



COVID-19 and a Moratorium on Evictions

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On March 12, 2020, in response to the COVID-19 pandemic, Governor Tony Evers signed [Executive Order #72](#), declaring a state of emergency relating to public health and designating the Department of Health Services (DHS) as the lead agency to respond to this emergency. On March 24, 2020, the Governor and Secretary-Designee of DHS Andrea Palm issued [Emergency Order #12: Safer at Home Order](#), directing all residents to stay within their places of residence except to perform essential duties.

On March 27, 2020, Governor Evers and Secretary-Designee Palm issued [Executive Order #15](#), placing a 60-day moratorium on most evictions from rental premises and on mortgage foreclosures.¹

Additionally, the Wisconsin Supreme Court has issued orders limiting in-person court proceedings and delaying civil jury trials, and circuit courts have also issued emergency orders limiting court proceedings in response to COVID-19 concerns.

This issue brief summarizes Executive Order #15 as it relates to evictions, explains which actions are prohibited or permitted under the order, and discusses the effects of the Supreme Court orders and circuit court actions on evictions.

EXECUTIVE ORDER #15

Citing the previously issued executive orders promoting social distancing and the importance of staying home in order to slow the spread of COVID-19, Executive Order #15 does all of the following:

- Places a 60-day moratorium on most evictions from rental premises and mortgage foreclosures.
- Proclaims that the economic effects of the pandemic have been significant and that Wisconsin residents have suffered loss of income that threatens their ability to make rental or mortgage payments.
- Proclaims that the threat of eviction poses a significant and direct threat to personal security and the public's health during the current public health emergency by removing the ability of persons to stay in their homes and avoiding contact with infected persons.
- Proclaims that in the case of commercial evictions and foreclosures, evictions and foreclosures also create a likelihood of personal interactions inconsistent with necessary social distancing measures, hurts Wisconsin businesses, destabilizes local economies, and threatens designated essential businesses and operations.
- Acknowledges that the U.S. Department of Housing and Urban Development, Fannie Mae, and Freddie Mac announced the suspension of all evictions and foreclosures for a period of 60 days.
- Prohibits, with limited exceptions, landlords, mortgagees, and sheriffs from taking actions that would result in an eviction from a residential or commercial premises.
- Specifies that the order does not relieve a tenant from liability for rent due or any other obligations under a lease.

The executive order applies to residential and commercial leases and specifies that tenants are still responsible for paying rent and complying with other obligations of their leases.

EVICITION ACTIONS AFFECTED BY EXECUTIVE ORDER #15

Generally, a landlord may terminate a tenancy for failure to pay rent or for other breach of a lease or rental agreement.² After proper notice to the tenant, eviction actions are heard in small claims court and, if a court enters an order of eviction, a sheriff may execute the writ of restitution (order for removal) granted by the court.³

Under Executive Order #15, no landlord may serve any notice terminating a tenancy for failure to pay rent, file an eviction action because of a tenant's failure to pay rent, or provide a sheriff with a writ of restitution (eviction order) that has been issued because of a tenant's failure to pay rent. A sheriff may not execute a writ of restitution that was issued because of a tenant's failure to pay rent.

However, if a landlord provides an affidavit attesting that an eviction is not based on a failure to pay rent and attesting to a reasonable belief, and the basis thereof, that a failure to proceed with the eviction will result in an imminent threat of serious physical harm to another person, the landlord may serve a notice terminating a tenancy, file an eviction action, or provide a sheriff with a writ of restitution to evict a tenant. A sheriff may execute a writ of restitution provided to him or her with such an affidavit. Additionally, a landlord may initiate an eviction action against a tenant who fails to vacate a premises after his or her lease ends (known as holdover eviction). However, while the executive order allows holdover evictions to proceed, orders issued by the Wisconsin Supreme Court and by circuit courts, discussed below, may limit or postpone court action on these permissible proceedings.

WISCONSIN SUPREME COURT ORDERS AFFECTING EVICTION ACTIONS

On March 22, 2020, the Wisconsin Supreme Court issued an order postponing, with limited exceptions, in-person circuit and appellate court proceedings until April 30, 2020. The order directs courts to remain open and to utilize available technologies to conduct proceedings remotely.⁴ Under the order, it would be possible for an eviction action that had been filed prior to the issuance of Executive Order #15 to proceed via remote hearings.

However, under Executive Order #15, even if a court did grant an order of eviction and issue a writ of restitution, no sheriff may execute the writ if it was issued for failure to pay rent. Moreover, if some aspect of an eviction proceeding required an in-person appearance or if remote technology was not available, the eviction proceeding likely would be postponed as a result of this Supreme Court order. In addition, if any party requests a jury trial, the proceeding must be rescheduled to a date after May 22, 2020, pursuant to a separate Supreme Court order regarding civil jury trials generally.⁵

In light of the March 22, 2020 Wisconsin Supreme Court order--which states that it is intended to be interpreted broadly for protection of the public, court staff, and judges from the risks associated with COVID-19--the courts in some counties have reduced or suspended nonessential proceedings. For instance, circuit courts in the judicial district that includes seven counties in northeastern Wisconsin are conducting hearings only on matters specified as essential to maintaining the critical day-to-day operations of those courts.⁶ Because eviction proceedings are not specified as essential, it appears that any eviction proceeding in that judicial district would be stayed until April 30, 2020. A list of circuit court emergency orders can be found at the COVID-19 information link on the Wisconsin Supreme Court's [webpage](#).

¹ For more information relating to the moratorium on mortgage foreclosures, see [Legislative Council, COVID-19 and Home Mortgage Foreclosures, Issue Brief \(Apr. 2020\)](#).

² Section 704.17, Stats.

³ Sections 799.40 to 799.44, Stats.

⁴ Supreme Court of Wisconsin, [In Re The Matter of Remote Hearings During the COVID-19 Pandemic](#), Mar. 22, 2020.

⁵ Supreme Court of Wisconsin, [In Re The Matter of Jury Trials During the COVID-19 Pandemic](#), Mar. 22, 2020. A subsequent order suspends deadlines for jury trials until further order of the court, subject to review by the court on May 1, 2020, Supreme Court of Wisconsin, [In the matter of an Interim Rule Re Suspension of Deadlines For Non-Criminal Jury Trials Due to the COVID-19 Pandemic: Public Hearing Notice](#).

⁶ Hon. James A. Morrison, Chief Judge, 8th Judicial District, [Notice Clarifying Temporary Measures for Courthouse Operations in 8th Judicial District Regarding COVID-19 Public Emergency](#), Mar. 27, 2020.