

Landlords and Lenders Encouraged to Consider Creative Options (Updated March 27, 2020)

Article

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As more tenants, both residential and commercial, face financial difficulties during the COVID-19 crisis, landlords should try to work with tenants and consider creative options since traditional remedies, such as evictions, are unavailable and may remain so for some time.

On March 18, 2020, Milwaukee Circuit Court Judge Colón ordered Milwaukee sheriff's deputies to stop serving eviction orders until at least April 9th. Judge Colón will then hold a hearing about the pending eviction orders. When Judge Colón issued the order, there were nearly 50 eviction orders that had previously been approved by the courts, but not yet served.

Not only does Judge Colón's order prevent eviction orders from being served, county court closures and orders restricting the types of cases courts will hear effectively prevent eviction hearings from occurring. For example, on March 14, 2020, Milwaukee Chief Judge Triggiano issued an order implementing temporary emergency measures which suspended all small claims proceedings—including evictions—until at least April 3, 2020. Dane County Chief Judge Bailey-Rihn issued a similar order suspending all contested small claims hearings until after April 17, 2020. In Brown County, Chief Judge Hock postponed small claims cases to April 27th, at the earliest, with many cases, including eviction returns, postponed indefinitely.

While 53 of the 69 circuit courts have issued their own emergency orders restricting the types of cases heard, on March 22, 2020, the Wisconsin Supreme Court issued an order suspending all in-person hearings in every trial and appellate court across the entire state. Typically, eviction hearings require the presentment of evidence, which requires an in-person hearing. So while the order does not explicitly address eviction matters, by barring in-person hearings, it creates an effective moratorium on eviction proceedings.

On March 27, 2020, Governor Evers issued Emergency Order #15, which prevents a landlord from commencing a civil action seeking eviction except in a very narrow limitation. It also prevents mortgagees from commencing a civil action to foreclose upon real estate. The ban is in place for 60 days from March 27 to May

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26. For more information about the implications of Emergency Order #15, please see our article titled "Governor Evers Orders Suspension of Evictions and Foreclosures for 60 Days during COVID-19 Crisis."

Even when the temporary emergency measures are lifted, landlords may still have difficulties seeking traditional relief. The courts are already overworked with cases. In 2019, over 802,395 cases were opened in Wisconsin, including nearly 150,000 small claims cases. This results in many court dockets being full even before the COVID-19 crisis. The longer the crisis continues, there will be even greater challenges managing rescheduling. As the courts reopen, they will have to figure out how to reschedule all the cases that were postponed while managing already busy dockets. Additionally, certain cases may be prioritized, like criminal matters. Therefore, landlords may still be delayed in seeking or receiving help from the court system.

During this time, landlords should try to work collaboratively and creatively with their tenants for the benefit of all parties. This may include postponing rent payments until economic relief proposed by Congress, such as the plans providing over \$1,000 to every citizen, may be distributed. Another option may be deferring payments while the health state of emergency is in effect or establishing a repayment schedule for later payments.

Banks and the federal government already offering such relief are receiving welcomed praise from the general public. On March 18th, the U.S. Department of Housing and Urban Development issued an immediate 60-day moratorium on foreclosures and evictions of single family homeowners with Federal Housing Administration-insured mortgages.

On March 19th, Bank of America announced that homeowners with mortgages and home equity loans could defer their payments because of COVID-19 outbreak. On March 21st, Associated Bank announced that it would also be offering payment deferrals on consumer loans, mortgages, and small business loans. It also announced it would suspend foreclosure activity on homes and new repossession activities for 60 days.

During this time, communication and collaboration will be key. Proactive steps to begin working together will lead to a mutually agreeable path through these trying times.

Editor's Note: On March 27, 2020, this article was updated to reflect Governor Evers' Emergency Order #15 and its implications for landlords and mortgagees.

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