

March 30, 2020

Dear Presiding County Court Judge:

The below Nebraska legal organizations respectfully request that you, in your role as the Presiding Judge of your respective Judicial District, enter an Administrative Order clarifying residential eviction legal actions in your district's County Courts during today's public health emergency.

As you are aware, COVID-19 is a highly contagious virus that, as of this morning, has infected over 143,000 Americans and killed more than 2,500. In response to this rapidly changing public health emergency, federal, state, and local governments, including in Nebraska, have declared states of emergency and implemented a large number of emergency orders and legislation, all intended to swiftly and decisively slow the spread of the virus and mitigate the devastation it will cause.

Chief Justice Heavican has also instructed Nebraska courts, while keeping the courts open, to limit the risk of transmitting the virus, restrict gatherings at each courthouse, and enter continuances and postponements when possible. In response, a majority of Judicial Districts in Nebraska have now entered orders waiving, postponing and continuing other non-essential civil and criminal proceedings until the public health emergency is over. We all thank you for what you have already done to protect litigants, counsel, court personnel, and the public.

The below organizations now write today to provide you current information about the status of residential eviction legal rights and actions in Nebraska, and encourage you to act in accordance as soon as possible. As these emergency orders and legislation directly impact eviction activity you see in your courts on a regular basis, we believe by bringing this to each Presiding Judge's attention, an Administrative Order can be entered efficiently and consistently along with other courts across Nebraska, ensuring greater control of the spread of the virus.

On March 25, 2020, Nebraska Governor Pete Ricketts' entered Executive Order 20-07, based upon the good cause of the public health emergency. This order suspended the statutory requirement that Nebraska Courts must hear residential evictions within 10 to 14 days from the date of filing. This order is reinforced by Neb. Rev. Stat. § 76-1403, and its express applicability to our public health emergency. We believe that Governor Ricketts' Executive Order 20-07 empowers Nebraska Courts to now continue all residential eviction cases and not issue any writs of restitution until after May 31, 2020.

On March 27, 2020, Congress passed and President Trump signed into law the CARES Act, which, among other relief related to COVID-19, prohibits lessors of "covered dwellings" from filing to evict residential tenants for a 120-day period beginning on March 27, 2020. CARES Act, H.R. 748, 116th Cong. § 4024(b). Specifically, the restrictions of § 4024(a) broadly apply to any dwelling where the building is secured by a federally backed mortgage loan, secured by a federally backed-multifamily loan, or participates in certain "covered housing programs" such as Section 8, Freddy Mac/Fannie May loans, HUD loans, or the low income housing tax credit program. We believe the CARES Act affects the great majority of residential single and multi-family rental housing in Nebraska.

The below organizations now are requesting you enter an Administrative Order for your courts of administrative jurisdiction that complies with both the Governor’s Executive Order and the federal CARES Act, as well as conforms with the Chief Justice’s guidance to the courts to continue non-essential proceedings as much as possible.

We believe an order from each Presiding Judge that takes into consideration all of the above must include at least the following elements:

- 1) continues all residential eviction cases through at least May 31, 2020 per the March 25, 2020 Executive Order;
- 2) prohibits the issuance of all writs of restitution through at least May 31, 2020 per the March 25, 2020 Executive Order; and,
- 3) prohibits the filing of any residential eviction actions related to non-payment of rent for 120 days from March 27, 2020 (the date of enactment of the CARES Act), unless the owner of the rental property can make an affirmative showing that the rental property is not a “covered dwelling” under the CARES Act.

In sum, because of the state of emergency, Governor Rickett’s March 25, 2020 Executive Order, the March 27, 2020 federal CARES Act, and guidance from the Supreme Court, there exists ample authority for you to take these actions on behalf of your judicial district. Without such an order, residential evictions will continue to be filed and heard, putting entire Nebraska communities at great risk during this public health emergency. Entering an Administrative Order will instead efficiently protect thousands of vulnerable Nebraskans.

We would be pleased to respond to any questions you have and provide any further assistance. Thank you for your consideration of this request.

Respectfully,

Legal Aid of Nebraska
Nebraska College of Law Civil Clinic
Milton Abrahams Legal Clinic, Creighton University School of Law
Nebraska Appleseed
Family Housing Advisory Services
Immigrant Legal Center
Disability Rights Nebraska
Lincoln Commission on Human Rights