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PRACTICAL CONSIDERATIONS IN LIGHT OF EVICTION AND FORECLOSURE STAY

On Friday afternoon, Governor Tony Evers and Secretary-designee Andrea Palm issued Emergency Order #15, a Temporary Ban on Evictions and Foreclosures. The Order generally prevents the commencement and continuation of eviction and foreclosure proceedings statewide for a period of 60 days commencing March 27, 2020. The Order raises some practical considerations for landlords and tenants alike.[1]

The Order contains several provisions that alter the traditional landlord-tenant relationship. Principally, landlords are prohibited from initiating measures to remove tenants from the leased premises. Landlords may not issue notices terminating tenancy, commence civil actions for eviction, or deliver writs of restitution to the sheriff. A narrow exception to this general bar applies. The bar does not prevent landlords from taking legal action based on non-monetary defaults if the basis for the termination of tenancy is that a failure to do so "will result in an eminent threat of serious physical harm to another person." In that event, any notice served, action commenced, or writ delivered by a landlord must be accompanied by an affidavit from an individual with personal knowledge detailing the reasonable belief of eminent threat of serious physical harm that would result if action is not taken.

Importantly, the Order does not work to authorize a period of holdover for a tenant, nor does the Order relieve a tenant from any of its obligations under a lease, including a tenant's responsibility to pay rent.

While the Order works to prevent a near-term spike in eviction proceedings resulting from the economic effects of COVID-19, landlords' eviction-based remedies will be restored eventually. This underscores the importance, for both landlords and tenants, of finding practical solutions to potential rental problems.

One of the first things that landlords and tenants should consider is whether there is business interruption insurance available to cover rental payments. Business interruption coverage can be triggered by unforeseen events that cause business losses. Each policy is unique and should be carefully examined by a qualified professional to determine whether a claim can be made.

If business interruption coverage is not available, landlords and tenants will need to make

alternative payment arrangements until each tenant's business stabilizes. The parties may wish to amend their leases so that payment for less than the current rental rate does not constitute an event of default. Repayment of the rental arrearage should also be specified so that parties have a clear understanding of the new terms of the lease. Because most leases contain a clause that requires any modifications of the lease to be in writing, parties to a lease should be careful to properly document all of their modifications in a lease amendment that satisfies the Statute of Frauds, Section 706.02, Wis. Stats.

Whether you are a landlord or a tenant experiencing lease issues as a result of the economic effects of COVID-19, our experienced legal team at O'Neil Cannon can answer your lease questions and protect your interests.

[1] This article focuses on leasehold interests, but the Order also has practical implications for mortgagees and mortgagors. Mortgagees are prevented from commencing foreclosure actions and scheduling sheriff's sales, and sheriffs are prevented from conducting sheriff's sales and acting on writs of assistance. The only exception to this general bar is for abandoned property pursuant to Section 846.102, Wis. Stats. Mortgagees and mortgagors should consider how their remedies and statutory timelines may be affected by the Order.