



## **Guidance on Directive 036**

*Updated December 17, 2020*

### **Who is covered by this Directive?**

A residential tenant is covered by this Directive if the tenant is a "Covered Person," and the eviction is a "Covered Eviction," and the tenant provides their landlord with a "Covered Persons Declaration."

### **How can a tenant be a "Covered Person"?**

The Directive provides that a "Covered Person" under this Directive is a natural person who:

1. Is unable, due to circumstances related to the COVID-19 pandemic, to pay the full rent due to substantial loss of household income, significant loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
2. Is likely to become homeless or be forced to move into a congregate or shared living situation if evicted; and
3. The individual:
  - a. Expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return);
  - b. Was not required to report any income in 2019 to the U.S. Internal Revenue Service; or
  - c. Received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.

### **What type of eviction is a "Covered Eviction"? (see *Covered Evictions Reference Chart*)**

The Directive provides that a "Covered Eviction" is a residential unlawful detainer or summary eviction action against Covered Persons that is:

1. Based on continued possession after the termination of the lease agreement pursuant to the contractual terms of the lease agreement and for which the tenant is in default on rent;
2. Pursuant to NRS 40.251, other than NRS 40.251(1)(a)(3), and NRS 40.251(1)(b)(2), and NRS 40.251(1)(c)(1), and NRS 40.251(1)(d), and pursuant



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- to NRS 40.250 through summary eviction pursuant to NRS 40.254 and for which the tenant is in default on rent;
3. Based upon nonpayment of rent pursuant to NRS 40.2512, NRS 118B.200(1)(a), and NRS 40.290 to NRS 40.420 inclusive; or
  4. Through summary eviction based upon nonpayment of rent pursuant to NRS 40.253.

A covered eviction is a residential eviction based on the tenant's inability to pay rent, other than tenancies at will, for a covered person who delivers a covered persons declaration to their landlord. It covers tenants on a weekly, monthly, or other periodic tenancies.

Evictions that are not covered evictions are evictions based upon anything other than nonpayment of rent for a covered person who delivers a covered persons declaration to their landlord. This includes evictions based upon breach of a lease term or condition, waste, nuisance, damage to the property, violation of the controlled substances act, etc.

### **Does a tenant need to do anything for this Directive to apply?**

If the tenant is a Covered Person, the tenant must provide their landlord with a "Covered Person Declaration." A Covered Person Declaration is an affidavit or a declaration swearing under penalty of perjury that the tenant meets each of the criteria of a Covered Person. A sample declaration is provided with the Directive. In addition, the declaration attached to the CDC's Order meets the criteria of a Covered Person Declaration.

### **What types of evictions are paused by this Directive if a tenant is a covered person and provides the covered person declaration to their landlord?**

If a tenant meets the requirements of a covered person and the tenant provides a covered person declaration to their landlord, the Directive applies and pauses covered evictions which are residential evictions based on the tenant's inability to pay rent, other than tenancies at will. It covers tenants on a weekly, monthly, or other periodic tenancies.

### **Does this Directive stay Covered Eviction proceedings for Covered Persons that were commenced before the Directive went into effect?**

Yes, although the Directive is not intended to stay or discourage ongoing mediation efforts between the parties, including parties who have requested and/or been referred to the Nevada Supreme Court Eviction Mediation Program.



### **Does this Directive apply to execution of an eviction order for a Covered Eviction that was issued by a Court before the Directive went into effect?**

Cases in which a Court issued an eviction order prior to the effective date of this Directive, regardless of whether or not that order has been posted, will fall into two categories.

First, eviction orders in which the Court has already stayed execution until after December 31, 2020 because the Court's record contains evidence that the tenant previously provided a CDC declaration to the landlord are Covered Evictions against a Covered Person. Those eviction orders are further stayed until termination of this Directive. Tenants do not need to take any additional action to invoke the additional stay of execution of the eviction order granted by this Directive.

Second, eviction orders in which the Court has not stayed execution because the Court's record DOES NOT contain evidence that the tenant previously provided a CDC Declaration are exempt from this Directive and may be posted and/or executed upon by a sheriff or constable in the normal course of business. This would include eviction orders on Covered Evictions because the tenant is not deemed a Covered Person under Section 2 of this Directive and the Court's record does not contain evidence that the tenant has taken the necessary steps to invoke the protection of the CDC Order or this Directive.

### **Can a landlord serve an eviction notice for a covered person of a covered eviction if the tenant has not provided a covered persons declaration to the landlord?**

Yes. A tenant has not invoked the protections of this Directive until a covered persons declaration has been provided to the landlord.

### **Does the tenant need to provide an affidavit to the court as required by law if they receive an eviction notice for either a covered eviction or non-covered eviction?**

Yes. This Directive DOES NOT waive a tenant's statutory obligation to file an affidavit contesting any eviction notice with a Court within the statutory time allotted.

### **Can a tenant file a covered persons declaration with a Court *instead* of providing it to the landlord?**

No. A covered persons declaration must be provided to the landlord. However, after it has been provided to the landlord, the Court may require proof of the service and/or a copy of the covered persons declaration be filed with an eviction case. A tenant may



also provide the Court a copy of their covered persons declaration with an affidavit contesting any eviction.

### **Does this Directive apply to commercial property / commercial evictions?**

No. It only applies to certain residential evictions that are covered evictions for covered persons when a tenant provides their landlord with a covered persons declaration.

### **Does the tenant still owe the unpaid rent?**

Yes. The Directive only temporarily prevents the tenant from being evicted from the premises when the tenant is a covered person and the eviction is a covered eviction and the tenant provides their landlord with a covered persons declaration. The tenant is still responsible for paying all rent due pursuant to the rental or lease agreement, or the periodic tenancy.

### **Can a landlord charge the tenant late fees or penalties for missing rent payments?**

Yes, but only if the rental or lease agreement provides for late fees or penalties and they do not exceed the statutory amount. The Directive only temporarily prevents the tenant from being evicted from the premises when the tenant is a covered person and the eviction is a covered eviction and the tenant provides their landlord with a covered persons declaration. It does not prohibit landlords from charging late fees or penalties pursuant to the rental or lease agreement.

### **Since this Directive allows landlords to assess late fees or penalties, does that mean a landlord can now assess late fees or penalties for defaults that occurred while one of the previous moratoriums or the CDC Order were in effect?**

No, Directive 025 did not prohibit assessment of late fees or penalties pursuant to the rental or lease agreement beginning September 1, 2020, but did prohibit retroactive application for late fees or penalties pursuant to the rental or lease agreement prohibited by Directive 008 from March 30, 2020 to August 31, 2020. The CDC's Order also did not prohibit assessment of late fees or penalties pursuant to the rental or lease agreement. Directive 036 also does not prohibit assessment of late fees or penalties pursuant to the rental or lease agreement.

### **Can a landlord evict a tenant for violating terms of the rental agreement other than nonpayment of rent if a tenant is a covered person in a covered eviction who provides a covered persons declaration to their landlord?**

Yes. The Directive only temporarily prevents the tenant from being evicted from the premises when the tenant is a covered person and the eviction is a covered eviction and



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the tenant provides their landlord with a covered persons declaration. This Directive does not prevent evictions based on breaches of a rental agreement other than nonpayment of rent as defined by a covered eviction.

### **Are there any exceptions that would allow for evictions for non-payment of rent during this Directive's pause on evictions?**

Yes. This Directive does not apply to a tenant who does not provide a covered persons declaration to a landlord, is not a covered person, or is not facing a covered eviction. In addition, a tenant could be evicted if a landlord successfully challenges a tenant's covered persons declaration, or if a landlord provides evidence that the property will soon be foreclosed on unless the landlord is allowed to evict the tenant.

### **How can a landlord invoke a challenge or exemption from the Directive?**

The landlord must give the tenant notice of the eviction, as normally required by law, and include a notice that the landlord intends to (1) challenge the tenant's eligibility and/or (2) request an exemption from this Directive due to the threat of foreclosure. This notice of challenge or exemption may be on the same document as the eviction notice or a separate document.

Landlords who file frivolous challenges or requests for exemption, and tenants who file frivolous covered persons declarations, may be sanctioned by the court.

### **Can a tenant and landlord still seek mediation for evictions through the Nevada Supreme Court Eviction Mediation Program?**

If a tenancy is not covered by this Directive, tenants and landlords can still seek mediation for evictions through the Nevada Supreme Court Eviction Mediation Program while the program is still active. Cases pending before the court that have been referred to the eviction mediation program may continue to be mediated. However, if the Directive applies, cases in which a landlord is challenging a tenant's covered persons declaration and/or seeking an exemption for the Directive may be referred to the eviction mediation program. Tenants and landlords are encouraged to work together to seek rental assistance through any available program.

### **If I am a tenant that owes unpaid rent, will I still have to pay the rent that I owe?**

Yes. Tenants are required to pay all rent due under the rental or lease agreement and may be subject to a civil action by the landlord for a judgment and collection of that unpaid rent. Tenants and landlords are encouraged to work together to seek rental assistance through any available program.



### Covered Evictions Quick Reference Chart

Covered Evictions	Not Covered Evictions
Evictions based upon a residential tenant’s failure to pay rent. This includes summary eviction actions brought pursuant to NRS 40.253 and formal unlawful detainer civil actions brought pursuant to NRS 40.290 to 40.420, inclusive, after service of a notice to pay or quit in accordance with NRS 40.2512.	Both summary evictions and formal unlawful detainer actions based on a tenant-at-will’s failure to vacate the property after being served a five-day notice. NRS 40.251(1)(a)(3).
Evictions based upon a manufactured home park lot tenant’s failure to pay rent where notice to pay rent or quit has been served in accordance with NRS 118B.200(1)(a) and a formal unlawful detainer action has been brought pursuant to NRS 40.290 – 40.420, inclusive.	Both summary evictions and formal unlawful detainer actions based on a tenant’s failure to vacate a recreational vehicle lot after being served a five-day notice. NRS 40.251(d).
Both summary evictions and formal unlawful detainer actions where a tenant: 1) is in default of rent; and 2) has failed to vacate the property after the landlord has terminated a month-to-month or week-to-week tenancy,  regardless of the landlord’s basis for terminating the tenancy or whether the tenancy was terminated pursuant to contractual terms or pursuant to NRS 40.251.	Both summary evictions and formal unlawful detainer actions based on a tenant’s failure to perform or cure: 1) basic obligations under NRS Chapter 118A (NRS 40.251(1)(b)(2)); or 2) any conditions or covenants set forth in the lease agreement or contract (NRS 40.2516),  other than non-payment of rent, after being served a five-day notice.
	Both summary evictions and formal unlawful detainer actions based on a holdover tenant’s failure to vacate the property after the expiration of the specified term or period set forth in the lease agreement, whether written or oral. NRS 40.250. This does not include month-to-month or week-to-week tenancies that are terminated by the



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	landlord.
	Both summary evictions and formal unlawful detainer actions based on: 1) a tenant's assignment or sublet of the leased premises contrary to the lease terms; 2) a tenant's waste; 3) a tenant's unlawful business in or on the leased premises; 4) a tenant's nuisance; or 5) a tenant's violation of any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, in or on the leased premises.
	Both summary evictions and formal unlawful detainer actions set forth in the "Covered Evictions" column in which a tenant has not provided the landlord: 1) a declaration invoking the protections of the CDC order; or 2) a declaration asserting he or she is a covered person under Section 2 of Directive 036,  And cases in which a court has determined a tenant is not a "Covered person" under Section 2 of the Directive after a landlord's challenge and evidentiary hearing thereon.