

ISSUE ALERTS



KANSAS LEGISLATURE PASSES NEW LAW GIVING VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT NEW PROTECTIONS; DIRECTLY IMPACTS LANDLORDS OF RESIDENTIAL PROPERTIES

April 26, 2019

By: C. Edward Watson II

Recently, the Kansas Legislature passed Senate Bill 78, which creates new protections for persons, who, in the preceding 12 months have been, are, or are in imminent danger of becoming a victim of domestic violence, sexual assault, human trafficking or stalking (“protected person (s)”).

Under the new statute, landlords cannot refuse to rent to applicants on the basis that the applicant is a protected person if that applicant otherwise qualifies for tenancy. Additionally, the new statute provides new protections for protected persons if they otherwise are qualified for (or not otherwise in default of) the lease. Specifically, landlords cannot evict a protected person or cannot find that the protected person is in violation of the lease “as a direct result” of that tenant’s status as a protected person. *The statute does not define what “as a direct result” means. That will have to be determined on a case-by-case basis, at least initially.*

This statute clearly adds to landlords’ and property owners’ responsibilities to tenants; you may want to **consider asking Foulston’s commercial real estate attorneys to review your lease forms and train your staff on the nuances of this new statutory framework.** Preventive review and training are typically less expensive than fines and reactive legal services.

Foulston partner Ed Watson offers this summary of the pertinent statutory provisions below. For more information, Ed can be reached at cewatson@foulston.com or call 316.291.9589.

WHAT DOES THE STATUTE DO?

- **Allows** a person to invoke the statutory protections by a mere statement to the landlord that the person qualifies for the statutory protections. Nothing in the statute requires that this initial statement be written, verified, or

FOULSTON

ATTORNEYS AT LAW

notarized. *If the applicant or tenant submits false information, it can be the basis for the denial of tenancy or eviction.*

- **Provides** that in a landlord's action for the recovery of rent, a tenant may assert an affirmative defense that he or she is a protected person. If the tenant prevails, the tenant will not be liable for rent for the period after the tenant vacated the premises to the extent the court finds the following:
 - The tenant was a protected person on the date the tenant vacated the premises; **and**
 - The tenant notified the landlord that the tenant believes the tenant qualifies for the protection.
- **Permits** a court to award a tenant statutory damages of \$1000 **and** reasonable attorney fees and cost from any landlord that violates the terms of the statute.
- **Prohibits** the landlord from attempting or requesting the tenant to waive his or her rights under the statute.

WHAT DOES THE STATUTE NOT DO?

- If a protected person abandons a lease and there are other persons who remain responsible for the lease, the new statute does not **absolve** the remaining tenants from their obligations under the lease.
- **Eliminate** the protected person's liability for late or unpaid rent or other amounts owed to the landlord.

WHAT SHOULD OR CAN LANDLORDS AND PROPERTY OWNERS DO TO PROTECT THEMSELVES?

- **The most important thing you can do is:** Revise your standard lease agreement to include a reasonable termination fee (not to exceed one month's rent) if, pursuant to the terms of this new statute, a tenant requests lease termination before expiration of the lease.
- If you decide to deny tenancy to an applicant and the applicant has made a claim that he or she is a protected person, you should **document** other legitimate reasons for denying tenancy.
- If a tenant tells you that he or she is a protected person and you decide notwithstanding to evict the tenant, you should **establish** that there is some other independent basis for the eviction.
- If the applicant or tenant makes a claim that he or she is entitled to the protections provided under the bill, you can **request additional documentation** to verify that the claim is valid. The additional documentation can be:
 - A document signed by both (a) the person claiming protection **and** (b) **either:** (i) a licensed physician; (ii) a licensed physician's assistant; (iii) a licensed nurse, or (iv) a licensed behavioral science professional (e.g., social worker), where the licensed person declares under the penalty of perjury that he or she holds the opinion that an incident of domestic violence, sexual assault, human trafficking, or stalking is the basis for protection under the statute; **or**
 - A court order issued to the protected person granting relief relating to domestic violence, sexual assault, human trafficking, or stalking

Foulston's real estate practice supports multi-family property managers, investors and developers. We offer both fixed-fee pricing and estimates.

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Real Estate