Kansas Lawmakers Extend Disaster Declaration, Drop Eviction, Foreclosure Protections

By: KWCH Staff

TOPEKA, Kan. (KWCH/AP) - The Kansas Legislative Coordinating Council voted on Friday to extend a disaster declaration until June 15. However, they also immediately ended the emergency order on foreclosures and evictions.

The measure was approved 6-2. All of the Republicans on the council voted in favor of ending the moratorium. Two Democrats voted against it.

Top Republican legislators are serving notice that they're preparing to end the state of emergency in Kansas for the coronavirus pandemic and are accusing Democratic Gov. Laura Kelly of having no "exit strategy." The state of emergency was set to expire Friday.

State law required Kelly to get lawmakers' approval to retain the disaster declaration. She sought the longest extension the law allows at one time, 30 days, until June 27. Democrats say it's still too early to end the state of emergency.

"Since the beginning of the pandemic, Governor Kelly has taken a clear-eyed, practical approach and empowered the people who know how to handle emergencies best. Maj. General Weishaar has been clear about the importance of this disaster declaration. It is central to how we get Kansas back to normal. We can not put our recovery at risk," read a statement issued to the media on Friday.

"The Governor strongly disagrees with the LCC's decision to revoke her evictions and foreclosure moratorium. As we finally start to recover from this global pandemic, now is not the time to kick people out of their homes. Governor Kelly will continue to focus on doing what's right – and not what's politically convenient."

But some landlords say the moratorium has hurt them.

Cyndi Paul rents out one property. It's paid off, so she doesn't have a mortgage, but she still pays taxes on it. She said her tenants haven't paid rent since 2019, before the pandemic.

"It's cost me a fortune," she said of the moratorium. "...On (the tenants') end, this doesn't really have anything to do with the pandemic. I think they just took advantage of it."

When Paul was about to evict them, the moratorium went into effect, keeping her from doing so, until now.

"I've spent about $12,000 on attorney fees. I'm not getting money from them," she said. "I wanted to retire. This was kind of my retirement investment."

She said she plans to take the tenants to court now that the protections have ended.

Analysis: Tax Implications of The American Families Plan

The second half of President Biden's infrastructure agenda has significant tax implications for the rental housing industry.

On April 28, President Biden unveiled the second half of his infrastructure agenda, the American Families Plan. Released just weeks after the American Jobs Plan, this new proposal is focused on providing educational, child care, family and workplace benefits. Notably, the $1.8 trillion proposal would be financed by significant tax increases that would directly affect the multifamily industry. As outlined below, the proposal would impose steep increases on tax rates and capital gains while eliminating carried interest, curtailing like-kind exchanges and repealing stepped-up basis.

State of Play

Prospects for enacting the American Families Plan are uncertain. Some Democratic members of Congress would like to see the proposal processed alongside the Administration's previously released $2.25 trillion American Jobs Plan that is focused on traditional infrastructure. However, others would like to first pass a traditional infrastructure package in a bipartisan manner before moving to a second proposal.

Additionally, it is unclear that all Democrats would support the Administration's proposed tax increases, which Republicans are likely to unilaterally oppose. With their narrow majorities, Democrats will have little margin in the House and no margin in the Senate to approve extraordinarily significant revenue increases. Given this political reality, many of the Administration's proposals may need to be modified to win approval or will end up being dropped. As Congress moves forward, NMHC and NAA will continue to educate policymakers about the key role these tax provisions play in the multifamily industry.

Analysis of Proposals

Following is an exploration of the key proposals in the American Families Plan that would impact the rental housing industry.

Ordinary income

Individuals pay ordinary income taxes at rates of up to 37% as they earn wages. The Biden Administration seeks to increase the top marginal rate to 39.6%.

Capital Gains Taxes & Carried Interest

Multifamily taxpayers often face capital gains taxes when they sell properties. While the maximum capital gains tax rate for assets held over one year is currently 20%, the Biden Administration is proposing several changes to the taxation of capital income.

Analysis: Tax Implications of The American Families Plan *Continued*

Capital Gains Tax Rate: The Biden Administration would raise the top capital gains rate to 39.6% for taxpayers earning over $1 million. Since 1991, capital gains have been appropriately taxed at lower rates than ordinary income as they are derived from investments in capital assets and entail risk.

Carried Interest: The Biden Administration would tax carried interest at ordinary income tax rates as opposed to capital gains tax rates under present law. Carried interest should receive capital gains tax treatment because it represents a return on an underlying, long-term capital asset, as well as risk and entrepreneurial activity. This is in contrast to any fees that managing partners receive in payment for operations and management activities, which are taxed as ordinary income. A higher tax rate on long-term capital gains will discourage real estate partnerships from investing in new construction at a time when demand for apartments continues to grow and chronic underbuilding has limited new housing supply.

***Medicare Surtax*:** Under current law, taxpayers are assessed a 3.8% Medicare tax on net investment income above $200,000 for single filers and $250,000 for joint filers. The Biden Administration believes "application is inconsistent across taxpayers due to holes in the law." It seeks to "apply the taxes consistently to those making over $400,000 per year." The implications of the proposal are unclear, but the National Apartment Association (NAA) and National Multifamily Housing Council (NMHC) would strongly oppose imposing the 3.8% net investment income tax on capital income derived from a trade or business that is not passive.

Like-Kind Exchanges

The Biden Administration proposes to eliminate like-kind exchanges for gains exceeding $500,000. Like-kind exchange rules play a crucial role in supporting the multifamily housing sector by encouraging investors to remain invested in real estate while still allowing them to balance their investments to shift resources to more productive properties, change geographic location or diversify or consolidate holdings. Like-kind exchanges enable property owners to defer capital gains tax if, instead of selling their property, they exchange it for another comparable property. As long as the taxpayer remains invested in real estate, tax on any gain is deferred. When the taxpayer ultimately does sell the asset, the property tax is paid.

Stepped-Up Basis

The Biden Administration proposes to eliminate stepped-up basis and tax unrealized capital gains at death. There would be a $2.5 million exclusion per couple taking into account existing rules benefiting the sale of principal residences. Additional rules would also enable tax deferral to the degree heirs continue to run family-owned businesses.

Legislative News

Analysis: Tax Implications of The American Families Plan *Continued*

If enacted, this proposal would have extremely unfortunate consequences. Not only would death become a taxable event at $2.5 million, a level far below today's estate tax exclusion, but tax could also be imposed even before the asset is sold. If tax is imposed immediately upon transfer, in many cases, those inheriting property might not have the cash to pay the tax due. Even if the funds to pay the tax are available, little might be left over to improve and upgrade the property, which could negatively impact the amount of affordable housing in the marketplace.

Housing Affordability Update *By: Gregory Brown, NAA*

In other news, at long last, we have movement on two of NAA's top legislative priorities for 2021. First, the "Yes In My Back Yard Act" (YIMBY Act) will be introduced this week in both the House and the Senate. In the House, Representatives Derek Kilmer (D-Wash.) and Trey Hollingsworth (R-Ind.) are leading the charge while in the Senate, Todd Young (R-Ind.) and Brian Schatz (D-Hawaii) are the chief cosponsors of the legislation. As well, next week will see the introduction of the "Choice in Affordable Housing Act" introduced by Senators Chris Coons (D-Del.) and Kevin Cramer (R-N.D.).

This is our Section 8 reform legislation that creates incentives for private sector housing providers to participate in Section 8 through various incentives, program improvements, help for PHAs to improve their engagement with private owners and other provisions. A House companion bill is in the works, but will come later. You will recall that both of these bills were part of NAA's basket of "asks" during the Advocate conference this year (and in 2020). The work of our advocates to highlight the importance of this legislation both during the conference and afterwards helped make this possible. Now, our work begins to build co-sponsorship for both bills and get them across the finish line. Be on the lookout for a communication from us as to how you and your members can help in that effort.

THANK YOU TO OUR NEWSLETTER SPONSORS:

Legislative News

360 E William, Suite 101 | Wichita, KS 67202
T: 316-665-6544 | E: orders@flamingoink.com
flamingoink.com

COPY & PRINT | FLIERS | BUSINESS CARDS | PRESENTATIONS | +MORE

Renting furniture, housewares & electronics within one business day.
1336 E. Douglas | 316.263.5750 | FurnitureOptions.com

David Pfaff
Business Development

24-7 EMERGENCY HOTLINE
800.856.3333 | 800.800.BELFOR

100 West 61st Street North
Suite 1
Wichita, KS 67219
PHONE: 316.260.4227
FAX: 316.260.4254
CELL: 316.469.1894
david.pfaff@us.belfor.com
www.belforusa.com

RESTORING MORE THAN PROPERTY

People Before Profit

Your premium choice for On-Demand Labor!
Fastest Growing Staffing Agency
in the State of Kansas!

316.202.2082 | WichitaStaffing.com
415 N. Poplar Ave. | Wichita, KS 67214

LOURELLA CALKINS
ARD Outside Sales

3545 N. Hillside
Wichita, KS 67219
316-941-4040
Fax: 316-941-4050
Cell: 316-761-6176

Lourella.C@Metro1974.com
www.MetroAppliancesAndMore.com

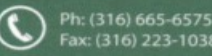
TULSA • OKLAHOMA CITY • LOWELL • LITTLE ROCK
JONESBORO • JOPLIN • SPRINGFIELD • WICHITA

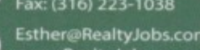
ARIC HANNA
ARD Outside Sales

3545 N. Hillside
Wichita, KS 67219
316-941-4040
Fax: 316-941-4050
Cell: 316-633-0710

Aric.H@Metro1974.com
www.MetroAppliancesAndMore.com

TULSA • OKLAHOMA CITY • LOWELL • LITTLE ROCK
JONESBORO • JOPLIN • SPRINGFIELD • WICHITA





300 W. Douglas Ave. - Suite 122
Wichita, KS 67202

Esther Mills
General Manager

www.RealtyJobs.com