

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

2 **January 04, 2022**

3
4 **NO. 22-8500-001**

5 **IN THE MATTER OF A PILOT PROJECT**
6 **IN THE NINTH JUDICIAL DISTRICT TO**
7 **LIFT THE STAY 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**

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14
15 **ORDER**

16 WHEREAS, in Order No. 20-8500-007 and Order No. 20-8500-008, this
17 Court recognized the need to exercise its equitable powers and power of
18 superintending control over pleading and practice in the New Mexico Judiciary in
19 response to the extraordinary circumstances presented by the onset of the current
20 public health crisis by balancing the need for imminent evictions in some
21 circumstances with the directives from public health authorities that emphasize the
22 need for New Mexicans to avoid unnecessary contact with one another and remain
23 in their homes to the greatest extent possible during the COVID-19 public health
24 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 believes it most prudent to launch its statewide
11 Eviction Prevention and Diversion Program via an initial pilot that soon expands to
12 all jurisdictions;

13 WHEREAS, the Ninth Judicial District will pilot the Eviction Prevention and
14 Diversion Program before it expands to the remainder of the state in March 2022;

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

18 NOW, THEREFORE, IT IS ORDERED that any writ of restitution issued in
19 the Ninth Judicial District on or after March 24, 2020 for nonpayment of rent, in
20 proceedings arising under the Uniform Owner-Resident Relations Act or the Mobile

1 Home Park Act, that has not been executed before February 1, 2022, shall be deemed
2 null and void, but a person who obtained the writ of restitution for nonpayment of
3 rent, or their successor in interest, may file a new, separate post-judgment
4 application for a writ of restitution in the Ninth Judicial District on or after February
5 1, 2022;

6 IT IS FURTHER ORDERED that, effective February 1, 2022, judges
7 presiding in eviction proceedings in the Ninth Judicial District, arising under the
8 Uniform Owner-Resident Relations Act or the Mobile Home Park Act for
9 nonpayment of rent, shall recommence issuing writs of restitution for nonpayment
10 of rent in accordance with the terms of this order;

11 IT IS FURTHER ORDERED that the stay of applicable deadlines for appeal
12 of a judgment for possession or restitution in the Ninth Judicial District is hereby
13 LIFTED, effective February 1, 2022;

14 IT IS FURTHER ORDERED that the district courts and the magistrate courts
15 in the Ninth Judicial District shall issue writs of restitution for nonpayment of rent
16 only in accordance with the following procedures:

17 **Track A. Plaintiff Has Obtained a Judgment for Restitution, a Judgment**
18 **for Possession, or a Writ of Restitution in the Ninth Judicial District that has**
19 **Not Been Executed.**

20
21 **1. *Post-Judgment Application for Writ of Restitution.*** A plaintiff in the
22 Ninth Judicial District seeking to evict a defendant for nonpayment of rent, under

1 the Uniform Owner-Resident Relations Act or the Mobile Home Park Act, must
2 recommence the eviction proceeding(s) using Form 4-904A NMRA, Post-Judgment
3 Application for Writ of Restitution, if the following conditions are met:

4 (a) a court in the Ninth Judicial District has issued

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

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

11 (iii) a Writ of Restitution for nonpayment of rent under either
12 the Uniform Owner-Resident Relations Act or the Mobile Home Park Act that has
13 not been executed before February 1, 2022;

14 (b) the judgment or any writ of restitution was issued on or after
15 March 24, 2020, and before February 1, 2022;

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

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

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

6 **3. *Service of Notice of Hearing.***

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

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

11 **(ii)** a legible copy of the Post-Judgment Application for Writ
12 of Restitution filed by the plaintiff;

13 **(iii)** a legible copy of the Judgment for Restitution (Uniform
14 Owner-Resident Relations Act) or the Judgment for Possession (Mobile Home Park
15 Act) against the defendant; and

16 **(iv)** a legible copy of the designated Resource Information
17 Sheet provided by the Ninth Judicial District Court, including information about
18 emergency rental assistance and legal assistance.

19 **(b)** The plaintiff shall serve each defendant with the full service
20 packet at least eleven (11) calendar days before the hearing. (Rule 1-006(A)(1))

1 NMRA applies for time calculation.) The plaintiff shall serve by hand delivery or
2 by posting and mailing, in accordance with NMSA 1978, Section 47-8-13(D). The
3 person(s) who served the packet shall (each) complete the return of service and the
4 certificate of mailing, if applicable, at the bottom of the summons and notice of
5 hearing, and the plaintiff shall file the original summons and notice of hearing with
6 each completed return of service in the court prior to the hearing date.

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

9 (a) the judge shall inquire if either party requests that the proceeding
10 be on the record;

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

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

15 (ii) unpaid rent that has accrued after the date of judgment;
16 and

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

20 (iv) moving costs, should an eviction occur.

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

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

10 **(e)** if both parties agree to participate in the Eviction Prevention and
11 Diversion Program, the judge shall continue the hearing for sixty (60) days and shall
12 refer the parties to the program. If the parties reach a settlement by the end of the
13 sixty (60)-day period, the parties shall submit a stipulated order of dismissal with
14 prejudice to the court, and the court shall dismiss the case with prejudice. On motion
15 of a party or on the court’s own motion, the court may enter an order extending the
16 sixty (60)-day continuance for a reasonable amount of time, not to exceed an
17 additional thirty (30) days. If the parties do not reach a settlement, the court shall
18 resume the hearing and may issue a writ of restitution using Form 4-913 NMRA
19 (Uniform Resident-Owner Relations Act) or Form 4-929 NMRA (Mobile Home
20 Park Act), as applicable.

1 **Track B. The Court in the Ninth Judicial District Has Not Issued a**
2 **Judgment for Restitution or a Judgment for Possession.**

3 ***Additional Procedures Required; Eviction Prevention and Diversion***

4 ***Program.*** If an owner, landlord, or authorized management representative seeks to
5 evict a resident in the Ninth Judicial District for nonpayment of rent under the
6 Uniform Owner-Resident Relations Act or the Mobile Home Park Act, and such
7 owner, landlord, or authorized management representative has not obtained a court
8 judgment before February 1, 2022, that owner, landlord, or authorized management
9 representative may commence or proceed with the statutory process for eviction in
10 the Ninth Judicial District. Eviction proceedings shall comply with the statutory
11 requirements set forth in the Uniform Owner-Resident Relations Act or Mobile
12 Home Park Act, as applicable, subject to the following additional procedures prior
13 to the issuance of a writ of restitution for nonpayment of rent:

14 **(a) *Service of Initial Notice.*** The owner, landlord, or authorized
15 management representative shall include, with the initial notice to the resident, a
16 legible copy of the designated Resource Information Sheet provided by the Ninth
17 Judicial District Court, including information about emergency rental assistance and
18 legal assistance.

19 **(b) *Service of Summons and Notice of Hearing.*** If a case is already
20 pending or a new case is filed, the court may proceed with the case, but before any
21 hearing in the case, the owner, landlord, or authorized management representative

1 shall serve each defendant by hand delivery or posting and mailing, using Form 4-
2 905B NMRA, Summons and Notice of Hearing on Petition for Restitution or
3 Possession, along with a legible copy of the designated Resource Information Sheet
4 provided by Ninth Judicial District Court, including information about emergency
5 rental assistance and legal assistance.

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

8 (i) the judge shall inquire if either party requests that the
9 proceeding be on the record;

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

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

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

16 (C) moving costs, should an eviction occur.

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

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

6 (v) if both parties agree to participate in the Eviction
7 Prevention and Diversion Program, the judge shall continue the hearing for sixty
8 (60) days and shall refer the parties to the program. If the parties reach a settlement
9 by the end of the sixty (60)-day period, the parties shall submit a stipulated order of
10 dismissal with prejudice to the court, and the court shall dismiss the case with
11 prejudice. On motion of a party or on the court's own motion, the court may enter
12 an order extending the sixty (60)-day continuance for a reasonable amount of time,
13 not to exceed an additional thirty (30) days. If the parties do not reach a settlement,
14 the court shall resume the proceeding and may enter a judgment and issue a writ of
15 restitution for nonpayment of rent in accordance with law.

16 **Nothing in this Order shall abrogate any discretion that the court might**
17 **otherwise have to fashion an equitable remedy other than a writ of restitution;**
18 and

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IT IS FURTHER ORDERED that this order shall become effective on February 1, 2022, in the Ninth Judicial District, and shall remain in effect until further order of this Court.

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 4th day of January, 2022.


Jennifer L. Scott, Chief Clerk of the Supreme Court
of the State of New Mexico