

## PROTECTING YOUR BUSINESS, YOUR RIGHTS, AND YOUR TENANTS – A LANDLORD’S GUIDE TO THE COVID-19 RESPONSE

*The following is provided as a community service to the members of Landlords of Iowa. This is not legal advice and is instead a general analysis of recent suspensions of Iowa’s Landlord/Tenant law due to the state’s COVID-19 response. **Landlords with specific cases or questions in this subject matter should contact an attorney before taking any action.***

### Part One – Landlord Duties to Tenants

Since the onset of government action in response to the COVID-19 outbreak, the state and federal governments have used the authority under their respective disaster / emergency powers authority to both curb the spread of the illness, and to slow the personal and business economic impact of both the illness and the response to it. You should anticipate the new regulations / suspensions to be in effect until no earlier than April 16th, 2020, and potentially longer than that. The Courts (small claims / evictions other than what is exempted below) should be considered closed until May 4th, 2020, and potentially longer than that.

[Here is a copy](#) of Governor Reynolds’ order dealing with evictions.

[Here is a copy](#) of the Supreme Court’s order dealing with access to courts and FEDs.

While the focus of this memo has to do with Landlords’ legal obligations and short term changes in law, it’s critical that you are also mindful of the fact that we are in the people business, and that right now, for the coming weeks, business owners are also now required in some ways to severely restrict contact with people – in our case, tenants and vendors. This can be in conflict with even the basics of your rental agreement, so this issue requires some thought.

Significant areas of concern for Landlords is tenant contact during maintenance calls, showings, and even things as simple as package delivery. Landlords are now required to be pretty creative in meeting their obligations to tenants. One thing that is critical to remember – Landlords are still contractually obliged to the terms of the lease. This includes things as “normal” as maintenance, inspections, and other such things that would otherwise require close personal contact with tenants. Landlords in this situation should establish a clear policy, stick to it, and apply it equally to all tenants. In an instance in which tenants are correctly nervous and Landlords are front and center, you should overcommunicate. Take it upon yourselves to make sure tenants know that they are in this response with you (particularly in multi-unit buildings.) You will want to advise your tenants as to what you’re doing, and how that may affect their daily lives.

You are on solid ground to advise your tenants that until the emergency health declaration is over, that if maintenance calls can wait, they should. Some Landlords have explicitly stated that they will only respond to emergencies. I don’t recommend that; while that may end up how things are in practice, that may be problematic for you, and could be used as a way for a Tenant to claim nonperformance of your obligations. That’s unclear – in some respects, LLs and Ts are in uncharted territory here, and frankly, not all magistrates will have the same view. But the point is – have the conversation with your tenants. Good faith at the onset will pay off in many ways in the event these things continue and develop in a way that further interferes with your abilities to fulfill your contractual obligations.

Note that at present, the state of Iowa is also limiting contact to ten people. While neighbors in a common area wouldn't necessarily be thought of as covered under that rule, they are people and their contagion is multiplied. You can't fix everything or force people to be isolated, but for rec rooms, common areas, management offices, mail pickups, you can, and you are obliged to limit peoples' contact with each other.

In practice, this means you should provide notice to your tenants that:

- You are limiting contact to telephone and email – if your apartment complex has an office, close its doors. If you must meet in person, schedule an appointment to limit the potential for walk-ins.
- You are limiting maintenance calls to necessities but that tenants should always take proper steps in the event of an emergency. Note that ordinary maintenance calls don't "become" an emergency, even in this unusual period (and also note, that ordinary processes – such as a fee for an after-hours lockout – still apply.)
- For leases and rental agreements – remember that an electronic "signature" is legal. If you email someone a lease, and they respond with confirmation that they agree to the terms, you have a contract – you can wait on having a paper copy.
- If you have a pickup spot for tenants' mail / packages, suspend that service immediately. You may also want to advise tenants to take extra precautions with package delivery – so that they aren't victimized by thieves who see packages in front of units.
- There's no hard guidance, & every landlord has different sets of circumstances, but all Landlords should specifically think about the statements you make to your tenants and how you limit the impact of the new rules and practices to what they're intended to address.
- It is clear that in many respects, regular rules don't apply as normal. But, you still need to be in a position in which you can both recognize the limits on what you can do, while also making sure that you are substantially complying with your statutory and contractual duties – that is the stuff that can help prevent a Judge from forcing you to break a lease for nonperformance on your part, and that can limit your exposure to damages. Plus, happy tenants.

### **Now – to the new status of law & the Governor's Declaration.**

State and federal law is very broad when it comes to housing, but there are limits. Generally speaking, the Governor (or President, but the Governor is the main official here) can waive otherwise applicable laws during a disaster or public health emergency, if she determines that strict compliance with the laws will make the emergency worse.

The Governor has explicitly included landlord/tenant law in her orders, specifically, relating to evictions. The President has also included certain types of evictions in his order.

First, to the Governor's proclamation itself. It is:

***“WHEREAS, strict compliance with the regulatory provisions of Iowa Code §§ 562A.27, 562B.25, and 648.1(2)–(6) allowing for the termination of a rental agreement by a landlord and the eviction of a tenant under certain circumstances would prevent, hinder, or delay necessary action in coping with this disaster in all counties of our state and reduction in***

*evictions will help prevent the transmission of infectious disease and help ensure that cases of COVID-19 are properly controlled and treated...”*

## **“SUSPENSION OF CERTAIN EVICTIONS**

***SECTION TWO. Pursuant to Iowa Code §§ 29C.6(6) and 135.144(3), and in conjunction with the Iowa Department of Public Health, I temporarily suspend the regulatory provisions of Iowa Code §§ 562A.27, 562B.25, and 648.1(2)–(6), allowing for the termination of a rental agreement by a landlord and the eviction of a tenant under the Iowa Uniform Residential Landlord and Tenant Act or the Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Act in certain circumstances. This suspension does not apply to actions for forcible entry and detainer where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property and detains the same, or any other emergency circumstances allowed by law. Suspension of these provisions shall apply during the duration of this Proclamation or any future extension of this suspension.”***

This is where the rubber meets the road for apartment landlords & mobile home landlords. Before continuing, we need to look directly at the relevant code sections, so you can see the law that is being suspended.

Here is 562A.27, which is the part of Iowa’s landlord-tenant law that deals with when a landlord may evict and for what reason. This is suspended and not enforceable at this time.

– “Noncompliance with rental agreement – failure to pay rent – violation of federal regulation.”

Link: <https://www.legis.iowa.gov/docs/code/562A.27.pdf>

It is critical that you read this. Take some time, and go over it line by line. It’s complex, but you deal with complex leases all the time. So this is worth your time and expertise.

In plain English, under this code section, if a tenant is noncompliant with a lease term, you can give a notice requiring them to fix it – 7 day notice of a “Right to Cure,” then if they don’t, you can terminate the lease (or, if they’ve violated the same lease term in the past six months. This also allows for a similar process for nonpayment of rent with a three day notice.

This code section also includes damages and claims associated with that, and It is not as clear what the impact of the Governor’s order is on that piece of the process.

Here’s the thing you need to know – your normal processes of notice, cure and a potential eviction are now ON HOLD. **Do NOT follow your ordinary procedures here. Related to this, the Courts have also suspended their operations.**

So – if you filed a FED, a) it won’t go anywhere, and b) – this is absolutely crucial – a Judge will very possibly even throw out the case! Magistrates are not likely all on the same page here, but we just don’t know. *However*, Clear and Present Danger filings *are* allowed – proceed as you normally would. The same applies for squatters – you can enforce that just like normal (more on this below.) .

Second, the declaration deals with the grounds for a FED. Here it is: <https://www.legis.iowa.gov/docs/code/2015/648.1.pdf>

The order suspends most of the FED statute (which is paired with the Landlord / Tenant statute, but they're not the same.) You can still file a FED if the tenant / defendant "...has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same." In plain English – this is squatting and / or lying on a lease.

## 648.1 Grounds.

### A summary remedy for forcible entry and detainer is allowable:

1. *Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same. (This is still in effect and is not suspended.)*
2. **Where the lessee holds over after the termination of the lease.**
3. **Where the lessee holds contrary to the terms of the lease.**
4. **Where the defendant continues in possession after a sale by foreclosure of a mortgage,**

**or on execution, unless the defendant claims by a title paramount to the lien by virtue of**

**which the sale was made, or by title derived from the purchaser at the sale; in either of which**

**cases such title shall be clearly and concisely set forth in the defendant's pleading.**

5. **For the nonpayment of rent, when due.**
6. **When the defendant or defendants remain in possession after the issuance of a valid tax deed.**

The **bolded** language above is suspended.

Recap in Plain English:

Until the Order is lifted, a Landlord **MAY NOT** file an action for FED under most circumstances.

A Landlord **MAY** file an action if:

- Tenant is causing clear and present danger
- Occupant is in a property due to force, fraud, etc (Squatter.)

What does this mean for you?

The ordinary process of notice > right to cure > failure to cure > file for FED is pretty much stopped until at least April 16th.

Well, what options then? Here's some Qs and As.

**Q:** Can I terminate a lease?

**A:** Not for nonpayment of rent or for violation of a lease term. You can terminate for clear and present danger or fraudulent possession.

**Q:** Can I decline to renew a lease?

**A:** Yes. If the lease was going to expire anyway, provided you give the proper notice (full rental period if month to month, 30 days if periodic / lease tenancy.) For example, you have a month to month with rent due on the 1st. You decide on March 23rd that you don't want to rent to a tenant. You have to notify the tenant with enough time to give them a full rental period, in this case a month. So as long as you notify them by the last day of March, their month to month lease will expire on the last day of April. If you do it at any point after 1st of April, however, they get an entire rental period – i.e., the month of May.

**Q:** What if the tenant doesn't leave?

**A: WATCH OUT.** (See Appendix at the end of this document for specifics.)

**Q:** Can I still get sued if I do any of this and I'm right?

**A: YES.** As you know, a lot of Magistrates and lawyers do not know this area of law.

**Q:** What do I do then?

**A:** Now is a good time to consider non-legal remedies – settlement of debts and mediation. Do NOT self-help. If you have debts that are accruing & potentially problem tenants, it is critical that you contact an attorney to make sure that any attempts to collect or get a tenant out of a property are done in a way that does not subject you to legal liability. This is a very easy area of law to screw up and it is evolving in some respects from week to week. But this is the time you think of mediation, satisfaction of debts, things like that. Small claims court should not really be considered a resource for you in the near future.

## **Part Two – Obeying The Law – Late / Unpaid Rent and the FED Structure**

There is not a consensus as to what Courts would do if a Landlord files a conventional FED (ex., for nonpayment of rent,) during this period of 1) suspension of the law and 2) suspension of the Courts.

However, there are a couple important factors to recognize. While the Governor's order is significant, it's an emergency. It does not mean bad tenants get a permanent pass from regular and generally applicable laws nor does it suggest that every tenant's hardship is emergency-related. It also is not a wholesale removal of Landlord's rights under Iowa law, any more than it is a removal of your responsibilities.

The following two areas are also important and require your attention.

### **FEDs for Nonpayment of Rent or Other Breach**

You should assume that you can't even *file* a court action right now. Maybe you can, but don't count on it. The part of state law that allows the FED to proceed is suspended. The law has changed, but facts have not, including the fact that sometimes people don't pay rent. Ordinarily, you would file a three day notice, and if the problem wasn't fixed, you would file the FED.

You also know that there is a time limitation to when you can file the FED. Here is the law:

**648.18 Possession — bar. Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding.**

This is so a landlord can't hover over a tenant for a long time with a FED always in the background for unpaid rent from months back. It's a "use it or lose it" provision.

The language here is important. "...after the cause of action accrues."

What this means is that normally you can't file a FED any longer than 30 days after the first day you were entitled to file it. It's a statute of limitations.

Here's the point. Because the law is suspended, the cause of action has likely not accrued. It will accrue once the law is back on. Magistrates may view this differently but we're a little bit in the wild west here.

So, if you have a tenant that has not paid rent, you should give them the three day notice to cure. That is a process issue. You are telling them what the issue is and following the law with respect to notice. Then, you wait. You can't file a FED if they don't cure. But you gave them notice. Once the suspension of conventional FEDs lapses, your cause of action accrues, and the fact of the nonpayment, your notice, and whatever followed becomes the factual basis for the legal question of when the cause of action accrued.

Again – a Magistrate may throw that out. But they may not, and you have at least provided notice. You've done everything you can. Again – no self-help and don't beat a dead horse. Just check the box and be patient.

**Part Three – Protecting Future Rights.**

This is a weird time, and Landlords and Tenants will without question be looking for ways to get through economic difficulties together. The longer you can keep a good tenant, the better. Situations like this are ripe for Landlords to give tenants "breaks" to keep their tenants. In plain terms, keeping the tenants you have can be far better than trying to fill up empty units with new ones, at a rental rate contingent on factors you can't know yet.

If you choose to waive certain parts of your rental agreement, there are a couple things you need to do to protect yourself. First, if you're making a general waiver (ex., for late fees,) you must put this in writing and apply it equally to similarly situated tenants.

You may also be asked by a tenant for some help. This doesn't mean just financial – it could be that you only allow so many people in the unit for longer than three days, and you have a tenant asking for

a short-term change to that – like they have a family member who needs a place to stay for a week. It could be your tenant is asking for a few more days to pay rent – any condition in the lease at all.

You are free to accept or reject these requests (again, provided you treat similarly situated people equally!) But if you accept things that vary from your lease terms, state law – here: <https://www.legis.iowa.gov/docs/code/562A.30.pdf> – means that you give up the right to terminate your lease if you do, unless you follow a very explicit and strict process.

If you choose to allow partial performance of the lease terms (i.e., you let a tenant have a dog for a couple weeks, agree to partial rent, late fees, etc.) You **MUST** put the temporary waiver in writing, **AND** tell the tenant how long the temporary waiver is for before the tenant relies on it. Like this:

T – L: “Do you mind if my mom stays with me for three weeks?”

L- T: “I will give you formal notice that while it is breach of your rental agreement, that you may have your mom stay with you for three weeks instead of the three days in your lease.”

This has to to be formal legal notice – so, either hand delivery, acknowledgment / signature, personal service, etc. – just like other legal communications you do with a tenant (here if you want a refresher generally: <https://www.legis.iowa.gov/docs/code/562A.8.pdf>.)

Language should be substantially similar to this:

“Tenant has asked for a week long extension of Tenant’s due date for rent. Rent is due on the first of the month. Unpaid rent by that date is grounds for termination under the terms of the rental agreement. Landlord agrees to a temporary waiver of the due date of rent. This waiver expires on April 8th, 2020. This temporary waiver shall not be construed as a general waiver of Landlord rights with respect to this or any other lease term, and is provided as a courtesy to tenant, without consideration, fees, or other compensation.”

## **APPENDIX – “WATCH OUT.”**

There is one critical piece of the Governor’s order that is counterintuitive. It may even be an oversight, but it’s not possible to tell. You can see that most terminations of a lease for cause are suspended (i.e., nonpayment of rent) and the FED process is on hold. You may however file an FED for clear and present danger, or for ‘squatters’ – people who took possession of a unit by ‘fraud or force,’ etc. – like picking a lock & staying there – in other words, people with no property interest in the unit.

You may also decline to renew a lease as long as it would naturally expire, and you provide the legally required notice. You can let a contract end. (Reminder – Iowa’s law is a month to month default provision; so if you have lease that expires, but you / tenant are silent about renewing it, it reverts to a month to month.)

**But this is big, and you need to pay attention to it.** The provision allowing a FED for holding over after the termination of a lease is suspended – “648.1(2) – Where the lessee holds over after the termination of the lease.”

We know this means a FED for nonpayment that leads to an early termination is on hold. I believe a Magistrate could / should view a natural expiration differently, largely, because the Landlord / Tenant law uses the word termination virtually identical to nonrenewal. But I believe if you have provided proper notice and have been a stickler with notice of nonrenewal, (i.e., the proper length of time, etc.,) then the expiration of the lease on the date certain may instead trigger the squatter clause instead. Now – it may not and you may be out of luck. But in any event – follow proper notice procedures, and you will be in the best possible position to either 1) take the question before a Magistrate during this suspension period, or 2) be fully prepared once the suspension is lifted.

**-END-**