



## Expungement: Removing Barriers to Obtaining Safe and Stable Housing

### Court Records are Public Records

As a matter of public policy, the general rule is that court records are available to the public in order to ensure transparency in our judicial system and to promote public safety. (Certain court records are confidential in order to protect vulnerable people and personal information, such as financial records, etc.) While most court records are harmless, certain criminal and eviction records have a substantial negative impact on an tenant's ability to obtain safe and stable housing.

### Minnesota Law Allows Expungement of Certain Cases

Fortunately, Minnesota law allows for expungement (removal/sealing) of certain eviction and criminal records. The law and process for eviction and criminal expungement vary, but both require convincing the court of two things, sometimes referred to as the "Justice Factors": (1) that granting the expungement will substantially benefit the tenant, and (2) that the potential disadvantage to the

public from removing the record is minimal (i.e. the court decides if expunging the case for the tenant is more important than future landlords knowing about the case). To that end, a part of every expungement motion should include an explanation of what the tenant has done since the time of the criminal or eviction record to improve their situation and why they are now a safe person to rent to (from a landlord's perspective).

It is important to note that an expungement motion is not the time to try to re-litigate the case! Every expungement motion should clearly show that the person requesting the expungement accepts responsibility for what happened, even if they believe the eviction or criminal charge was unwarranted, unfair, or otherwise not their fault.

In most cases, the final determination about whether to grant an expungement is left to the discretion of the individual judge hearing the expungement motion.

Expungement can be complicated! If you are working with someone who has an eviction or criminal record and are wondering whether that record might qualify for expungement, contact us and we will review the case with you.

### Meet Standpoint's Housing Team



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### Expungement Training Opportunities

Standpoint offers a training on criminal and eviction expungement. We train over Zoom or we will come to you! Request a training here: [www.standpointmn.org/housing-program-trainings](http://www.standpointmn.org/housing-program-trainings)



### Which Cases Qualify for Expungement?

Remember, even when cases qualify for expungement, the ultimate decision of whether to grant an expungement is up to the discretion of the judge hearing the expungement motion, and a large part of that decision will be based on the Justice Factors referred to above. The following is a brief overview of which cases might qualify for expungement.

#### Criminal Expungement

The majority of people seeking criminal expungement are seeking full expungement, otherwise known as statutory expungement. Full or statutory expungement is the sealing of records related to the offense across all governmental agencies that might have record of the conviction (i.e. Dept. of Human Services, BCA, local law enforcement, etc.). Minnesota Statute § 609A.02 provides a list of qualifying offenses, as well as specific requirements for full expungement based on several factors, including:

- the level of the offense
- how the case was resolved
- how much time that has passed since the tenant has been off probation for all offenses
- if there are any new convictions or charges

Again, even when the tenant's criminal history fits within the statute, the ultimate decision of whether to grant an expungement is up to the discretion of the judge hearing the expungement motion, and the Justice Factors will be an important part in that decision.

#### Eviction Expungement

Minnesota law for eviction expungement includes mandatory expungement for evictions that involved foreclosure or contract for deed cancellation; discretionary expungement for cases that included a problem in the underlying case that may have resulted in judgment in favor of the tenant had the issue been raised at the eviction hearing; and discretionary expungement for cases in which the court determines that expunging the case is in the interest of justice (i.e. the court decides if expunging the case for the tenant is more important than future landlords knowing about the case). In addition to the Justice Factors, the court will consider several factors when determining whether grant an expungement:

- reason for the eviction
- is money still owed to the landlord
- the tenant's record of timely rent payments
- other evictions on the tenant's record
- length of time since last eviction
- number of evictions with the same landlord
- disposition of original eviction case
  - dismissed or tenant won
  - settlement agreement
    - did tenant comply?
  - was a writ issued?
- Tenant continued to rent from landlord after the eviction case