



What's Next? How Landlords, Tenants and Lenders are Navigating the COVID-19 Pandemic



COVID-19

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Tom Amon

- Litigator attorney specializing in commercial and real property disputes
- Represents large and small companies in cases involving mass tort, contract, construction, condemnation, real estate, environmental, etc.
- Litigates in both federal and state courts, including appellate courts

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Bob Nolan

- Counsels clients in complex commercial real estate development
- Real estate development experience includes: retail, shopping centers, condos, commercial retail leasing and landlord-tenant laws

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Brandon Cory

- Litigation attorney specializing in real estate litigation and appeals
- Handles a wide range of disputes involving boundary lines, riparian rights, docking and public access, zoning, commissions, land use, restrictive covenants, leases, adverse possessions, easements, Michigan's Uniform Condemnation Procedures Act, eminent domain, Michigan's Builder's Trust Fund Act, quiet title proceedings, etc.

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Landlord-Tenant

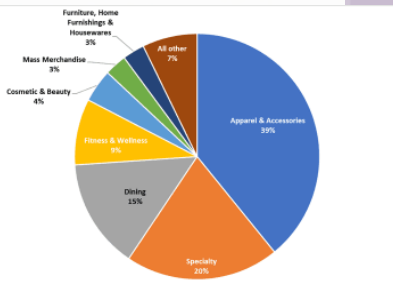
Forbes

660 views · 1 Apr 14, 2020, 09:47am EDT

\$20 Billion In Retail Sales Expected This Year

Only Way Forward

Greg Maloney Contributor
Retail



Category	Percentage
Apparel & Accessories	33%
Specialty	20%
Dining	15%
Fitness & Wellness	9%
Cosmetic & Beauty	4%
Mass Merchandise	3%
Furniture, Home Furnishings & Housewares	3%
All other	7%

Litigation Will Follow

Yonezawa-Miller Company LLC, a California LLC v. Park Place Five LLC, Promanias Inc., PF3 LLC
4/24/2020 2:20 cv 11019 Cox (Detroit)

Contract. Plaintiff seeks the return of a \$300,000 deposit in regard to an aborted \$18 million purchase agreement for commercial real estate. Defendants concealed that more than half of its tenants were seeking rent abatement during negotiations with plaintiff.

[CNS Plus Download](#)

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**Lay of the Land
Legal Options Currently
Available to Landlords**

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Executive Order 2020-54 (replaces 2020-19)

Until May 15, no person can:

- Enter a **residential property** to remove or exclude a tenant or vendee or their property (including pursuant to a writ authorizing restoration of land to owner);
- Exclude a tenant or vendee from a **residential property**; or
- Deny a mobile-home owner access to their mobile home.

Exception: tenant poses a substantial risk to health or another person, or an imminent and severe risk to property. (See, e.g., MCL 600.5714(1)(d)).

A Sherriff cannot serve process requiring forfeiture of a leased **residential premises**.

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Executive Order 2020-54 (replaces 2020-19)

Can make demand for *rent* but cannot make demand for possession or *any threat of eviction for nonpayment of rent*. Language not limited to residential properties—though rest of EO is.

Until June 14 (*i.e.*, 30 days after expiration of EO), suspends all statutory limits on Michigan courts to:

- Adjourn proceedings
- Toll limitations periods
- Toll redemption periods
- Extend any deadlines

Willful violation of EO is a misdemeanor crime.

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Legislative Action

U.S. Congress moratorium until July 25, 2020 on eviction for non-payment of rent of residents in "covered dwellings," defined as:

- Residential properties with lease or no-lease tenancies that
 - Participate in certain federal housing/voucher programs, or
 - Have a federally backed mortgage or multi-family mortgage loan.

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Michigan Supreme Court Administrative Orders

Administrative Order 2020-3 requires any party filing for a summary proceeding for eviction for non-payment of rent to complete the new form DC504, certifying that the property is not a "covered dwelling":

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STATE OF MICHIGAN JUDICIAL DISTRICT	VERIFICATION OF COMPLIANCE WITH CARES ACT	CASE NO. and JUDGE
Court address		Court telephone no.
Plaintiff's name, address, and telephone no.	v	Defendant's name, address, and telephone no.
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.
The plaintiff states:		
1. I am seeking to recover possession of the following described premises:		
2. The property is not a covered dwelling as defined by Sec. 4024(a)(1) of the CARES Act.		
NOTE: See page 2 for definitions.		
I declare under the penalties of perjury that this verification has been examined by me and that its contents are true to the best of my information, knowledge, and belief.		
Date		Plaintiff/Attorney signature

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Michigan Supreme Court Administrative Orders

Administrative Order 2020-8:

- All deadlines for case *initiation* are suspended during stay at home order. Initial complaints, answers, motions on pleadings, etc.
- Days during the stay at home order do not count toward "any statutory prerequisite to filing" an initial pleading. Does this include the 7 or 10 days of a notice to quit?

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Michigan District Court Responses

Generally district courts are responding in the same basic way: (i) adjourn all landlord/tenant matters but (ii) allow filing of new cases.

However, each district has a slightly different on-the-ground approach:

- Kent (63) – Litigation conferences continuing. Court will enforce judgments of possession, where otherwise permitted by law.
- Southfield (46) – In-custody and emergency proceedings only. No videoconferencing technology available.
- Detroit (36) – Emergency landlord-tenant matters only. "Moratorium on evictions"—no language limiting this to residential.

These are not run-of-the-mill proceedings anymore. The legal framework for evictions is changing on a daily basis, and individual courts are constantly changing how/whether they are considering these matters at all.

If a foot fault is deemed "willful," it could be a crime.

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Michigan Circuit Court Responses

Even more variation here.

Some courts still holding a semi-normal batch of hearings virtually. Some suspending all but emergency and in-custody matters.

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Legal Options

<p>Commercial Leases</p> <ul style="list-style-type: none"> • Still may proceed with evictions. But at what speed? • <i>Possibly</i> no demand for possession for non-payment of rent. • File in District or Circuit Court? • Know your court's new, frequently changing rules. 	<p>Residential Leases</p> <ul style="list-style-type: none"> • Eviction in "covered dwellings" suspended until July 25. • No demand for possession for non-payment of rent. • State prohibition on residential evictions until at least May 15. • Exception for health/safety/security of property. • Form DC 504
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Lease Negotiation Issues

- Overview / Backdrop for Decision Making
- Sectors Impacted

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Lease Negotiation Issues

Landlord Approaches:

- Rent Reduction
- Rent Deferral
- Rent Abatement
- Convert to a Loan

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Lease Negotiation Issues

Tenant Approaches:

- Know your lease
- Know your rights
- Know the timelines

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Implementation and Best Practices

- Go Forward Basis Only
- Duration of the Accommodation
- Standardize Your Approach
- Pocket Judgment
- Due Diligence for an Accommodation
- Acceleration of Rent
- Cut Dead Weight
- Loosen Tight Terms
- Portfolio Holders / Don't Standardize Your Approach

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Lender Negotiation Issues

- Overview / Backdrop for Approach
- What Lenders Expect
- What Borrowers Should Do / Prepare
- Protection on the Horizon?

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Pre-litigation: Default Processing

When you're thrust into litigation, you obviously have to make sure you're prepared to deal with that
— Roger Goodell

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Understand Your Lease

In Commercial Disputes, the Lease terms carry a lot of weight.

Understand:

- The business terms
- The parties' respective obligations
- Rights and remedies upon default; notice requirements

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Build Your File



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April 28, 2020

Name of Tenant
Tenant Address
City, State zip

Re: NOTICE OF TENANT DEFAULT

Dear Tenant:

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Protect Your Communications



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Understand that Litigation may be *inevitable*.

Work towards resolution, but prepare for litigation.

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Back to Business: Litigation Risk



McConnell Wants Broad Liability Shield In Next COVID-19 Bill

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In the Meantime: Risk Mitigation

Workplace/Premises Safety

- Premises/workplace liability lawsuits are already on the rise
- Key to re-opening is risk mitigation

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Understand Your Legal Risk

- Review your lease
- Management agreements
- Practices and course of dealing
- Insurance policies
- Communicate

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Additional Things to Consider

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Upcoming Warner Webinars

- **April 30:** Insurance Coverage for Emerging COVID-19 Claims Against Businesses
- **May 1:** Managing your Supply Chains After COVID-19
- **May 6:** Employment Litigation After COVID-19
- **May 7:** COVID-19 Strategies for Reducing Your Legal Spend
- **May 12:** Gaining Access to Government Data During COVID-19 with FOIA and OMA
- Visit WNJ COVID-19 Resource Center at www.wnj.com/About-Us/COVID-19-Updates

Email covid@wnj.com to subscribe to Warner's eAlerts and webinars. Warner Norcross - Judd

Thank You!

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