OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: March 30, 2020
RE: Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to limit foreclosures, evictions, and disconnections from service

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

During a state of emergency, § 10-3-104(2)(c), MCA, authorizes the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." The Governor may "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if the strict compliance with the provisions of any statute . . . would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Section 10-3-104(2)(a), MCA.

Montana's public health laws also authorize the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor's direction, to "prevent and mitigate conditions of public health importance" through, among other things, "isolation and quarantine" measures. Section 50-1-202, MCA; *see also* § 50-1-203, MCA. Montana law provides that these authorities will be utilized to respond to an "outbreak of disease," § 10-3-103(4), MCA, and to "limit the transmission of the communicable disease." *See, e.g.*, § 50-1-101(6), MCA.

Montana law expressly contemplates that the Governor may provide for the housing needs of Montanans during a disaster or emergency, which includes the outbreak of communicable disease. *See* § 10-3-313, MCA. Under § 10-3-313(1)(c), MCA, the Governor is authorized to temporarily suspend or modify for up to 60 days any public health or safety, zoning, or transportation laws when the Governor has declared their suspension or modification essential to meet temporary housing needs in an emergency or disaster. Further, Montana law authorizes the Governor to mobilize "the services and facilities of the existing officers and agencies of the state" and provides that "all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out" the response to the emergency. Section 10-3-305(2), MCA.

In responding to the outbreak of COVID-19, I previously determined that it is essential to the health, safety, and welfare of the State of Montana during the ongoing state of emergency that, to the maximum extent possible, individuals stay at home or at their place of residence to prevent opportunities for the transmission of COVID-19. Effective March 28, 2020, I have directed Montanans to stay in their homes to the maximum extent possible, with exceptions for essential travel and essential work, among others.

To stay at home, Montanans must continue to have a home. The outbreak has already taken a significant toll on economic activity in Montana, forcing small business owners to close their doors and generating layoffs, furloughs, and large increases in unemployment claims. Many Montanans are

faced with the loss of their income and with it, the ability to pay their rent or mortgage. Other states across the United States, recognizing the immediate economic shocks of the outbreak combined with the need to allow residents to stay home to curtail the outbreak, have provided temporary moratoriums on evictions and foreclosures.

Accordingly, in consultation with public health experts, health care providers, business leaders, and disaster and emergency professionals, I have determined that it is essential to public health and human safety that Montanans not be subject to eviction or foreclosure, or other actions that might coerce a homeowner or renter into surrendering their home or rental, for lack of payment during the emergency. Evicting Montanans from their homes during the emergency will only worsen the state's ability to respond to the emergency. Because the requirement to stay at home also means that Montanans have the basic utilities to make their home habitable and the basic means to communicate with others and minimize the need to leave their home, I have also determined that it is essential to the public health and human safety that Montanans not be subjected to loss of electricity, water, telephone, or internet services due to lack of payment. These measures are necessary to secure the temporary housing needs of Montanans during the emergency and to implement the requirement that Montanans, where possible, occupy and remain in their homes or places of residence during the emergency to prevent the spread of COVID-19.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana, effective immediately through April 10, 2020:

I. Limitation on Evictions

- For the duration of this Directive and except as provided herein, there shall be no actions for termination of a tenancy, possession, unlawful holdover, or rent involving a residential dwelling tenancy. No writ, judgment, or order requiring a tenant or authorized guest to surrender or vacate the premises shall be enforced. I request the courts of this State to stay all currently pending actions, related to the above, for the duration of this Directive.

- For the duration of this Directive and except as provided herein, no landlord may:
    - terminate a tenancy or refuse to renew or extend the terms of a residential dwelling tenancy on at least a month-to-month basis;
    - charge or accrue late fees, interest, or other charges, penalties, or amounts due because of nonpayment of rent for the duration of this Directive;
    - increase the amount of rent payable under the terms of a rental agreement (except previously agreed increases or reasonable increases reflecting the size of the unit, number of tenants or guests, or services provided by the landlord);
    - request the suspension or termination of any utilities provided to the tenant based upon nonpayment of utilities, rents, or other amounts due under the rental agreement; or
    - report a residential tenant to a credit bureau for nonpayment of a financial obligation.

- No landlord may at any time seek or collect treble damages based on the failure of a tenant or authorized guest to vacate the premises for the duration of this Directive.

- This Directive does not relieve the obligation of a tenant to pay rent or the obligations of landlords and tenants to comply with any other conditions of the tenancy.

- This Directive does not preclude tenancy terminations, actions for possession, unlawful holdover, or refusals to renew or extend the terms of a tenancy that are based on grounds other than nonpayment of rent, fees, interests, or other monetary obligations, nonpayment of utilities, or other failure of the tenant to perform any other obligation requiring payment or expenditure of money by the tenant; or any action to evict a tenant based on damage or destruction to the premises, criminal activity on the premises, or a threat to the health and safety (except a claim that the tenant or authorized guest could potentially transmit COVID-19) of any person or the public.

- No default judgment may be entered against a defendant in an action for termination, possession, unlawful holdover, or rent for the duration of this Directive.

- These limitations do not apply in the following circumstances:
    - Any eviction action, including but not limited to any request, motion, filing or action taken or made after the tenant (including tenant family members) is no longer in possession and no longer occupies the dwelling unit personally as their home.
    - Property rented for commercial business use.

II. Limitation on Residential Foreclosures

- For the duration of this Directive and except as provided herein, no trustee's sale, sheriff's sale, or other involuntary sale of residential real property (or delivery of any trustee's deed, certificate of sale or sheriff's deed with respect to such sale) shall proceed. Residential real property means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

- For the duration of this Directive and except as provided herein, there shall be no actions for foreclosure of a mortgage, trust indenture, or other lien on residential real property, nor any action seeking a writ, judgment, or order directing the sale of such property or directing the mortgagor, grantor, or other debtor in possession of the property to surrender or vacate the property. No writ, judgment or order directing the sale of residential real property or directing a mortgagor, grantor, or other debtor in possession of the property to surrender or vacate the property shall be enforced. I request the courts of this State to stay any such actions currently pending, related to the above, for the duration of this Directive.

- Nothing in this Directive relieves a borrower, mortgagor, or grantor in possession of real property to pay any financial obligations, including payment of loan principal or interest, insurance, taxes, the accrual of interest, or other financial obligations (except late fees or other charges). No borrower, mortgagor, or grantor in possession of real property, however, may be reported to a credit bureau for nonpayment for the duration of this Directive.

- These limitations do not apply in the following circumstances:
    - For trust indentures and mortgages, any foreclosure based on grounds other than a failure to make payment as required under the trust indenture, mortgage, or related loan notes, instruments, or documents of any loan principal or interest payments, property or title insurance, property taxes and assessments, late fees or other charges, or any other failure of the grantor, mortgagor, or borrower to perform any other obligation requiring payment or expenditure of money by such grantor, mortgagor, or borrower.
    - Any foreclosure based on damage or destruction to the property or to the conduct of criminal activity on the property.

- Any foreclosure, judgment, order, foreclosure sale, trustee's deed, certificate of sale, sheriff's deed, order terminating a right of possession or other request, motion, or filing made after the grantor, mortgagor, or other debtor (including family members) is no longer in possession and no longer occupies the residential property personally as their primary home.

III. Limitation on Utility and Internet Cancellation

- For the duration of this Directive, no business or political subdivision of the State supplying electricity, gas, sewage disposal, water, telephone, or internet services for use, in whole or in part, in a dwelling unit or residence shall terminate that service. No fee or charge for late or untimely payment that becomes due after this Directive takes effect may be billed or collected.

State Agency Action

- All public housing authorities located in the State are hereby requested to extend deadlines for housing assistance recipients or applicants to deliver records or documents pertaining to their eligibility for programs, to the extent that those deadlines are within the discretion of said housing authority(ies).
- The Montana Commissioner of Banking, along with the Montana Department of Commerce, are hereby directed to immediately engage with financial institutions to identify any tools, means, or methods that could be utilized to afford Montanans relief from the threat of residential foreclosure, and to otherwise promote housing stability during this state of emergency, in furtherance of the objectives of this Directive.

Preemption and Suspension

- This Directive supersedes, suspends, or preempts any conflicting state or local statute, rule, ordinance, or order. Nothing in this Directive, however, shall be construed to prevent any local government from imposing more stringent restrictions on evictions and foreclosures to the extent otherwise permitted by law.

- Nothing in this Directive shall, in any way, restrict state or local authority to order any quarantine, isolation, and/or other public health measures that may require an individual to remain in any particular residence or dwelling for the duration of this Directive.

- Nothing in this Directive suspends, modifies, amends, or lessens the rights of obligations of any person except as specifically provided in this Directive.

- Nothing in this Directive prohibits proceedings to remove a person who enters onto residential property without any legal claim of possession or title to said property.

Flexibility

- Parties to rental agreements and mortgages are encouraged to provide flexibility and realistic payment options and plans to minimize the hardship on all parties resulting from the COVID-19 pandemic and related economic adversity.

Authorities: Sections 10-3-104, -103, -302, -305, and -313, MCA; §§ 50-1-103, -202, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13, MCA; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and is in effect through April 10, 2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- If any provision of this Directive or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Directive, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Directive are declared to be severable.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.