# COVID-19's Impact on Commercial Evictions and Landlord-Tenant Relations in Minnesota

by Eric A.O. Ruzicka, Anna Boyle, and Roxanna V Gonzalez

Throughout Minnesota's COVID-related peacetime emergency, residential evictions have been generally prohibited in order to minimize community spread of the virus and to reduce displacement and homelessness. Although it appears the prohibition was not intended to impact commercial leasing, the practical reality has been more complicated. According to our recent survey of twelve Minnesota counties, commercial landlords and tenants involved in a leasing dispute are likely to encounter varied responses from courts depending on the jurisdiction in which they do business.

***Governor's Orders***

On March 23, 2020, ten days after declaring a peacetime emergency due to the COVID-19 pandemic, Minnesota Governor Tim Walz issued Executive Order (EO) 20-14 imposing a general moratorium on residential evictions throughout the state. Specifically, EO 20-14 prohibits landlords from terminating a lease or filing an eviction action in court in connection with a residential property, except in cases involving serious safety concerns or certain types of illegal activity. The order also blocks enforcement of writs of recovery (documents that authorize a landlord to repossess a leased premises following a court-ordered eviction), but in what was likely a drafting oversight fails to specify that the restriction on enforcement of writs is limited to residential properties. EO 20-14 also placed restrictions on foreclosures related to home mortgages. The order announced that the moratorium would last for the duration of the peacetime emergency unless expressly rescinded, and imposes misdemeanor penalties for violations. A follow-up order issued on June 5 (EO 20-73) clarified the safety-related exceptions while reinforcing the basic prohibition on residential evictions.

On July 14, Governor Walz issued EO 20-79, which will rescind EO 20-14 and EO 20-73 and replace them with a modified framework for evictions beginning on August 4. The general moratorium on residential evictions will continue under EO 20-79, with a modest expansion on the exceptions to the moratorium, allowing, for example, residential landlords to evict tenants in some situations in order to house their own families. Similar

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- Eric A.O. Ruzicka
- Anna Boyle
- Roxanna V Gonzalez

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to the prior orders, EO 20-79 will last for the duration of the peacetime emergency or until rescinded by proper authority. The current peacetime emergency order (EO 20-78) extends through August 12, but it has been renewed on a monthly basis since March and by most accounts is likely to continue for the foreseeable future.

Under normal circumstances, a Minnesota eviction action (either residential or commercial) is commenced when the landlord files a complaint with the district court in the county where the property is located. The court will then issue a summons for service on the tenant. State statute requires the court to schedule an initial hearing within 14 days of the issuance of the summons and to proceed expeditiously with a trial if necessary (although recent legislation, HF4556, Sec 16, allows courts to extend statutory deadlines as needed during and for up to 60 days after the peacetime emergency). If the landlord is successful in proving grounds for eviction, a writ of recovery is issued. The local sheriff may assist in enforcing the writ and facilitating the landlord's repossession of the premises.

Governor Walz's stated purpose in imposing the moratorium on residential evictions was "to keep Minnesotans in their homes to mitigate the community spread of COVID-19." Consistent with this purpose, none of the Governors' orders on this topic appear to impose any restrictions on or changes to commercial eviction procedures.

But it appears that many Minnesota courts are declining to recognize a distinction between residential and commercial evictions, adding uncertainty to already tenuous business operations and guaranteeing a massive backlog when courts begin to resume more normal operations.

***Twelve-County Survey***

We conducted an informal survey of the following twelve Minnesota counties to determine how commercial evictions are being administered throughout the state: Anoka, Blue Earth, Carver, Clay, Dakota, Hennepin, Olmsted, Ramsey, Scott, St. Louis, Stearns, and Washington. This list represents the Twin Cities Metro and several regions in Greater Minnesota.

Of the twelve counties surveyed, only four—Anoka, Hennepin, Scott, and Washington—are currently issuing summonses and scheduling (remote) commercial eviction hearings within approximately 14 days. The sheriff's office in each of these four counties also confirmed that it will enforce any writ of recovery issued by a court and assist landlords with repossession. So, landlords and tenants in at least these four counties can expect essentially normal court operations around commercial evictions, with the exception that hearings will occur remotely/virtually rather than in a physical courtroom.

The other eight counties in our survey interpret the Governor's orders to impose a general moratorium on *all* evictions and are treating commercial and residential eviction filings in the same manner. Those counties (Blue Earth, Carver, Clay, Dakota, Olmsted, Ramsey, St. Louis, and Stearns) reported that they are not issuing summonses or scheduling hearings for any eviction matters except those that meet the criteria for expedited treatment. In short, for the time being, commercial landlords and tenants can anticipate no court activity with regard to potential evictions arising from failure to pay rent in a majority of counties.

***Practical Suggestions for Commercial Landlords and Tenants***

Although landlords and tenants alike face much uncertainty with respect to the eviction process, both parties have some options for navigating their landlord-tenant relationship.

As an initial matter, landlords should consider moving forward with the eviction process even if the court in the relevant county is not issuing summonses or writs of recovery. Eventually, the courts will resume operations and parties with eviction complaints lodged in the court's system will be heard. Once the eviction moratorium for residential leases is lifted, the courts will likely experience a sudden wave of eviction filings and create some delay in the issuance of writs of recovery. Therefore, because commercial evictions are not prohibited in Minnesota during the peacetime emergency, landlords should consider filing an eviction action as soon as a claim is available.

If the parties seek to have a tenant remain in the premises, then both parties should review their lease agreements to determine the rights and obligations of each party. Tenants should review the lease to identify any options for force majeure provisions that potentially excuse nonperformance of certain obligations. Tenants should also identify any options for rent relief or termination of the lease. Tenants should review how their rights are impacted if landlords cannot provide certain services under the lease or permit the tenant to access or operate the business.

Ultimately, both parties should consider being flexible in negotiations and seeking to resolve disputes. Landlords face challenges because of the uncertainty of the eviction process and the increased difficulty of finding replacement tenants in the current social and economic climate. Landlords and tenants should open their lines of communication and be amenable to creative solutions such as rent extensions, forbearance, and payment plans, to keep the tenant open for business if possible during these unprecedented times.