

KANSAS MORATORIUM UPDATE: KANSAS JUDGE SAYS CDC EVICTION MORATORIUM IS UNENFORCEABLE; STATEWIDE MORATORIUM NO LONGER IN EFFECT

Supreme Court Update (as of June 30, 2021): In *Alabama Association of Realtors, et al., v. Department of Health and Human Services, et al.*, the United States Supreme Court denied the Plaintiff's application to vacate a stay asking the United States Supreme Court to enforce the lower court's prior ruling. The United States District Court for the District of Columbia previously ruled that the CDC's moratorium exceeded its authority but stayed its decision from going into effect so that the Defendants had time to appeal. The Plaintiffs sought to lift that stay. In a 5-4 decision, the United States Supreme Court denied the application with Justice Brett Kavanaugh writing a concurring opinion. In his opinion, Justice Kavanaugh agreed with the lower court that the CDC's moratorium exceeded its statutory authority, but voted to deny the application "because the CDC plans to end the moratorium in only a few weeks, on July 31, and because those few weeks will allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds..."

On March 27, 2020, President Trump signed into law the CARES Act which included a temporary moratorium on foreclosures and evictions for certain loans effective until May 17, 2020. Shortly before the CARES Act moratoriums expired, several federal agencies that back mortgages extended the moratoriums for their loans through June 30, 2020. These moratoriums have been extended numerous times throughout the pandemic with the latest extension through July 31, 2021.

As July 31 nears to mark the end of various state, federal and administrative foreclosure and eviction moratoriums across the nation in connection with housing concerns related to the COVID-19 pandemic, Kansas, along with other states across the nation, has weighed in on whether the moratoriums,

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including the CDC eviction moratorium, should continue or end, and has opted for the latter.

In a Zoom eviction hearing held on June 17, 2021, Johnson County (Kansas) Magistrate Judge Daniel Vokins agreed with the Washington, D.C., Circuit Court of Appeals and the 6th Circuit Court of Appeals, saying the CDC eviction moratorium is unenforceable. During the hearing, Judge Vokins remarked that a federal judge found that the CDC exceeded its authority last month, reportedly referring to the decision in *Tiger Lily, LLC v. U.S. Dept. of Housing and Urban Development, et al.*, No. 21-5256 (on appeal from No. 2:20-cv-02692 in the Western District of Tennessee) and accordingly agreed with the 6th Circuit Court of Appeals.

For more information regarding the U.S. District Court for the District of Columbia's decision, please see our [recent advisory](#).

Additionally, Kansas's statewide foreclosure and eviction moratorium has ended. During the COVID-19 pandemic, Kansas Gov. Laura Kelly implemented several executive orders, all of which were effective until the expiration of the State of Disaster Emergency Declaration (Declaration). One such order, Executive Order 21-13, prohibited financial institutions and landlords from foreclosing or evicting certain individuals or tenants. On May 28, 2021, the Legislative Coordinating Council (LCC) voted 6 to 2 to extend the Declaration through June 15, 2021. The Declaration has since expired. Accordingly, all executive orders implemented by Gov. Kelly, including Executive Order 21-13, are no longer in effect.

While it appears Kansas has begun to lift its moratorium holds, because federal regulations and statutes may still govern, it is important to seek the advice of legal counsel to confirm whether an eviction or foreclosure action in Kansas should be initiated.