

# How to Successfully Navigate a Commercial Eviction

When tenants fail to meet lease obligations, an eviction action can become a necessary tool for Wisconsin landlords. Evictions provide landlords with an opportunity to reclaim possession of their property using the small claims procedures codified in Wisconsin Statutes Chapter 799. These procedures provide a more efficient and expedient process than circuit court lawsuits. Eviction actions also provide landlords with an opportunity to acquire a money judgment for any unpaid rental obligations under the lease. However, the eviction process can be difficult to navigate, as each county seems to have its own procedural spin on how evictions are handled.

The first step in any eviction action is determining whether the tenant is in default under the lease. If the tenant has defaulted, the landlord must comply with any lease requirements related to notice of default and a cure period. It is also important to evaluate what remedies are available to the landlord upon the tenant's breach. For example, while Wisconsin strictly prohibits acceleration of rent in residential leases, commercial leases often contain some type of acceleration provision allowing the landlord to capture not just past rent but also future rent. The landlord may also be entitled to late fees, interest, collection costs, attorneys' fees and other remedies.

If the tenant fails to timely cure the default, the second step is filing and serving the eviction action. The eviction summons and complaint form is available online and avoids the more costly filing of a formal complaint. (Note: Dane County has its own specialized form.) The summons and complaint form should be accompanied by the applicable lease and the notice of default. Once the summons and complaint are filed, a process server will serve the tenant.

If an early resolution is reached after the tenant is served, Wisconsin publishes an eviction stipulation form that can be used to document the agreement. An early stipulation often helps landlords quickly resolve evictions and restore possession.

If a resolution is not reached, then, in most counties, the eviction action proceeds under a bifurcated (two-step) process. The "eviction" step is first. If a resolution is not reached prior to the "eviction" step, the landlord will use this first step to seek (1) an eviction judgment, which entitles the landlord to retake possession, and (2) a writ of restitution, which compels the sheriff's department to assist the landlord in retaking possession.

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The “money judgment” step is second. The landlord will seek whatever monetary amounts are owed by the tenant under the lease. While most small claims actions limit recovery to \$10,000, eviction actions have no limit. For example, clients with acceleration clauses have recovered six-figure money judgments. Because a money judgment can be so high, it is important that the landlord bring the eviction action against not just the tenant entity, but also against any guarantors under the lease.

Eviction actions rarely proceed without hurdles. Tenants often seek out ways to remain in the property for as long as possible without paying rent, basically “gaming” the system to maximize rent-free time in the property.

So what can Wisconsin landlords do? First, get counsel. The eviction process is too complicated with too many traps for the unwary to go it alone. Second, keep the eviction process moving forward—even during negotiations. Tenants frequently say they will come current or, alternatively, move out, by a certain date. Landlords and their counsel should continue moving the eviction process forward during such negotiations. That way, if negotiations break down, the landlord can proceed with the eviction action without delay.

If you have any questions or need assistance, Reinhart has a team of attorneys that focuses on commercial leasing, including transactional work, litigation and dispute resolution.

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