XII.B.0. for a discussion of considerations for all tenant actions. See discussion of licenses at XII.B.3.f1.

## 504B.171 COVENANT OF LANDLORD AND TENANT NOT TO ALLOW UNLAWFUL ACTIVITIES.

Subdivision 1. **Terms of covenant.** (a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

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

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

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

Subd. 2. **Breach voids right to possession.** A breach of the covenant created by subdivision 1 voids the tenant's or licensee's right to possession of the residential premises. All other provisions of the lease or license, including but not limited to the obligation to pay rent, remain in effect until the lease is terminated by the terms of the lease or operation of law. If the tenant or licensee breaches the covenant created by subdivision 1, the landlord may bring, or assign to the county or city attorney of the county or city in which the residential premises are located, the right to bring an eviction action against the tenant or licensee. The assignment must be in writing on a form provided by the county or city attorney, and the county or city attorney may determine whether to accept the assignment. If the county or city attorney accepts the assignment of the landlord's right to bring an eviction action:

(1) any court filing fee that would otherwise be required in an eviction action is waived; and

(2) the landlord retains all the rights and duties, including removal of the tenant's or licensee's personal property, following issuance of the writ of recovery of premises and order to vacate and delivery of the writ to the sheriff for execution.

Subd. 3. **Waiver not allowed.** The parties to a lease or license of residential premises may not waive or modify the covenant imposed by this section.

**History:** *1999 c 199 art 1 s 15; 2003 c 52 s 1; 2014 c 188 s 1*

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# LOCK OUTS AND SHUT OFFS OVERVIEW

## Lock outs

In a tenancy, it is the tenant who has been given possession which is exclusive even against the landlord, with the only exceptions being the landlord's right to enter the premises to demand rent or make repairs, or exceptions provided by the lease. *Seabloom v. Krier*, 219 Minn. 362, ___, 18 N.W. 2d 88, 91 (1945).

"Wrongful eviction is prohibited by common law and by statute. A lock out also constitutes a misdemeanor under Minn. Stat. §504B.225. The tenant can call the police, although police responses to lockouts vary considerably." Minn. Stat. § 504B.281 (formerly § 566.01) provides:

> FORCIBLE ENTRY AND UNLAWFUL DETAINER PROHIBITED.
>
> No person may occupy or take possession of real property except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.

Tenant may file a petition to regain possession. The Minnesota Judicial Branch website has form HOU 702 (Verified Petition for Possession of Residential Rental Property Following Unlawful Removal or Exclusion) for this purpose. Minn. Stat. §504B.375 details what should be included in the petition. The above form does not prompt the petitioner to include damages nor penalties, however the petitioner should include them along with statute citations. The Minnesota Statutes related to damages include §504B.231, §557.08 & §557.09.

A common practice is for the court to issue an order requiring the landlord to remedy the lockout, scheduling a hearing to determine compliance and damages and hear defenses, and providing a deadline for service of the petition and order on the defendant. The statute does not provide for a hearing procedure. The tenant has the burden of proof, even if the court has ordered the landlord to remedy the lockout, to prove (1) tenancy, (2) lockout or exclusion, (3) impact on tenant, and (4) relief requested.

**Above information from McDonough, Residential Eviction Defense and Tenant Claims in Minnesota, and the Minnesota Judicial Branch Web site.

## Shut offs

The following statutes are relevant to shut-offs: §504B.221, §504B.231, §504B.225, §216B.096-216B.098.

**Cold Weather Rule**

1. Lawrence McDonough. *Residential Eviction Defense and Tenant Claims in Minnesota*. (16th ed., 2020).
2. *When facing a utility disconnection*, MN Attorney General, last visited on July 31, 2020. https://www.ag.state.mn.us/Consumer/Publications/UtilityDisconnection.asp

Special protections exist for Minnesotans facing disconnection between October 15 and April 15 under Minnesota's Cold Weather Rule. It is important to note that this protection does not prohibit utilities from disconnecting service, but that it requires several steps to be taken before disconnection.

**First**, if your household income is below 50% of the state median, a utility must not disconnect you and must reconnect the utility service if your primary heat source is affected. You may need to provide verification of your household income, but your utility provider should give you a reasonable timeframe to provide this documentation. With this protection, you must still enter into a payment arrangement with your utility, but the utility must consider the financial resources of your household when establishing an arrangement. If your household income is above 50% of the state median, you still have a right to a payment agreement that takes into consideration your financial resources and any other extenuating circumstances.

**Second**, utilities must provide the following information to customers facing disconnection during the period of the Cold Weather Rule.

1. a notice of proposed disconnection;
2. a statement explaining your rights and responsibilities;
3. a list of local energy assistance providers;
4. forms on which to declare an inability to pay; and
5. a statement explaining available payment plans and other opportunities to secure continued utility service.

**Third**, during the Cold Weather Rule, a utility typically cannot disconnect service on a Friday, on a weekend, holiday, or the day before a holiday, when utility offices are closed, or after the close of business on a day when disconnection is permitted.

1. Lawrence McDonough. *Residential Eviction Defense and Tenant Claims in Minnesota*, (16th ed., 2020).
2. *When facing a utility disconnection*, MN Attorney General, last visited on July 31, 2020. https://www.ag.state.mn.us/Consumer/Publications/UtilityDisconnection.asp

# Lock-Outs and Shut-Offs to Evict Are Illegal

## What is a lock-out or shut-off?

A lock-out is when your landlord forces you out of your home without going to court first, like if they change or take off your locks. **It is illegal.** If a landlord tries to get you out by shutting off water, heat or electricity that is a shut-off and is also illegal.

**A landlord can only evict you by filing a court case**, called an eviction action. If this happens, you will be served with court papers. In court you have a chance to tell your side of the story.



If you lose in court, or do not show up to court, the landlord will get an order called a Writ of Recovery. The sheriff will post the Writ on your door, telling you to leave within 24 hours. If you do not leave in that time, the sheriff or police can come back, move you out, change the locks and supervise moving your things to storage.

**A landlord can never force you out of your home without a Writ and a law officer**. The landlord can't change the locks, shut off your utilities, move your property outside, take off or board up doors and windows, or do anything else to make you leave. The landlord can *ask* or *tell* you to move, but a landlord cannot *force* you to move unless they go to court.

If you and your landlord sign a lease, but then the landlord won't let you move in, that may also be an illegal lock-out.

## What if my landlord is threatening to lock me out?

Tell your landlord that you know lockouts are illegal and they would have to evict you to force you to move. If your landlord is threatening to lock you out, always carry your ID and copies of things that show you are a current tenant. These could be things like a copy of your lease, copies of utility bills, and rent receipts. It is good to have these in case you are locked out and have to call the police to get back in.

## What should I do if I am locked out?

Call the landlord. Explain that a lockout is a crime and they can get jail time and a fine (Minnesota Statutes 504B.225 and 609.606). Ask to be let back in. Take this fact sheet to the landlord if you have to. Remain calm at all times. If you talk to the landlord in person, bring a witness.



**If the landlord refuses, call the police**. Explain what happened. Say that you know that a lock-out is a criminal misdemeanor. Ask them to call the landlord and meet you and the landlord at the property to let you in. Show them this fact sheet when they come to your house. Show them the proof that you live there, like an ID, utility bill or lease.

**If that does not work, or if you can't find the landlord, call a lawyer**. If you have a low income, call your legal aid office. Often, a call from a lawyer to the landlord will solve the problem.

## How do I file a lock-out case in court?

If you have a lawyer or not, you can go to court and very quickly get an order to get you back into your home. Some courts have a form like the one attached. You can also find them online. Fill out the court form or the one attached, and take it to your county courthouse. Bring something that shows that you live on the property, like your lease, driver's license, or utility bill. Ask to see a judge as soon as possible.

If you have a low income, ask at the court for a court fee waiver or "inability to pay" (IFP) form. This form asks the court to waive your fees.



You can create an IFP online using an easy step-by-step interview.

Go to www.lawhelpmn.org/forms.

→ Click on Court Fee Waiver (IFP)

When you go to court bring proof of your income, like pay stubs, or proof of government assistance.

**Your landlord may claim that you abandoned the apartment**. If your things are there and you did not tell the landlord you are leaving, then you did not abandon the apartment. The landlord must file an eviction case in court before moving your things or changing the locks.

**You might have the right to be let in the property even if you never moved in.** If you signed a lease and gave money to the landlord for rent or a security deposit, the landlord must let you move into the property on the date the lease starts. If the landlord refuses to let you in, you have the right to start a lockout action and be let into the property.

**Even people who live in temporary housing can't be locked out.** You have the right not to be locked out of your home even if your home is in an assisted living building, a sober house, a homeless shelter, and other types of housing. The landlords who run buildings like these might say they can make you leave without going through an eviction. They are wrong. Even if you live in temporary housing, you have the rights in this fact sheet. You can ask the court to order the sheriff to help you get back in right away.

**You can also ask the court to set a hearing to decide if the landlord should pay you money (damages) for locking you out.** The court should sign an order for you to take to the sheriff. The sheriff can let you back in, even if they have to break in.

**Your damages are the money you lost** or had to spend because of the lock-out. Tell the court about any damaged property, missed work, missed appointments, motel bills, gas and food expenses, or other costs. Keep receipts and bring them to court.

You can also get triple damages (3 times your damages), or $500, whichever is more, plus attorney's fees, ***if***:

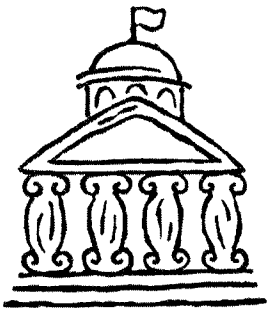
- The landlord shuts off your electricity, water, heat, or gas AND you told the landlord about it, but the landlord did not try to get your utilities turned back on within a reasonable time.

***OR***

- The landlord acted in "bad faith." Bad faith usually means lying, cheating, or knowing that something is wrong but doing it anyway.

If you win money damages, ask the court to let you collect it by taking it off your rent. Get a copy of the order. If your landlord files an eviction case against you for unpaid rent, show the judge the lockout case order.

**If you don't go to court to get back in, you can sue your landlord** later in Conciliation Court. Be sure to save all your evidence and keep track of any witnesses. The sooner you act the better. Remember that if you owe your landlord any money, they can "counterclaim" for their damages if you file a case. See our fact sheet *Conciliation Court*.



***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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**STATE OF MINNESOTA** **DISTRICT COURT**

**COUNTY OF** _____

_____

Plaintiff (Tenant)

**LOCK-OUT PETITION**

Vs.

_____ FILE NO.

Defendant (Landlord)

Plaintiff states under oath:

1. My address is _____

2. My landlord's name is _____

3. My landlord's address is _____

4. The monthly rent is $ _____

5. I have not abandoned my home. I was last there on _____ At that time, my personal property was still there.

6. The landlord has forced me out of my home by doing the following:

_____

_____

_____

7. The landlord did not go to eviction court for a Writ of Recovery (Minn. Stat. 504B.345), or the landlord did go to court, but did not have the sheriff act on the Writ (Minn. Stat. 504B.365).

8. I am entitled to triple damages or $500, whichever is more, plus attorney's fees (Minn. Stat. 504B.231, 504B.221) because:

☐ The landlord shut off my electricity, water, heat, or gas. I told him/her about it, but s/he did not try to restore service within a reasonable time.

and/or

☐ The landlord has shown bad faith by:

_____

9. My monthly income is $ _____ I can't afford to post money as security in this case.

10. I respectfully ask the court for an order:

A. To restore me to my home.
B. To have the sheriff serve the court's order on the landlord.
C. To have the sheriff to restore me to my home immediately, with or without the cooperation of my landlord.
D. Set a hearing under Minn. Stat. 504B.375 to hear my claims for possession.
E. Set a hearing under Minn. Stat. 504B.225 and .231 to hear my claims for damages, costs, and attorney's fees.
F. Award me costs if I win.
G. Allow me to deduct any money judgment against the landlord from my rent.
H. Rule that I do not have to pay security.

I certify that, to the best of my knowledge:

- This document is not being filed for an improper reason, such as harassment or delay; and
- My claims are supported by the law; and
- There is evidence for my claims and/or my denials.

I know that I may be fined or sanctioned by the court if this certification is false.
I declare under penalty of perjury that everything I have stated in this document is true and correct.
This document was signed in _____ County, State of Minnesota

Date: _____ Signed: _____

## 504B.225 INTENTIONAL OUSTER AND INTERRUPTION OF UTILITIES; MISDEMEANOR.

A landlord, an agent, or person acting under the landlord's direction or control who unlawfully and intentionally removes or excludes a tenant from lands or tenements or intentionally interrupts or causes the interruption of electrical, heat, gas, or water services to the tenant with intent to unlawfully remove or exclude the tenant from lands or tenements is guilty of a misdemeanor. In any trial under this section, it shall be presumed that the landlord, agent, or other person acting under the landlord's direction or control interrupted or caused the interruption of the service with intent to unlawfully remove or exclude the tenant from lands or tenements, if it is established by evidence that the landlord, an agent, or other person acting under the landlord's direction or control intentionally interrupted or caused the interruption of the service to the tenant. The burden is upon the landlord to rebut the presumption.

The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 26*

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## 504B.375 UNLAWFUL EXCLUSION OR REMOVAL; ACTION FOR RECOVERY OF POSSESSION.

Subdivision 1. **Unlawful exclusion or removal.** (a) This section applies to actual or constructive removal or exclusion of a residential tenant which may include the termination of utilities or the removal of doors, windows, or locks. A residential tenant to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e).

(b) The residential tenant shall present a verified petition to the district court of the judicial district of the county in which the premises are located that:

(1) describes the premises and the landlord;

(2) specifically states the facts and grounds that demonstrate that the exclusion or removal was unlawful, including a statement that no writ of recovery of the premises and order to vacate has been issued under section 504B.345 in favor of the landlord and against the residential tenant and executed in accordance with section 504B.365; and

(3) asks for possession.

(c) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the residential tenant or the residential tenant's attorney or agent that the exclusion or removal was unlawful, the court shall immediately order that the residential tenant have possession of the premises.

(d) The residential tenant shall furnish security, if any, that the court finds is appropriate under the circumstances for payment of all costs and damages the landlord may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of security, the court shall consider the residential tenant's ability to afford monetary security.

(e) The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises. If the landlord, the landlord's agent, or other person in control of the premises cannot be found and if there is no person in charge, the officer shall immediately enter into and place the residential tenant in possession of the premises. The officer shall also serve the order and verified petition or affidavit immediately upon the landlord or agent, in the same manner as a summons is required to be served in a civil action in district court.

Subd. 2. **Motion for dissolution or modification of order.** The landlord may, by written motion and notice served by mail or personally on the residential tenant or the residential tenant's attorney at least two days before the hearing date on the motion, obtain dissolution or modification of the order for possession issued under subdivision 1, paragraph (c), unless the residential tenant proves the facts and grounds on which the order is issued. A landlord bringing a motion under this subdivision may recover possession of the premises only by an eviction action or otherwise provided by law. Upon the dissolution of the order, the court shall assess costs against the residential tenant, subject to the provisions of section 563.01, and may allow damages and reasonable attorney fees for the wrongful granting of the order for possession. If the order is affirmed, the court shall tax costs against the landlord and may allow the residential tenant reasonable attorney's fees.

Subd. 3. **Finality of order.** An order issued under subdivision 1, paragraph (c), or affirmed, modified, or dissolved under subdivision 2, is a final order for purposes of appeal. Either party may appeal the order

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within ten days after entry. If the party appealing remains in possession of the premises, bond must be given to:

(1) pay all costs of the appeal;

(2) obey the court's order; and

(3) pay all rent and other damages that justly accrue to the party excluded from possession during the pendency of the appeal.

Subd. 4. **Waiver not allowed.** A provision of an oral or written lease or other agreement in which a residential tenant waives this section is contrary to public policy and void.

Subd. 5. **Purpose.** The purpose of this section is to provide an additional and summary remedy for residential tenants unlawfully excluded or removed from rental property and, except where expressly provided in this section, sections 504B.285 to 504B.371 do not apply to proceedings under this section.

Subd. 6. **Application.** In addition to residential tenants and landlords, this section applies to:

(1) occupants and owners of residential real property that is the subject of a mortgage foreclosure or contract for deed cancellation for which the period for redemption or reinstatement of the contract has expired; and

(2) mortgagees and contract for deed vendors.

**History:** *1999 c 199 art 1 s 55; 2005 c 10 art 2 s 4*

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MINNESOTA
PUBLIC UTILITIES COMMISSION

# Shut-Off Protection

# Cold Weather Rule

The Cold Weather Rule (CWR) helps protect and reconnect your heat from October 15 through April 15.

CWR protection is for residential customers only.

All electric and natural gas companies must offer CWR protection. Different types of payment plans are available, depending on your household income and which electric or natural gas company you have.

If you are having trouble keeping up with your winter heating bills, contact your electric or natural gas company to sign up for a CWR payment plan.

CWR protection ends on April 15. If you still owe on your bill on April 15, you may ask your electric or natural gas company to continue your payment plan.

Call your natural gas or electric company for more information on additional discounts.

# FAQs

***Can my heat be shut off in the Winter?***

- **YES.**
- You must make and keep a Cold Weather Rule payment plan with your natural gas or electric utility company to receive Cold Weather Rule (CWR) protection between October 15 and April 15
- This is true for all residential customers, including senior citizens and families with young children
- Payment plans can be established at any time during the CWR season.
- If the payment plan is broken the natural gas or electric company is not required to offer additional arrangements
- If you are unable to agree on a payment amount, you request an appeal from your natural gas or electric company.

***How do I sign up?***

- Contact your natural gas or electric company and request a CWR payment plan
- Payment plans can be established at anytime during the CWR season. If the payment plan is broken the utility is not required to offer additional arrangements
- If you are unable to agree on a payment amount, you have the right to appeal with your natural gas or electric company.

***After you sign up***

- Once you make and keep a CWR payment plan, the utility will turn on your heat. As long as you make your payments, you are protected until April 15

***Appeals***

- If you and the utility cannot agree on a payment plan, you can request and appeal from your natural gas or electric company
- You have ten days to submit your appeal to the Commission
- The Commission will help you set up a payment plan
- Your service will stay on during the appeal process

***Does this apply to all utilities?***

- No. Delivered fuels such as fuel oil, propane and wood are not covered by the CWR.

- If you need electricity to keep your heat on, you may apply for CWR protection with your electric company.

***Utility Requirements***

- Before disconnecting service between October 15 and April 15, the natural gas and electric companies must provide you with:
  - Notice of disconnection
  - Payment plan options to stop a disconnection
  - Appeal rights if you and the utility cannot agree on a payment plan
  - A list of local energy assistance and weatherization providers
  - A list of no-cost and low-cost methods to conserve energy
  - A Third Party Notice form

***What if I can't make my scheduled payment?***

- If you can't make your payments, **call your utility immediately** to make a new CWR payment plan.
- If you do not make your payments, your service may be shut off

***What if I rent and pay my own utility bills?***

- If the natural gas or electric service in your name affects your primary heat, you are eligible for CWR protection

***Help reading and understanding notices***

- If you have trouble with utility bills and notices, fill out a Third Party Notice form and the utility will send copies to the person you choose so you don't miss important dates.

- The Third Party is not responsible for paying any bills.

# Help paying bills

## Help is a phone call away

**County Human Services (http://mn.gov/portal/government/local/counties)**
County Human Services departments offer cash, emergency, food, housing, and medical assistance.

**Energy Assistance Program (https://mn.gov/commerce/consumers/consumer-assistance/energy-assistance/)**
The Energy Assistance Program (EAP) helps pay home heating costs. Households with the lowest incomes and highest energy costs receive the greatest benefit.

**Energy Assistance Hotline (https://mn.gov/commerce/consumers/consumer-assistance/energy-assistance/eap-provider.jsp)**
1. 800. 657. 3710
Application (https://mn.gov/commerce-stat/pdfs/application-english.pdf)

**Gas Affordability Program (GAP)**
If you receive Energy Assistance, you may qualify. Contact your gas company for information.

**Low Income Electric Rate Discount**
If you receive Energy Assistance, you may qualify. Contact your electric company for information.

**The Salvation Army HeatShare**
(http://salvationarmynorth.org/programs-that-help/basic-needs/heatshare/) HeatShare provides emergency utility assistance.
1. 800. 842. 7279

**United Way 2-1-1**
(http://www.211.org/) United Way 2-1-1 is a free and confidential service that can help you find local resources.
Dial 211.

# Protect & Reconnect Your Heat

Cold Weather Rule Brochure (/puc/assets/D6%202019%20Cold%20Weather%20Rule%20Brochure_tcm14-399620.pdf)

## 216B.096 COLD WEATHER RULE; PUBLIC UTILITY.

Subdivision 1. **Scope.** This section applies only to residential customers of a utility.

Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "Cold weather period" means the period from October 15 through April 15 of the following year.

(c) "Customer" means a residential customer of a utility.

(d) "Disconnection" means the involuntary loss of utility heating service as a result of a physical act by a utility to discontinue service. Disconnection includes installation of a service or load limiter or any device that limits or interrupts utility service in any way.

(e) "Household income" means the combined income, as defined in section 290A.03, subdivision 3, of all residents of the customer's household, computed on an annual basis. Household income does not include any amount received for energy assistance.

(f) "Reasonably timely payment" means payment within five working days of agreed-upon due dates.

(g) "Reconnection" means the restoration of utility heating service after it has been disconnected.

(h) "Summary of rights and responsibilities" means a commission-approved notice that contains, at a minimum, the following:

(1) an explanation of the provisions of subdivision 5;

(2) an explanation of no-cost and low-cost methods to reduce the consumption of energy;

(3) a third-party notice;

(4) ways to avoid disconnection;

(5) information regarding payment agreements;

(6) an explanation of the customer's right to appeal a determination of income by the utility and the right to appeal if the utility and the customer cannot arrive at a mutually acceptable payment agreement; and

(7) a list of names and telephone numbers for county and local energy assistance and weatherization providers in each county served by the utility.

(i) "Third-party notice" means a commission-approved notice containing, at a minimum, the following information:

(1) a statement that the utility will send a copy of any future notice of proposed disconnection of utility heating service to a third party designated by the residential customer;

(2) instructions on how to request this service; and

(3) a statement that the residential customer should contact the person the customer intends to designate as the third-party contact before providing the utility with the party's name.

(j) "Utility" means a public utility as defined in section 216B.02, and a cooperative electric association electing to be a public utility under section 216B.026. Utility also means a municipally owned gas or electric utility for nonresident consumers of the municipally owned utility and a cooperative electric association

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when a complaint in connection with utility heating service during the cold weather period is filed under section 216B.17, subdivision 6 or 6a.

(k) "Utility heating service" means natural gas or electricity used as a primary heating source, including electricity service necessary to operate gas heating equipment, for the customer's primary residence.

(l) "Working days" means Mondays through Fridays, excluding legal holidays. The day of receipt of a personally served notice and the day of mailing of a notice shall not be counted in calculating working days.

Subd. 3. **Utility obligations before cold weather period.** Each year, between September 1 and October 15, each utility must provide all customers, personally, by first class mail, or electronically for those requesting electronic billing, a summary of rights and responsibilities. The summary must also be provided to all new residential customers when service is initiated.

Subd. 4. **Notice before disconnection during cold weather period.** Before disconnecting utility heating service during the cold weather period, a utility must provide, personally or by first class mail, a commission-approved notice to a customer, in easy-to-understand language, that contains, at a minimum, the date of the scheduled disconnection, the amount due, and a summary of rights and responsibilities.

Subd. 5. **Cold weather rule.** (a) During the cold weather period, a utility may not disconnect and must reconnect utility heating service of a customer whose household income is at or below 50 percent of the state median income if the customer enters into and makes reasonably timely payments under a mutually acceptable payment agreement with the utility that is based on the financial resources and circumstances of the household; provided that, a utility may not require a customer to pay more than ten percent of the household income toward current and past utility bills for utility heating service.

(b) A utility may accept more than ten percent of the household income as the payment arrangement amount if agreed to by the customer.

(c) The customer or a designated third party may request a modification of the terms of a payment agreement previously entered into if the customer's financial circumstances have changed or the customer is unable to make reasonably timely payments.

(d) The payment agreement terminates at the expiration of the cold weather period unless a longer period is mutually agreed to by the customer and the utility.

(e) Each utility shall use reasonable efforts to restore service within 24 hours of an accepted payment agreement, taking into consideration customer availability, employee availability, and construction-related activity.

Subd. 6. **Verification of income.** (a) In verifying a customer's household income, a utility may:

(1) accept the signed statement of a customer that the customer is income eligible;

(2) obtain income verification from a local energy assistance provider or a government agency;

(3) consider one or more of the following:

(i) the most recent income tax return filed by members of the customer's household;

(ii) for each employed member of the customer's household, paycheck stubs for the last two months or a written statement from the employer reporting wages earned during the preceding two months;

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(iii) documentation that the customer receives a pension from the Department of Human Services, the Social Security Administration, the Veteran's Administration, or other pension provider;

(iv) a letter showing the customer's dismissal from a job or other documentation of unemployment; or

(v) other documentation that supports the customer's declaration of income eligibility.

(b) A customer who receives energy assistance benefits under any federal, state, or county government programs in which eligibility is defined as household income at or below 50 percent of state median income is deemed to be automatically eligible for protection under this section and no other verification of income may be required.

Subd. 7. **Prohibitions and requirements.** (a) This subdivision applies during the cold weather period.

(b) A utility may not charge a deposit or delinquency charge to a customer who has entered into a payment agreement or a customer who has appealed to the commission under subdivision 8.

(c) A utility may not disconnect service during the following periods:

(1) during the pendency of any appeal under subdivision 8;

(2) earlier than ten working days after a utility has deposited in first class mail, or seven working days after a utility has personally served, the notice required under subdivision 4 to a customer in an occupied dwelling;

(3) earlier than ten working days after the utility has deposited in first class mail the notice required under subdivision 4 to the recorded billing address of the customer, if the utility has reasonably determined from an on-site inspection that the dwelling is unoccupied;

(4) on a Friday, unless the utility makes personal contact with, and offers a payment agreement consistent with this section to the customer;

(5) on a Saturday, Sunday, holiday, or the day before a holiday;

(6) when utility offices are closed;

(7) when no utility personnel are available to resolve disputes, enter into payment agreements, accept payments, and reconnect service; or

(8) when commission offices are closed.

(d) A utility may not discontinue service until the utility investigates whether the dwelling is actually occupied. At a minimum, the investigation must include one visit by the utility to the dwelling during normal working hours. If no contact is made and there is reason to believe that the dwelling is occupied, the utility must attempt a second contact during nonbusiness hours. If personal contact is made, the utility representative must provide notice required under subdivision 4 and, if the utility representative is not authorized to enter into a payment agreement, the telephone number the customer can call to establish a payment agreement.

(e) Each utility must reconnect utility service if, following disconnection, the dwelling is found to be occupied and the customer agrees to enter into a payment agreement or appeals to the commission because the customer and the utility are unable to agree on a payment agreement.

Subd. 8. **Disputes; customer appeals.** (a) A utility must provide the customer and any designated third party with a commission-approved written notice of the right to appeal:

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(1) a utility determination that the customer's household income is more than 50 percent of state median household income; or

(2) when the utility and customer are unable to agree on the establishment or modification of a payment agreement.

(b) A customer's appeal must be filed with the commission no later than seven working days after the customer's receipt of a personally served appeal notice, or within ten working days after the utility has deposited a first class mail appeal notice.

(c) The commission must determine all customer appeals on an informal basis, within 20 working days of receipt of a customer's written appeal. In making its determination, the commission must consider one or more of the factors in subdivision 6.

(d) Notwithstanding any other law, following an appeals decision adverse to the customer, a utility may not disconnect utility heating service for seven working days after the utility has personally served a disconnection notice, or for ten working days after the utility has deposited a first class mail notice. The notice must contain, in easy-to-understand language, the date on or after which disconnection will occur, the reason for disconnection, and ways to avoid disconnection.

Subd. 9. **Cooperative and municipal disputes.** Complaints in connection with utility heating service during the cold weather period filed against a municipal or a cooperative electric association with the commission under section 216B.17, subdivision 6 or 6a, are governed by section 216B.097.

Subd. 10. **Customers above 50 percent of state median income.** During the cold weather period, a customer whose household income is above 50 percent of state median income:

(1) has the right to a payment agreement that takes into consideration the customer's financial circumstances and any other extenuating circumstances of the household; and

(2) may not be disconnected and must be reconnected if the customer makes timely payments under a payment agreement accepted by a utility.

Subdivision 7, paragraph (b), does not apply to customers whose household income is above 50 percent of state median income.

Subd. 11. **Reporting.** Annually on November 1, a utility must electronically file with the commission a report, in a format specified by the commission, specifying the number of utility heating service customers whose service is disconnected or remains disconnected for nonpayment as of October 1 and October 15. If customers remain disconnected on October 15, a utility must file a report each week between November 1 and the end of the cold weather period specifying:

(1) the number of utility heating service customers that are or remain disconnected from service for nonpayment; and

(2) the number of utility heating service customers that are reconnected to service each week. The utility may discontinue weekly reporting if the number of utility heating service customers that are or remain disconnected reaches zero before the end of the cold weather period.

The data reported under this subdivision are presumed to be accurate upon submission and must be made available through the commission's electronic filing system.

**History:** *2007 c 57 art 2 s 13,43; 2008 c 162 s 2,3; 2011 c 97 s 7*

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## 216B.097 COLD WEATHER RULE; COOPERATIVE OR MUNICIPAL UTILITY.

Subdivision 1. **Application; notice to residential customer.** (a) A municipal utility or a cooperative electric association must not disconnect and must reconnect the utility service of a residential customer during the period between October 15 and April 15 if the disconnection affects the primary heat source for the residential unit and all of the following conditions are met:

(1) The household income of the customer is at or below 50 percent of the state median household income. A municipal utility or cooperative electric association utility may (i) verify income on forms it provides or (ii) obtain verification of income from the local energy assistance provider. A customer is deemed to meet the income requirements of this clause if the customer receives any form of public assistance, including energy assistance, that uses an income eligibility threshold set at or below 50 percent of the state median household income.

(2) A customer enters into and makes reasonably timely payments under a payment agreement that considers the financial resources of the household.

(3) A customer receives referrals to energy assistance, weatherization, conservation, or other programs likely to reduce the customer's energy bills.

(b) A municipal utility or a cooperative electric association must, between August 15 and October 15 each year, notify all residential customers of the provisions of this section.

Subd. 2. **Notice to residential customer facing disconnection.** Before disconnecting service to a residential customer during the period between October 15 and April 15, a municipal utility or cooperative electric association must provide the following information to a customer:

(1) a notice of proposed disconnection;

(2) a statement explaining the customer's rights and responsibilities;

(3) a list of local energy assistance providers;

(4) forms on which to declare inability to pay; and

(5) a statement explaining available time payment plans and other opportunities to secure continued utility service.

Subd. 3. **Restrictions if disconnection necessary.** (a) If a residential customer must be involuntarily disconnected between October 15 and April 15 for failure to comply with subdivision 1, the disconnection must not occur:

(1) on a Friday, unless the customer declines to enter into a payment agreement offered that day in person or via personal contact by telephone by a municipal utility or cooperative electric association;

(2) on a weekend, holiday, or the day before a holiday;

(3) when utility offices are closed; or

(4) after the close of business on a day when disconnection is permitted, unless a field representative of a municipal utility or cooperative electric association who is authorized to enter into a payment agreement, accept payment, and continue service, offers a payment agreement to the customer.

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Further, the disconnection must not occur until at least 20 days after the notice required in subdivision 2 has been mailed to the customer or 15 days after the notice has been personally delivered to the customer.

(b) If a customer does not respond to a disconnection notice, the customer must not be disconnected until the utility investigates whether the residential unit is actually occupied. If the unit is found to be occupied, the utility must immediately inform the occupant of the provisions of this section. If the unit is unoccupied, the utility must give seven days' written notice of the proposed disconnection to the local energy assistance provider before making a disconnection.

(c) If, prior to disconnection, a customer appeals a notice of involuntary disconnection, as provided by the utility's established appeal procedure, the utility must not disconnect until the appeal is resolved.

Subd. 4. **Application to service limiters.** For the purposes of this section, "disconnection" includes a service or load limiter or any device that limits or interrupts electric service in any way.

**History:** *1991 c 235 art 2 s 1; 2001 c 212 art 4 s 2; 1Sp2003 c 11 art 3 s 2; 2007 c 57 art 2 s 14,15*

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## 504B.155 TENANT MUST GIVE COLD WEATHER NOTICE BEFORE VACATION OF BUILDING.

Except upon the termination of the tenancy, a tenant who, between November 15 and April 15, removes from, abandons, or vacates a building or any part thereof that contains plumbing, water, steam, or other pipes liable to injury from freezing, without first giving to the landlord three days' notice of intention so to remove is guilty of a misdemeanor.

**History:** *1999 c 199 art 1 s 12*

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## 216B.0975 DISCONNECTION DURING EXTREME HEAT CONDITIONS.

A utility may not effect an involuntary disconnection of residential services in affected counties when an excessive heat watch, heat advisory, or excessive heat warning issued by the National Weather Service is in effect. For purposes of this section, "utility" means a public utility providing electric service, municipal utility, or cooperative electric association.

**History:** *1Sp2003 c 11 art 3 s 3*

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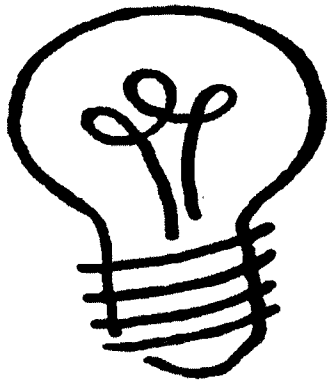
# Utility Shut-Offs
# When Landlord Owes the Bill

## The Shut-Off Notice

If the landlord does not pay the bill, the utility company can shut off service. They must post a notice at the property, or mail you a notice, telling you that they are going to shut off service if the bill isn't paid.

There's a chance you won't get the notice if the utility company thinks the landlord lives at the address. Contact the utility company any time you get a bill that is in the landlord's name. Tell them that it is a tenant occupied property. The shutoff notice has a number to call for more information.

## Stopping a Shut-Off



First, call the landlord and demand that the bill be paid. If they say they will pay it, ask them when. Then, call the utility company to make sure it was paid.

If the landlord does not pay, there are 2 ways to stop the shut-off: an Emergency Tenant Remedy Action, or paying the bill and taking it off the rent.

### 1. Emergency Tenant Remedy Action

You can file a court case called an Emergency Tenant Remedy Action (ETRA), also called a Petition for Emergency Relief Under the Tenant Remedies Act. Get the forms from the court website at www.mncourts.gov.

→ Click on *Get Forms*
→ Click on *Housing/Landlord-Tenant*
→ Click on *Emergency Relief*

The court can order the landlord to pay the bill. If you have repair problems, the court can also order the landlord to fix them. You can ask the court to let you pay the utility bills and take it off your rent. See our fact sheet, *Emergency Repairs*, to learn about ETRAs.

If you can't get a court order before the shut-off date, call the utility company and ask them to keep service on until you get the court order.

## 2. Pay and Deduct

Minnesota has a pay-and-deduct law. This law is for utilities, not repairs. Some cities, like Minneapolis, also have their own pay-and-deduct laws. To use the Minnesota law, first make sure the utility company agrees to keep your service on for another billing period if you pay.

Tell or write to the landlord 48 hours ahead of time that you are going to pay the bill and take it off your rent. You can give less notice if service is going to be shut off in less than 48 hours. If you tell your landlord verbally, you must send a written notice within 24 hours.

Keep a copy of the notice you sent. Pay the most recent bill. Get a receipt from the utility. Send a copy of the receipt to the landlord and take the amount you paid off your next rent payment.

The utility company might only give you one more billing period before shutting off the utility. If this is the case and your landlord does not make payments within this period, you may still have to file an ETRA in order to be sure of continuing your utility service.

## 3. Paying Current Charges to the Utility Company

First try to contact the landlord and get them to pay the utility bills. If that does not work, talk to the utility companies.

**Water:**

The water company has to tell you if they are going to disconnect the service. Contact the water company. You have the right to pay ***only*** the current month's charges and keep the service on, or get it turned back on. You are NOT responsible to put down a deposit or pay any late charges or fees that belong to the landlord. Send your landlord a copy of the receipt showing the amount you paid, and then you can take that amount out of your next month's rent.

**Gas & Electric:**

The gas and electric companies have to tell you if they are going to shut off the service, and when. You can contact the gas or electric company. You have the right to pay ***only*** the current month's charges and keep the service on, or get it turned back on, for at least another month. You are NOT responsible to put down a deposit or pay any late charges or fees that belong to the landlord. Send your landlord a copy of the receipt showing the amount you paid, and then you can take that amount out of your next month's rent.



If you live in a 1-4 family building, you have the option to take over the account in your own name. You are NOT responsible to put down a deposit or pay any late charges or fees that belong to the landlord. Send your landlord a copy of the receipt showing the amount you paid, and then you can take that amount out of your next month's rent.

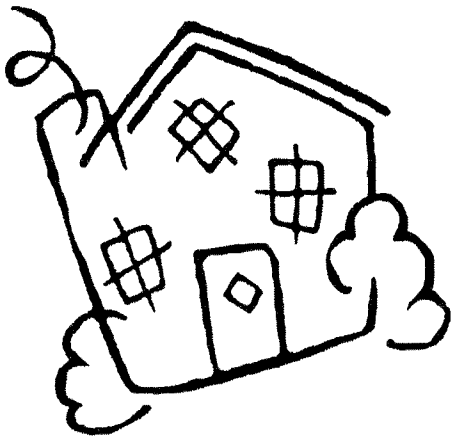
## Which option should I choose?

The advantage of "pay and deduct" is that you can take the payment out of your rent, without going to court. But if more than one utility is being shut off, or if you have repair problems, you should file an ETRA. With an ETRA, you can ask the court to order the landlord to pay **all** the utility bills and make the repairs. With an ETRA, if the landlord does not fix the utility shutoff problems, you can also ask the court to appoint an administrator to take over managing the building where you rent until the problems are fixed. You can also ask to have your rent reduced because of the repair problems.

If you change the gas and electric into your own name you are responsible for that bill from now on. If you owe the gas and electric company any bills from before at another apartment or home, you may have to pay those past due bills. The advantage is you are treated as a new customer and do not have to pay any of your landlord's past due bills, and you can deduct what you paid from your rent.

## What if my landlord sells or loses the property?

If the property changes hands through a sale or foreclosure, the new owners are responsible for the utilities that the old owner had to pay. Contact the new owners as soon as you know who they are to make sure that the bill is properly transferred to them and your utilities will not be shut off. See our fact sheet *When Your Landlord Loses the Building: Mortgage Foreclosure and Contract for Deed Cancellation*, to learn more about tenants' rights in foreclosure.



***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
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MINNESOTA JUDICIAL BRANCH

# Recovery of Lost Rent

## When can I keep my tenant's security deposit?

Generally, you can keep the security deposit to cover any unpaid rent. For damage, a tenant is not responsible for normal wear and tear of the premises. However, if the damage left behind is more than normal wear and tear, you may be able to use the security deposit (or part of the security deposit) to pay for the damage. If you do withhold any of the security deposit, you have to give the tenant a written explanation as to why the deposit is not being returned within 21 days after the tenancy ends. For more information, see the Landlords and Tenants: Rights and Responsibilities booklet.

## How do I recover unpaid rent from my tenant?

Landlords can keep some or all of the security deposit to cover unpaid rent. If the deposit does not cover the full amount of rent owed, you can start a court action to recover unpaid rent from a tenant in either Conciliation Court (if the amount is less than $15,000) or District Court (if the amount is more than $15,000).

To find this and other information for landlords, go to MNCourts.gov, and click on the **Help Topics** link at the top of the page. In the list of topics, choose, **Landlord Resources** and click on the tab for **FAQ** (Frequently asked questions).

## 504B.125 PERSON IN POSSESSION LIABLE FOR RENT; EVIDENCE.

Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold or for any term of years, shall be liable for the amount or proportion of rent due from the land in possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases or provided by law.

**History:** *1999 c 199 art 1 s 6*

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# Disposition of Abandoned Personal Property

The landlord is responsible for proper removal, storage and care of the property, and is liable for damages for loss of or injury to the property caused by a failure to exercise care as a reasonably careful person would exercise under the circumstances. The abandoned property statute, § 504B.271 (formerly § 504.24), governs storage and return of the property. The landlord must store the property for 28 days. The landlord must notify the tenant at least 14 days before sale of the property. The landlord has only a claim, and not a lien, for the reasonable removal and storage costs. Conseco Loan Finance Co. v. Boswell, 687 N.W.2d 646, (Minn. Ct. App. 2004) (manufactured home park lot owner who stored tenant's manufactured home on the premises retained only a claim for storage costs, and not a lien); City View v. Brooks, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property).

If the landlord fails to allow the tenant to take possession of the property within 24 hours of the tenant's written demand, exclusive of weekends and holidays, the landlord is liable for punitive damages of the greater of double damages or $1,000 in addition to actual damages and reasonable attorney's fees. The statute states four factors for the court to consider in determining the amount of punitive damages - the nature and value of the property, the effect of deprivation of the property on the tenant, and whether the landlord or landlord's agent unlawfully took possession of the property or acted in bad faith in not allowing the tenant to retake possession. § 504B.271 (formerly § 504.24).

In Pentel v. Bakewell, No. CX-95-1595, 1996 WL 45168 (Minn. Ct. App. Feb. 6, 1996) (Appendix 356), the prevailing unlawful detainer plaintiff executed the writ on October 15, sent notice of sale of the tenants' property on December 4, and sold the tenants' property on December 21. The tenants sent a notice to recover the property on December 26. The court affirmed the district court's conclusions that the plaintiff complied with the statute, noting that the statute allows the landlord to sell the property if it reasonably appears that the tenant abandoned the premises, and the tenants' notice came after the sale.

# Getting Property Back After You Move Out

If you were evicted, moved out, or abandoned your home and you left some of your things behind, there are rules about what the landlord can do with them. The landlord can't just throw your things out on the street.

## If Your Property Is Still In the Building Where You Lived

These rules apply if you moved out and left property behind. **It doesn't matter if there was an eviction case in court or not**, or if your landlord told you to move, or if you just decided to move.



- **The landlord must give the property back within 24 hours** of you asking for it back. You have to ask for it in writing. You can ask by text message, email or in a letter. These deadlines do not include weekends or holidays. Put the date on your demand letter and keep a copy of it. You may want to send the letter by certified mail or deliver it in front of a witness. Make sure you tell the landlord in writing the date and time you want to get your things back.

- **After 28 days, the landlord can sell or throw away your property.** The landlord has to give you 14 days written notice before the sale. If they do not give you the notice themselves, they must mail it to your last known address and post it on the property for 2 weeks.

  If the landlord throws your stuff away instead of selling it, they don't have to give you any notice. But they still have to wait 28 days before throwing it away.

- **If your things were stored in your building, you do not have to pay to get them back.** Your landlord can't hold your things until you pay rent or fees you owe. But your landlord can demand you pay for time spent moving things or storage costs.

- **If you are evicted, the landlord has to make a detailed list of all your property while the sheriff is there**. The list must state the condition of each item. It must have the name and badge number of the sheriff. Both you and the sheriff must get a copy.

### If Your Property is Stored Somewhere Else and There is NO Court Eviction Order

Your landlord has to follow the same rules as above BUT has 48 hours (instead of 24) to give you your things back.

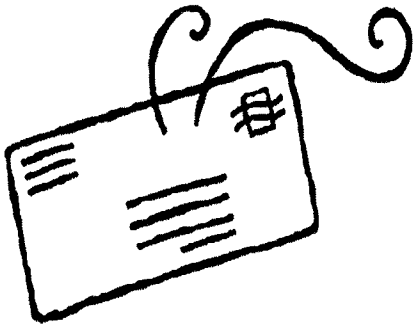
### If Your Property is Stored Somewhere Else and There is a Court Eviction Order

- **The landlord must give the property back within 48 hours** of you asking for it back. You have to ask for it back in writing. These deadlines do not include weekends or holidays. Put the date on your demand letter and keep a copy of it. You may want to send it certified mail or deliver it in front of a witness.

- **The landlord must take care of your property for 60 days.** After that the landlord can sell your property. They must give you 3 weeks' notice of the sale. If they do not give you the notice themselves, they must mail it to your address, if they know it, and publish it in the newspaper, or post it in 3 public places.

- **You have to pay the landlord back for the cost of moving and storing your things if you were evicted in court and the sheriff came to get you out.** This is only if your things were moved out of your building to somewhere else. Your landlord can demand that you pay before you get your property back. The costs have to be reasonable.

### What if I owe rent or fees?



**You can still get your property back if you owe the landlord money** from when you lived there including rent, fees, or court costs. The landlord can ask for the money, but cannot keep your things because you have not paid it.

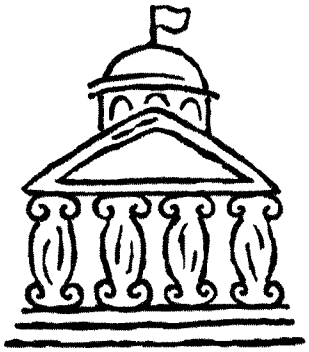
**The landlord can use the money from the sale for moving and storage costs or for any debts you owe them.** You can ask for any money left over. Write a letter to the landlord saying you want the money that is left. Keep a copy.

## Can I sue?

If the landlord won't give you back your property, you can sue in Conciliation Court. You will need proof of all the property your landlord took and proof of any money you had to spend to replace items you can't do without, like medicine or tools for work.

You can also ask for attorney's fees and a penalty up to twice your damages or $1,000, whichever is more. See our fact sheet, *Conciliation Court.* If you owe the landlord money, the landlord can counterclaim for it in Conciliation Court.

If you were evicted in Hennepin or Ramsey County, you can go back to Housing Court with this claim, instead of filing a new case in Conciliation Court.



***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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## 504B.271 TENANT'S PERSONAL PROPERTY REMAINING IN PREMISES.

Subdivision 1. **Abandoned property.** (a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

(b) The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

(c) The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

(d) Prior to a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail.

Subd. 2. **Landlord's punitive damages.** If a landlord, an agent, or other person acting under the landlord's direction or control, in possession of a tenant's personal property, fails to allow the tenant to retake possession of the property within 24 hours after written demand by the tenant or the tenant's duly authorized representative or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant or a duly authorized representative when the landlord, the landlord's agent or person acting under the landlord's direction or control has removed and stored the personal property in accordance with subdivision 1 in a location other than the premises, the tenant shall recover from the landlord punitive damages in an amount not to exceed twice the actual damages or $1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees.

In determining the amount of punitive damages the court shall consider (1) the nature and value of the property; (2) the effect the deprivation of the property has had on the tenant; (3) if the landlord, an agent, or other person acting under the landlord's direction or control unlawfully took possession of the tenant's property; and (4) if the landlord, an agent, or other person under the landlord's direction or control acted in bad faith in failing to allow the tenant to retake possession of the property.

The provisions of this subdivision do not apply to personal property which has been sold or otherwise disposed of by the landlord in accordance with subdivision 1, or to landlords who are housing authorities, created, or authorized to be created by sections 469.001 to 469.047, and their agents and employees, in possession of a tenant's personal property, except that housing authorities must allow the tenant to retake possession of the property in accordance with this subdivision.

Subd. 3. **Storage.** If the landlord, an agent, or other person acting under the landlord's direction or control has unlawfully taken possession of a tenant's personal property the landlord shall be responsible for paying the cost and expenses relating to the removal, storage, or care of the property.

Subd. 4. **Remedies additional.** The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to

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public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

**History:** *1999 c 199 art 1 s 35; 2010 c 315 s 8,9*

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# Violation of tenant privacy rights

The 1995 Minnesota Legislature created § 504.183 (now § 504B.211), which provides that a landlord may enter the tenants premises only for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice under the circumstances. A tenant may not waive and the landlord may not require the tenant to waive the tenant's right to prior notice. Minn. Stat. § 504B.211 (formerly § 504.183), subd. 2, 1995 Minn. Laws Ch. 226, Art. 4 § 21. The statute sets out several reasonable business purposes for landlord entry, and several exceptions to the notice requirement. If the landlord substantially violates the statute, the tenant may use a tenants remedies action or emergency tenants remedies action to enforce the statute and ask for a rent reduction, full recission of the lease, recovery of any damage deposit less amounts retained under the damage deposit statute, and up to a $100.00 civil penalty. The statute does not provide for enforcement through an eviction (unlawful detainer) action defense.

However, privacy can be raised in eviction defense under other bases, such as quiet enjoyment and habitability, and when consolidated with a tenant-filed action, such as a rent escrow action or tenant remedies action. See discussion, infra, at XII.B.2.

## From the Minnesota Attorney General's website:

Examples of a reasonable business purpose include:

1. Showing the unit to prospective tenants.
2. Showing the unit to a prospective buyer or insurance agent.
3. Performing maintenance work.
4. Showing the unit to state, county, or local officials (i.e., fire, housing, health, or building inspectors) inspecting the property.
5. Checking on a tenant causing a disturbance within the unit.
6. Checking on a tenant the landlord believes is violating the lease.
7. Checking to see if a person is staying in the unit who has not signed the lease.
8. Checking the unit when a tenant moves out.
9. Performing housekeeping work in a senior housing unit. A senior housing unit is a building where 80 percent of the tenants are age 55 or older.

A tenant's right to prior notice may not be waived in any residential lease. However, the landlord may enter the unit without giving prior notice in the following situations:

1. When immediate entry is necessary to prevent injury to persons or property because of conditions relating to maintenance, building security, or law enforcement.
2. When immediate entry is necessary to determine a tenant's safety.
3. When immediate entry is necessary to comply with state law or local ordinances.

If a landlord enters without giving prior notice and the tenant is not present, the landlord must give written notice to the tenant. If the landlord violates this law, the tenant may recover up to $100 per violation in court.

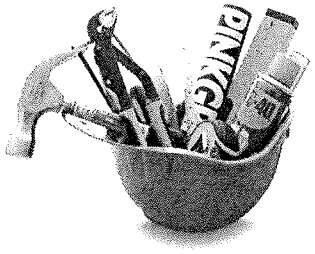
# Can My Landlord Enter My Home?
## A Tenant's Right to Privacy

Minnesota law says that a landlord or caretaker can only enter your apartment for a business reason or an emergency. If it is for a business reason, the landlord has to tell you ahead of time. A landlord can't make you sign anything giving up your right to know ahead of time if they want to enter your apartment. Some cities have tenant privacy laws in their housing codes. You can find out by calling the housing inspection office or the mayor of your city.

### What is a business reason?

The law lists some examples of business reasons:

- If your lease is about to end or you have given notice to move, the landlord can show the apartment to a new tenant.
- The landlord can show the apartment to someone who may buy it.
- To do maintenance work or allow inspections.
- To do pre-arranged housekeeping in senior citizens' housing.
- A tenant is causing a disturbance in an apartment.
- The landlord has reason to think the tenant is violating the lease in the apartment.



- The landlord has reason to think someone is living there without permission.
- The tenant has abandoned the apartment.

### What kind of notice does the landlord have to give me?

The landlord has to make a "good faith effort" to give you "reasonable notice." What this means depends on the situation. A 24-hour notice is probably "reasonable" in most situations. The notice **does not** have to be in writing.

If a landlord enters your home without notice while you are out, they have to leave a note in a place where you will see it.

**Note:** If a landlord has a business reason to enter your apartment and has given you reasonable notice then your landlord has the right to enter even if the timing is not convenient for you, or you are not home. If you asked your landlord to make repairs, that is a good business reason to enter your apartment.

## What is an emergency?

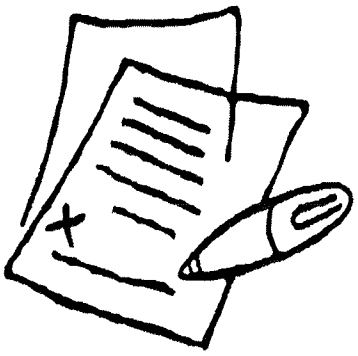
In an emergency, your landlord can come in your apartment without telling you first. It is an emergency if:

- There is a maintenance, building security, or crime problem in an apartment that may harm a person or property
- The landlord thinks that you or someone in the home is in danger.
- The landlord thinks there is illegal activity.

## What if my landlord breaks the law?

Send a letter to the landlord telling your landlord to stop. Include a copy of this fact sheet. Date your letter and keep a copy. Give your landlord 14 days after your letter to stop the privacy violation. If they do not stop, you can file a Rent Escrow case for a court order telling the landlord to stop and asking for money (damages).

You can ask the court to give you rent money back, plus up to a $100 penalty for each privacy violation. How much rent you get back, and how much the penalty is, depends on how bad the violations were. You can also ask the court to cancel your lease so that you can move out.



## How do I file a case?

Remember: Wait 14 days after you send the letter to the landlord and **then** file the case. Bring a copy of the letter to file with the court.

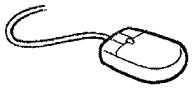
A Rent Escrow form is attached. To start a Rent Escrow case, fill it out and take it to your county courthouse along with your rent money.

You do not need to check the boxes on the form that are for repair problems if your home is in good repair and/or the only issue you want help with is protecting your privacy.

You don't need to wait until your rent is due to file a rent escrow. But you must pay **all** the rent into court when it is due. If you don't pay all of the rent that is due into court when you start a rent escrow case, your landlord could counterclaim to evict you.

## Does it cost to file a Rent Escrow Action?

You do not have to pay a filing fee if you have a low income. Ask the court clerk for an IFP (court fee waiver) form or create one online.



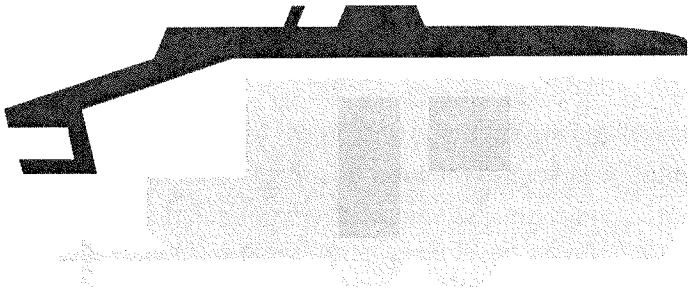
Go to www.lawhelpmn.org/forms.

→ Click on *Court Fee Waiver (IFP)*

When you file your IFP make sure you have proof of your low income, like pay stubs, or proof of government assistance.

## Does the right to privacy apply to mobile home parks?

The law does not apply if you own your mobile home and rent a space. It may apply if you rent both the home and the space from your landlord.



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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____

**Plaintiff (Tenant)**

**vs.**

_____

**Defendant (Landlord)**

**RENT ESCROW**
**AFFIDAVIT**
**Minn. Stat. 504B.385**

**FILE NO.**

Plaintiff states under oath:

1. My address is _____

2. My landlord's name is _____

3. My landlord's address is _____

4. The monthly rent is $ _____

5. ☐ My landlord has violated my right to privacy under Minn. Stat. 504B.211
   a) ☐ S/he entered my home without a reasonable business purpose or emergency
   b) ☐ S/he entered my home without making a good faith effort to give me reasonable notice.
   c) ☐ S/he entered my home when I was not there without giving prior notice and did not place a written disclosure of the entry in a conspicuous place.
   d) ☐ I sent the landlord a letter stating the privacy violations. A copy is attached.

6. ☐ My landlord has failed to make needed repairs and
   a) ☐ I sent the landlord a letter describing the problems. The landlord did not fix them within 14 days. A copy of the letter is attached.

   and/or

   b) ☐ An inspector ordered the landlord to make repairs. The inspector's deadline has passed, and the landlord has not made all the repairs. A copy of the inspector's orders is attached.

7. As of today, the amount of rent I owe is $ _____ I am depositing that amount with the court.

8. My best estimate is that it would cost $ _____ for the landlord to make all the repairs.

9. The landlord has known about these repair problems since on or near the following date or dates:

_____

10. Because of these repair problems, my apartment has not been worth the amount of rent I pay. It has been worth $ _____ per month.

11. I respectfully ask the court for an order as follows:

a) ☐ Right to Privacy: Money damages

(i) Return to me $ _____ of the rent I have paid.

(ii) Award me $100 for each violation, for a total of $ _____

(iii) Authorize me to collect this money by deducting it from the rent.

b) ☐ Lease Cancellation

Cancel our lease, order the landlord to return my security deposit in full and allow me to move without further notice.

c) ☐ Repairs

(i) Order the landlord to make all of the repairs immediately.

(ii) Reduce my rent to $ _____ per month until after all of the repairs are done. For any repairs that the landlord does not complete by the court's deadline, authorize me to pay for the repairs myself and deduct the cost from future rent.

(iii) For the repair problems in the past months, enter a judgment against the landlord for $ _____

(iv) If I have used an attorney, enter a judgment for reasonable attorney fees.

(v) Let me collect the judgment by taking it out of future month's rent.

(vi) Set a follow-up hearing to make sure that the landlord made the repairs and done all the things ordered.

(vii) Other: _____

I declare under penalty of perjury that everything I have stated in this document is true and correct. I also certify that, to the best of my knowledge this case is not being filed for an improper reason, such as harassment or delay, my claims are supported by the law; and there is evidence for my claims.

I know that I may be fined or sanctioned by the court if this certification is false.

Date: _____ _____ _____

Signature Daytime phone

_____

County and State where signed

# Victims of Domestic Violence, Stalking, or Criminal Sexual Conduct: Your Rights in Breaking Your Lease

**If you are not safe because of domestic violence call: 1 (866) 223-1111.**

**If you are not safe because of sexual assault call: 1 (800) 656-4673.**

Any tenant in MN who is a survivor of domestic abuse, stalking, or criminal sexual conduct and is NOT in subsidized housing may break her lease to get away for safety. There are steps you have to follow. **Each step must be done right if you want to end your lease.**

**Note:** If you live in:

- Public Housing
- Subsidized Housing
- USDA Rural Housing
- Low Income Housing Tax Credit (Section 42) housing

**OR**

- have a Section 8 Voucher



there are different **federal** laws that protect your rights as a survivor of domestic and/or sexual violence. You can end your subsidized lease and you have more protections than the Minnesota law described in this fact sheet gives.

**If you are in a subsidized housing program**, see our fact sheet *Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault* for information **before** taking any steps to end your lease.

**Note:** the steps you need to take to end your lease can be different for different housing programs. Talk to a domestic violence advocate or call your local legal services office for help.

**If you are not in subsidized housing** and need to end your lease for safety, you MUST do each of these steps:

## Step 1: Get Documentation

Get a copy of **ONE** of the following documents if you need to break your lease. **You only need 1:**

- An **Order for Protection (OFP)**

**OR**

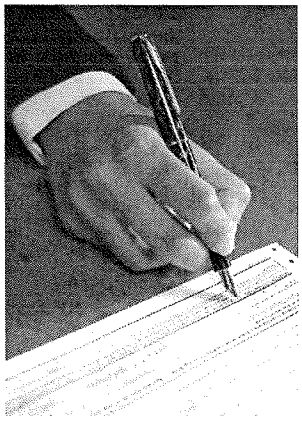
- A **No Contact Order**

**OR**

- **A Domestic Abuse No Contact Order (DANCO)**

**OR**

- **Something signed by a Court Official**. A court official could be a judge, referee, court administrator, prosecutor, or probation officer. It could be a court order, a letter from probation, or a letter from the prosecutor. It should say that you are the victim of domestic abuse, stalking or criminal sexual conduct. It must give the name of your abuser or the perpetrator if you know it AND if it is safe for you to give it.



**OR**

- **Something signed by city, county, state or tribal law enforcement** that says you are the victim of domestic abuse, stalking, or criminal sexual conduct. It could be something like a police report, a recap report or some other document signed by law enforcement. The document must give the name of your abuser or perpetrator if you know it AND if it is safe for you to give it.

**OR**

- **A statement from a "qualified third party"**. A qualified third party is:
  - A licensed healthcare professional who is seeing you for reasons that have to do with the assault (like a doctor or nurse)
  - A sexual assault counselor who works at a crisis center and is trained in crisis counseling to work with victims of sexual assault
  - A domestic abuse advocate who works at community-based battered women's shelter or at domestic abuse programs that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse.

You can use the form attached to this fact sheet called "Statement by a Qualified Third Party".

**Note:** If there is information in any of these documents that you don't want others to see, you can make copies and then "block" out what you want to keep private. You would cover those parts up with pen or white-out so no one can see them.

For example, you might want to block out details of the assault or information about children. You can block details like this as long as somewhere in the document it says that you or someone living with you is a victim of domestic abuse, stalking or sexual assault.

## Step 2: Give Written Notice to Your Landlord

You have to give **written** notice to your landlord. You can use the attached "Notice to End Lease Due to Fear of Violence." If you write your own notice it **must** state that:

- You or someone living in your home are in fear of violence right now from someone.
- You need to end your lease.

- The date you will move out. You do NOT have to give 30 or 60 day notice. You can pick any date that works for you.

- What you want the landlord to do with anything you leave behind.

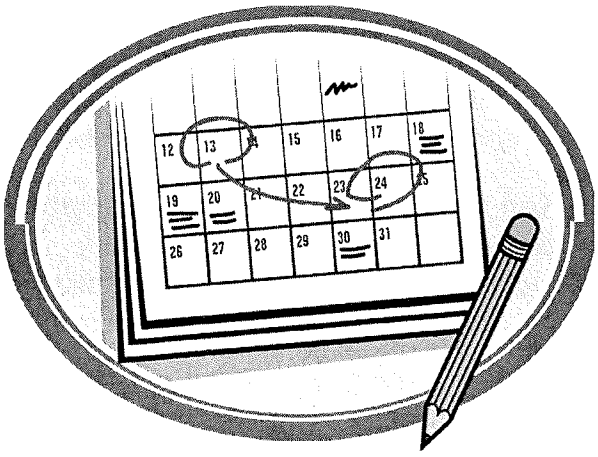
- Attach a copy of your document from Step 1 above to your written notice.

**Keep a copy of the written notice and documentation you send to your landlord.**

## Step 3: Pay Rent and Move

You have to pay <u>full rent</u> for the month you are in the unit. For example, if you give the landlord notice on August 2nd that you want to be out by August 15th, you still have to pay all of August rent when it is due.

Keep proof that you paid the full rent. If you pay with cash get a receipt. If you pay by money order, make a copy or take a photo of the money order with your landlord's name filled in. Keep the receipt that shows you bought the money order.



Move by the date you gave in your written notice and return the keys to the landlord.

If you follow each of the 3 steps above your lease will end on the date you move out and you will not be responsible for rent for the months left on the lease. **BUT,** if you do not do these things exactly how the law says, you could be held responsible for the rent for the rest of the lease.

**Note:** Even if you end your lease using the 3 steps above you are still responsible for any money you owed to the landlord before you gave this notice.

**IMPORTANT:** If you end your lease using the 3 steps above your landlord gets to keep your security deposit, but you **don't** have to pay anything extra to the landlord be able to move out.

## What if there are other tenants on my lease?

If there are other tenants on your lease, their lease ends at the end of the month you move out. For example, if your written notice says you will move out on May 13th, the other tenants' lease ends on May 31st. They need to move out on that date or sign a new lease with the landlord. They may have to pay a new deposit for their new rental with the landlord.

### Can the landlord share my information with others?

A landlord **can't** tell anyone that you are a victim of violence or give anyone information from your written notice or the attached document without your written permission. The only time a landlord can share the information without asking is if he/she needs to give the information to a court to evict someone or collect unpaid rent or money for damages to the rental property.



### Can the landlord make me give the name of the abuser or perpetrator?

No. The landlord can ask you the name of the person who abused or assaulted you or the person in your home, but the landlord can't make you give that information. You don't have to tell if you think it's not safe to name the person or if you don't know the person's name. You still get to break your lease under this law if you do everything else.

### Can the landlord make me waive these rights or make me sign something that waives these rights?

No. The landlord can't make you waive your right to use the law described in this fact sheet. This means that any agreement made between you and your landlord that doesn't follow this law, is not legal. **Even if it's in your lease**.

### Can the landlord make me pay anything more than the rent for the month I move out and give up my security deposit?

No. If you take the steps outlined in this fact sheet your obligation to the landlord for rent ends. You don't have to pay more to escape to safety.

This project was supported by Grant No. 2016-WL-AX-0052 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibit are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***
*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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## Notice to end lease due to fear of violence (Minn. Stat. § 504B.206)

Date: _____

Dear Landlord:

Minnesota law (Minn. Stat. § 504B.206) lets me break my lease because I, or another person authorized to live in my home, fear imminent violence because of an incident of domestic abuse, stalking, or criminal sexual conduct. This is my notice that I am breaking my lease because of fear that I or another person authorized to live in my home will become the victim of domestic or sexual violence again if I do not move.

I will move out on: _____.
*(Date –this may be any date before the end of your lease)*

I am attaching a copy of the *(check one)*:

- ☐ Order for Protection (OFP)
- ☐ No Contact Order
- ☐ Domestic Abuse No Contact Order (DANCO)
- ☐ Documentation from a Court Official or Law Enforcement Official
- ☐ Documentation from a qualified third party-- licensed health care professional, domestic abuse advocate, or sexual assault counselor

If any of my property is left behind after I move *(check one)*:

- ☐ You may get rid of my property right away
- ☐ Please store my property for 28 days and I will be responsible under the MN law 504B.271 for storage fees.

I understand that my security deposit will not be returned to me in exchange for me being able to break my lease early due to imminent fear.

I request that you do not give the information in this letter or the attached document to anyone, especially not my abuser, as required by Minn. Stat. § 504B.206.

Signed: _____

Printed Name: _____

**[Keep a copy of this letter and the document you attached for your records]**

## Statement by qualified third party (Minn. Stat. § 504B.206)

I, _____*(name of qualified third party),* do hereby verify as follows:

1. I am a licensed health care professional, domestic abuse advocate, as that term is defined in Minn. Stat. § 595.02, subdivision 1, paragraph (l), or sexual assault counselor, as that term is defined in Minn. Stat. § 595.02, subdivision 1, paragraph (k), who has had in-person contact with _____.

*(name of victim(s))*

2. I have a reasonable basis to believe _____*(name of victim(s))* is a victim/are victims of domestic abuse, criminal sexual conduct, or stalking and fear(s) imminent violence against the individual or authorized occupant if the individual remains (the individuals remain) in the leased premises.

3. I understand that the person(s) listed above may use this document as a basis for gaining a release from the lease.

I attest that the foregoing is true and correct.

_____
*(Printed name of qualified third party)*

_____
*(Signature of qualified third party)*

_____

_____

_____
*(Business address and business telephone)*

_____ *(Date)*

**[Keep a copy of this letter and the document you attached for your records]**

# Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault

## Victims of Domestic Violence in Subsidized Housing Have Rights

There is a federal law called VAWA that helps if you or a household member are a victim of domestic violence or sexual assault **and** apply for or live in:

- Public Housing
- Subsidized Housing
- Section 8 Voucher Programs
- USDA Rural Housing or
- Low Income Housing Tax Credit (Section 42)

VAWA stands for the Violence Against Women Act. It says that a housing program can't turn you down for housing, terminate you or evict you because of your abuser's or attacker's actions against you or a household member. Housing programs had until June 14, 2017 to put in place an emergency transfer policy for victims of domestic violence or sexual assault who need to move for safety if another unit is available.



Domestic violence can be violence against you or a household member, dating violence and stalking. The housing agency or landlord can ask you to prove the domestic violence or sexual assault. They may end the lease for the abuser or attacker and keep renting just to you.

This law does not mean that the housing agency or landlord can't enforce other housing program rules or other terms of the lease. You can be evicted for something else that violates the rules or your lease.

## How do I know if VAWA can help me?

Look at the 2 boxes. Pick the one that fits your situation- are you applying or already a tenant? If you say "yes" to the first statement in your box, you may be protected by VAWA. Look at the other statements. If you can say "yes" to any of them, fill out the notice attached to this fact sheet. Give the notice to the housing authority, owner or landlord and tell them that you are protected by VAWA and what you want. Make sure you sign the letter and keep a copy for yourself.

| Applying | Yes | No |
|---|---|---|
| I applied for public housing, a subsidized apartment, USDA Rural Housing, Low Income Housing Tax Credit (Section 42) housing, or have a Section 8 Voucher. | | |
| My application was denied. | | |
| Someone in my household has been a victim of domestic violence or sexual assault. | | |
| My application was denied because of what the abuser or attacker did, or is a direct result of what the abuser/attacker did. | | |

| Already A Tenant | Yes | No |
|---|---|---|
| I live in public housing, subsidized apartment, USDA Rural Housing, Low Income Housing Tax Credit (Section 42) housing, or have a Section 8 Voucher. | | |
| I got a bill for damage caused by the abuser or attacker. | | |
| I got a notice of lease violation, a notice of termination or eviction papers. | | |
| Someone in my household has been a victim of domestic violence or sexual assault. | | |
| I am being billed, terminated or evicted because of what the abuser or attacker did, or is a direct result of what the abuser/attacker did. | | |
| I need to move to a different subsidized unit so the victim of domestic violence or sexual assault in my household can escape imminent harm from the abuser or attacker. | | |
| I need to "port" my Section 8 Voucher to a new location to protect the health or safety of the victim of domestic violence or sexual assault in my household. | | |
| I need my housing subsidy provider or my landlord to take the abuser or attacker off my lease but let me and my family remain on the lease. | | |
| My income has decreased due to domestic violence or sexual assault so I need my rent recalculated immediately. | | |

**If you are not safe because of domestic violence call: 1 (866) 223-1111.**
**If you are not safe because of sexual assault call: 1 (800) 656-4673.**

If you need more information, legal help to claim your rights under VAWA, or have been told that VAWA does not apply to you, call your legal services office.

*This project was supported by Grant No. 2016-WL-AX-0052 awarded by the office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. department of Justice, Office on Violence Against Women.*

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# VAWA Notice

**TO:** **Housing Authority/Section 8 Program/Landlord**

**FROM:** Name: _____

Address: _____

**DATE:** _____

I am, or my household member is, a victim of domestic violence, dating violence, stalking or sexual assault. The Violence Against Women Reauthorization Act (VAWA) of 2013, Pub. L. 113-4 (March 2013), applies to me.

I cannot:

- ☐ have my housing application denied for reasons related to the abuse or assault
- ☐ be evicted for not paying for damage caused by an abuser
- ☐ have my lease terminated for reasons related to the abuse or assault
- ☐ be evicted for reasons related to the abuse or assault
- ☐ be treated differently than others based on the abuse or assault

The reasons for your actions against me are the result of the domestic violence, dating violence, stalking or sexual assault that has happened to me or my household member.

Please, apply my VAWA rights:

- ☐ when reviewing my application
- ☐ when reviewing an alleged lease violation
- ☐ and take the bill for damages caused by abuser or attacker off my account
- ☐ and take my abuser or attacker off my lease and make a new lease agreement with me
- ☐ when considering termination of my lease
- ☐ when considering evicting me
- ☐ and transfer me to another subsidized unit
- ☐ and give me new Section 8 Voucher papers to move
- ☐ and give me new Section 8 Voucher papers to port my Voucher out of your program to a new location
- ☐ and recalculate my rent immediately because my income decreased due to domestic violence or sexual assault.
- ☐ to (other) _____

Please contact me for information that you need in order to provide me with my VAWA rights.

**Please do not give out the information in this notice to anyone, especially my abuser, without my written permission.**

_____

(Signature)

**(keep a copy of this notice for your own records)**

## 504B.206 RIGHT OF VICTIMS OF VIOLENCE TO TERMINATE LEASE.

Subdivision 1. **Right to terminate; procedure.** (a) A tenant to a residential lease may terminate a lease agreement in the manner provided in this section without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to:

(1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;

(2) criminal sexual conduct under sections 609.342 to 609.3451; or

(3) harass, as that term is defined under section 609.749, subdivision 1.

(b) The tenant must provide signed and dated advance written notice to the landlord:

(1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;

(2) stating that the tenant needs to terminate the tenancy;

(3) providing the date by which the tenant will vacate; and

(4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

(c) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a qualifying document.

(d) The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons. Disclosure shall not be a precondition of terminating the lease.

(e) The tenancy terminates, including the right of possession of the premises, as provided in subdivision 3.

Subd. 2. **Treatment of information.** (a) A landlord must not disclose:

(1) any information provided to the landlord by a tenant in the written notice required under subdivision 1, paragraph (b);

(2) any information contained in the qualifying document;

(3) the address or location to which the tenant has relocated; or

(4) the status of the tenant as a victim of violence.

(b) The information referenced in paragraph (a) must not be entered into any shared database or provided to any person or entity but may be used when required as evidence in an eviction proceeding, action for unpaid rent or damages arising out of the tenancy, claims under section 504B.178, with the consent of the tenant, or as otherwise required by law.

Subd. 3. **Liability for rent; termination of tenancy.** (a) A tenant who is a sole tenant and is terminating a lease under subdivision 1 is responsible for the rent payment for the full month in which the tenancy terminates. The tenant forfeits all claims for the return of the security deposit under section 504B.178 and is relieved of any other contractual obligation for payment of rent or any other charges for the remaining

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term of the lease, except as provided in this section. In a sole tenancy, the tenancy terminates on the date specified in the notice provided to the landlord as required under subdivision 1.

(b) In a tenancy with multiple tenants, one of whom is terminating the lease under subdivision 1, any lease governing all tenants is terminated at the later of the end of the month or the end of the rent interval in which one tenant terminates the lease under subdivision 1. All tenants are responsible for the rent payment for the full month in which the tenancy terminates. Upon termination, all tenants forfeit all claims for the return of the security deposit under section 504B.178 and are relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. Any tenant whose tenancy was terminated under this paragraph may reapply to enter into a new lease with the landlord.

(c) This section does not affect a tenant's liability for delinquent, unpaid rent or other amounts owed to the landlord before the lease was terminated by the tenant under this section.

Subd. 4. [Repealed by amendment, 2014 c 188 s 2]

Subd. 5. **Waiver prohibited.** A residential tenant may not waive, and a landlord may not require the residential tenant to waive, the tenant's rights under this section.

Subd. 6. **Definitions.** For purposes of this section, the following terms have the meanings given:

(1) "court official" means a judge, referee, court administrator, prosecutor, probation officer, or victim's advocate, whether employed by or under contract with the court, who is authorized to act on behalf of the court;

(2) "qualified third party" means a person, acting in an official capacity, who has had in-person contact with the tenant and is:

(i) a licensed health care professional operating within the scope of the license;

(ii) a domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l); or

(iii) a sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k);

(3) "qualifying document" means:

(i) a valid order for protection issued under chapter 518B;

(ii) a no contact order currently in effect, issued under section 629.75 or chapter 609;

(iii) a writing produced and signed by a court official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known;

(iv) a writing produced and signed by a city, county, state, or tribal law enforcement official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known; or

(v) a statement by a qualified third party, in the following form:

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STATEMENT BY QUALIFIED THIRD PARTY

I, ..... (name of qualified third party), do hereby verify as follows:

1. I am a licensed health care professional, domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l), or sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k), who has had in-person contact with ..... (name of victim(s)).

2. I have a reasonable basis to believe ..... (name of victim(s)) is a victim/are victims of domestic abuse, criminal sexual conduct, or harassment and fear(s) imminent violence against the individual or authorized occupant if the individual remains (the individuals remain) in the leased premises.

3. I understand that the person(s) listed above may use this document as a basis for gaining a release from the lease.

I attest that the foregoing is true and correct.

(Printed name of qualified third party)

(Signature of qualified third party)

(Business address and business telephone)

(Date)

Subd. 7. **Conflicts with other laws.** If a federal statute, regulation, or handbook permitting termination of a residential tenancy subsidized under a federal program conflicts with any provision of this section, then the landlord must comply with the federal statute, regulation, or handbook.

**History:** *2007 c 54 art 4 s 3; 2010 c 299 s 14; 2014 c 188 s 2; 1Sp2019 c 1 art 6 s 59; 1Sp2019 c 5 art 2 s 29*

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# Waiver of rent due by accepting partial payment

A landlord who accepts a partial payment of rent in arrears waives an action for possession based on the remaining balance, absent a written agreement to the contrary. Minn. Stat. § 504B.291, subd. 1(c) (formerly 504.02). Before enactment of the partial payment statute, case law supported the argument that accepting partial payments in real estate contracts waived any claimed default of contractual payment provisions and the right to rescind or declare a forfeiture. Brack v. Brack, 218 Minn. 503, 509-11, 16 N.W. 2d 557, 560-61 (1944).

Section 504B.291 implies that acceptance of a partial payment of rent without a written agreement may waive the eviction (unlawful detainer) action based on the remaining rent due. Howard v. _____, No. 27-CV-HV-13-3143 (Minn. Dist. Ct. 4th Dist. June 19, 2013) (Appendix 792) (expungement granted under inherent authority for acceptance of part payment of rent for oral lease); Union Hall Apartments v. _____, No. 27-CV-HC-12-3761 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 793) (expungement granted and referee decision reversed where complaint pled less than one month's rent due, defendant claimed partial payment of rent that plaintiff did not contest, and plaintiff did not introduce the lease or any written nonwaiver agreement); Bottineau Commons Limited Partnership v. _____, No. 27-CV-HC-12-7930 (Minn. Dist. Ct. 4th Dist. Apr. 3, 2013) (Judge Rosenbaum) (Appendix 794) (expungement granted and referee decision reversed for accepting partial payments of rent equaling the full rent without a written non-waiver agreement); Sumner Field Partners 2, L.P. v. _____, No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint); Singh v. _____, No. 27-CV-08-1136 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2012) (Appendix 795) (Judge Hedlund) (expungement granted and referee decision reversed where complaint pled less than full rent due and landlord accepted partial payment of rent before filing action); Dibba v. _____, No. 27-CV-HC-12-3108 (June 25, 2012, June 14, 2012) (Appendix 789) (expungement granted after dismissal based on partial rent payment accepted without written agreement required under statute); J&M Homes, L.L.C. v. _____, No. 27-CV-HC-11-5292 (Minn. Dist. Ct. 4th Dist. Aug. 25, 2011) (Appendix 790) (dismissal and expungement granted where eviction case was based on partial rent payment accepted without written agreement required under statute); Borsay v. _____, No. 27-CV-HC-09-9322 (Minn. Dist. Ct. 4th Dist. Dec. 30, 2009) (Judge Swenson) (Appendix 796) (dismissal and expungement for accepting partial payment of rent in violation of Minn. Stat. § 504B.291); Azzam v._____, No. 27-CV-HC-09-6888 (Minn. Dist. Ct. 4th Dist. Jan. 27, 2010, Sep. 9, 2009) (Appendix 791) (expungement granted after dismissal based on accepted partial payment without written agreement required under statute); Weniger v. _____, No. 27-CV-HC-09-4460 (Minn. Dist. Ct. 4th Dist. June 30, 2009) (Appendix 749) (plaintiff waived right to prompt payment of rent by accepting late rent 5 or more times; tenant awarded $200 in costs that can be deducted from rent); Rush v. _____, No. 27-CV-HC-09-361 (Minn. Dist. Ct. 4th Dist. Jan. 26, 2009) (Appendix 618) (eviction dismissed where landlord accepted part payment of rent after filing action, and lease did not contain a non-waiver clause); Ali v. _____, No. 060310538 (Minn. Dist. Ct. 4th Dist. Mar. 24, 2006) (Appendix 666) (eviction dismissed for improper pleading and partial payment of rent; costs awarded); Exodus Community Development Co. v. _____, No. HC 040109515 (Minn. Dist. Ct. 4th Dist. Jan. 23, 2004) (Appendix 495) (dismissal where landlord accepted part payment of rent); Svendsen v. _____, No. HC 1031006510 (Minn.

Dist. Ct. 4th Dist. Oct. 15, 2003) (Appendix 582a) (dismissal where landlord accepted part payment of rent); Brooklyn Park Housing Associates I, LLP v. _____, No. HC 1010124505 (Minn. Dist. Ct. 4th Dist. Feb. 7, 2001) (Appendix 482) (landlord may pursue claim for part payment of rent only if there is a written document reserving that right; landlord may amend complaint to claim current rent claim not waived by part payment, with tenant retaining right to redeem); Valley Investment & Management, Inc. v. _____, No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Nov. 1, 2000) (Appendix 589a) (14 day notice requirement for termination of month-to-month tenancy for nonpayment of rent in Minn. Stat. § 504B.135 (formerly 504.06) is not required for a nonpayment of rent eviction action; landlord's acceptance of part payment without a written agreement to retain an eviction claim for the balance waives the eviction claim; plaintiff cannot amend complaint once defendant has served an answer). Footnote

In Filister v. Okabue, No. C6-97-61 (Minn. Ct. App. July 1, 1997), Finance and Commerce at 45 (July 3, 1997) (Appendix 254) (Unpublished), the Court of Appeals, without citing Minn. Stat. § 504.02 (now § 504B.291), affirmed decision for landlord where landlord made monthly written rent payment requests noting possibility of legal action, lease included lost rent and non-waiver clauses, and tenants' underpayment was too small to justify immediate legal action.

In JHCJ Associates v. Bryant, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217), the Section 8 certificate landlord did not waive the right to evict for back rent because landlord regularly and consistently notified tenant of landlord's continuing claim for rent, but the court hesitated to evict the Section 8 tenant who has made timely rent payments recently, and authorized prospective monthly payments on the back rent.

A provision in a lease purporting to be a non-waiver clause might not cover part payment of rent. The Wirth Companies v. Victor, No. UD-1931108551 (Minn. Dist. Ct. 4th Dist. Nov. 30, 1993) (Appendix 420), (a landlord may satisfy the requirement for a written agreement stating that part payment of rent does not waive eviction with a provision in the lease, but a non-waiver clause directed at non-financial breaches does not include part payment of rent).

Public Education Brochure

# How to Prepare for Trial for Housing Cases

Housing cases usually start with a "first appearance." If the case is not settled or resolved at the first appearance, a new court date will be assigned for a trial. This brochure is about the trial.

**Talk to a lawyer if possible:**

If possible, get a lawyer to help you with your trial. Some courts have legal advice clinics at the courthouse or law library. Go to www.mncourts.gov/selfhelp and select Self-Help Services in the courts. For lawyer referral information, go to www.mncourts.gov/selfhelp/?page=252

**Read all court orders and notices carefully:**

Your trial date will be in a court order or a Notice of Trial Date. Make sure you get a copy. If there is a court order, read it carefully. It may require you to do certain things. The order may ask you to exchange lists of witnesses and exhibits. Exhibits are the documents and other evidence you want to use at trial. If you do not exchange information on time, the Court may not allow you to use those witnesses and exhibits. In addition, the order may require you to bring extra copies of exhibits to the trial so that the other party and the Judge have copies of your exhibits to keep. The order may also require the tenant to deposit rent into court.

**Pay the court ordered rent on time:**

If the Court order tells you to deposit rent, make sure you do so on time. "Deposit rent" means that you pay the rent to court administration. The Judge will later decide who gets the rent on deposit – the tenant or the landlord. Before bringing the rent money to court administration, ask what type of money is accepted. Some courts will accept only cash or certified funds. Some courts will accept money orders. Do not bring non-certified checks.

**Scheduling and continuances:**

The Court generally schedules the trial within seven days of your first court date. If you want the trial postponed, you must ask the other side and the Court for a continuance. Ask as soon as possible. It is unusual to be allowed a continuance. You may have to ask the Court in writing.

**Begin preparing now for your trial:**

This is the time to decide who your witnesses will be and what exhibits you want to bring to trial. Exhibits are things that you want the Court to look at, such as pictures, letters, your written lease, rent ledger sheets and inspection reports. You must bring them to court if you want the Court to look at them; the Court does not automatically get reports from other government agencies.

**Note:** Remember that in all Housing Court cases you should at a minimum bring a copy of your written lease and some record or documentation about your rent payment history!

**Evidence and witnesses:**

The Minnesota Rules of Evidence control what evidence the Court can accept in a trial. For example, in general, you cannot use oral or written statements from a person unless the person comes to trial to testify. This is called the "hearsay rule." There are exceptions to it. The rules of evidence are available at the Law Library in the courthouse and online at www.mncourts.gov/selfhelp under "Laws, Rules and Legal Research." For more information on evidence, see the Court's booklet "What to Expect as a Self-Represented Plaintiff or Defendant...Civil Trial (without a jury)."

**Subpoenas:**

You can subpoena witnesses or documents to make sure that they appear at trial. You get a subpoena from court administration for a fee, but the fee can be waived by a judge for persons with low incomes. The subpoena must be served on the witness, along with the witness fees and mileage costs, by an adult who is not a party to the case. If you subpoena a witness, you will need to pay that witness a fee, plus mileage from the witness' home to the courthouse and back. For more information on the witness fees, see the Instructions on the court Subpoena form, available at www.mncourts.gov/ctforms.

If you want to use a Housing Inspector's order as evidence, you do not need to subpoena the Inspector. Instead, you can ask the Inspector for a certified copy of the inspection order to bring to court. However, if you are claiming that the Housing Inspector said anything that is not noted on the report or if you want the Inspector to present other evidence, you must subpoena the inspector, unless the Inspector agrees to come to court without being subpoenaed.

If you want a witness, including an inspector, to bring records to court, you must use a subpoena duces tecum to require the witness to bring records. The duces tecum box on the subpoena must be checked and a list of the documents you are requesting clearly written on the subpoena. If a witness agrees to bring a document to court voluntarily, you do not need the subpoena duces tecum. However, a witness is required to appear in court or to bring documents only if a subpoena is served with the witness fees.

**Consider discussing settlement with the other side:**

Most cases are settled. A settlement can save both sides time, money and the stress of a trial. Either side might win or lose at trial, while settlement might allow each party to get something.

The settlement should be in writing so both sides and the Court are clear about the settlement agreement. If you reach your settlement at Court, ask the clerk for a settlement form. The Court will review and approve your agreement.

**Trial Day: Come Early**

Check in with court administration, along with your witnesses, at least 15 minutes before the trial is scheduled to begin. Always allow extra time for traffic, security screening and finding the courtroom. **If you are not on time for your trial, you may lose your case by default.**

**Trial Procedure:**

At the start of the trial, the Judge explains how the trial is run. If you have a question, ask it then, before you start presenting your case. The Judge cannot give you legal advice. The Judge's job is to be neutral and fair, and decide the facts and the law. Everything said in the trial is "on the record", which means that the court reporter or the recording equipment takes it all down. It is your job to prove to the Court what you believe happened. It is also your job to convince the Court to rule in your favor by having good supporting witnesses and documents and by showing the court that the law supports the relief you seek.

**Do not interrupt:**

Never interrupt the other side, a witness or the Court. If you think that the other side is violating the Minnesota Rules of Evidence, you should stand up and say, "Your Honor, I object." After making this statement, you should explain your objection to the evidence. For example, "that statement is hearsay, because the person who said it is not here to testify." The Court will either grant or deny your motion. If the Court grants your motion, then the other side's evidence will not be allowed into the record.

**Do's and don'ts:**

Do not bring young children to court. No gum, food or drinks are allowed in the courtroom. All cell phones must be turned off. You must treat the Judge and the other side with respect. Address them formally, for example, "Your Honor", "Mr. Smith", or "the Defendant."
**Yelling, swearing and using abusive language are not allowed. These actions can be punished as contempt of court with fines and an immediate escort by a court deputy to jail.**

The Court may call a recess. If you need a break for a medical reason, ask the Court immediately.

**Who sits at the front tables:**

Usually, only the parties and their lawyers or agents sit up front at the tables in the courtroom. If you want someone else, like an advocate or building manager to sit with you, ask the Court at the start of the trial. You need the Court's permission first. Stay at your table unless you need to give a witness or the judge or referee a document. Before you can walk up to a witness on the stand or the judge or referee. Ask, "May I approach the witness?" or "May I approach the Bench?"

**The end of the trial:**

At the end of the trial, the Court may make a decision right away and give you a copy. If the Court takes the case "under advisement", the Court will mail you a copy of the order once a decision has been made. Make sure the Court has your correct mailing address. Do not call the referee or judge about your case. If you write the Court, you must send a copy of your letter to the other side. On the letter to the Court, list the names of all people to whom you sent a copy.

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

**Settlement Agreement**

_____
Defendant(s) (first, middle, last)

The parties have reached the following agreement:

_____

_____

_____

_____

☐ Parties agree to the following payment schedule:

| Date Payment is Due | Time Due (if applicable AM/PM) | Amount Due | Form of Payment (Money Order, Certified Funds, etc.) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | Total Amount: | $0.00 |

This includes rent for the following months: _____

☐ No Writ of Recovery is requested at this time. This signed agreement serves as settlement.

☐ Defendant(s) shall vacate on or before _____ or a Writ of Recovery shall be issued upon request of Plaintiff and payment of the fee for a Writ. There will be no notice to Defendant or hearing.

☐ If any payment is missed or other terms of the settlement are violated, a Writ of Recovery shall be issued upon request by Plaintiff and payment of the fee, and filing of an affidavit stating how the agreement was violated. There will be no notice to Defendant or hearing. A request for the Writ must be made within 30 days of the violation of the agreement.

☐ If a Writ of Recovery issues, Plaintiff may file an affidavit requesting costs and disbursements allowed by statute, and the court shall award a judgment against Defendant for allowable costs and disbursements.

**I have read, understand, and agree to be bound by this Settlement Agreement:**

Date _____ Date _____

_____ _____
PRINT Plaintiff(s) NAME PRINT Defendant(s) NAME

_____ _____
Signature of Owner/Agent/Attorney Signature

_____
Signature

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

_____
Defendant (first, middle, last)

## Affidavit of Violation of Settlement Agreement & Order for Judgment

This case was heard by the court on _____.

A settlement agreement allowing the Plaintiff to obtain a Writ of Recovery if the agreement was violated was reached and approved by the court.

The following provision(s) was/were not met:

_____

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Date signed: _____ _____
Plaintiff's Signature

_____
County and State where signed

## ORDER

Based on that agreement and subsequent breach, it is the order of the court that Judgment shall be entered for the landlord and a Writ of Recovery shall be issued.

***LET JUDGMENT BE ENTERED ACCORDINGLY***

RECOMMENDED BY: BY THE COURT:

_____ _____ _____ _____
Referee Date Judge Date

I Hereby Certify That the Above Order Constitutes the Entry of Judgment of This Court.

BY _____ DATED _____
Deputy (Seal)

# INSTRUCTIONS

## Eviction Action Complaint

**Forms you will need for your Eviction case:**

- Instructions (HOU101);
- Eviction Action Complaint (HOU102);
- Affidavit of Service (HOU106); and
- Additional Litigants Form (HOU125) – if needed.

### Overview of Steps in an Eviction Case

1. Fill out and sign the Eviction Action Complaint, following all of the steps in these instructions.
2. Make copies of the signed Eviction Action Complaint.
3. File your forms (electronically or at the courthouse), and pay the filing fee (or ask for a fee waiver if you cannot afford to pay the fee). They will issue you a Summons.
4. Have someone (not you) serve a copy of the Complaint and Summons on each tenant. No later than 3 days before the court hearing, file proof with the Court that each tenant was served. Steps for personal service are explained in greater detail in Step 5 below.
5. Go to the court hearing. Each "step" is explained below in detail.

### Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Got a question about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the MN Courts Self Help Center at (651) 435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

## General Information about Eviction Action Complaints
**Minn. Stat. § 504B.321**

Use the *Eviction Action Complaint* (HOU102) to ask the Court to evict a tenant from residential or commercial rental property. Carefully read through the steps laid out in these instructions to complete the forms to file.

The information in these instructions is a general guide to you to explain the legal process for filing for an eviction. If you do not understand any of the following steps or do not know if these forms are right for your situation, you should speak with an attorney for legal advice. **Court staff cannot give legal advice.**

To evict a tenant, the landlord must have a valid reason for the eviction under Minnesota law, and the landlord must properly complete all the steps for the eviction, as required by Minnesota Statutes Chapter 504B and the Minnesota Rules of Civil Procedure. In Hennepin and Ramsey Counties, eviction cases are heard in "Housing Court" governed by General Rules of Practice for District Courts, Rules 601-612. There may be other legal requirements in City Ordinances, Minnesota Statutes and Rules, or Federal law affecting your eviction action.

# Step 1
**Fill Out the *Eviction Action Complaint*** (HOU102)

The Eviction Action Complaint form is broken up into sections below with guided numbers to help you fill out the form. This guide is not meant to be legal advice. If you have questions on how to fill out a question you should speak with an attorney for legal advice.

A

**State of Minnesota**

County 1

2 **District Court**

Judicial District:
Court File Number: 3
Case Type: Housing

# EVICTION ACTION COMPLAINT
## (Minn. Stat. § 504B.321)

**Plaintiff #1 (Landlord)**

Name
Address 4
City/State/Zip

**Plaintiff #2 (Landlord)**

Name
Address
City/State/Zip

vs.

**Defendant #1 (Tenant)**

Name
Address 5
City/State/Zip

**Defendant #2 (Tenant)**

Name
Address
City/State/Zip

6 Check Box if there are more than two plaintiffs or more than two defendants. List the information for the other parties on the *Additional Litigants Form,* HOU125.

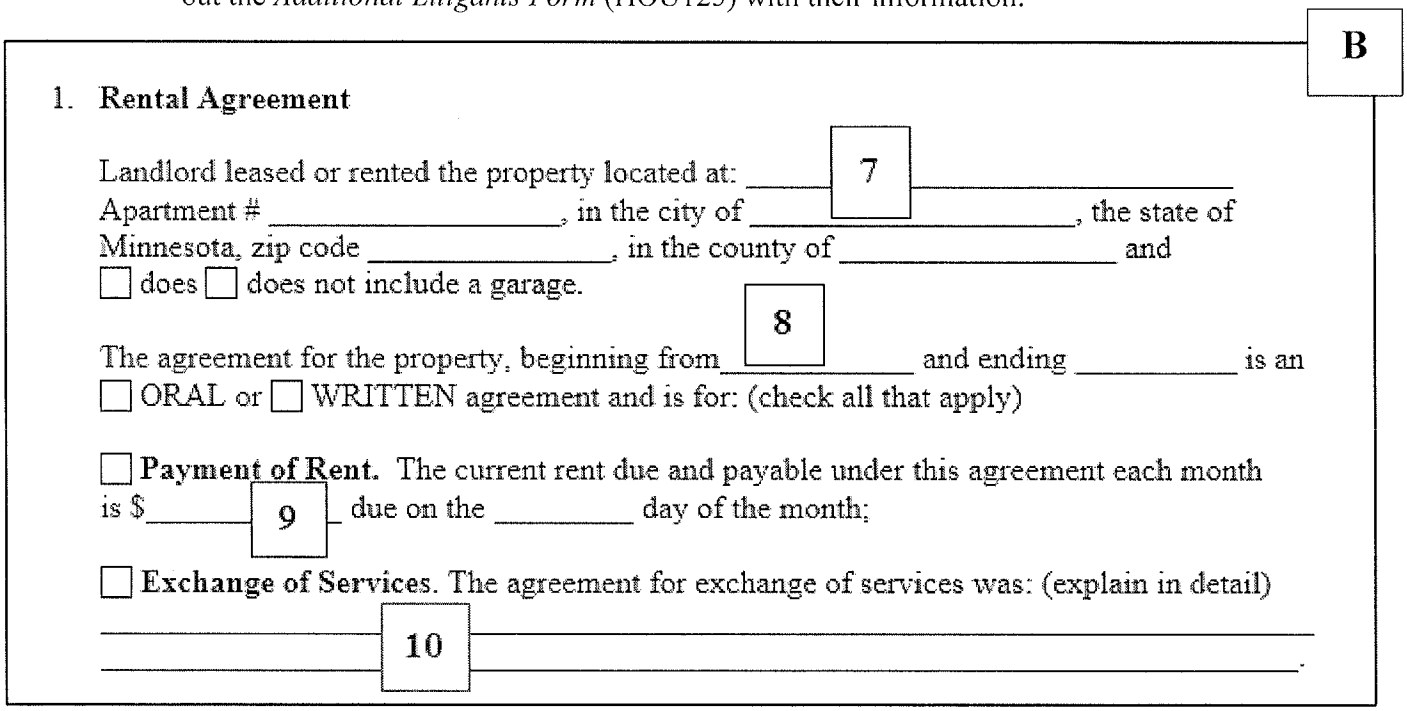
## A – Caption

1. In the upper left corner, fill in the county where the property is located.
2. In the upper right corner, fill in the Judicial District number.
3. Leave the Case File Number blank for now.
4. On the line marked "Plaintiff #1," write the name and address of the property owner (or the person entitled to possession). The plaintiff is a person, or the legal entity that is the owner (corporation, partnership, or sole proprietor) or a court-appointed receiver or fiduciary.
    - If there are co-owners, such as a husband and wife, you may list one or both as plaintiffs in "Plaintiff #2" of the caption.
    - If business is conducted using an assumed name, list the owner's name followed by the assumed name. *Example: John Jones, doing business as Lakeview Apartments.* Note: Minn. Stat. § 333.01 requires a commercial business to file a certificate of assumed name with the MN Secretary of State before conducting business using the assumed name.
    - A property management company or property manager that does not own the property should not be listed as the plaintiff.

- If you have questions about who to list as a plaintiff, read Minnesota Statutes Chapter 504B or ask an attorney for advice. You can also visit the Landlord-Tenant Help Topics page for information to laws and rules at http://www.mncourts.gov/Help-Topics/Landlord-and-Tenant-Issues.aspx .

5. On the line marked "Defendant #1," write the name and address of the tenant. Include all adults on the lease, and any other adults known to be living there. If there are more than two tenants, you should use the *Additional Litigants Form* (HOU125). If unknown persons are living there, you can list "John Doe" or "Mary Roe" along with the known persons.

6. If you have more than two landlords or two tenants, then check this box and be sure to fill out the *Additional Litigants Form* (HOU125) with their information.




## B – Rental Agreement

7. Fill in the street address, apartment, city, zip code and county where the property is located. Check if the property "does" or "does not" include a garage.

8. Write in the beginning and end date of the agreement. Check if the agreement was an "Oral" or "Written" agreement.

9. Check the box if the agreement was for payment of rent. Write in the amount of rent and on which day of the month rent is due.

10. Check the box if the agreement was for an exchange of services. Note: an agreement can be both for payment of rent and an exchange of services (for example, an agreement for reduced rent if the tenant cleans the common areas of building). Explain in detail the agreement on services to be provided by the tenant.

**Is your situation different?** The *Eviction Action Complaint* form was created for use in the typical situation where a tenant agrees to pay rent each month to landlord. An eviction can also be filed if there is an agreement for an exchange of services instead of rent, or if unlawful activities are occurring at the property that are covered in Minn. Stat. § 504B.171. If this is not your situation, talk with an attorney for advice on what steps you may take to evict someone.

**C**

2. **Notice of Right of Possession by Landlord for Residential Leases**

Landlord having present right of possession of the residential property, has followed Minn. Stat. § 504B.181 by: (you must check either A **and** B, or C)

☐ a. informing the Tenant, either in the rental agreement or otherwise in writing, before the beginning of the tenancy the name and address of:

**11**

i. the person authorized to manage the property **AND**
ii. a landlord or agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands, **AND**

☐ b. posting in an obvious place on the property a printed or typewritten notice that includes the information above. Explain where the notice is posted: _____, **OR**

☐ c. The Tenant knew of the name and address of the person authorized to manage the property and accept and give receipt for notices and demands, at least 30 days before the filing of this action because: _____

**12**

_____.

## C – Notice of Right of Possession by Landlord for Residential Leases

This section only applies to residential property only (not commercial leases) where there is an agreement to pay rent. You cannot file an eviction unless A **and** B are true, or C is true. See Minn. Stat. § 504B.181, Subd.4. If you have not given the tenant the required information at this point, speak with an attorney for legal advice.

11. Before the tenant moves in and pays rent, the landlord must give the tenant certain information in writing AND must post the information on the property. Read Paragraphs 3 (a) and (b). If both are true, check both boxes and fill in the line at (b) explaining where the information was posted.

12. If you are not able to check both box A **and** B, then you must check box C and explain, in detail, how the tenant knew this information at least 30 days ago.

**NOTE:** You cannot file an eviction unless A and B are true, or C is true. If you have not given the tenant the required information in writing at this point, talk with an attorney for legal advice.

D

**3. Grounds for Eviction**

Landlord seeks to have the Tenant evicted for the following reasons: (check all that apply)

☐ a. The Tenant is still in possession of the premises and has failed to pay rent for the month(s) of _____ 13 _____ in the amount of $_____ per month payable on the _____ day of each month for a total due of $_____.

☐ b. The Tenant failed to vacate the property after written notice was given: (check all that apply)

☐ Landlord gave written notice to Tenant on _____ (date) to vacate the property by _____ (date). Tenant has failed to vacate the property. 14

☐ Tenant gave written notice to Landlord on _____ (date) that they would vacate the property by_____ (date). Tenant has failed to vacate the property.

☐ c. The Tenant has broken the terms of the rental agreement with property landlord by: (be specific) _____ 15 _____.

☐ d. The Tenant has breached the covenants as stated in Minn. Stat. §504B.171 by: (be specific): _____ 16 _____.

☐ e. The Tenant defaulted on the mortgage and the property has been sold at a Sheriff's sale. The Redemption period has expired and Plaintiff is entitled to possession. 17

☐ f. The Tenant defaulted on a Contract for Deed and is holding over after proper cancellation of the contract. 18

## D – Grounds for Eviction

**13. Check box A if the reason for the eviction is that the tenant did not pay the rent.**

- State which months are unpaid (such as Jan, Feb).
- State the amount of rent that is unpaid per month (such as $500 for Jan, and $900 for Feb).
- Fill in the day of the month when rental payments are due.
- Fill in the total rent owed at the time the Complaint is signed.

**NOTE:** Tenant may be able to redeem or "pay and stay" if the only reason for filing the eviction action is nonpayment of rent, and they bring to the court hearing the amount of rent that is past due (plus interest), the costs of the court action, and an attorney's fee (not greater than $5), and performs any other agreements of the lease.

If the rent is paid by the day of court, the Judge can give the tenant up to 7 more days to pay the other costs. See Minn. Stat. § 504B.291, Subd. 1. For purposes of "pay and stay" court costs include only the court filing fee and reasonable service of process fees. Court costs do not include management fees, or fees paid to an agent. If the total amount due on the *Complaint* includes utilities or late fees, the Judge will decide if these amounts must be paid by the tenant to "pay and stay."

**14. Check box B if tenant failed to move out (vacate) after notice was given.**

- Landlord gave notice to Tenant - Check the first box if the landlord asked the tenant to move out. First write in the date you gave the notice to the tenant and then write in the date they were to move out of the property.
- Tenant gave notice to Landlord – Check the second box if the tenant gave notice that they would be moving out. First write in the date notice was given and then write in the date they were to move out of the property.

**NOTE:** If landlord asked tenant to move, a copy of the letter telling tenant to move out should be attached to the *Complaint*.

## Common Problems with evictions for failure to move out :

**Improper Notice to Vacate:** In general, a full rental period's notice must be given.

If you have a written lease, read the lease to see if some other notice period is required. If the property was foreclosed, other notice periods may apply. An eviction case may be dismissed for improper service. Speak with an attorney for legal advice if this was not done.

**Example 1**: *If rent is due on the 1st of the month and you want the tenant to move out by March 1, you must deliver the notice to vacate on or before January 31.*

**Example 2**: *If you give the tenant a notice to vacate letter on April 10, the earliest date the notice can tell the tenant to leave is May 31, so you have given notice of a full rental period (the month of May)*

**Filing the *Eviction Action Complaint* before the vacate date:** If tenant was asked to move out by January 1, do not file the *Complaint* until after January 1, even if the court date will be after January 1. The tenant must be in violation of the request to move out at the time you file the *Complaint*. If the tenant tells the landlord they do not plan to move out by January 1, landlord still must wait until after January 1 to file the *Complaint*.

**Waiting to File if tenant fails to pay rent:** Generally, if the tenant gives or is given a notice to move out, the tenant must still pay rent through the move-out date. An exception to this rule is if the lease allows tenant to apply a damage deposit as the last month's rent, or a specific law allows it, such as with mortgage foreclosures. If the tenant must pay the last month's rent and does not pay by the due date, landlord can file an eviction case for non-payment of rent. Landlord does not have to wait until tenant fails to move out per the Notice to Vacate. Failure to pay rent creates a separate reason to file for eviction.

**15. Check box C if tenant violated the rental agreement (for something other than not paying rent.)**

- Describe the dates and specific details of how the tenant broke the terms of the rental agreement. The breach of lease should be material, meaning something that is significant.
- If the agreement was for an exchange of services and tenant did not perform those services as part of the agreement, explain in detail what was not done.

**NOTE**: A copy of the lease should be attached to the *Complaint*. Be sure to read Minn. Stat. § 504B.115 to see if you are required to give the tenant a copy of the written lease before filing an eviction action.

**16. Check box D if the tenant has violated Minn. Stat. § 504B.171 (drugs, prostitution, guns, stolen property at the rental property)**

- Be sure to read Minn. Stat. § 504B.171 before deciding if this ground for eviction applies to your situation. You must be detailed about the alleged unlawful activities. Attach a copy of any police report(s) to the *Complaint.*

**17. Check box E if the tenant defaulted on the mortgage and the property has been sold at a Sheriff's sale.**

- This should only be done if the redemption period has expired and Plaintiff has right to possession. Read Minn. Statute §504B.285 subd. 1(a) for more information and requirements. If you are not sure if this applies to your situation, talk with an attorney for legal advice.

**18 . Check Box F if Contract for Deed was cancelled and the tenant is still living in property.**

- Please read Minn. Stat. §504B.285 subd. 1(b) to be sure you have followed all of the steps for notice and meet the requirements. If you are not sure if this applies to your situation, talk with an attorney for legal advice.

## E – Date of Birth and Military Status

**E**

5. Tenant #1 date of birth: _____ **19** _____/ ☐ Unknown; Tenant #2 date of birth: _____/ ☐ Unknown. *If a tenant is a business, leave this section blank for that tenant.*

6. Military status for Tenant: **20**
Tenant # 1 ☐ is in the military service / ☐ is not in the military service / ☐ Unknown
Tenant # 2 ☐ is in the military service / ☐ is not in the military service / ☐ Unknown

*If a tenant is a business, leave this section blank for that tenant.*

19. Fill in the tenant's birthdate, if known. If unknown, check "unknown." If the tenant is a business, you can leave this question blank.

20. Check whether the tenant, to the best of your knowledge, is in the military service. If you do not know whether they are in the military service, check "unknown." If a tenant is in the military, special laws may apply. Talk with an attorney for legal advice before signing the *Complaint.* If a tenant is a business, leave this section blank for that tenant.

## Step 2
## Sign the *Eviction Action Complaint*

1. Sign the *Complaint* under penalty of perjury. By signing the *Complaint* under penalty of perjury, you are stating that the information in the document is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth.

2. The *Complaint* must be signed by the owner, a licensed attorney, or the person entitled to possession of the property.

3. *Print* your name, title if filing on behalf of a plaintiff, and fill in your address, city, state, zip, daytime phone number, and e-mail address. E-mail addresses are required if documents are served or filed using electronic means.

**NOTE**: If the owner of the property is a business, an attorney must sign the *Complaint* and appear in court with the owner or owner's agent. There is an exception in filing in Hennepin County Housing Court. You can read the Housing Court Rules online. See Step 6 for more information on attorneys representing businesses in court.

# Step 3

**Make Copies of the *Eviction Action Complaint***

Make a copy of the signed *Complaint* with attachments, if any, for each tenant named in the *Complaint*. You should be sure to make a copy for yourself as well.

# Step 4

**Bring the *Eviction Action Complaint* to the Court Administrator**

**File the following documents with the Court Administrator**:

- The *Eviction Action Complaint*, and any attachments such as a copy of the written lease, a copy of the Notice to Vacate, Power of Authority (used only in Hennepin County), or police report.
- If needed, be sure to also file the *Additional Litigants Form* (HOU125).
- Pay the court filing fee . If you have a low income and cannot afford to pay the filing fee, you can use Form IFP102 and IFP104 to ask that a judge waive the fee.

  Court administration cannot accept your *Complaint* for filing without the fee or a request to waive the fee. If the filling fee is not waived you are then required to pay the fee before the Court can take any action.

**Interpreter Needed?** If you need an interpreter at the hearing, tell court administration when you file. If you think your tenant needs an interpreter, consider asking the tenant to call court administration. Generally, 48 hours (2 full days) notice is needed, not including weekends and holidays, to schedule an interpreter. Less notice may cause a delay or a rescheduling of the hearing.

The Court will create a ***Summons***. A *Summons* is a written notice telling the tenant that a legal action has been filed and will be heard in court on a certain day. It also states that if the tenant disagrees with the action or wants to tell a different side of the story, they must appear in court at the time of the hearing.

**You will need a copy of the *Summons* for each tenant.**

# Step 5

**Serve the *Summons* and *Eviction Action Complaint* on the Tenant**

- You (the plaintiff) **cannot be the person who serves the *Summons* and *Complaint***. If you gave Power of Authority to an agent, do not ask the agent to serve the papers. It is best not to

ask the building manager to serve papers. Use a neutral person who is over the age of 18, or pay a service of process agency or the Sheriff to serve the papers.

- Service of the *Summons* and *Complaint* must be completed **at least 7 days before** the hearing date. *Example: If court is on Friday, the last day to serve is Friday of the week before.*
- A *Summons* and *Complaint* cannot be served on a legal holiday.
- Each named tenant must be served. **Example:** *if there are 3 tenants, each tenant must be served with a separate copy of the Summons and Complaint. If there is a husband and wife and 2 children, the husband and wife must each be served with a separate copy of the Summons and Complaint. Minor children should not be named as defendants or served.*
- A separate *Affidavit of Service* **for each tenant** must be filed with the Court at least **3 days before** the court hearing (when counting the 3 days, don't count Saturdays, Sundays, or legal holidays). **There is more information about the *Affidavit of Service* below.**
- *If Section 8 is involved*, the contract between the landlord and the Housing Authority may require the landlord to serve a copy of the *Summons* and *Complaint* on the Housing Authority at the same time the papers are served on each tenant.

**PERSONAL SERVICE OF THE SUMMONS & COMPLAINT**

***Personal Service:*** An adult who is not involved with the case may act as the server and may hand the *Summons* and *Complaint* directly to the tenant at least seven days before the court date.

***Substitute Service:*** An adult who is not involved with the case may "serve" the *Summons* and *Complaint* by leaving a copy of the documents with a responsible person who lives with the tenant. This person is then responsible for delivering the *Summons* and *Complaint* to the tenant. **Example**: *Joe and John are adult roommates. If only Joe is home, the server can leave 2 copies of the Summons and Complaint with Joe, one for Joe and one for John.*

The server fills out one *Affidavit of Service* **for each** tenant. The server must sign the *Affidavit of Service* under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. The *Affidavits of Service* are your proof that you had the tenant served. **File the completed *Affidavits* with the court at least 3 days before the hearing** (not counting Saturdays, Sundays, or legal holidays).


It is always best if the tenant is personally served with the *Summons* and *Complaint*. However, if you cannot find the tenant, you may be able to have the tenant served in another way called *mailing and posting*.

**MAILING AND POSTING of the SUMMONS & COMPLAINT**

***Use this method of service when:***

1. Tenants cannot be found in the county ***AND***

2. Personal or substitute service has been tried at least twice on different days with at least one of the attempts at service made between 6 and 10 p.m.

   If the property is commercial instead of residential, the attempts to serve are not required. Instead, there must be proof that the commercial property is not occupied.

See the form *Instructions – Service by Mail and Post* (HOU107) for instructions on using this form of service.

## Step 6
### Go to the Hearing

The plaintiff, the plaintiff's attorney, or the plaintiff's agent with power of authority (in Hennepin County only), must attend the hearing.

If the plaintiff is a business, the plaintiff must have an attorney in court. There is one exception to this rule. In Hennepin County, an officer or agent with power of authority may appear and represent the corporation without a lawyer in Housing Court. If a decision is appealed to a judge or appellate court, however, then an attorney will be required.

Many eviction cases settle at court. The landlord and tenant should try to work out an agreement. In some counties, if a trial with witnesses and evidence is needed, the trial will be scheduled for a separate date. In other counties, you may be expected to have your witnesses ready at the first hearing date. For more information about what to expect at an eviction hearing, contact court administration for the county where you are filing, and/or look at the court's website at http://www.mncourts.gov/Find-Courts.aspx and then pick your district/county.

# Other Information

| | |
|---|---|
| **Requesting an Interpreter** | If you need interpreter services for the hearing, call court administration right away. The court generally needs 48 hours notice (2 full days), excluding weekends and holidays, to provide an interpreter. |
| **Expedited Hearing** | If tenant's behavior is seriously endangering the property or safety of other residents or the owner, landlord can request that the eviction court date be scheduled within 5 to 7 days, rather than 7 to 14 days. An additional affidavit is required, and a judicial officer must pre-approve the request before court administration sets the date. A landlord can be fined up to $500 for abuse of the expedited hearing process. See Minn. Stat. §504B.321 Subd.2. |
| **Collecting the Rent** | An eviction action decides if the tenant must move. It does not include a judgment for rent or other money owed.<br>Claims for rent and other money issues cannot be brought in housing court with the eviction complaint and must be brought separately in either conciliation court or district court. Claims that are less than $15,000 can be brought in Conciliation Court.<br>Claims over $15,000 must be filed in District Court. |
| **Eviction Notice (Writ of Recovery of Premises and Order to Vacate)** | A "Writ of Recovery of Premises and Order to Vacate" is a legal notice ordering the tenant to move and authorizing the sheriff to take certain actions if the tenant does not move voluntarily. It is issued by the court if the landlord wins an eviction action in court, the landlord asks for the Writ, and pays a Writ fee.<br>Landlord takes the Writ to the sheriff. If the sheriff cannot find the tenants to serve the Writ, the sheriff may post it in a noticeable place at the property.<br>The Tenant has 24 hours to remove all property and turn in keys. If the Tenant ignores the notice, Landlord may contact the sheriff to schedule a "move out" time.<br>For more information, read Minn. Stat. § 504B.365 (Unlawful exclusion or removal; action for recovery of possession). |
| **Tenant's Personal Property** | Minn. Stat. § 504B.271 covers what the landlord can do with property a tenant leaves behind after moving out. For more information, see links to booklets published by the Attorney General and other agencies at www.mncourts.gov/selfhelp/?page=415 |

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

# EVICTION ACTION COMPLAINT

(Minn. Stat. §504B.321)

**Plaintiff #1 (Landlord)**

| Name: |
|---|
| Address: |
| |
| City/State/Zip |

**Plaintiff #2 (Landlord)**

| Name: |
|---|
| Address: |
| |
| City/State/Zip: |

VS.

**Defendant #1 (Tenant)**

| Name: |
|---|
| Address: |
| |
| City/State/Zip: |

**Defendant #2 (Tenant)**

| Name: |
|---|
| Address: |
| |
| City/State/Zip |

☐ Check box if there are more than two plaintiffs or more than two defendants. List the information for the other parties on the *Additional Litigants Form* (HOU125).

1. **Rental Agreement**

Landlord leased or rented property located at: _____

Apartment # _____ in the city of _____, the state of Minnesota,

Zip Code _____, in the county of _____ and

☐ does ☐ does not include a garage.

The agreement for the property, beginning from _____ and ending

_____ is an ☐ ORAL or ☐ WRITTEN agreement and is for:

*(Check all that apply)*

☐ **Payment of Rent.** The current rent due and payable under this agreement each month is $ _____ due on the _____ day of each month.

☐ Exchange of Services. The agreement for exchange of services was: (explain in detail)

_____

_____

_____

_____

2. **Notice of Right of Possession by Landlord for Residential Leases**

Landlord having present right of possession of the residential property, has followed Minn. Stat. §504B.181 by: (You must check either A **and** B, or C)

☐ a. informing the Tenant, either in the rental agreement or otherwise in writing, before the beginning of the tenancy the name and address of:

i. the person authorized to manage the property **AND**

ii. a landlord or agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands **AND**

☐ b. Posting in an obvious place on the property a printed or typewritten notice that includes the information above. Explain where the notice is posted:

_____

_____

_____

_____

**OR**

☐ c. The Tenant knew of the name and address of the person authorized to manage the property and accept and give receipt for notices and demands, at least 30 days before the filing of this action because:

_____

_____

_____

_____

3. **Grounds for Eviction**

Landlord seeks to have the Tenant evicted for the following reasons: (Check all that apply)

☐ a. The Tenant is still in possession of the premises and has failed to pay the rent for the month(s) of _____ in the amount of $ _____ per month payable on the _____ day of each month for a total due of $ _____.

☐ b. The Tenant failed to vacate the property after written notice was given: (Check all that apply)

☐ Landlord gave written notice to tenant on _____ to vacate the property by _____. Tenant has failed to vacate the property.

☐ Tenant gave written notice to Landlord on _____ that they would

vacate the property by _____ . Tenant has failed to vacate the property.

☐ c. The Tenant has broken the terms of the rental agreement with property landlord by: (be specific)

_____

_____

_____

_____

☐ d. The Tenant has breached the covenants at stated in Minn. Stat. §504B.171 by: (be specific)

_____

_____

_____

☐ e. The Tenant defaulted on the mortgage and the property has been sold at a Sheriff's sale. The Redemption period has expired and Plaintiff is entitled to possession.

☐ f. The Tenant defaulted on a Contract for Deed and is holding over after proper cancellation of the contract.

4. The Landlord seeks judgment against the above Tenants for restitution of said premises plus costs and disbursements.

5. Tenant #1 date of birth _____ / ☐ Unknown;

Tenant #2 date of birth _____ / ☐ Unknown;

*If a tenant is a business, leave this section blank for that tenant.*

6. Military status for Tenant:

Tenant # 1 ☐ is in the military service ☐ is not in the military service ☐ Unknown

Tenant # 2 ☐ is in the military service ☐ is not in the military service ☐ Unknown

*If a tenant is a business, leave this section blank for that tenant.*

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

******Notice: A licensed attorney must sign the Complaint and appear in court on behalf of a corporation or LLC. ******

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of Ramsey | Judicial District: Second<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

_____
Defendant (first, middle, last)

# Power of Authority in Eviction Action in Ramsey County Housing Court

1. Plaintiff is (check one): ☐ an individual or individuals
   ☐ a sole proprietorship owned by _____
   ☐ a partnership or association
2. The undersigned is the proper person to execute this document as the landlord, or as a partner or officer of the landlord.
3. That _____ (name) is hereby appointed the representative to sign documents, file, and appear on behalf of Plaintiff with full authority and power to perform all acts necessary that the grantor could do if personally in attendance on the housing court matter.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

Note: A licensed attorney must sign court documents and appear in court on behalf of a corporation, partnership, or limited liability company in Ramsey County Housing Court.

# INFORMATION SHEET AND INSTRUCTIONS
# Affidavit in Support of Request for Expedited Hearing

**For Use With:** Affidavit in Support of Request for Expedited Hearing

**Citations:** Minn. Stat. § 504B.321, subd. 2

**General Information:**
An expedited hearing will be scheduled on the 5th, 6th, or 7th day after a request is granted. If your request is granted, then you must have the Defendant(s) served within 24 hours. Service is done by having someone, at least 18 years old and NOT a party to the case, hand the papers to the Defendant(s) OR hand the papers, at the Defendant(s)'s home, to an adult who lives there. For an expedited hearing, you must have the papers served within 24 hours of the time the Court gives you the Summons.

An expedited hearing may be granted if the Affidavit specifically describes:

1. The Defendant(s)'s violation of the covenant not to allow unlawful activities (Minn. Stat. § 504B.171) or other illegal or nuisance acts done by the Defendant(s)
2. AND explains how those acts cause a serious danger to other tenants or to the property of the landlord or other tenants.

The Affidavit needs to be specific, including the dates, the names, and exactly what happened. If you have police reports, you may attach them to your Affidavit. Don't rely on police reports alone, though. You need to describe in your own words exactly what happened and how it causes a danger.

If the Court grants your request, and if you have the papers served within 24 hours, then the first hearing will be five (5) to seven (7) days after the Court issues the Summons. If the facts later show that you did not have a sufficient reason under the law to request the expedited hearing, then you will have to pay a civil penalty up to $500. If the facts show that you had a sufficient basis for your request, and the tenant(s) should be evicted, then the Court will order a Writ of Restitution to evict the tenant(s) and to give you possession of the property.

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

**Filling Out the Request Affidavit:**

1. Put the names of the parties in the top part of the Affidavit. These names must be the same as the names you put on the Complaint.
2. Print your name in the first line of the Affidavit.
3. In #4, write in your description of what happened. The more specific you are, the more likely your request will be granted. Describe exactly why you believe there is an immediate risk of danger to other tenants, their property, or the landlord's property.
4. Don't forget to read the statements in #3 and #5 before you sign the Affidavit.
5. Sign the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, you are stating the information in the document is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth.
6. The Deputy Court Administrator will bring your Request to a Referee/Judge as soon as possible. If your request is granted, then you must bring it to the Deputy Court Administrator, file it, and get the Summons. The Summons, the Complaint, your Affidavit, the Order, and any attachments, must be served within 24 hours. Whoever delivers the papers needs to sign an Affidavit of Service, and you must return that to the Court three (3) days before the hearing.

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff/Property owner or person entitled to possession

vs.

_____
Defendant(s)/Tenant(s) (Full name(s) and DOB, if known)

_____

_____

# Affidavit in Support of Request for Expedited Hearing

(Minn. Stat. §504B.321, subd. 2)

_____, states that she/he:

1. Is the Plaintiff, or an authorized agent of the Plaintiff, in this Eviction action;

2. Submits this Affidavit to request an expedited Eviction hearing;

3. Has read and understands the attached INFORMATION SHEET, specifically that the Court WILL impose a penalty of up to $500 if the Court grants this request and later finds that this Affidavit was filed in bad faith or was an abuse of the expedited hearing process or that the person signing this Affidavit had no basis to believe that the facts claimed here are true;

4. STATES that the following SPECIFIC FACTS show that the Defendant(s) are causing a nuisance or acting illegally AND that the Defendant(s)'s actions are seriously endangering other tenants, their property, or the landlord's property (State here the facts, dates, and exactly what happened; you may attach documents):

_____

_____

_____

_____

_____

_____

_____

_____

5. Plaintiff, or Plaintiff's agent, acknowledges that the Court may also award costs, disbursements, and reasonable attorney and witness fees to Defendant, if Plaintiff acts in bad faith, asserts a claim that is frivolous and costly to Defendant(s), asserts an unfounded position solely to expedite the ordinary course of these proceedings or to harass Defendant(s), or commits a fraud upon the Court.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

**Affidavit of Personal or Substitute Service**

_____
Defendant (first, middle, last)

I, _____ state that I am at least 18 years of age
(Name of person who hand-delivered documents)

having been born on _____ and that on _____ I served the attached *Summons* and *Complaint* in an Eviction Action upon the named defendant(s)

_____
( Name of defendant(s))

**at:** _____ .
(street address, city, state, zip code)

by personally handing a true and correct copy of the document to:

☐ the defendant(s) named above

**OR**

☐ _____ , a person of suitable age and
(Name of person you handed the papers to, if someone other than defendant)
discretion residing with the defendant(s).

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

# Mail and Post Instructions

**Overview**
Service may be completed by way of Mailing and Posting if the defendant(s) cannot be found and if personal or substitute service has been attempted at least twice on different days with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.

**Procedures:**

1. Plaintiff is provided with the following documents; Affidavit of Not Found, Affidavit of Plaintiff, Affidavit of Service by Mail and Affidavit of Service by Posting.
2. Plaintiff is to make extra copies of the Summons and Complaint for the defendant. Plaintiff or the plaintiff's attorney at law mails copy of Summons and Complaint to the defendant at the defendant's last known address.
3. Process Server makes at least two attempts at personal service at the premises. The attempts must be on different days. One of the attempts must be between 6:00 p.m. and 10:00 p.m.
4. Process Server completes Affidavit of Not Found.
5. Plaintiff or Plaintiff's attorney at law completes Affidavit of Plaintiff.
6. Plaintiff or the Plaintiff's attorney at law (whoever did the mailing) completes Affidavit of Mailing.
7. Someone files the Affidavit of Not Found, Affidavit of Plaintiff and Affidavit of Mailing with the court.

**AFTER AND ONLY AFTER THESE AFFIDAVITS ARE FILED, PROCEED TO NEXT STEPS:**

8. Process server posts the Summons and Complaint in a conspicuous (easy-to-notice) place on the premises (for example, on the front door of the apartment). **This must occur at least 7 days prior to the hearing but may be done after business hours.**
9. Process server completes Affidavit of Posting. Someone files this document at least 3 business days before the hearing.

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

**Affidavit of Service by Mail**

vs.

_____
Defendant (first, middle, last)

Hearing Date: _____

Time: _____

I, _____ state that on _____
(Name of person who mailed documents) (Date documents mailed)

I served a *Summons* and *Complaint* in an Eviction action upon

_____
(name of person(s) to whom documents were mailed)

by placing a true and correct copy of the document in an envelope addressed to the persons at his/her last known address of _____ in the City of _____, State of Minnesota, and whose Zip Code is _____, and depositing the envelope, with sufficient postage in the U.S. Mail at the post office located in the City of _____, State of Minnesota.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

**Affidavit of Not Found**

_____
Defendant (first, middle, last)

I, _____, state that I have attempted to make service of the *Summons* and *Complaint* in the above entitled action upon the defendant(s) at the following address: _____.

That service has been attempted at least twice on different days with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m., in accordance with Minn. Stat §504.331B. That these attempts were:

**at** _____ __ **m. on** _____ **and**

**at** _____ __ **m. on** _____ and no service could be made.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

_____
Defendant (first, middle, last)

## Affidavit of Plaintiff

I, _____, ☐ plaintiff / ☐ plaintiff's attorney, state that I believe that the above defendant(s) cannot be found, or that defendant(s) is/are not in the State of Minnesota.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (first, middle, last)

vs.

_____
Defendant (first, middle, last)

## Affidavit of Service by Posting

I, _____ , state that on _____
*(Name of person who posted documents)* *(Date documents posted)*

I served a *Summons* and *Complaint* in an Eviction Action on the defendant(s) by posting a true and correct copy of each document in a conspicuous place at defendant's residence, namely

_____
*(Exact location where documents posted, including apartment number, if any)*

located at _____
*(Street address of where documents were posted)*

in the City of _____ , State of Minnesota.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

**Plaintiff # 1 (Landlord)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

vs

**Plaintiff # 2 (Landlord)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

**Defendant # 1 (Tenant)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

**Defendant # 2 (Tenant)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

## Housing Court
## Additional Litigants Form

**Plaintiff # 3 (Landlord)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

**Plaintiff # 4 (Landlord)**

Name: _____
Address: _____
_____
_____
City/State/Zip: _____

**Defendant # 3 (Tenant)**

**Defendant # 4 (Tenant)**

Name: _____

Address: _____

_____

_____

City/State/Zip: _____

Date of birth: _____

Military Service: ◯ Yes ◯ No ◯ Unknown

Name: _____

Address: _____

_____

_____

City/State/Zip: _____

Date of birth: _____

Military Service: ◯ Yes ◯ No ◯ Unknown

**State of Minnesota** **District Court**

| County of: | Judicial District: |
|---|---|
| | Court File Number: |
| | Case Type: Housing |

_____
Plaintiff (Landlord) (first, middle, last)

_____

_____
Plaintiff's Address

VS.

_____
Defendant(s) (Tenants) (first, middle, last)

_____ Tenant's Date of Birth: _____

_____
Defendant's Address

## Eviction Action Answer

(Minn. Stat. §504B.335)

My name is _____ . I understand that I must tell the truth:

1. I am the Defendant in this case.

2. **Receipt of Court Papers** (check one):

a. ☐ At least seven (7) days before the date of the court hearing someone other than the Plaintiff hand-delivered to me the *Summons and Eviction Complaint*.

b. ☐ At least seven (7) days before the date of the court hearing someone other than the Plaintiff hand-delivered the *Summons and Eviction Complaint* to

_____ an adult who lives with me.

c. ☐ The *Summons and Eviction Complaint* were not delivered to me or to a person of suitable age and discretion living with me or mailed to me at least seven (7) days before the court hearing.

d. ☐ The *Summons and Eviction Complaint* were given to the following person who does not live with me: _____

e. ☐ The *Summons and Eviction Complaint* were given to a child whose name is _____ and who is _____ years of age and who is not of suitable age and discretion to receive service.

f. ☐ I received the *Summons and Eviction Complaint* in the mail at my residence at least seven (7) days before the court hearing.

g. ☐ The *Summons and Eviction Complaint* were posted in a conspicuous place on the

property at least seven (7) days before the hearing.

3. **Military Service** (check one):

☐ I am ☐ I am not now an active duty member of the armed forces of the United States.

4. **Name and Address of Building Manager and Owner** (check one):

☐ Plaintiff (Landlord) gave me the name and street address of the property owner AND the person authorized to manage the property, OR the name and street address of the agent authorized to collect rent, accept service of process, and receive and give receipt for notices and demands, in the rental agreement or otherwise in writing, or by posting the information in a conspicuous place on the property.

☐ I knew the name and street address of the property owner or property manager or person authorized to accept rent or service of process at least 30 days before the date of the hearing.

☐ I did not know the name and street address of the property owner or property manager or person authorized to accept rent or service of process at least 30 days before the date of the hearing.

**For Questions 5-10, Check off only those that are true:**

5. ☐ Plaintiff says that I owe rent in the total amount of $ _____. I believe Plaintiff is wrong because:

_____

_____

_____

_____

6. ☐ Plaintiff says that I did not move out after receiving proper notice. I believe Plaintiff is wrong because:

_____

_____

_____

_____

7. ☐ Plaintiff says the rental agreement has expired. I believe Plaintiff is wrong because the rental agreement does not expire until the following date: _____.
I have attached a copy of the rental agreement.

8. ☐ Plaintiff says that I have broken the lease. I believe Plaintiff is wrong because:

_____

_____

9. ☐ My apartment has the following repair problems, which I have told my landlord about, but which my landlord has not fixed.

10. ☐ I believe that my landlord should not be able to evict me because:

11. ☐ If I have to move, allow me seven (7) days to move because: (Tell the court why it would be a substantial hardship for you to move immediately)

**Verification and Acknowledgments:**

a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an Order precluding me from serving or filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for an improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party

because of the serving or filing of this document, court costs, and reasonable attorney fees.

Dated: _____

_____
Signature of Defendant(s)

(Attach additional sheets if multiple defendants)

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

# RENT ESCROW INSTRUCTIONS

**Minnesota Statutes § 504B.385**

Please read the complete instructions before you begin. If you do not understand these instructions, you may need to contact an attorney.

## IMPORTANT INFORMATION

- A rent escrow action is a legal way for a residential tenant to bring a claim that requires the landlord to make needed repairs or to comply with the terms of the lease.
- The court can only hear cases involving residential property located in its own county.
- A tenant cannot be evicted on the basis of demanding repairs, calling a Housing Inspector or starting a rent escrow action. The tenant can be evicted for not paying the rent due to the landlord up to the time of filing the rent escrow action or not depositing the full amount with the court at the time the action is filed. The landlord may allege that there are other reasons the tenant should be evicted.
- The tenant must reside in the problem property. The tenant cannot file a rent escrow action after they have moved.
- The tenant can ask the court to order the landlord to make repairs, reduce the rent until repairs are complete, refund a portion of past rent when repairs were not made and other relief.

One of the following must have occurred before the tenant may file:

- The tenant must provide the landlord with written notice listing the needed repairs or describing what part of the lease the landlord has not completed. The notice must have been personally delivered to the landlord or mailed to the place where rent is usually paid. If it has been at least 14 days since the tenant provided the landlord with a written notice, then the tenant may file.
- A local housing inspector completed a code violation report and the deadline the inspector gave the landlord to make repairs has passed without the repairs being completed. The tenant must ask the inspector for a copy of the report.
- A local housing inspector completed a code violation report and the tenant believes the inspector gave the landlord too much time to complete the repairs. The tenant must ask the inspector for a copy of the report.

## REQUIREMENTS TO FILE A RENT ESCROW

- Complete an Affidavit of Rent Escrow (available at the Court Administrator/Housing Court office or online at www.mncourts.gov/forms ).
- Attach a copy of the Code Inspection Report by the inspector OR the tenant's letter to the landlord requesting repairs (Case can be filed if the tenant does not have a copy).
- Pay the filing fee or obtain an order from the court waiving the fee.
- Deposit any rent that is owed with the court. Personal checks are not accepted. Cash or cashier's check is acceptable. Check with the Court Administrator/Housing Court for acceptable forms of payment.

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

## COMPLETING THE AFFIDAVIT OF RENT ESCROW

*Remember as you answer the questions on the affidavit, you are under oath and must tell the truth.*

Caption of the Affidavit:

- The tenant(s) is the plaintiff.
- The landlord is the defendant. The landlord may be a corporation or an individual. Be sure to list the landlord, not their agent.

Body of the Affidavit:

1. Fill in your complete address including your apartment number, city, state, ZIP, county and phone number including area code.
2. Fill in the landlord's name, complete address, city, state, ZIP and phone number including area code.
3. If the property manager is different from the landlord, fill in their name, address, city, state, ZIP and phone number including area code.
4. List all problems or violations with your housing that have NOT been repair. Attach additional pages if needed.
5. Give an estimate of how much it would cost to repair the problems or violations listed in #4. If you don't know, contact someone to give you a professional estimate.
6. If the inspector issued a code violation report, complete "a". If you mailed or personally delivered a letter requesting repairs, complete "b".
7. Fill in the amount of your monthly rent and when it is due. If rent is paid in full to date, check "a". If rent is due, check "b" and be prepared to deposit that amount with the court. Check with Court Administrator/Housing Court for acceptable forms of payment.
8. If there is something you would like the court to do, indicate by checking the appropriate box(es). You may leave this question blank.
9. Read and understand

Signing the Affidavit:

- By signing the Affidavit under penalty of perjury, you are stating that the information in the document is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth.
- Fill in today's date
- Print your name, address, city, state, ZIP and phone number including area code.

## GETTING A COURT DATE

- Once your Affidavit has been filed with the court, the clerk will prepare a Notice of Hearing for Rent Escrow and attach a copy of the Affidavit of Rent Escrow and either the code violation report or your letter to the landlord requesting repairs.
- A court date will be set within 10 to 14 days after the rent is deposited with the court unless there is a pending eviction action. If so, both the eviction and the rent escrow will be set for the same date (Minn. Stat. § 504B.385, subd. 8).

## NOTIFYING (SERVING) THE LANDLORD OF THE COURT DATE (Minn. Stat. § 504B.385, subd. 5)

Cost of Repairs is $15,000 or Less:

- The court clerk will serve the landlord at the address provided by the tenant. Service will be by first class mail.

Cost of Repairs is More than $15,000:

- The tenant is responsible for arranging for personal service on the landlord(s). Service may be done by any one 18 years of age or older who is not a party to the case. The tenant can not serve the landlord. Service must be made at least five days but not more

than ten days before the date of the hearing. The person doing the service must complete an Affidavit of Personal Service. The tenant must file this affidavit with the court at least three days prior to the court date.

**AT THE HEARING**

Once the case is decided, the judicial officer will issue a Decision and Order. The Decision and Order will address who is to receive the rent that is deposited with the court. The court may order a portion to the landlord and a portion to the tenant or may order all the monies to one party. The court may schedule a future date to ensure the landlord has complied with its court.

**IF THE REPAIRS ARE MADE PRIOR TO THE COURT DATE**

The tenant notifies the court in writing that the needed repairs have been made, the clerk will release the rent to the landlord. The hearing will be cancelled. If the tenant and landlord enter into a written agreement signed by all parties distributing the rent between them, the clerk must release the rent in accordance with the written agreement.

**WHAT CAN HAPPEN IF RENT DUE IS NOT DEPOSITED WITH THE COURT** (Minn. Stat. § 504B.385, subd. 2)

The landlord may file a Counterclaim for Possession of the Premises or a separate eviction action if the tenant did not or does not deposit all rent due.

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (Tenant) (first, middle, last)

vs.

_____
Defendant (Landlord) (first, middle, last)

# Affidavit of Rent Escrow

(Minn. Stat. § 504B.385)

STATE OF MINNESOTA )
) SS
COUNTY OF _____ )
*(County where Affidavit is signed)*

My name is _____, I understand that I must tell the truth when answering the following questions:

1. I am a tenant with the right to live at the property located at the following address:

   Address: _____
   Street Address Apt. or Unit Number

   City/St./Zip: _____
   City State Zip Code

   County: _____

   Phone: _____

2. The name, address, and phone number for the owners(s) of the property are:

   Name: _____

   Address: _____
   Street Address Apt. No. City/State/Zip Code

   Phone: _____

3. The name, address, and phone number for the managers(s) of the property (if different from the owner) are:

   Name: _____

   Address: _____
   Street Address Apt. No. City/State/Zip Code

Phone: _____

4. The following is a list of all problem(s) or violation(s) regarding my apartment or rental housing:

_____

_____

_____

_____

_____

5. I estimate the cost of the repair problems to be _____ (If you have no idea of the estimated cost, you should contact someone to give you a professional estimate.)

6. The landlord or manager received the following written notice about the problems or violations with my apartment or rental housing: (Check all that apply)

☐ a. On the following date, _____, the City Inspector issued an order, a copy of which is attached, ordering the landlord or manager to fix the problem or violations by _____ AND:

○ 1. The landlord and manager did not complete the repairs on time OR

○ 2. The City Inspector gave the landlord or manager too much time to complete the repairs, because:

_____

_____

☐ b. On the following date, _____, I mailed or hand delivered to the

☐ landlord ☐ manager a written list of repairs needed or other problems with my apartment or rental housing. It has been at least 14 days since I provided the landlord and/or manager with the written notice and the landlord and/or manager have not completed the repairs or fixed the problems. I have attached a copy of the list of repairs.

7. My rent is _____ per month due on the _____of each month.

As of this date: (check one)

○ a. My rent is paid in full and no rent is due until: _____. If this case is not resolved by that date, then on or before that date I will deposit with the court the amount of rent due.

○ b. Rent in the amount of _____ is now due and I am depositing this amount with the court.

8. I ask the court to order one or more of the following (check all that apply):

- ☐ a. Directing the landlord and/or manager to complete the repairs and/or fix the problems with my housing.
- ☐ b. Allowing me to complete the repairs and/or fix the problems with my housing and deduct the costs from my rent.
- ☐ c. Directing that an administrator take over operation of the property to complete the repairs and/or fix the problems with my housing.
- ☐ d. Directing the landlord and/or manager to pay me a rent refund for the month(s) when my housing was not fixed.
- ☐ e. Directing the landlord and/or manager to give me a rent reduction each month until the repairs are completed and problems fixed.
- ☐ f. Directing the landlord and/or manager to pay a fine if this Order is violated.
- ☐ g. Directing the landlord and/or manager to pay reasonable attorney fees.
- ☐ Other:

_____

_____

and ordering other relief deemed just and proper by the court.

**Verification and Acknowledgments**

a. I have read this document. To the best of my knowledge, information, and belief the information contained in this document is well grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an Order precluding me from serving or filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for an improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document, court costs, and reasonable attorney fees.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (Tenant) (first, middle, last)

vs.

_____
Defendant (Landlord) (first, middle, last)

# Release of Rent

(Minn. Stat. §504B.385, subd.7)

☐ **By Plaintiff Before Hearing**

The undersigned plaintiff declares to the Court that the violations cited by the inspecting authority and/or by the plaintiff in the *Affidavit of Rent Escrow* have been remedied and the corrections are satisfactory. It is further understood and agreed that the escrowed rent in the amount of $_____ on deposit with the Court, may be immediately released to the Defendant (landlord) and the scheduled hearing may be canceled. (Only Plaintiff must sign below.)

☐ **By Stipulation Before Hearing**

Plaintiff and Defendant agree that the escrowed rent in the amount of $ _____, on deposit with the Court, may be immediately released by the Court as follows:

To Plaintiff: $_____ To Defendant: $_____

The scheduled hearing may be canceled. (Both parties must sign below.)

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

**Plaintiff (Tenant)**

Date: _____

_____
Signature

_____
County and State where signed

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**Defendant (Landlord/Agent/Attorney)**

Date: _____

_____
Signature (*required only if stipulation)*

_____
County and State where signed

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Plaintiff (Tenant) (first, middle, last)

vs.

_____
Defendant (Landlord) (first, middle, last)

## Counterclaim for Possession of Premises and Notice of Hearing

(Minn. Stat. §504.385, subd. 2)

NOTICE TO TENANT: Your landlord is asking the court to evict you.

I, _____ am the: (check one)

☐ Landlord ☐ Person with power of authority filed and state:

1. Landlord leased or rented to tenant(s) on _____ by an ☐ oral ☐ written agreement the premises at: _____

*Street* *Apt* *City* *State* *Zip Code*

The agreement was from _____ to _____. The current rent due and payable under this agreement each month is $ _____ due on the _____ day of each month.

Tenant(s) date(s) of birth: (if known) _____

2. The landlord of the premises described above is: _____
3. The plaintiff is still in possession of the premises.
4. Plaintiff(s) filed a rent escrow action and deposited with the Court $ _____ ("none" or $ amount)
5. Plaintiff(s) failed to deposit the full amount of rent due and owing on the date of the deposit.

   On the date of the deposit with the court, plaintiff(s) owed a total of $ _____

   in rent as follows: $ _____ per month due for _____ months.
6. Defendant, having the present right of possession of the property, has complied with Minn. Stat. §504B.181 by:

   ☐ a. disclosing to tenant either in rental agreement or otherwise in writing prior to the

start of the tenancy the name and address of:
1. the person authorized to manage the property; **AND**
2. the landlord or agent authorized by landlord to accept service of process and receive and give receipt for notices and demands; **AND**

☐ b. posting in a conspicuous place on the property a printed or typewritten notice containing the above information (describe where posted)

_____

**OR**

☐ c. the above information was known by tenant(s) not less than 30 days before the filing of this action because:

_____

7. The defendant seeks judgment against the plaintiff(s) for restitution of the premises plus costs and disbursements.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

## HEARING DATE: IMPORTANT NOTICE TO PARTIES

TENANT: You must appear before the court or you could be evicted. (Check one)

☐ The Rent Escrow Hearing, previously set for _____ is continued and consolidated with the counterclaim and will be heard on _____ at
(Date)

_____, _____
(Time) (Location)

**OR**

☐ The Rent Escrow Hearing and counterclaim are consolidated and will be heard on

_____ at _____, _____
(Date) (Time) (Location)

Note: Landlord is responsible for having a third party serve a copy of this Counterclaim on tenants(s) at least 7 days before the hearing date. Service must be made in the manner specified in Minn. Stat. §504B.331. See Minn. Stat. §504B.385, subd. 2(d).

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Name of Plaintiff(s)/Tenant(s)

vs.

_____
Name of Defendant(s)/Building Owner(s)

## Petition for Emergency Relief Under Tenant Remedies Act

(Minn. Stat. § 504B.381)

STATE OF MINNESOTA )
) SS
COUNTY OF _____ )
*(County where Affidavit is signed)*

My name is _____, I understand that I must tell the truth when answering the following questions:

1. I am a tenant with the right to live at the property located at the following address:

   Address: _____
   Street Address Apt. or Unit Number

   City/St./Zip: _____
   City State Zip Code

   County: _____

   Phone: _____

2. The name, address, and phone number for the owners(s) of the property are:

   Name: _____

   Address: _____
   Street Address Apt. No. City/State/Zip Code

   Phone: _____

3. The name, address, and phone number for the managers(s) of the property (if different from the owner) are:

   Name: _____

Address: _____

Street Address Apt. No. City/State/Zip Code

Phone: _____

4. I am requesting emergency relief from the court because of a loss of one or more of the following utilities, facilities, or other essential services that the building owner and manager are responsible for providing (check all that apply):

☐ heat ☐ running water

☐ hot water ☐ electricity

☐ sanitary facilities ☐ other _____

5. The following facts show that I have an emergency caused by the loss of utilities, facilities, or other essential services that the building owner and manager are responsible for providing *(tell the court what the emergency is and why the owner and manager are responsible for providing that utility or service):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

6. On the following date: _____ , I reported this emergency to:

_____

I have taken the following actions to report this emergency (tell the court HOW you told or tried to tell the building owner or manager about the problem and WHAT you told the person about the problem):

_____

_____

_____

_____

7. The building owner or manager did not fix the emergency problem.

8. On the following date:_____ I gave _____

who is the owner and/or manager a twenty four hour notice that I would be requesting emergency relief from the Court today by (tell the court HOW you told or tried to tell the building owner or manager that you were going to court and what you told the person if you talked to the person or left a message):

_____

9. ☐ This emergency problem is not the result of a deliberate or negligent act or omission by me or anyone acting under my direction or control. *(Check box if this applies)*

10. The following other information would be helpful to the Court in granting emergency relief (tell the court any other information regarding this emergency that you think will be helpful to the court in granting your request for help):

_____

11. I am asking the Court to order one or more of the following:

☐ Direct the building owner or manager to immediately fix the emergency problems with my housing.

☐ Allow me to fix the emergency problems with my housing and deduct the costs from my rent.

☐ Direct that an administrator take over operation of the property to complete the emergency problems with my housing.

☐ Direct the building owner to pay me a rent refund or credit for the month(s) of when my housing was not fixed.

☐ Direct the building owner to give me a rent reduction until the emergency problems are fixed.

☐ Directing the building owner to pay a fine if this Order is violated.

☐ Directing the building owner to pay reasonable attorney fees.

☐ To grant other relief deemed just and proper by the Court:

_____

**Verification and Acknowledgments**

a. I have read this document. To the best of my knowledge, information, and belief the information contained in this document is well grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an Order precluding me from serving or filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for an improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document, court costs, and reasonable attorney fees.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

*Attorney Signature Block*

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Attorney Lic. #: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Housing |
|---|---|

_____
Name of Plaintiff(s)/Tenant(s)

vs.

_____
Name of Defendant(s)/Building Owner(s)

# Verified Petition for Possession of Residential Rental Property Following Unlawful Removal or Exclusion

(Lockout Petition Under Minn. Stat. § 504B.375)

STATE OF MINNESOTA )
) SS
COUNTY OF _____ )
*(County where Affidavit is signed)*

My name is _____, I understand that I must tell the truth when answering the following questions:

1. I am a tenant with the right to live at the property located at the following address:

   Address: _____
   Street Address Apt. or Unit Number

   City/St./Zip: _____
   City State Zip Code

   County: _____

   Phone: _____

2. The name, address, and phone number for the owners(s) of the property are:

   Name: _____

   Address: _____
   Street Address Apt. No. City/State/Zip Code

   Phone: _____

3. The name, address, and phone number for the managers(s) of the property (if different from the owner) are:

   Name: _____

   Address: _____
   Street Address Apt. No. City/State/Zip Code

Phone: _____

4. On the following date: _____, defendant(s) and I entered into an agreement for me to rent the property. The rent is _____ per month and is due on the _____ day of each month.

5. I am attaching the following documents, if any, which show that I have a right to live at the property:

_____

_____

_____

_____

6. No judgment and writ of recovery (eviction order) has been issued by a court against me in favor of defendant(s) regarding this property.

7. Defendant(s) unlawfully forced me out of my home or made it impossible for me to live there by doing the following (describe in detail who did what and when):

_____

8. The last date on which I was present at the property was _____.

9. The defendant(s) has/have not followed the legal procedure for eviction.

10. I ask the Court to order one or more of the following:

    a. Directing the defendant(s) to allow me to immediately move back into the property.

    b. Directing the defendant(s) to allow me to have sufficient access to the property to move out my belongings.

    c. Ordering the defendant(s) to immediately stop their unlawful actions that are keeping me out of my home.

    d. Directing that the sheriff of this county shall enforce the Court's Order.

    e. Other:

    _____

    f. Other relief that is deemed just and proper by the court.

**Verification and** Acknowledgments

a. I have read this document. To the best of my knowledge, information, and belief the information contained in this document is well-grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant and I am not the subject of an Order precluding me from serving or filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for an improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document, court costs, and reasonable attorney fees.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

# INSTRUCTIONS

## Expungement of Eviction Record

Forms you may need when asking for expungement of your eviction record case:

- Instructions (HOU503)
- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

### What You Need to Do

1. Get information about your eviction case from the court record.
2. Fill out and sign the court forms, following all of the steps in these instructions.
3. Get a hearing date from court administration in the county where the eviction took place.
4. Make copies.
5. Serve the other parties with a copy of the *Notice of Motion and Motion for Expungement of Eviction Record, Affidavit in Support of Motion for Expungement of Eviction Record*, and any documents you attached to your *Affidavit*.
6. File your forms (electronically or at the courthouse), and pay the filing fee (or ask for a fee waiver if you cannot afford to pay the fee).
7. Appear at the hearing. Each "step" here is described in more detail below.

### Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Got a question about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the MN Courts Self Help Center at (651) 435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see http://mn.gov/law-library/research-links/county-law-libraries.jsp . For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

## General Information About Expungement of Eviction Record
**Minn. Stat. § 484.014**

**The information contained in these instructions is not intended as legal advice but as a general guide to you to explain the legal process. If you do not understand any of these steps or do not know if these forms fit your situation, talk to an attorney. Court staff cannot give legal advice.**

**What is eviction expungement?**
Eviction expungement asks for a judge to seal an eviction court record (formerly known as unlawful detainer) from public view. If your eviction expungement request is granted, then a search of court records will not show your eviction case.

**Why would you ask for an expungement of your eviction court record?**
Usually, someone asks for expungement of an eviction court record because it impacts their ability to rent another property. Eviction court records can be viewed by the public, and landlords commonly use tenant screening companies to do background checks on individuals asking to rent their property.

**When can the court expunge an eviction court record?**
You can ask for an expungement when the landlord wrongly filed an eviction case and it would be unfair to keep it on your record. Minnesota law says expungements are allowed when:

- The landlord's case was "sufficiently without basis in fact or law,"
- It is "clearly in the interests of justice," **and**
- The public's interest in knowing about the case is not stronger than the justice that would be accomplished by expunging the case.

**Do you have all the information you need to fill out the forms?**
The Motion and Affidavit for Expungement of Eviction Record forms ask for the following information:

- The county, judicial district number, and the court file number where the eviction was filed.
- The name and address of the landlord and/or the attorney representing the landlord.
- Your address listed in the Eviction Complaint.
- Details about why you should have your eviction court record expunged.
- Any evidence or documentation to support your request to have your eviction court record expunged.

## Eviction Expungement Checklist

**This is a checklist of the steps you must follow to ask for an eviction expungement. You will want to carefully review steps 1-7 in the instructions below to complete the checklist.**

☐ **Get information about your eviction case from the court record. You can find contact information for the courts online starting at http://mncourts.gov/Find-Courts.aspx (Step 1A)**

☐ **Get the Eviction Expungement forms**

- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

☐ **Complete the Eviction Expungement forms (Steps 1 & 2)**

☐ **Get a hearing date (Step 3)**

☐ **Make copies (Step 4)**

☐ **Serve the other party copies of Eviction Expungement forms (Step 5)**

☐ **File the *original* Eviction Expungement forms with court administration and pay the filing fee (Step 6)**

- Notice of Motion and Motion for Expungement of Eviction Record (HOU502);
- Affidavit in Support of Motion for Expungement of Eviction Record (HOU503);
- Affidavit of Service (SOP102, SOP104, or SOP105);
- Notice of Hearing (CIV604).

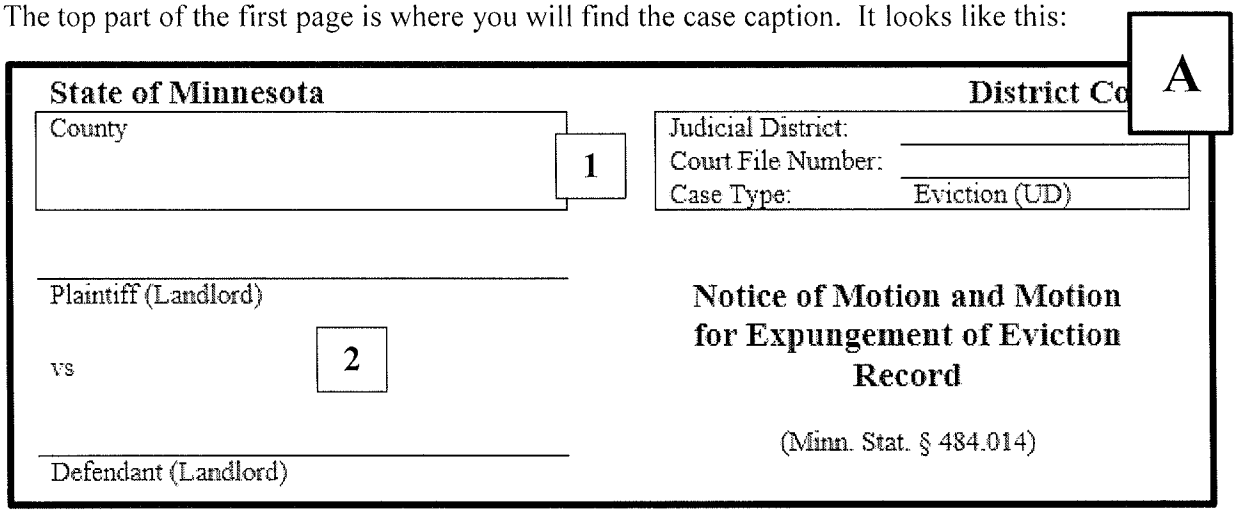
☐ **Attend the hearing (Step 7)**

## Step 1

## Fill Out the *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502)

### Section A – The Caption

The top part of the first page is where you will find the case caption. It looks like this:



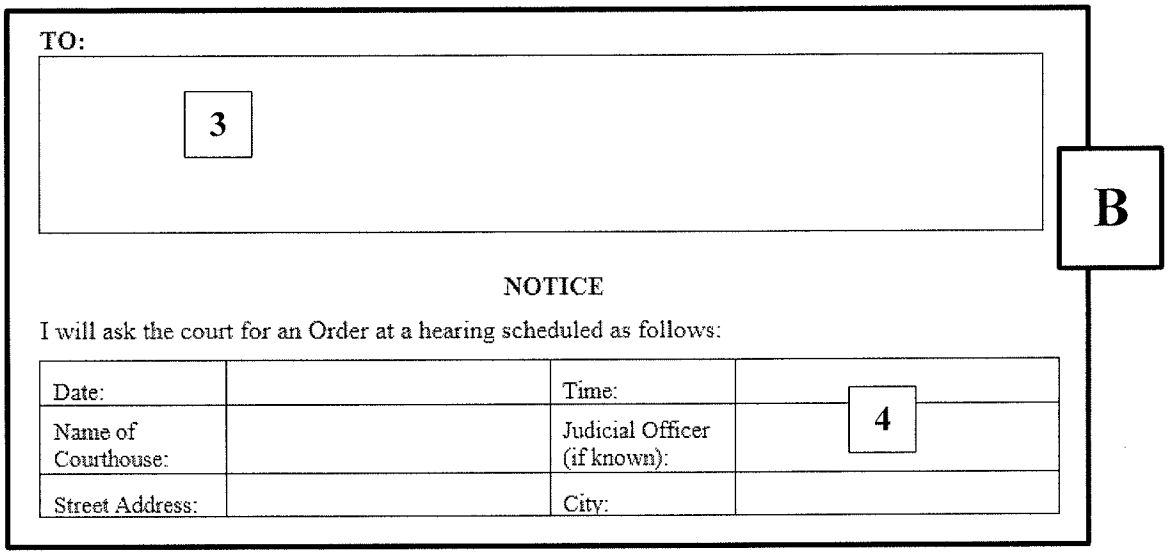

You will find the information you need to fill out the caption on the court form from your original eviction case. If you do not have any documents from your eviction case, and if you do not know the information, you will need to look in your court file.

- Some limited case records can be viewed online at www.mncourts.gov/publicaccess.
- If you cannot view your case online, you may be able to view your court file at any courthouse in Minnesota. If your eviction case is older, you may need to go to the courthouse in the county where your eviction case is located to view the paper record of your court file.

1. At the top of the page, write in the following information:
   - The **county** where the case is located;
   - The **judicial district number** (each county is located in one of ten judicial districts); and
   - Your **court file number** (this usually starts with a two-digit number, followed by letters and numbers. For example, *15-CV-17-0001*).

2. Write in the name of the **plaintiff (landlord)** as listed on the eviction complaint. Write in the name of each **defendant (tenant)** as listed on the eviction complaint. If your name is incorrect in any way, you can add "aka" (Also Known As) and then your correct name.

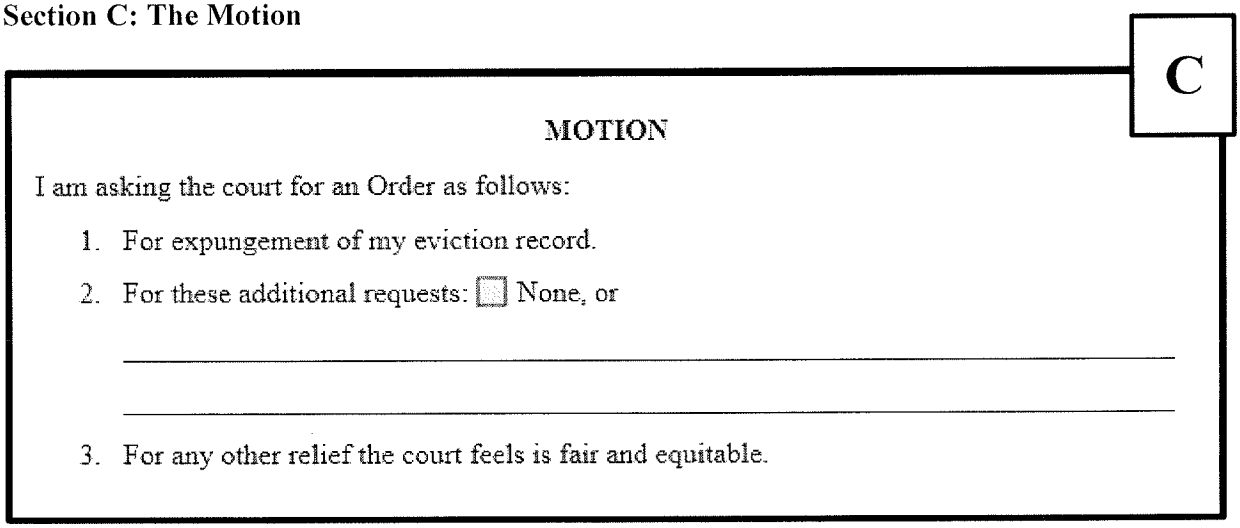
### Section B: The Notice




3. After the word "TO," print the name and address of the landlord or the landlord's attorney if the landlord is represented in the eviction case.

4. Leave the hearing date section blank for now. You will fill in this section when you reach Step 3 below.

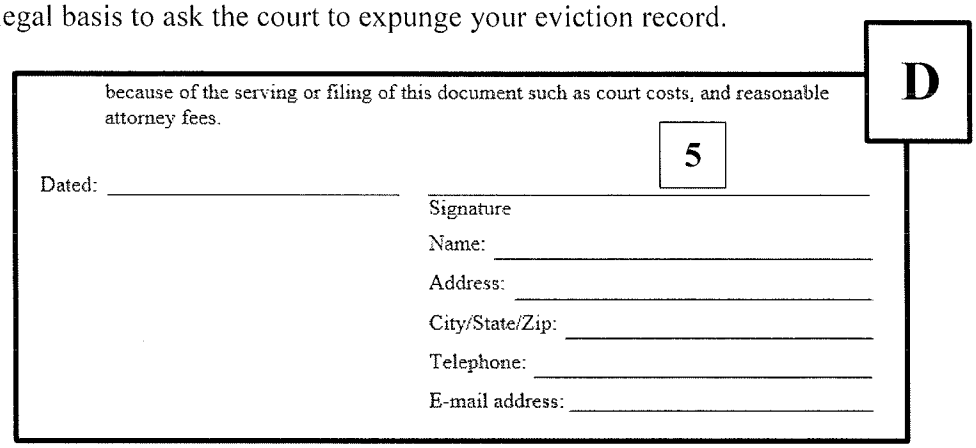
**Section C: The Motion**




You are asking the court to expunge your eviction record. List any additional requests you would like the court to grant. If you do not have any additional requests, check the box for "none."

**Section D: The Signature Block**

On page 2 of the *Notice of Motion and Motion for Expungement of Eviction Record,* please read the Verification and Acknowledgments carefully. There can be serious consequences if you do not have a legal basis to ask the court to expunge your eviction record.

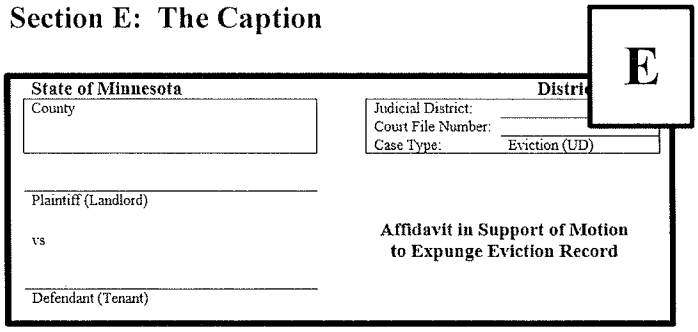



5. After you have filled out the *Notice of Motion and Motion for Expungement of Eviction Record* (except for the information about the hearing), you can date and sign the form. Then print the county and state where you signed the form and your personal contact information below your signature.

## Step 2

## Fill Out the *Affidavit in Support of Motion for Expungement of Eviction Record* (HOU503)

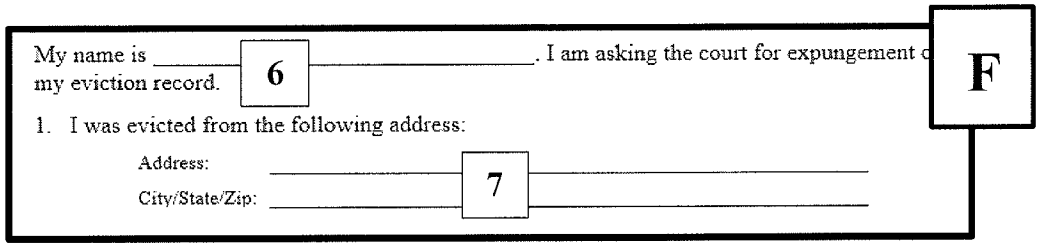
### Section E: The Caption




Fill out the case caption just like you did in Section A above.

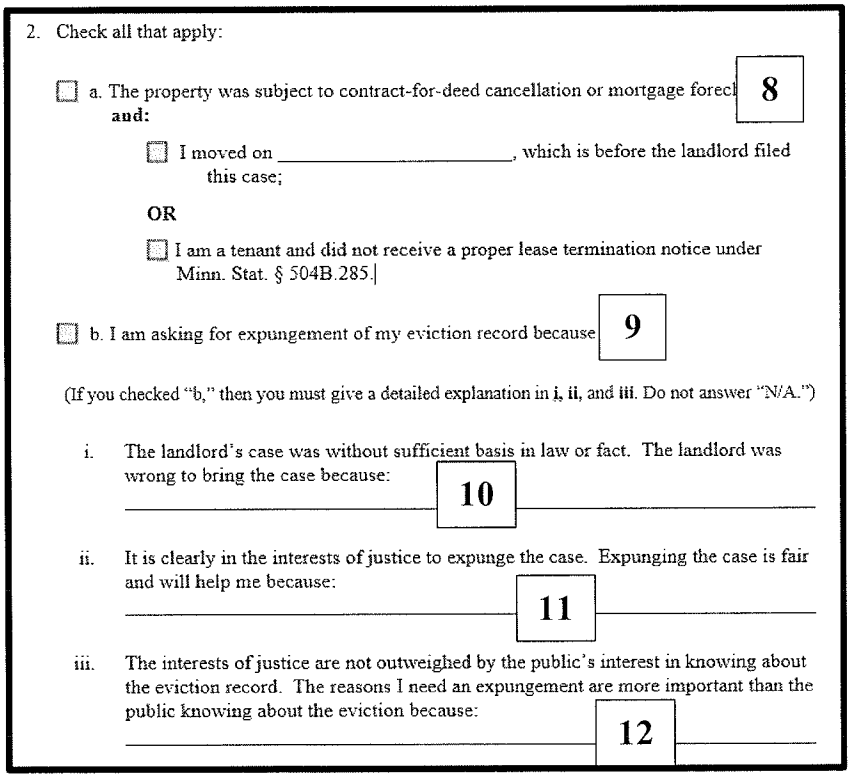
### Section F: The Statement of Facts

In the *Affidavit in Support of Motion for Expungement of Eviction Record*, write down facts that support your request to expunge your eviction record. This is where you explain why you are asking the court to expunge your eviction court record. Later on, you will sign the *Affidavit* under penalty of perjury. This is like being under oath. It means you should not write anything that you know is not true.




6. Write your full name.

7. List the address where you lived when the landlord started the eviction case.




**Your Burden of Proof.**

You must explain to the court why you are asking to expunge your eviction record. You may check the box next to "**a**," or "**b**," or both "**a**" and "**b**."

8. You may be entitled to expungement of your eviction record if the property you rented was subject to contract for deed cancellation or mortgage foreclosure. This is called mandatory eviction expungement. Check the appropriate boxes if this applies to your situation.

9. You may also be entitled to discretionary expungement of your eviction record. You must prove all of the following:

i. the landlord's eviction case was "sufficiently" without basis in fact or law;
ii. the expungement is "clearly in the interest of justice;" **AND**
iii. the "interests of justice" are not outweighed by the "public's interest in knowing the record."

Be sure to give a detailed explanation for i., ii. **and** iii. If you fail to provide an explanation for all three sections, the judge may deny your request to expunge your eviction record.

10. To prove the landlord's eviction case was without sufficient basis in law or fact, you can talk about things that were wrong with the case. For example, the court papers were not served the right way, you won the case, the parties settled the eviction with an agreement and the landlord agreed he or she did not have good legal reasons for starting the case, you moved out before the eviction was filed, or the case was about nonpayment of rent but there were things at the property that needed repairs.

11. The court also needs to know why the expungement is in the interests of justice. Describe why the expungement is important to you and how it will help you. For example, you can explain if you still live at the property the eviction was about or if the eviction was related to a hard time in your life, like job loss, medical problems, or divorce.

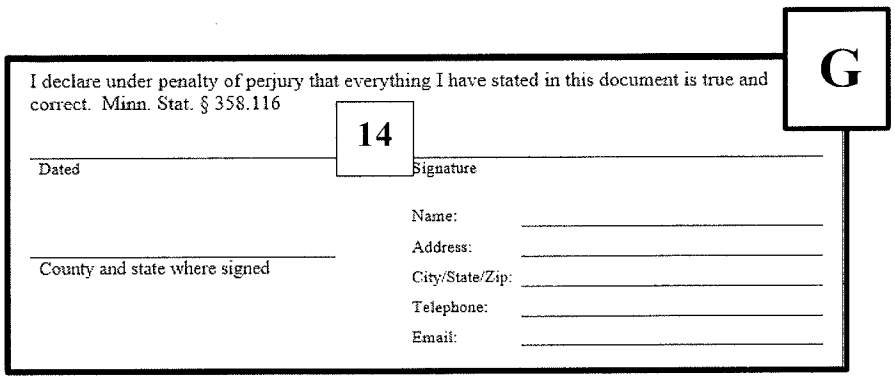
12. You also need to prove the interests of justice are not outweighed by the public knowing about the eviction. For example, you can explain if the case is old, if you have not had any recent evictions, if you are having trouble finding housing, or why safe, stable and affordable housing is important to you.

**13** I am including the following documents or affidavits, if any, that support my request and show that I met any conditions required by the court for expungement: ☐ None, OR

_____

13. If you have any documents or other evidence to support your request to expunge your eviction record, you should attach it to your *Affidavit*. List the evidence you are attaching. You may attach things like a settlement agreement, proof you moved, a letter from the landlord agreeing not to object to expungement, rental application denials, pictures of the repair problems, etc.

**Section G: The Signature Block / Penalty of Perjury**



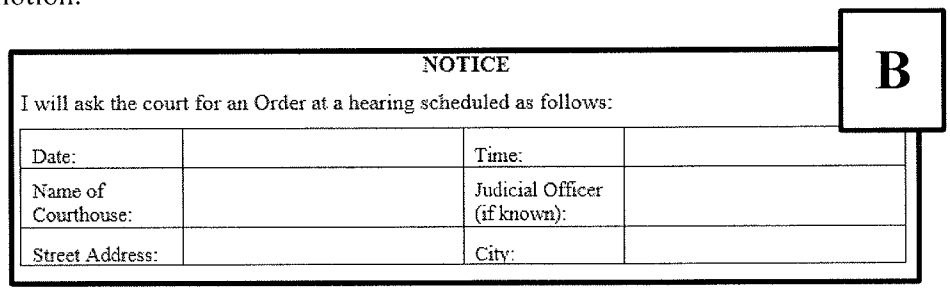

14. When you sign your *Affidavit in Support of Motion for Expungement of Eviction Record*, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in your *Affidavit* is true to the best of your knowledge.

    Date and sign the *Affidavit*. Then write the names of the county and state you are in when you signed it, and print your personal contact information below your signature.

## Step 3

## Contact Court Administration About a Hearing Date

In some districts, you need to schedule the hearing before you file your Motion for Expungement of Eviction Record. In other districts, you get a hearing date after you have filed. It is important that you check with your local Court Administration to see how to schedule a hearing for an eviction expungement motion. If you do not schedule a hearing, the court will not do anything with your motion.




***If you are able to schedule a hearing date right away:***

- Then go back to the "Notice" section (Section B: The Notice) on the first page of your *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502). Fill in the information (hearing date, time, location, and name of judicial officer).

***If your county schedules the hearing after you file:***

- Then you can write in "To Be Determined" in the "Notice" section of your *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502). Note: It is okay to fill in the name and address of the courthouse.
- Later on, once you do have a hearing date, you will need to fill out the *Notice of Hearing* form (CIV604) and serve that form on the landlord (See Step 7 below).

## Step 4

## Make Copies

Make a copy of the *Notice of Motion and Motion for Expungement of Eviction Record*, the *Affidavit in Support of Motion for Expungement of Eviction Record*, and any attachments for each party, including yourself. Be sure to bring your copy with you to court when you go to the hearing.

## Step 5

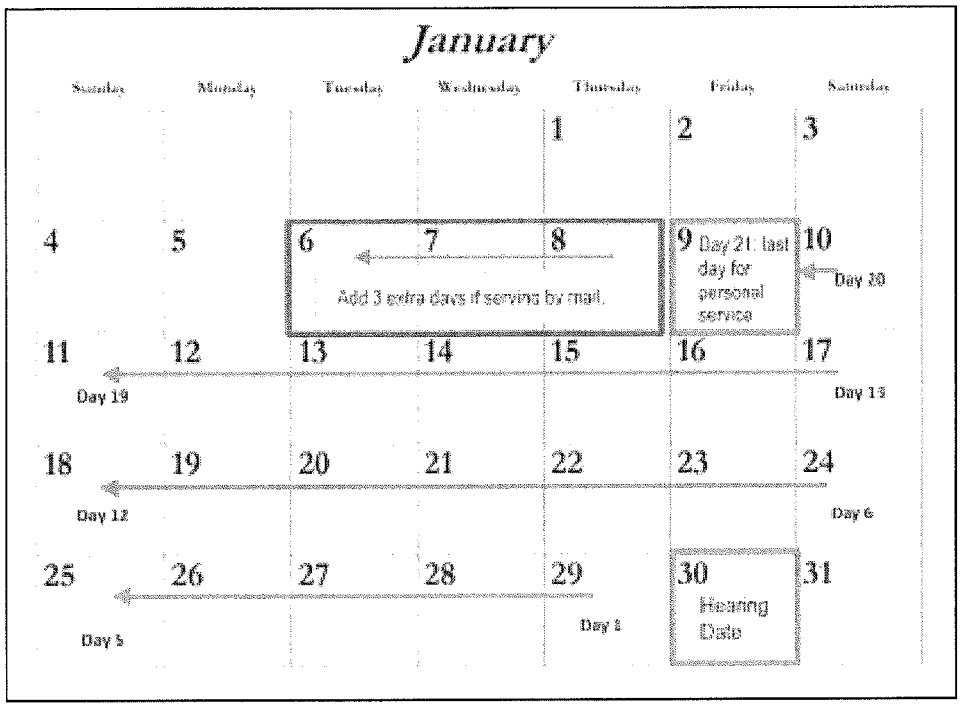
## Serve Notice on the Other Party

**Overview**
The other party must receive notice of the hearing and complete copies of all documents you have prepared for the eviction expungement hearing. This is called "service of process." The papers can be served personally (handed to the other party), or by mail. The other party must receive the papers at least 21 days before the hearing. If papers are served by mail, Court Rules require adding 3 days, so that papers must be postmarked at least 24 days before the hearing.

**If the other party is represented by an attorney, serve the other party's attorney, instead of the party directly.**

Papers CANNOT be served on legal holidays as defined in Minn. Stat. § 645.44, subd. 5 (https://www.revisor.mn.gov/statutes/cite/645.44#stat.645.44.5).

**Who Can Serve**
The forms you have prepared can be served by any of the following:
- The sheriff;
- Another adult; or
- You.




Count **backwards** from the hearing date. The day before the hearing date is **Day 1**.

**Personal Service**
**At least 21 days before the hearing date**, the server hands to the other party **one copy** of the completed *Notice of Motion and Motion for Expungement of Eviction Record*, and **one copy** of your *Affidavit in Support of Motion for Expungement of Eviction Record*, including one copy of any and all attachments. Example: If the hearing date is January 30, the papers must be served on or before January 9. If January 9 is a Saturday, Sunday, or legal holiday, keep counting backwards to the next day that is not a Saturday, Sunday, or legal holiday to determine the service deadline.

**Service by Mail**
The server places **one copy** of the completed *Notice of Motion and Motion for Expungement of Eviction Record*, and **one copy** of your *Affidavit in Support of Motion for Expungement of Eviction Record*, and one copy of any and all attachments in an envelope.

The server must mail the envelope containing the forms to the other party by first class U.S. mail **at least 24 days before the hearing date.** Example: If the hearing is January 30, the papers must be postmarked no later than January 6. If January 6 is a Saturday, Sunday, or legal holiday, keep countying backwards to the next day that is not a Saturday, Sunday, or legal holidy to determine the service deadline.

**Warning: If your forms are not personally served on the other party at least 21 days before the hearing OR mailed to the other party at least 24 days before the hearing date, you Motion may NOT be heard by the court.**

**If there is more than one plaintiff or more than one defendant, please note that ALL of the other parties must be served.**

## Step 6

## The Person Who Served the Papers Personally or By Mail Fills Out the *Affidavit of Service* form

**After** the papers are served on the other party (***not before***), either personally or by mail, the server must fill out an *Affidavit of Service* form. This form is proof for the court that the papers were served on the other party.

For more information about the *Affidavit of Service*, see the "Service of Process" Help Topic online at http://www.mncourts.gov/Help-Topics/Service-of-Process.aspx.

## Step 7

## File with Court Administration

You will need to file the following forms with Court Administration at least 21 days before the hearing:

- Original *Notice of Motion and Motion for Expungement of Eviction Record* (HOU502);
- Original *Affidavit in Support of Motion for Expungement of Eviction Record* (HOU503);
- Original *Affidavit of Service* (SOP102, SOP104, or SOP105) (one *Affidavit of Service* for each party other than yourself).

There will be a fee when you file your paperwork. You can make checks payable to "District Court."

If you cannot afford to pay the fee, you can ask for a fee waiver by completing the forms in the In Forma Pauperis/IFP packet of forms (found online at www.mncourts.gov/forms). If a judge does not sign the fee waiver order, then you must pay the fee before Court Administration can process your forms.

## Step 8

## *Notice of Hearing* Form (CIV604)

If you filed your *Notice of Motion and Motion for Expungement of Eviction Record* and *Affidavit in Support of Motion for Expungement of Eviction Record* **without a hearing date**, then you need to use the *Notice of Hearing* form (CIV604) to let the other party know when the hearing date is scheduled.

If you use the *Notice of Hearing* form, follow these instructions to fill it out:

1. Fill out the caption like you did for the *Notice of Motion and Motion for Expungement of Eviction Record.*
2. After the word "TO," write the name and address of the landlord or the landlord's attorney if the landlord is represented in the eviction case.
3. Fill in the details of the hearing (date, time, location, name of judicial officer).
4. Fill in the date that you **filed** the original *Notice of Motion and Motion for Expungement of Eviction Record.* If you do not remember the date, you may be able to look it up online at www.mncourts.gov/publicaccess.
5. Date and sign the form, then print the requested information.
6. Make one copy of this *Notice of Hearing* form for each party (including for yourself).
7. Arrange to serve a copy of the *Notice of Hearing* form on the other party like you did with the *Notice of Motion and Motion for Expungement of Eviction Record.* See Step 5 above.
8. File the original *Notice of Hearing* form and *Affidavit of Service* form (for the other party or other party's attorney, if represented) with Court Administration.

## Step 9

## Go to Your Hearing

To prepare for your hearing, it is a good idea to look at the court rules that apply to civil cases. You can find links to these rules online at http://mncourts.gov/Help-Topics/Civil-Actions.aspx#tab06RulesAndLaws. You could also visit a law library to read the court rules.

You must go to court on the date set for the hearing. It is important to be on time. If you are even a few minutes late, the judicial officer may dismiss your motion.

Bring copies of the paperwork with you to the hearing. If you are unsure how to prepare for the hearing, or what evidence you should bring, you should get legal advice before your court date.

## Notice to Other Party

After you receive these papers, if you want to respond to anything raised by the other party in their motion and affidavit, your written response (usually called *Responsive Motion & Affidavit*) must be served on the other party:

- at least 14 days before the hearing if personally served; or
- at least 17 days before the hearing if served by mail.

Your responsive motion and affidavit must be filed with the District Court Administrator at least 14 days before the hearing.

**** If you do not serve and file a written response, the court might not look at papers you bring to the hearing and might not allow you to make a verbal response at the hearing.****

## Verification and Acknowledgments:

a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.

b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.

c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for any improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document such as court costs, and reasonable attorney fees.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

**State of Minnesota** **District Court**

| County of: | Judicial District: _____<br>Court File Number: _____<br>Case Type: Eviction (UD) |
|---|---|

_____
Plaintiff (Landlord)

vs.

_____
Defendant (Tenant)

## Affidavit in Support of Motion to Expunge Eviction Record

My name is _____. I am asking the court for expungement of my eviction record.

1. The Plaintiff filed a case to evict me from the following address:

Address: _____

City/State/Zip: _____

2. Check all that apply:

☐ a. The property was subject to contract-for-deed cancellation or mortgage foreclosure, **and:**

☐ I moved on _____, which is before the landlord filed this case;

**OR**

☐ I am the tenant and did not receive a proper lease termination notice under Minn. Stat. § 504B.285.

☐ b. I am asking for expungement of my eviction record because:

(If you checked "b," then you must give a detailed explanation in **i, ii,** and **iii.** Do not answer "N/A.")

i. The landlord's case was without sufficient basis in law or fact. The landlord was wrong to bring the case because:

_____

_____

_____

_____

ii. It is clearly in the interests of justice to expunge the case. Expunging the case is fair and will help me because:

_____

_____

_____

_____

iii. The interests of justice are not outweighed by the public's interest in knowing about the eviction record. The reasons I need an expungement are more important than the public knowing about the eviction because:

_____

_____

_____

_____

3. I am including the following documents or affidavits, if any, that support my request and show that I met any conditions required by the court for expungement: ☐ None , OR

_____

_____

_____

_____

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

_____
County and State where signed

_____
Signature

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____