



**PROTECTING KENTUCKY TENANTS
DURING TIMES OF CRISIS**
AN OVERVIEW OF FEDERAL AND STATE COVID-19 PROTECTIONS

Cory L. Dodds
Staff Attorney
www.klaid.org

EVER CHANGING INFORMATION

This video recorded on June 6, 2020.

- Kentucky's Response to COVID-19: <https://governor.ky.gov/covid19>
- Supreme Court of Kentucky Orders: <https://kycourts.gov/courts/supreme/Pages/rulesprocedures.aspx>
- Kentucky Equal Justice Center: <https://www.kyequaljustice.org/blog/categories/covid-19>

OUTLINE

1. Governor Beshear's Executive Order 2020-323
2. Coronavirus Aid, Relief, and Economic Recovery Act
3. Kentucky Supreme Court Order 2020-44
 1. AOC Form 1026.1
 2. Tips for Investigating Landlord Properties

EXECUTIVE ORDER 2020-323

• Issued on May 8, 2020.

Eviction Moratorium

- For duration of the State of Emergency:
 1. Evictions from residential premises for failure to pay rent are suspended; and
 2. Law enforcement are to cease enforcement of orders of eviction.
 1. Arguably applies to all evictions.

EXECUTIVE ORDER 2020-323

“ [E]victions from residential premises for **failure to pay rent** within the Commonwealth are suspended, and all state, county, and local law enforcement officers in the Commonwealth are directed to cease **enforcement of orders of eviction for residential premises** for the duration of the State of Emergency...”

- Landlord cannot use law enforcement assistance to enforce a forcible detainer judgment in any circumstance.
- Arguably, a court should not issue a Warrant of Possession during the state of emergency.

EO 2020-323

- No evictions for nonpayment of rent can be initiated or prosecuted.
- No set-outs for any reason.

CORONAVIRUS AID, RELIEF, AND ECONOMIC RECOVERY ACT

- Signed into law on March 27, 2020. Public Law 116-138.
- Enacted temporary tenant protections for “covered properties.”
 - Between March 27, 2020 until expiration of the Act on July 25, 2020.
- Does not apply to forcible detainer actions filed prior to March 27, 2020.

CARES ACT PROHIBITIONS

From March 27 to July 25, 2020, landlords of “covered properties” are prohibited from:

1. Initiating a legal action to recover possession for the nonpayment of rent or other fees or charges. Sec. 4024(b)(1).
2. Charge late fees, penalties or other charges to the tenant related to the nonpayment of rent. Sec. 4024(b)(2).
3. Issuing a notice to vacate until after expiration of the Act on July 25, 2020. Sec. 4024(c)(2).
4. Requiring the tenant to vacate before 30 days after providing a notice to vacate. Sec. 4024(c)(1)

CARES ACT NOTICE TO VACATE

“(b) Moratorium.—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

- (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for **nonpayment of rent** or other fees or charges; or
- (2) charge fees, penalties, or other charges to the tenant related to such **nonpayment of rent.**”

“(c) Notice.—The lessor of a covered dwelling unit—

- (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
- (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).”

CARES ACT NOTICE TO VACATE

- Earliest possible notice to vacate: July 25, 2020.
- Expiration of notice: August 24, 2020.
- Therefore, a court should not hear a forcible detainer action for a “covered property” until after August 24, 2020.

DEFINING “COVERED PROPERTIES”

1. Any property that participates in:
 1. A covered housing program of the Violence Against Women Act of 1994; or
 2. The rural housing voucher program of the Housing Act of 1949.

- Includes:
 - participates in a HUD program
 - constitutes public housing
 - participates in the Section 8 Housing Choice Voucher program
 - participates in Section 8 project-based housing
 - is considered Section 202 housing for the elderly
 - participates in Section 811 housing for people with disabilities
 - participates in Section 236 multifamily rental housing
 - participates in Section 221 (d)(2) Below Market Interest Rate (BMR) housing
 - Participates in HOME
 - Participates in Housing Opportunities for Persons with AIDS (HOPWA)
 - Participates in McKinney-Vento Act homelessness programs
 - Participates in Section 515 Rural Rental Housing, Sections 514 and 516 Farm Labor Housing, or Section 533 Housing Preservation Grants
 - Participates in Section 538 multifamily rental housing
 - Participates in Low-Income Housing Tax Credits (LIHTC)

DEFINING “COVERED PROPERTIES”

“Covered properties” also include any property with:

“Federally Backed” Mortgage Loan

“Any loan that is secured by a first or subordinate lien on residential real property (including individual units of condominiums or cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing secured loan by the same property; and”

Sec. 4024(4)(A).

“Federally Backed” Multi-Family Mortgage Loan

“Any loan is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and”

Section 4024(5)(A).

DEFINING "COVERED PROPERTIES"

"Federally Backed"

"(b) "is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation [Freddie Mac] or the Federal National Mortgage Association [Fannie Mae]."

Sec. 4024(4)(B) and 4024(5)(b).

DEFINING "COVERED PROPERTIES"


- Therefore, any property with loans associated with the following are "covered properties":
 - Housing and Urban Development
 - Federal Housing Administration
 - U.S. Department of Agriculture
 - Veterans Affairs
 - Fannie Mae and Freddie Mac
 - Government National Mortgage Association (i.e., Ginnie Mae).
- Temporary financing, such as a construction loan, is not "covered."

CARES ACT SUMMARY

- From March 27 to July 25, 2020,
- a landlord of "covered property"
 - which includes federally subsidized housing and "federally backed" mortgages
- may not:
 1. Evict a tenant for nonpayment of rent;
 2. Charge fees for nonpayment of rent;
 3. Issue a notice to vacate for any reason until July 25; or
 4. Require a tenant to vacate until 30 days after the notice.

KENTUCKY SUPREME COURT ORDER 2020-44

- As of May 29, 2020, certain eviction cases may proceed:
 - Voluntary dismissal of an eviction;
 - Evictions from residential premises for which the Office of the Governor has granted to Plaintiff an exemption
 - Eviction from residential premises for a reason other than nonpayment of rent/fees/charges.
 - Non-residential evictions.
- Plaintiffs “shall verify” that the eviction action meets one of these criteria using AOC 1026.1.
 - Any filing without this form shall be rejected by the circuit court clerk.

AOC 1026.1 Doc. Code 10000 May 2020		Case No. _____ County _____ Division _____
Commonwealth of Kentucky Office of the Attorney General 654930004	VERIFICATION OF COMPLIANCE	
	PLAINTIFF	
VS.	DEFENDANT	
PLAINTIFF	DEFENDANT	
I support the attached eviction filing related to the property located at _____		
<p>I have read the attached Kentucky Supreme Court Administrative Order 2020-44, Plaintiff's Verification and the attached Affidavit of Compliance. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the defendant in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p> <p><input type="checkbox"/> I am representing the plaintiff in this case. The attached filing is associated with an eviction case number of _____.</p>		
State	Plaintiff's Attorney Signature	
Address	Title/Position	
City		
Phone No.	Home/office no.	Cell/office no.

TIPS FOR INVESTIGATING “LANDLORD PROPERTIES”

- The following websites may be useful in beginning your research:
 - ProPublica CARES Act database: <https://projects.propublica.org/covid-evictions/>
 - Fannie Mae Renters Resource Finder: <https://www.knowyouroptions.com/rentersresourcefinder>
 - Kentucky Housing Corporation “Assisted Rental Housing in KY Directory Report”: <http://www.kyhousing.org/Rental/Pages/default.aspx>
 - National Low Income Housing Coalition database: <https://nlihc.org/federal-moratoriums>

CORY L. DODDS
1700 Destiny Lane
Bowling Green, Kentucky 42104
cdodds@klaid.org; (270) 782-1924
www.klaid.org



**KENTUCKY
LEGAL AID**



**TOGETHER
LAWYERS CAN**
