

Aftermath of the Nevada Eviction Moratorium

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On March 12, 2020, Governor Steve Sisolak declared a state of emergency in Nevada arising from the COVID-19 pandemic. Sisolak's declaration triggered additional executive powers pursuant to Nevada Revised Statute (NRS) Chapter 414. Utilizing these powers, Sisolak issued a series of directives. On March 29, 2020, Sisolak issued Declaration of Emergency Directive 008 (Directive 8). Directive 8 enacted the so-called "Eviction Moratorium," staying the vast majority of residential and commercial eviction and lockout proceedings, and prohibiting landlords from serving statutory eviction notices on their tenants. This article highlights the key provisions of the Eviction Moratorium, the state of evictions in Nevada as of the article's early October 2020 submission date, and next steps for landlords and tenants.

Directive 8

The language effecting the Eviction Moratorium is found in Section 1 of Directive 8, which states in relevant part that: "No lockout, notice to vacate, notice to pay or quit, eviction ... or other proceeding involving residential or commercial real estate based upon a tenant ... default ... may be initiated under any provision of Nevada law effective March 29, 2020, at 11:59 p.m." Bearing

in mind that a tenant is not subject to eviction unless they are in a legal state called "unlawful detainer" and, further, that a tenant cannot be in unlawful detainer without receiving a statutory notice, the language of Section 1 made it nearly impossible for a landlord to evict a tenant during the Eviction Moratorium's effectiveness.

Directive 8's blanket prohibition on notices and proceedings was subject to a couple of important exceptions. It "does not prohibit the eviction of persons who seriously endanger the public or other residents, engage in criminal activity, or cause significant damage to the property."¹ However, the mere fact that a tenant has tested positive for, or potentially been exposed to, COVID-19, does not serve as a basis for this exception.²

To understand the scope of eviction proceedings still permitted even during the Eviction Moratorium, it was helpful to review the Nevada Supreme Court's March 31, 2020, Order Concerning Implementation by Justice Courts of Governor's Emergency Directive 008, Administrative Order 12, as well as the form administrative order attached thereto for each of Nevada's justice courts to enter. While the vast majority of eviction notices and actions were prohibited in the form administrative order, notices pursuant to NRS 40.2514 (waste, unlawful business, nuisance, violation of the controlled substances act) were not.³ In addition, property owners could still proceed with the required notices and court proceedings to remove unlawful and unauthorized occupants under NRS 40.412 and 40.414.

Contrary to popular belief, Directive 8 did not modify the obligations of tenants to pay rent. In fact, Section 3 of Directive 8 specifically provides that nothing therein relieves a party from its obligation to pay rent or otherwise comply with its lease. However, landlords were not allowed to charge late fees or other penalties based on payment defaults.

Directive 25

On June 25, 2020, Sisolak issued Declaration of Emergency Directive 025 (Directive 25), the first directive to address the Eviction Moratorium in detail since its enactment. Directive 25 provided, for the first time, a clear date upon which the Eviction Moratorium would end: June 30, 2020, for commercial tenancies, and August 31, 2020, for residential tenancies. Directive 25 also expanded the bases upon which a residential landlord could notice and evict a tenant during the pendency of the Eviction Moratorium. Beginning August 1, 2020, a residential landlord could initiate summary eviction actions against the following tenants:

- Holdover tenants pursuant to NRS 40.250;
- At-will tenants pursuant to NRS 40.251(1)(a)(3);
- Tenants improperly assigning or subleasing their premises, conducting unlawful businesses, permitting waste or nuisances or violating controlled substance laws, in each case, pursuant to NRS 40.2514; and

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- Tenants who fail to perform any other lease condition or covenant pursuant to NRS 40.2516 (this basis, however, could only be used for nonpayment of rent *if* the landlord and tenant entered into a lease addendum/promissory note [see discussion below]).

Directive 31 and Beyond

On August 31, 2020, Sisolak issued Declaration of Emergency Directive 031, extending the Eviction Moratorium through October 14, 2020, for residential tenants who fail to pay rent. This extension gave governmental agencies more time to distribute funds for unemployment and rental assistance, and also launch the legislatively passed residential eviction mediation program. In addition, on September 2, 2020, the Centers for Disease Control and Prevention (CDC) issued an agency order prohibiting, nationwide and through the end of the year, evictions of any individual who expects to make less than \$99,000 in 2020, or a joint-filing couple that expects to make less than \$198,000 in 2020, and who makes certain CDC-required declarations regarding aid, pandemic-related job loss or expenses and the impact of eviction.

Repayment Agreements

Now, what? That is the question that many Nevada tenants are asking now that the Eviction Moratorium has been lifted or, in some cases, may soon be lifted. These tenants failed to make their rent payments during the past several months because they were laid off, furloughed, or because their businesses were not considered essential or were operated at reduced capacity. They do not want to be evicted, but they do not have the funds available to pay their past due rent and maybe even their current rent. These tenants should ask their landlords for rent relief, which may include some combination of rent abatement, temporary rent reduction, lease extension and/or entering into repayment agreements whereby tenants are given the opportunity to pay past due rent over time.

In Directive 25, Sisolak strongly encouraged landlords and tenants to enter into repayment agreements and even attached to the directive a suggested form of repayment agreement for residential landlords and tenants.⁴ This form of repayment agreement, however, could be

adapted and used by commercial landlords and tenants as well. The key provisions of this form repayment agreement are as follows:

- It sets forth the amount of past due rent and the schedule for paying such rent back going forward. It notes that these repayments “should be made in good faith, be reasonable under the totality of the circumstances, and consider the tenant’s ability to pay – as a suggestion[,] periodic payment should be no more than fifteen percent (15%) of the periodic rent in the Lease Agreement.”⁵
- It serves to cure the missed rental payments and to prevent landlord from exercising its right to evict based on a failure to pay rent. While the repayment agreement could extend beyond the term of the lease agreement, it does not itself extend the current term of the lease agreement.
- If a tenant fails to make a scheduled payment under the repayment agreement, a tenant has the right to notice and an opportunity to cure. If the tenant fails to timely cure such default by making the missed payment, the landlord may evict the tenant or may seek a money judgment for the total balance of the past due rent owing under the repayment agreement, but such money judgment shall not include any additional charges, late fees, penalties or prejudgment interest.
- It requires a landlord and tenant “to apply for rental assistance or rental funding in the form of financial incentives, payments or relief due to the COVID-19 pandemic that do not have any reasonably foreseeable adverse effects on the landlord or tenant.”⁶ Any such incentives, payments or relief shall be paid directly to landlord. An example of one of these rental assistance programs in the commercial context is the Nevada Commercial Rental Assistance Grant advanced by the Nevada Governor’s Office of Economic Development.

Entering into these repayment agreements is completely voluntary and not legally required. Further, if a landlord and tenant desire to enter into a repayment agreement, they are not required to use any particular form of repayment agreement, and all of the provisions of such an agreement may be negotiated between the parties. For example, some landlords are requiring that the terms of repayment agreements be kept confidential to prevent their tenants from comparing the terms of their repayment agreements.

Since the Eviction Moratorium may be further extended, modified or renewed depending on how the COVID-19 pandemic plays out, we recommend that you continue to monitor pandemic related information from the governor’s office, including any additional directives and declarations with respect to landlords and tenants. If you are unsure about how to proceed on a given issue raised by one or more directives, the Nevada Attorney General’s office may be able to help.

ENDNOTES:

1. See Section 1 of Directive 8.
2. See Section 2 of Directive 8.
3. Compare the bases for eviction in NRS 40.214(2)-(5) with the exceptions stated in Section 1 of Directive 8.
4. See Sections 1, 2 and 3 of Directive 25.
5. See Page 2 of form of Lease Addendum and Promissory Note for Rental Arrearages Due to COVID-19 attached to Directive 25 (“Lease Addendum”); see also Section 1 of Directive 8.
6. See Section C.1 of Lease Addendum.

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