

Kansas Legal Services

A non-profit law firm and community education organization helping low and moderate income people in Kansas



www.kansaslegalservices.org

COVID-19 - Questions and Answers About HOUSING

The Kansas State Finance Council met and only extended the State of Disaster Declaration until May 26, not May 31.

Governor Kelly's eviction ban that had been ordered until May 31, is no longer valid.

All executive orders relating to the pandemic, including the eviction and foreclosure moratorium, **expire on May 26.**

After the order expires, renters can be evicted and homeowners foreclosed upon.

Helpful forms for renters

Paul Shipp, Managing Attorney of KLS-Manhattan, and Kansas Legal Services - Manhattan has been partnering with Renters Together MHK on Renter's Rights Workshops to help tenants/renters in the Manhattan, Kansas area improve living conditions of renters and to educate renters of their rights.

During the process some helpful forms have been created; many of these forms may be modified and/or improved. The forms can be used for other locales besides Manhattan. **The forms can be found on this page.**

Here are all the questions and answers that were covered in the webinars on April 7 and 9:

General Questions

Are the slides from the Know your rights: Eviction and Foreclosure Webinar available online?

Yes! The presentation slides are available at bit.ly/kawebinarslides Additionally, recorded videos of the March 7th and March 9th webinars are available on Kansas Appleseed's Facebook page with subtitles. You can also sign up for updates at kansasappleseed.org/housing

Is information about Executive Order 20-10 available in Spanish?

Yes! Kansas Appleseed and Kansas Legal Services collaborated to explain Executive Order 20-10 in Spanish at bit.ly/eo2010espanol (available in English at bit.ly/eo2010explained)

Whom does Executive Order 20-10 protect?

Executive Order 20-10 protects both homeowners and renters affected by COVID-19. You cannot be foreclosed upon or evicted for missing mortgage or rent payments due to Coronavirus related financial hardship while the order is in effect. If you are in the situation where you will miss your mortgage or rental payments due to financial hardship directly or indirectly related to Coronavirus (Example: job loss, reduced hours, medical bills, child care, food, medicine, etc.), you are protected until May 1 or until the end of the State of Emergency Declaration. However, reach out to your lenders or landlord now to let them know what is going on, talk about forbearance, and negotiate a payment plan to repay the missed charges.

Who needs to prove the existence of Coronavirus related financial hardship proven? How is this done?

Renters and homeowners must keep their documents. If you have copies of your pay stubs and you can show that after the Coronavirus pandemic began, you are paid less than the month or two before the pandemic, which is a strong piece of evidence in your favor. Other key documents that could help prove financial hardship include your bills, (especially if additional medical or child care expenses were added due to the pandemic), or documents showing you need to stay home to care for your children while they are out of school. Keeping these documents on hand can help you if you need to present them in court.

However, the burden of proof is the responsibility of the landlord or lender, not the tenant or homeowner. Landlords or lenders must prove that their eviction or foreclosure filing is unrelated to Coronavirus related financial hardship. This is more difficult for a landlord to prove. Please note, landlords and lenders can still file if they can demonstrate another violation of the lease or contract (tenant or homeowner were late on payments before the pandemic or a tenant destroyed property in some way).

Are there any resources available for families that will not qualify for a stimulus check due to their immigration status?

There are currently not any protections or resources offered at the state or federal level that we know of. Some organizations offer rental assistance but they often require that individuals be present in the United States legally. Your community's local charities, churches, and/or mutual aid funds may be able to help provide more options and resources.

Timeline Questions

Is Executive Order 20-10 retroactive to March 12?

Yes! Although issued on March 23, 2020, Executive Order 20-10 retroactively protects against evictions and foreclosures. Homeowners and renters are protected against foreclosures and evictions due to Coronavirus related financial hardships occurring on or after March 12, 2020.

Does Executive Order 20-10 expire on May 1st or when the State of Disaster Emergency Declaration is removed?

Executive Order 20-10 will expire with whichever date comes first. If the State of Disaster Emergency Declaration is removed on April 20th, then Executive Order 20-10 will expire on April 20th. However, the Governor can extend Executive Order 20-10 past May 1 if she deems it necessary. NOTE: The Governor has extended the order to May 31.

After Executive Order 20-10 expires, will landlords and lenders still need to prove that nonpayment of rent or mortgage loans during March or April is not the result of the Coronavirus pandemic to file a petition for eviction or foreclosure?

Once Executive Order 20-10 expires, it is our understanding that all of the order's protections will be over. This means that evictions or foreclosures filed after the order expired will not require landlords or lenders to prove their petition is unrelated to Coronavirus related financial hardship.

Is it possible to cancel rent or mortgage payments during the crisis? If not, is there a possibility for debt forgiveness after the Coronavirus pandemic?

Executive Order 20-10 does not include provisions for rent or mortgage cancelation or forgiveness. There has been conversation about this and other relief provisions at the national level. Discussion will likely continue; however, no current provisions of this kind exist in Kansas or at the federal level. Call your representatives and voice your concerns!

Court Related Questions

Is Kansas Legal Services anticipating a backlog of cases of low-income renters and homeowners needing help to fight evictions or foreclosures following the expiration of Executive Order 20-10? Will this disrupt their ability to represent these cases?

Yes. There has already been a dramatic influx of cases and we anticipate more following the expiration of the executive order. However, KLS is consulting with other states to build a committee to find a way to handle the influx of eviction and foreclosure cases.

I thought courts were closed. Can non-Coronavirus related evictions or foreclosures still occur?

Courts were briefly closed for all non-emergency proceedings (including evictions and foreclosures). However, as of April 3, 2020 district courts can now resume eviction and foreclosure hearings via phone or video. If an eviction was filed before 3/12/20 or is not related to a Coronavirus related financial hardship, those evictions may now continue. Decisions about whether to hear these cases are now left up to district courts across Kansas.

What about evictions based on divorces or the eviction powers in temporary orders?

In the cases of protective orders or domestic violence cases, these have always been considered essential procedures and were able to be considered by the courts. Now, any evictions related to

divorces can continue depending based on district court discretion.

What should I do if I am told to report to the court by video but do not have access to wifi?

Immediately contact the court to let them know your situation and concern. Never ignore a court notice because if they hold the hearing without you, you will be considered defaulted. This will be very bad. However, courts will likely be very lenient if contacted well in advance. If you receive a court notice, contact the court as soon as possible to ask about what procedures they want you to follow and to raise concerns such as your lack of wifi access. They will likely work with you to find another solution (allow you to call in, provide opportunity for wifi access, etc.) or they may delay the court hearing until it can be held in person.

Renter Specific Questions

What must occur before March 12, 2020 for an eviction to proceed? Only a breach of the rental contract? An issuing of a 3-day notice?

Based on the language of Executive Order 20-10, the landlord must have filed a petition in court prior to March 12, 2020. A 3-day notice issued prior to March 12 is not enough to evict a tenant if the landlord had not filed a petition as well. Tenants are protected from evictions filed on or after March 12, 2020 so long as the reason for eviction is related to financial hardships caused by the Coronavirus pandemic. Any eviction filings not related to Coronavirus are still permitted at this time.

Under the CARES Act, you are protected from eviction if anyone in the same building receives Section 8 Housing. Is this the same if someone in your building receives a tenant-based voucher?

Yes. Section 8 has two separate programs. There are tenant-based vouchers and project based vouchers under Section 8 Housing. The CARES Act protects every individual in the complex from eviction if any single unit is subsidized by tenant-based or project-based vouchers.

If a landlord issued a 3-day notice on March 15, can they use that same 3-day notice on May 1st (or whenever Executive Order 20-10 expires)?

There are no current provisions in Kansas law requiring a 3-day notice to be used to file in the same month as it was issued. If a tenant has received a 3-day notice at any point due to nonpayment during the Coronavirus pandemic, they should be prepared for the landlord to file a petition once Executive Order 20-10 expires. Tenants should know that during those three 24 hour periods following a 3-day notice, tenants have the right to pay their rent without penalty. However, if you pay your rent after that 3-day notice period, the landlord can choose to still reserve their right to evict you. Before you pay your rent, talk with your landlord to discover if they plan to accept the late rent payment or if they will still attempt to evict you.

I'm a landlord and my tenant owes back rent from before March 12, 2020. They still have a job but are refusing to communicate with me. What options do I have?

The protection of Executive Order 20-10 only covers Coronavirus related financial hardships. If the tenant is not experiencing financial hardships caused by the pandemic, an eviction could be filed. However, it is important to remember that just because they have a job does not mean that

they can still pay their rent. Executive Order 20-10 protects tenants experiencing financial hardship directly or indirectly caused by the Coronavirus pandemic. Their hours could have been cut to part-time, they could be paying for someone currently hospitalized by Coronavirus, they could now be paying for child care so they could continue working, or there could be any number of other reasons why they could not pay rent.

Are there any resources for tenants who need help with landlord/tenant negotiations?

Currently, there are limited resources. If you are going to court please ask the court in advance if there are any additional resources for negotiation. If a landlord agrees to mediation, it could be a great option! However, remember that there is power in numbers. In some cases, 50% or more of tenants could be late on rent. Reach out to organizations like KC Tenants or your neighbors in your rental complex to unionize and work for combined negotiations.

My landlord is refusing to negotiate with me but has agreed to payment plans with at least 3 of my neighbors. What should I do?

According to Kansas law, a landlord's rules and regulations must apply to all tenants equally. This situation could be selective eviction based on discrimination which would be illegal. If you believe you are facing discrimination, you should contact an attorney or Kansas Legal Services for advice. This is another important reason to reach out to your neighbors to communicate what is happening.

My landlord and I negotiated a pay agreement for April 15 after I missed rent on April 1 and a 3-day notice was issued. Unfortunately, due to the Coronavirus pandemic, I still was not able to pay on April 15th. Can they evict me using the same 3-day notice they issued at the beginning of the month?

It is always a best practice to reissue a 3-day notice. Kansas law does not allow tenants or landlords to waive their rights so even if the decision to use the same 3-day notice was written into the new agreement (i.e. "if the tenant does not pay by the 15th, the landlord reserves the right to file a petition based on the previously issued 3-day notice..."), the court can choose to not accept this.

Tenants have a right to a new 3-day notice.

My landlord and I negotiated. They are requiring half of the payment on the 15th and the other half at the end of the month but will only allow me to do this if I also sign a contract allowing them to evict me if I do not complete the payments by the end of the month. If I sign the contract but do not come up with the money by the end of the month, will they be able to evict me?

If you are unable to make a second payment because of Coronavirus related financial hardship, they are not able to evict you even if you entered into a new agreement. Landlord-tenant contracts do not have the power to supersede an executive order's authority. However, you will still be responsible for paying the rent once the executive order expires and at that time, the landlord can evict you.

Is it legal for a landlord to not renew a lease and force someone to move out, without cause, during the Coronavirus pandemic?

In general, landlords in Kansas do not need to provide a reason for not renewing a lease. This is not true if you live in subsidized (Section 8 housing) or public housing in which case a reason must be specified. However, generally, it is legal for a landlord to not renew a lease without providing the cause for their decision. Read your lease. In the lease, there should be something specifying how much notice landlords must give their tenants if the lease will not be renewed and what will happen if this occurs. If a landlord does send you a notice that they are refusing to renew your lease, please contact an attorney or Kansas Legal Services for advice specific to your situation.

Do people have a right to stay in their homes during the pandemic even if their lease isn't being renewed?

While you do not have a legal right to stay, logistically you may be able to stay until the end of the pandemic. Just because your lease was terminated does not mean that the landlord will be able to take the case into court and have it decided before the end of the pandemic. Do not consider yourself evicted until you have the court paperwork. However, it is important to note that this action could make it more challenging for you to sign a lease in the future. If your circumstances force you to take this action, please continue paying rent if you are able. This will help your case if a petition is filed against you.

If a lease is not renewed but a tenant refuses to move out, will the tenant owe holdover?

Generally yes. Most one year leases will usually say either of these things

- If not renewed and the tenant does not vacate the apartment, lease will convert to a month-to-month lease (standard for Kansas law)
- If not renewed and the tenant does not vacate the apartment, they are now held to another one year of payments.

If a lease does not specify either of these two situations, then the lease will switch to a month-to-month tenancy automatically per Kansas law. If tenants decide to stay, rent will still be owed during that time.

Utility Related Questions

As a separate related topic are utility companies like water and electricity doing anything with payment forbearance?

Some utility companies may offer payment forbearance doing this on a case-by-case basis. However, Executive Order 20-05 protects against utility shut-offs until April 15 or until the expiration of the state of emergency order. The governor has the right to extend that Executive Order. All renters and homeowners would be liable for paying their utility bills as well as any fines or fees accumulated during the time of the pandemic.

For more information, Kansas Appleseed, the Climate + Energy Project (CEP), and David Nickel with the Kansas Citizen Utility Ratepayer Board are teaming up for a digital event on Facebook

Live and Zoom to explain what these executive orders mean for Kansans.

We'll take your questions LIVE. Participate live on Kansas Appleseed's Facebook page at 11:00 a.m. on Thursday, April 16: [b it.ly/KAwebinar](https://bit.ly/KAwebinar) OR participate on Zoom.

(We'll share the link on the day of the event!). If you miss this webinar, check out the recorded video on Kansas Appleseed's Facebook page!

Here is a link to the webinar held on Tuesday April 7. [Know Your Rights! Eviction/Foreclosure Moratorium](#)

KLS and Appleseed attorneys answer your questions about housing rights

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