

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **March 16, 2022**

3
4 **NO. 22-8500-012**

5
6 **IN THE MATTER OF LIFTING THE STAY**
7 **OF WRITS OF RESTITUTION**
8 **ISSUED UNDER THE UNIFORM**
9 **OWNER-RESIDENT RELATIONS ACT**
10 **AND THE MOBILE HOME PARK ACT**
11 **DURING THE COVID-19**
12 **PUBLIC HEALTH EMERGENCY**

13
14
15 **ORDER**

16
17 WHEREAS, in Order No. 20-8500-007 and Order No. 20-8500-008, this
18 Court recognized the need to exercise its equitable powers and power of
19 superintending control over pleading and practice in the New Mexico Judiciary in
20 response to the extraordinary circumstances presented by the onset of the COVID-
21 19 public health emergency by balancing the need for imminent evictions in some
22 circumstances with the directives from public health authorities that emphasized the
23 need for New Mexicans to avoid unnecessary contact with one another and remain
24 in their homes to the greatest extent possible during the COVID-19 public health
25 emergency;

1 WHEREAS, Order No. 20-8500-007, issued March 24, 2020, stayed the
2 execution of writs of restitution issued for the nonpayment of rent under the Uniform
3 Owner-Resident Relations Act, NMSA 1978, Section 47-8-46(A) (1995);

4 WHEREAS, Order No. 20-8500-008, issued March 26, 2020, stayed the
5 execution of writs of restitution issued for nonpayment of rent under the Mobile
6 Home Park Act, NMSA 1978, Section 47-10-9(A) (1997);

7 WHEREAS, any stay of the execution of a writ of restitution under the terms
8 of Order No. 20-8500-007 or Order No. 20-8500-008 also served to stay all
9 applicable deadlines for appealing the writ of restitution;

10 WHEREAS, the Court launched its statewide Eviction Prevention and
11 Diversion Program via an initial pilot in the Ninth Judicial District, which began on
12 February 1, 2022;

13 WHEREAS, the Court believes it most prudent to expand the Eviction
14 Prevention and Diversion Program to all judicial districts in New Mexico via a
15 phased approach; and

16 WHEREAS, in light of the foregoing, and the Court being sufficiently
17 advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice David K.
18 Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

19 NOW, THEREFORE, IT IS ORDERED that the Eviction Prevention and
20 Diversion program shall be expanded statewide, and the stay of writs of restitution

1 shall be lifted in accordance with the provisions of this order and the following
2 schedule:

- 3 1. Effective April 1, 2022, the Eviction Prevention and Diversion Program
4 shall begin and the stay of writs of restitution shall be lifted in the Second,
5 Fifth, Tenth, and Twelfth Judicial Districts.
- 6 2. Effective May 1, 2022, the Eviction Prevention and Diversion Program
7 shall begin and the stay of writs of restitution shall be lifted in the Third,
8 Sixth, and Seventh Judicial Districts.
- 9 3. Effective June 1, 2022, the Eviction Prevention and Diversion Program
10 shall begin and the stay of writs of restitution shall be lifted in the First,
11 Fourth, and Eighth Judicial Districts.
- 12 4. Effective July 1, 2022, the Eviction Prevention and Diversion Program
13 shall begin and the stay of writs of restitution shall be lifted in the Eleventh
14 and Thirteenth Judicial Districts.

15 IT IS FURTHER ORDERED that any writ of restitution issued in any judicial
16 district on or after March 24, 2020, for nonpayment of rent, in proceedings arising
17 under the Uniform Owner-Resident Relations Act or the Mobile Home Park Act,
18 that has not been executed before the scheduled phase-in date designated above for
19 the judicial district in which the writ was issued, shall be deemed null and void, but
20 a person who obtained the writ of restitution for nonpayment of rent, or the person's

1 successor in interest, may file a new, separate post-judgment application for a writ
2 of restitution on or after the phase-in date for the appropriate judicial district;

3 IT IS FURTHER ORDERED that, pursuant to the phase-in schedule above,
4 judges in all judicial districts presiding in eviction proceedings that arise under the
5 Uniform Owner-Resident Relations Act or the Mobile Home Park Act for
6 nonpayment of rent shall recommence issuing writs of restitution for nonpayment of
7 rent in accordance with the terms of this order;

8 IT IS FURTHER ORDERED that the stay of applicable deadlines for appeal
9 of a judgment for possession or restitution in all judicial districts is hereby LIFTED
10 in each judicial district on the phase-in date for that judicial district;

11 IT IS FURTHER ORDERED that the district, metropolitan, and magistrate
12 courts in all judicial districts shall issue writs of restitution for nonpayment of rent
13 only in accordance with the following procedures:

14 **Track A. Plaintiff Has Obtained a Judgment for Restitution, a Judgment**
15 **for Possession, or a Writ of Restitution That Has Not Been Executed.**

16
17 ***1. Post-Judgment Application for Writ of Restitution.*** A plaintiff who
18 has a judgment for restitution, judgment for possession, or writ of restitution that has
19 not been executed and who seeks to evict a defendant for nonpayment of rent under
20 the Uniform Owner-Resident Relations Act or the Mobile Home Park Act must
21 recommence the eviction proceeding(s) using Form 4-904A NMRA, Post-Judgment
22 Application for Writ of Restitution, if the following conditions are met:

1 (a) a court in any district except the Ninth Judicial District has issued:

2 (i) a Judgment for Restitution under the Uniform Owner-
3 Resident Relations Act (see Forms 4-909 and 4-909A NMRA for
4 metropolitan/district courts and magistrate courts, respectively) for nonpayment of
5 rent;

6 (ii) a Judgment for Possession under the Mobile Home Park
7 Act (see Form 4-926 NMRA) for nonpayment of rent; or

8 (iii) a Writ of Restitution for nonpayment of rent under either
9 the Uniform Owner-Resident Relations Act or the Mobile Home Park Act that has
10 not been executed before the applicable phase-in date;

11 (b) the judgment or any writ of restitution was issued on or after
12 March 24, 2020, and before the applicable phase-in date;

13 (c) the defendant against whom the court has entered judgment
14 remains in possession of the subject premises; and

15 (d) the defendant continues to be in arrears on rent due under the
16 judgment.

17 In cases in the Ninth Judicial District where a judgment for restitution,
18 judgment for possession, or a non-executed writ of restitution was issued on or after
19 February 1, 2022, the plaintiff does not need to follow the procedures set forth for
20 Track A and may proceed with the statutory procedures for eviction. In cases in the

1 Ninth Judicial District where a judgment for restitution, judgment for possession, or
2 a non-executed writ of restitution was issued between March 24, 2020, and February
3 1, 2022, the plaintiff must follow the procedures set forth for Track A.

4 **2. *Summons and Notice of Hearing on Post-Judgment Application for***
5 ***Writ of Restitution.*** The court shall promptly schedule a hearing on the post-
6 judgment application for writ of restitution. Notice of hearing shall be provided
7 using Form 4-905A NMRA, Summons and Notice of Hearing on Post-Judgment
8 Application for Writ of Restitution.

9 **3. *Service of Notice of Hearing.***

10 (a) The plaintiff shall compile a service packet that includes all of
11 the following documents for each defendant:

12 (i) a legible copy of the Summons and Notice of Hearing on
13 Post-Judgment Application for Writ of Restitution issued by the court;

14 (ii) a legible copy of the Post-Judgment Application for Writ
15 of Restitution filed by the plaintiff;

16 (iii) a legible copy of the Judgment for Restitution (Uniform
17 Owner-Resident Relations Act) or the Judgment for Possession (Mobile Home Park
18 Act) against the defendant; and

1 (iv) a legible copy of the designated Resource Information
2 Sheet provided by the court, including information about emergency rental
3 assistance and legal assistance.

4 (b) The plaintiff shall serve each defendant with the full service
5 packet at least seven (7) calendar days before the hearing. (Rule 1-006(A)(1) NMRA
6 applies for time calculation.) The plaintiff shall serve by hand delivery or by posting
7 and mailing, in accordance with NMSA 1978, Section 47-8-13(D). The person(s)
8 who served the packet shall (each) complete the appropriate return of service and
9 the certificate of mailing, if applicable, at the bottom of the summons and notice of
10 hearing, and the plaintiff shall file the original summons and notice of hearing with
11 each completed return of service in the court prior to the hearing date.

12 **4. *Hearing Procedure.*** The court shall conduct the hearing on the Post-
13 Judgment Application for Writ of Restitution as follows:

14 (a) if the case is proceeding in the Metropolitan Court and arises
15 under the Mobile Home Park Act, the judge shall inquire if either party requests that
16 a recording be made of the hearing for use in any subsequent on-record appeal;

17 (b) the judge shall inform the parties that funding is available under
18 the emergency rental assistance program to pay the following:

19 (i) rent and utilities, including back rent that is owed under
20 the judgment;

1 (ii) unpaid rent that has accrued after the date of judgment;

2 and

3 (iii) up to three (3) months of future rent, with the possibility
4 of additional future rent, upon requalification, so long as the overall total amount of
5 rental assistance does not exceed eighteen (18) months; and

6 (iv) moving costs, if an eviction occurs;

7 (c) the judge shall ask the parties whether they will participate in the
8 Eviction Prevention and Diversion Program for the purpose of obtaining funding
9 that will preserve the defendant's tenancy, prevent eviction, and compensate the
10 owner, landlord, or management;

11 (d) if both parties do not agree to participate in the Eviction
12 Prevention and Diversion Program, then, after conducting a hearing on the merits of
13 the application for writ, using Form 4-913 NMRA (Uniform Resident-Owner
14 Relations Act) or Form 4-929 NMRA (Mobile Home Park Act), as applicable, the
15 court may issue a writ of restitution; and

16 (e) if both parties agree to participate in the Eviction Prevention and
17 Diversion Program, the judge shall continue the hearing for thirty (30) days and shall
18 refer the parties to the program. If the parties reach a settlement by the end of the
19 thirty (30)-day period, the parties shall submit a stipulated order of dismissal with
20 prejudice to the court, and the court shall dismiss the case with prejudice. On motion

1 of a party or on the court's own motion, the court may enter an order extending the
2 thirty (30)-day continuance for a reasonable amount of time, not to exceed an
3 additional thirty (30) days. If the parties do not reach a settlement, the court shall
4 resume the hearing and may issue a writ of restitution using Form 4-913 NMRA
5 (Uniform Resident-Owner Relations Act) or Form 4-929 NMRA (Mobile Home
6 Park Act), as applicable.

7 **Track B. The Court Has Not Issued a Judgment for Restitution or a**
8 **Judgment for Possession.**

9
10 ***Additional Procedures Required; Eviction Prevention and Diversion***
11 ***Program.*** If an owner, landlord, or authorized management representative in any
12 judicial district seeks to evict a resident for nonpayment of rent under the Uniform
13 Owner-Resident Relations Act or the Mobile Home Park Act, and such owner,
14 landlord, or authorized management representative has not obtained a court
15 judgment before the applicable phase-in date for the Eviction Prevention and
16 Diversion Program, then the owner, landlord, or authorized management
17 representative may commence or proceed with the statutory process for eviction.
18 Eviction proceedings shall comply with the statutory requirements set forth in the
19 Uniform Owner-Resident Relations Act or Mobile Home Park Act, as applicable,
20 subject to the following additional procedures prior to the issuance of a writ of
21 restitution for nonpayment of rent:

1 (a) ***Service of Initial Notice.*** The owner, landlord, or authorized
2 management representative shall include, with the initial notice to the resident, a
3 legible copy of the designated Resource Information Sheet provided by the court,
4 including information about emergency rental assistance and legal assistance.

5 (b) ***Service of Summons and Notice of Hearing.*** If a case is already
6 pending or a new case is filed, the court may proceed with the case, but before any
7 hearing in the case, the owner, landlord, or authorized management representative
8 shall serve each defendant with a summons and notice of hearing by hand delivery
9 or posting and mailing, using Form 4-905B NMRA, Summons and Notice of
10 Hearing on Petition for Restitution or Possession, along with a legible copy of the
11 designated Resource Information Sheet provided by the court, including information
12 about emergency rental assistance and legal assistance.

13 (c) ***Hearing and Trial Procedure.*** The court shall conduct any
14 hearing or trial so as to include the following:

15 (i) if the case is proceeding in the Metropolitan Court and
16 arises under the Mobile Home Park Act, the judge shall inquire if either party
17 requests that a recording be made of the hearing for use in any subsequent on-record
18 appeal;

19 (ii) the judge shall inform the parties that funding is available
20 under the emergency rental assistance program to pay the following:

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(A) rent and utilities owed, including back rent;

(B) up to three (3) months of future rent, with the possibility of additional future rent, upon requalification, so long as the overall total amount of rental assistance does not exceed eighteen (18) months; and

(C) moving costs, if an eviction occurs;

(iii) the judge shall ask the parties whether they will participate in the Eviction Prevention and Diversion Program for the purpose of obtaining funding that will preserve the defendant’s tenancy, prevent eviction, and compensate the owner, landlord, or management;

(iv) if both parties do not agree to participate in the Eviction Prevention and Diversion Program, then, after conducting a hearing on the merits of the application for writ, using Form 4-913 NMRA (Uniform Resident-Owner Relations Act) or Form 4-929 NMRA (Mobile Home Park Act), as applicable, the court may issue a writ of restitution; and

(v) if both parties agree to participate in the Eviction Prevention and Diversion Program, the judge shall continue the hearing for thirty (30) days and shall refer the parties to the program. If the parties reach a settlement by the end of the thirty (30)-day period, the parties shall submit a stipulated order of dismissal with prejudice to the court, and the court shall dismiss the case with prejudice. On motion of a party or on the court’s own motion, the court may enter

1 an order extending the thirty (30)-day continuance for a reasonable amount of time,
2 not to exceed an additional thirty (30) days. If the parties do not reach a settlement,
3 the court shall resume the proceeding and may enter a judgment and issue a writ of
4 restitution for nonpayment of rent in accordance with law;

5 IT IS FURTHER ORDERED that **nothing in this Order shall abrogate any**
6 **discretion that the court might otherwise have to fashion an equitable remedy**
7 **other than a writ of restitution; and**

8 IT IS FURTHER ORDERED that this order shall become effective on **April**
9 **1, 2022**, and shall remain in effect until further order of this Court.

10 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 16th day of March, 2022.

Sally A. Paez, Acting Clerk of Court
Supreme Court of New Mexico

A handwritten signature in black ink that reads "Sally A. Paez".

Sally A. Paez, Acting Chief Clerk of the Supreme Court
of the State of New Mexico

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