



COVID-19 Centers for Disease (CDC) Late Rent and Eviction Moratorium

Date: September 3, 2020 (updated September 10, 2020)

Background: August 8, 2020, President Trump's Executive Order directed the CDC to evaluate whether temporarily halting evictions for failure to pay rent would be reasonably necessary to prevent the further spread of the COVID-19 virus. After examination, the CDC concluded that eviction will cause renters to move in with family, friends, move to homeless shelters, or to the streets, increasing the risk of contracting and spreading the virus. Therefore, the temporary ban on eviction has been implemented.

Order Titled: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 Notice

Effective and Expiration dates for protections -

- Filed September 1, 2020.
 - Effective – **September 4, 2020**
 - Expires – **December 31, 2020** (unless superseded by a new federal relief package)

***The order applies to all residing in rental housing that meet the qualification standards outlined in the body of this document.**

***The CDC's order does not mention a requirement that a renter's financial hardship be COVID-related.** **HCCI staff are not attorneys and are not giving legal advice.*

Renters must declare under penalty of perjury in a written document delivered to their landlord that they meet the following criteria (Contact HCCI for a free copy of the document to be provided to the landlord):

- ✓ Has used best efforts to obtain all available government assistance for rent or housing; and
- ✓ The individual is unable to pay a full housing payment due to substantial loss of household income, loss of compensable hours or work or wages, lay-offs, or extraordinary out-of-pocket medical expenses; and
- ✓ If evicted, the individual would likely become homeless, need to move into a homeless shelter, or into a shared living setting (ex. with acquaintances or family) combined with other people who live in close quarters because no other available housing options exist; and
- ✓ The individual is unable to pay full rent or make a full housing payment due to a substantial loss of household income, loss of compensable hours or work or wages, lay-offs, or extraordinary out-of-pocket medical expenses.

Must **also** certify to meeting at least one of the 3 financial criteria –

1. The individual(s) was not required to report any income to the IRS in 2019 (ex. had no income; met IRS qualifications for not filing a federal tax return; is a recipient of most social security income); or

2. The individual expects to earn no more than \$99,000 in 2020, or \$198,000 if filing a joint return; or
3. The individual received a stimulus check (Economic Impact Payment) under the CARES Act.

Despite the protections, tenants are not free from the obligation from owing rent and late fees. The following tenant responsibilities still apply under the order:

- ✓ Use best efforts to make partial payment on time that are as close to the full payment as the individual's circumstances may permit, taking into account, other non-discretionary expenses (ex. food, utilities and gasoline for vehicle); and
- ✓ Pay rent or make a housing payment and comply with other obligations that are under the tenancy, lease agreement, or similar contract; and
- ✓ Fees, penalties (late payments), for not paying rent on time as required by the rental agreement may still be charged or collected; and
- ✓ At the end of the temporary halt on evictions on December 31, 2020, the housing provider (landlord, property manager, housing authority, etc.) may require payment in full for all payments not made prior to and during the temporary halt. Failure to pay may result in eviction pursuant to Kansas law; and
- ✓ Any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages or imprisonment.

*While the order makes no such requirement, HCCI encourages tenants to maintain proof of their inability to pay (ex. job loss, reduced hours, substantial/significant medical bills).

The CDC's order is nationwide. However, it does not apply to any state, local territorial, or tribal area with a more stringent moratorium on residential evictions. Governor Kelly's current eviction halt is not more stringent than the CDC's order. It also does not affect American Samoa (until they report their first COVID-19 case). Link to CDC order – <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

*There are substantial penalties for landlords who do not comply. An individual landlord could be subject to a fine up to \$100,000 if no death results from the violation (ex. Tenant contracts COVID after eviction not in compliance with the order), one year in jail, or both. If a death occurs due to the landlord's noncompliance with the CDC's order, the fine can increase up to \$250,000. If it's an organization in violation (property management company, etc.), the fines can be no more than \$200,00 per event if the violation does not result in a death or \$500,000 per event if death results.

Important: Legal Innovation and Technology lab at Suffolk University Law School created an easy to use [interactive tool](#) that can help people determine if they are eligible. It can also generate a declaration to give to a landlord as well (HCCI can also provide a free CDC declaration).

Questions – Call HCCI's Tenant/Landlord Counselors at 800-383-0217.

See following pages for HCCI's education and tips on late rent and eviction.

Late Rent and Eviction Information/Education/Options - Because all eviction protections will expire at some point, tenants are still responsible for rent and late payments, HCCI offers the following education and options:

- If the rent will be late, contact the landlord immediately to explain the situation;
- Remember, this national emergency is not only happening to the tenant but the landlord as well;
- Both parties should try to work together;
- Being a landlord is a job and how a landlord's income is acquired;
 - Many landlords depend on rent payments to pay the mortgage for the tenant's rental.
- HCCI encourages landlords to negotiate payment plans (in writing), or other agreements to allow renters to address any late, non-payments, or late fees. Below are links to two documents distributed by HUD regarding landlords and tenants impacted by COVID-19 working together and repayment plan guidance.

HUD-Tools for Landlords with Tenants Impacted by COVID-19 (2020-08-05) – link below.

<https://www.hudexchange.info/resource/6108/tools-for-landlords-with-tenants-impacted-by-covid19/>

HUD-Tenant Repayment Plan Communication Guidance (2020-08-05) – link below.

https://www.hudexchange.info/resource/6107/covid19-tenant-guidance-rent-repayment-plans/?utm_source=HUD+Exchange+Mailing+List&utm_campaign=cbff86b69b-8.7.20-CPD-Eviction-Prevention-At-Risk-Tenant&utm_medium=email&utm_term=0_f32b935a5f-cbff86b69b-19499729

- Ask the landlord for a rent payment plan that should outline a weekly, bi-monthly, or monthly payment to get caught up;
 - The landlord does not have to accept a payment plan, a repayment schedule, or amount a tenant suggests, but if accepted, the plan should be in writing;
 - Tenants should only offer to pay what they can afford. Ex: If a tenant can only afford to repay \$75.00 every two weeks, then should not agree to pay \$100.00;
 - Both parties must agree on the amount paid and sign the pay agreement, each party receiving a copy;
 - Tenants can offer to work for the landlord as repayment;
 - Example – ask to mow lawns or conduct other yard work at the landlord's vacant or occupied rentals. Offer to clean a vacant rental(s). Any agreement should be in writing (call HCCI for details regarding performing tasks for the landlord as the Kansas Residential Landlord and Tenant Act (KRLTA) outlines specific guidance.
- Always obtain a receipt for any rent paid;
 - Ask the landlord if late rent fees can be excused because of this unusual pandemic. If the landlord agrees, get the agreement in writing;
 - Late fees can only be enforced if outlined in a rental agreement.
 - Tenants owing rent have the following options to seek rent assistance –
 - Dial 2-1-1, 24 hours a day, 7 days a week to receive information and referrals for rent assistance and other needs (211 is funded by the United Way in your area);
 - Contact area social service agencies or churches;
 - A city/county may have a list of resources for rent and other aid. HCCI has resource lists for the cities of Emporia, Lawrence, Manhattan, and Topeka;
 - Important - any additional income, for example, a government stimulus check, IRS tax refund, or unemployment income could be set aside in a checking or savings account for

rent or sent directly to the landlord to cover rent payments (obtain a receipt). In other words, don't make nonessential purchases with that money;

- Prioritize spending;
 - ✓ Housing, food, utilities, prescription medication are all necessities.
 - ✓ In this time of national crisis, other bills like credit cards and cable/satellite television can wait. Call HCCI's HUD Certified Financial Counselors with help on budgeting and other financial issues – FREE counseling by phone or online appt. – 800-383-0217.
- Borrow money from family or friends;
- Sell personal items using social media marketing or yard sales (be safe);
- Donate plasma for cash - Guidance released by the U.S. Department of Homeland Security - Plasma donors save lives by donating at plasma centers that collect blood plasma used to manufacture lifesaving pharmaceuticals. Therefore, these centers are within the category of essential, critical infrastructure (health care and pharmaceutical supply) that is exempted from general lockdown or closure directives;
- Remember - a tenant can face legal eviction if rent is not paid in full.

*Important – There are significant specifics regarding individual tenant questions. Each late rent issue can be unique. Therefore, tenants, tenant advocates, landlords and property managers should contact HCCI for FREE telephone counseling regarding late rent, eviction, or other rental-related issues @ **800-383-0217**. The caller's name and phone number will be placed on a call log. Calls will be returned in the order of their arrival (unless deemed an emergency).

*HCCI employs a counselor who is English/Spanish bilingual.

*For consumers experiencing other financial issues such as - late bills, debt, dealing with bill collectors, negative credit, student loan questions, or behind on mortgage payments - contact HCCI's HUD Certified Financial Counselors @ 800-383-0217 to set up an appointment.

Eviction Procedure – The following is not legal advice. HCCI does not provide legal advice. Kansas Courts in various locations sometimes differ in rendering decisions. The information below is based on statutes found in the Kansas Residential Landlord and Tenant Act (KRLTA) and general court procedures.

- KRLTA, KSA 58-2564 (b) informs that the landlord may terminate the rental agreement when...
 - Rent is unpaid when due and... the tenant fails to pay rent within 72 hours (3 days, not business days) after written notice by the landlord of nonpayment (5 days if mailed);

OR

- The tenant has the right to vacate within 72 hours of receiving the 3 day pay/vacate notice (remove all belongings, clean and return all keys). If the tenant vacates/returns possession, the lease terminates, and the tenant "may" be able to avoid legal eviction. HCCI can never say what a judge might decide.
- A 3-day/72-hour notice must contain the following information:
 - ✓ The notice must be in writing;
 - ✓ The date and time the notice is delivered should be documented on the notice;

- ✓ Inform the tenant payment must be received in 3 days (72 hours from the date/time served);
- ✓ State the amount owed;
- ✓ Note intention to terminate the rental agreement by way of legal eviction if the rent is not paid within such 3-day period.
- Must give 2 additional days if the notice is mailed (5 day notice instead of 3);
 - ✓ If the tenant attempts to pay the full amount owed within 3 days/72 hours, the landlord must accept it and tenancy continues;
 - ✓ If the tenant pays within the 3 days, but not the full amount – if a landlord accepts the money, the landlord might provide a receipt stating...
 - ✓ accepting late rent but reserving right to evict because the rent was not paid in full within the 3 days per statute 58-2564(b) & 58-2566;
 - ✓ If the landlord provides such a receipt, this indicates the landlord may decide to proceed with legal eviction;
 - ✓ HCCI cannot say what might happen in the aforementioned scenario. Though, many courts render evictions in such situations.
 - If the tenant pays after the 3-day period ends, either part of the rent money, or in full, if a landlord accepts the money, the landlord might provide a receipt stating....
 - ✓ accepting late rent but reserving the right to evict because the rent was not paid within the 3 days per statute 58-2564(b) and 58-2566. If the landlord provides such a receipt this indicates the landlord may decide to proceed with legal eviction. HCCI cannot say what might happen in such a scenario. Though many courts render evictions in such situations.

*Note – if the landlord cashes a check or money order for any rent paid in the above two scenarios and then files for eviction – the judge may decide against granting the eviction. Therefore, many landlords simply hold on to the money until the judge grants the eviction and allows the landlord to keep the rent (HCCI neither endorses nor opposes this practice).

- Once the eviction suit is filed, the attorney or the landlord representing himself pro se will be provided a date and time for the docket call of the court (court hearing);
- The tenant will be served notice to appear in court;
- The tenant should show up at the hearing even if an eviction is likely going to occur;
 - Otherwise, the tenant won't know what to expect and when to vacate, if evicted.
- The initial date is a hearing. The tenant will be asked to sign a form indicating whether there is an agreement that rent is owed. The tenant has 3 options, agree, disagree, or no contest;
- If the tenant agrees, the eviction can be granted on that date;
- If the tenant disagrees, a trial date will be set;
- At trial, the landlord and the tenant will present any evidence (always bring proof of payment and any other necessary documents);
- A judge will listen to both sides and make a ruling based on the law;
- Tenants often use a lack of maintenance as the reason for not paying rent. HCCI

informs tenants – never withhold rent due to a lack of maintenance as the eviction will typically still be granted (judges typically announce that rent and maintenance are separate issues);

- There are other options regarding a lack of maintenance – call HCCI’s Tenant/Landlord Program for education/options;
- If the eviction is granted, the tenant will be informed by the court of when they must vacate and remove all their personal property. It is vital to vacate and remove property on the said date. Otherwise, the sheriff's department or another designated party will arrive and only give a few minutes to allow the tenant to gather belongings. The remaining household items will be locked inside, and a tenant may lose them for good. Call HCCI for questions on this topic before the eviction date.

Unlawful Eviction – the following actions committed by a landlord are illegal. Tenants encountering such issues can call HCCI for immediate assistance.

- Lock-outs
- Removal/holding of personal property
- Interference with services – shutting off utilities
- Interference with access – blocking the tenant from entering
- Threats, intimidation, physical force

This document is for informational purposes only. It is not intended to give legal advice, nor is it intended to be an exhaustive list of all legal and procedural matters and requirements for declaring a financial hardship. This document does not offer or guarantee outcomes in a court proceeding. HCCI counselors have received extensive training and receive continuing education. HCCI provides education and options that might aid in determining a course of action. If you have any legal questions, you should contact an attorney specializing in tenant/landlord matters.

Teresa Baker

**Program Manager, Tenant/Landlord & HOPE Financial Coaching Programs
Counselor and Educator**

Housing and Credit Counseling, Inc.

800-383-0217

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