

KREKELER LAW REPORT



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LEGAL RESPONSE TO PANDEMIC PROBLEMS

The pandemic and resulting lockdowns have had widespread and serious consequences, and not just for those suffering illness, hospitalization, or death. Unemployment is at record highs, especially for those working in service industries such as restaurants, retail, and casinos. Uncertainty abounds, and for some people significant fears, both of the pandemic and for their economic futures.

The legal industry has responded, both on micro and macro levels. Law firms, courts, and even Congress have taken measures in an effort to help.

Our daily practice here in our office is dramatically different than before the lockdowns. Only one-half, or even less, of our work force is in the office on any particular day. The rest are working remotely. We are getting things done, but unfortunately at a slower pace than we did before. We work in teams and collaborate a great deal for the benefit of our clients, which has become much more difficult by remote work.

We are in full compliance with the Governor's Order to wear masks. We have people cleaning and sanitizing on what seems to be a constant basis.

A lot is changing in our practice, as well. Many people expected a huge jump in bankruptcy filings as soon as people lost their employment. We predicted otherwise (see [Krekeler Law Report- March 2020](#)), and that has been the case. Bankruptcy filings actually dropped by nearly 50%.

But problems abound. People already in Chapter 13 cases, or other reorganizations, are finding it difficult to make their payments. It is, of course, much more difficult to communicate with them, and especially with new clients. We have had very few in-person meetings, even though that is the best method of communication when dealing with complex topics.

We often need information from the IRS, which has been nearly impossible to get. Opposing counsel and other parties are also more difficult to reach, given that many are not in their offices. More telephone tag means more delays.

We have responded, using Zoom and other video conferencing, having our people stagger their hours, and by simply spending the time it takes to get things done. The courts have responded, as well. Because obtaining a wet signature on documents means in-person contact, or even more delay to mail, the wet signature requirement on bankruptcy pleadings has been temporarily suspended.

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Bankruptcy courts, and almost all other courts, are holding hearings telephonically or by video conference. This sometimes results in technological snags but has generally worked out well.

Of course, many legal actions have been suspended. In March a prohibition on evictions was put in place. That stay has now lifted, and evictions have dramatically increased (see article on page 3).

The entire system is learning a lot in making these adaptations. Holding creditor meetings by telephone is a change we hope will become permanent. Debtors no longer have to take a day off of work to attend in-person. Debtors no longer have to drive great distances to attend a meeting in Madison or Milwaukee, a meeting that often will only last five-to-six minutes.

Telephonic creditor meetings have proven to be efficient and thus far have not posed any problems.

The courts are not the only branch of government that has responded. Congress has passed and President Trump has signed the CARES Act. That law has many provisions of significant importance when it comes to dealing with debts.

For Chapter 13 debtors discussed above, the Act permits plans to be modified to extend out to 84 months, up from the normal maximum of 60 months. The debtors simply need to show that the modification is related to Coronavirus, and right now just about everything is related to Coronavirus. This change permits Chapter 13 debtors who have lost their jobs or have a reduction in income to not lose the benefits of the efforts they have already made.

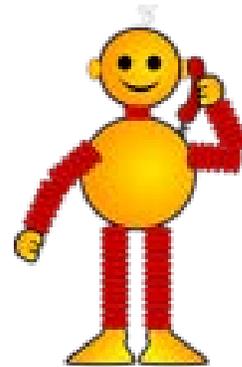
The CARES Act also provides for mortgage forbearances. These forbearances are mandatory for federally backed loans. They will permit the borrower a 180-day forbearance, which suspends any foreclosure activity. This relief is now extended through August 21, 2020.

Borrowers under a federally backed mortgage loan may contact their loan servicer and request the forbearance. The borrower simply needs to be experiencing financial hardship due to the pandemic. This hardship need not be direct, and the service cannot require anything more than the debtor's assertion of hardship.

Making that assertion grants the borrower up to 180 days of forbearance. That period shall be extended if the borrower so requests, for an additional 180 days. No fees, penalties, or interest can be charged or collected, other than what was originally provided for in the original loan documents.

The pandemic is not gone, and undoubtedly, we will all have to make more adaptations. We can and will do so. Our legal system is proving itself to be very resilient, and that resilience will serve us all well.

ROBOCALL BAN EXPANDED



If you are like most Americans, you strongly oppose getting robocalls on your cellphone. The **Telephone Consumer Protection Act (TCPA)** prohibits such calls without your consent.

But in 2015 an exception was added to the law, permitting calls by collectors who were trying to recover monies owed to the US government or which was guaranteed by the government.

Federal Communications Commissions chairman Ajit Pai has opposed this exception. "The Telephone Consumer Protection Act has long shielded Americans from unwanted robocalls, but the Obama Administration in 2015 snuck in a carve-out for federal debt collectors" Pai said in a statement to cnet.

Earlier this month **the US Supreme Court** struck down this exception in the law. Now consumers should not be receiving calls trying to collect government-backed obligations, the most common examples of which would be student loans, home and farm loans, small business administration loans, and veterans' loans.

The court's newest Justice, Brett Kavanaugh, wrote the opinion, joined by Justices John Roberts, Clarence Thomas, Samuel Alito, and Sonia Sotomayor. The decision upheld the rest of the TCPA, striking down only the objectionable provision in favor of the government.

We applaud this decision, as many Americans will now be able to enjoy their dinner without those calls.

ATTORNEY NORMAN FARNAM



[Norm Farnam](#) has been practicing law for over 20 years. That practice focuses primarily upon representing financial institutions in loan documentation and origination. In other words, in helping banks lend money to businesses. We met recently with Norm in part to discuss crop input financing for farmers this spring. Norm represents several entities who make such loans. Quite a few of our farm clients need this financing.

Norm also has extensive experience in loan workouts, when a borrower becomes unable to pay. He estimates he has probably handled over one-half billion dollars in foreclosure cases.

We know from personal experience that he is an adept litigator, and that he takes a practical approach to resolving disputes and issues. I recall a case I had in which Norm represented the lender and I the delinquent borrower. We were able to share our goals with each other, a feat not often accomplished. Adverse parties are often very reluctant to candidly share information. But as a result, and because both parties were practical, both parties benefitted from a compromise.

At his law firm, Stroud, Willink & Howard, LLC, Norm is a partner and must engage in firm management. He grew up in Elroy, WI and went to Northern Illinois University to get his bachelor's degree in history. His law degree came from the University of Illinois, but he has put it to good use here in Wisconsin.

We recommend Attorney Farnam highly to people in need of drafting and negotiating purchase contracts for large real estate assets and for anyone needing practical advice regarding business loans.

You can reach Attorney Farnam at (608) 257-2281 or at nfarnam@stroudlaw.com.

EVICCTIONS ARE UP...BUT THERE MAY BE HELP

The statewide moratorium on evictions expired May 26, 2020. Landlords in need of rents moved quickly.

During the first half of June the number of evictions filed in Wisconsin was 30% higher than the figure for that same period last year. Lawyers dealing with tenant housing expect the rate of filing to continue to increase.

There are still options for low-income tenants. A separate, federal moratorium remains in effect. This moratorium covers properties for which rents are at least paid in part with federal monies. Qualified tenants must have lost income due to the pandemic.

Some local courts and governments are taking their own actions. For example, the small claims court in Milwaukee County is requiring that landlords file affidavits certifying that the property that is the subject matter of the eviction action is not covered by the federal moratorium.

Wisconsin has also created its **Wisconsin Rental Assistance Program (WRAP)**. Funded with \$25 million from the federal CARES act, WRAP provides up to \$3,000 to qualified applicants. The money can be used for rent and security deposits.

To qualify for WRAP monies, an applicant must be an adult resident of Wisconsin. His/her income the month prior to the application must be below 80% of the median income for the applicant's county.

If you want to apply, or you know someone who should, contact the local community partner running the program for your area.

In Dane, Waukesha, and Jefferson counties that will be Community Action for South Central Wisconsin, Inc. Specifically, contact Cassidy Farrey at 608-244-4422 or Kfarrey@wiscap.org. If you live outside of these areas check doa.wi.gov/Secretary/WRAP-CAPContacts.pdf to find out who your community partner is. Applications started being accepted on June 8th and no end date has been determined at this time, but individuals should begin the application process as soon as possible.

FCA- FALSE CLAIMS ACT

The CARES Act is the largest stimulus injection in our nation's history. It is more than double the amount of the measures used in 2009 during that recession.

Many American businesses have received funds through the CARES Act. We can expect that some of them will face government investigations in the future.

The False Claims Act was used following the recession stimulus packages, with nearly 4,000 cases filed in almost \$23 billion recovered.

Businesses receiving money under the Payroll Protection Program, the Economic Injury Disaster Loan, or other programs should be certain that their applications are accurate and complete. Falsely or even recklessly submitting materially false information can result in litigation and conviction.



WHERE'S KREKELER?

David Krekeler attended a seminar on **contract drafting** presented by Law Pay and Attorney [Claude E. Ducloux](#). The presentation focused primarily on boilerplate language. Boilerplate is the term we use for fairly standard provisions of a contract that appear in most contracts. These typically include provisions relating to modification or amendment of the agreement, in law of the state that will govern interpretation of the contract and the venue

or forum for resolving any disputes that may arise.

Boilerplate provisions are often overlooked but can have serious consequences. We draft many contracts and agreements every year and have carefully crafted our own boilerplate language. We review that language each time, however, to make sure it is appropriate for the particular circumstances of the agreement we are drafting now.

David Krekeler attended another seminar on the **effects of Covid-19 on consumer bankruptcy**. The presentation focused on changes being implemented and trends for the future. We will use these ideas to help our clients through the pandemic.

David Krekeler also attended a seminar **on preparing a business for sale during a pandemic**. Many of our clients consider sales of their businesses when facing financial problems. This presentation outlined steps that owners may take to be ready for such a sale, even if they are not considering it at the present time.

If you would like to discuss these topics or would like us to give a presentation on them, please let us know.



Have a question? Idea for a future article?

If you ask for it – we will write it!

Contact Charlotte Pettit at (608) 310-3404 or Email cpettit@ks-lawfirm.com

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Speaking Engagements

If you would like more information on any of these topics, David would love to discuss them over coffee and a bagel- his treat (or Zoom). Contact him at jdkrek@ks-lawfirm.com

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