

COVID-19



WHAT KANSAS MULTI-FAMILY AND OTHER RESIDENTIAL LANDLORDS SHOULD KNOW ABOUT THE UNPRECEDENTED FEDERAL RESIDENTIAL EVICTION MORATORIUM ORDER

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Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

Kansas residential landlords, property managers, investors and lenders will want to understand the new unprecedented federal eviction moratorium, and then follow up with experienced counsel on the lurking legal issues housed in the moratorium details. Many landlords enter into leases anticipating state law to govern their eviction rights. We share this summary as part of Foulston's dedicated legal support of the Kansas commercial real estate industry and business community.

PROHIBITED EVICTIONS:

The 37-page CDC Federal Residential Eviction Moratorium Order prohibits some residential evictions from September 4 (the Order's scheduled publication date) through December 31, 2020. The Order prohibits eviction of a residential tenant if each adult listed on the lease or other housing agreement completes and delivers a Declaration signed under penalty of perjury providing information specified in the Order regarding the tenant's:

- efforts to obtain governmental assistance and make some rent payments,
- anticipated 2020 income,
- reasons for inability to pay rent,
- likely eviction consequences, and
- acknowledgement that all lease obligations remain in effect.

Page 34 of the Order provides a sample form of a compliant Declaration.

LANDLORD ACTIONS THAT MAY CONTINUE:

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But, importantly: the moratorium does not relieve residential tenants of their lease or other housing agreement obligations:

- During the moratorium period, landlords may continue to evict if the lease or housing agreement terms allow eviction for:
 - engaging in criminal activity on premises;
 - threatening the health or safety of other residents;
 - damaging or posing an immediate and significant risk of damage to property;
 - violating any applicable building code, health ordinance, or similar regulation relating to health and safety;
 - violating any other contractual obligation beyond failing to timely pay rent or similar housing-related payment, late fees, penalties or interest.
- During the moratorium period, landlords may continue to charge fees, penalties and interest for late payments, to the extent contemplated by a lease or housing agreement.
- After December 31, 2020, a tenant can be evicted under the terms of the lease or other housing agreement if all rent and other obligations have not been paid or performed in full.

The moratorium also does not restrict foreclosure on a borrower's residential mortgage.

ADDITIONAL LEGAL CONSIDERATIONS:

In Kansas, this federal moratorium does not supersede any Kansas law and orders to the extent Kansas law provides the same or greater level of public-health protection, including Executive Order 20-61. Foulston's real estate litigators are also monitoring the availability of Kansas courts to resolve real estate evictions and other disputes. Additionally, the moratorium does not supersede other federal action supporting residential tenants, and remains subject to adjustment or further guidance or interpretation at any time.

FOR MORE INFORMATION

If you have questions or want more information regarding the CDC's eviction moratorium order, contact your legal counsel. If you do not have regular legal counsel for these types of issues and matters, Foulston would welcome the opportunity to work with you to meet your specific real estate needs. Foulston's multi-family and broader commercial real estate practice puts to work for clients our real estate lawyers' high-level yet practical experience and skill. Our team's real estate client support is enhanced by Foulston lawyers focused on real estate litigation, financing, tax, bankruptcy, insurance, governmental relations, construction, environmental, natural resources, business, employment, along with many specific industry sectors. For more information, contact **Trish Voht** at 316.291.9767 or pvoth@foulston.com, or **Shannon Wead** at 316.291.9518 or swead@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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