

Justice of the Peace Courts Section State Bar of Texas

Coronavirus Conversations: Update of Supreme Court Emergency Orders and Best Practices

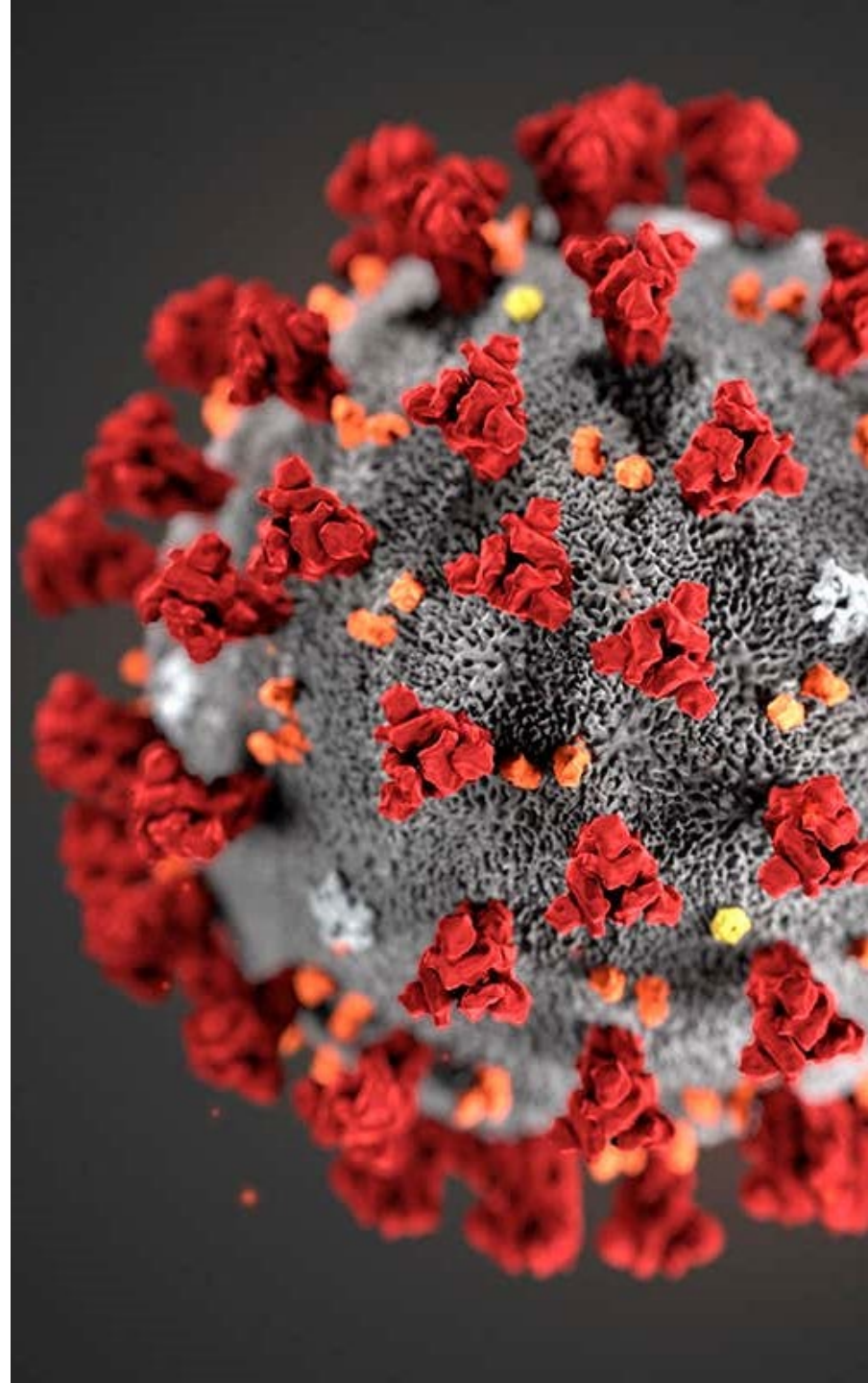
August 20, 2020

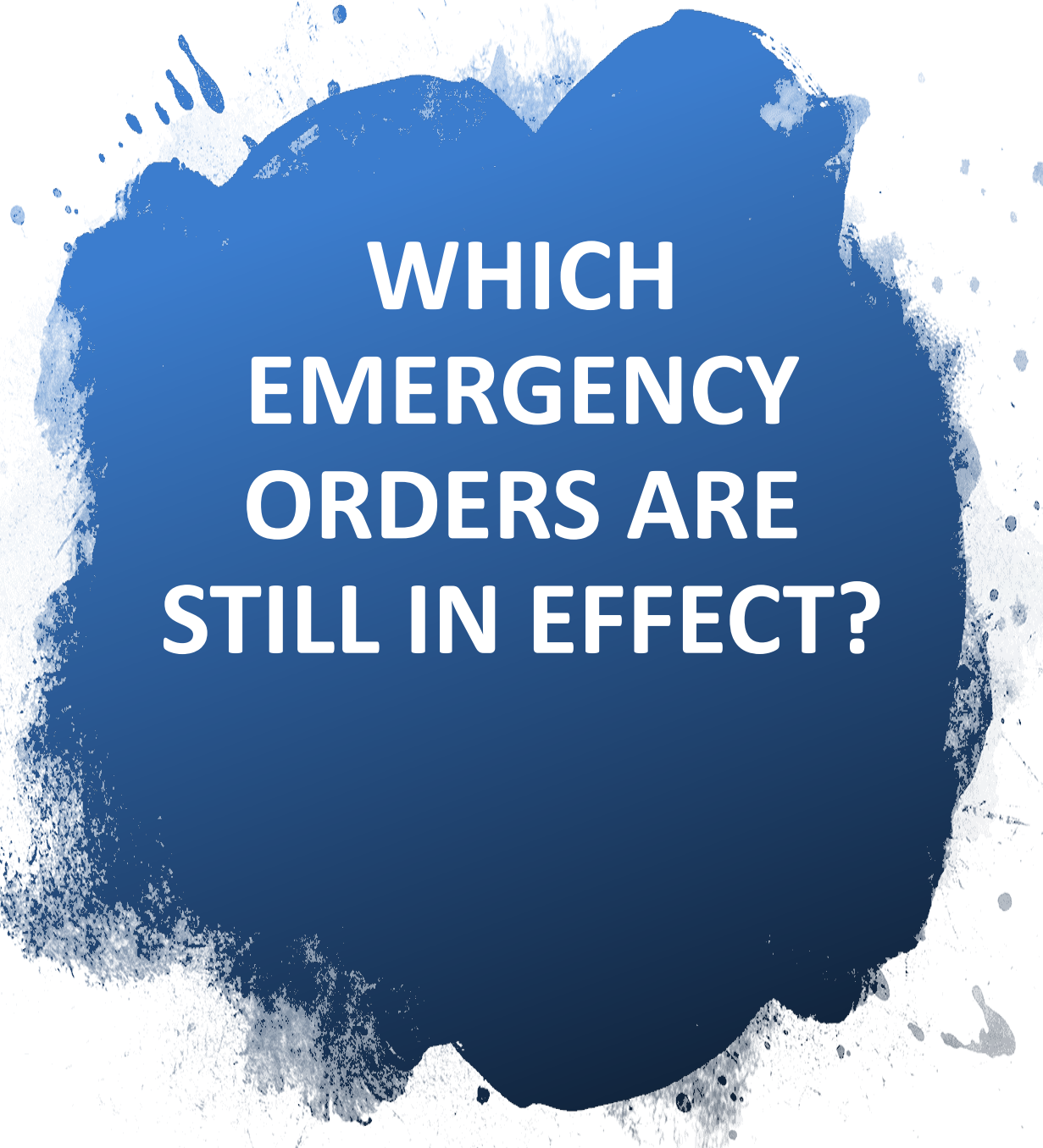
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**WHICH
EMERGENCY
ORDERS ARE
STILL IN EFFECT?**

Currently Active Emergency Orders

- 20th Emergency Order:
 - Effective July 21; expires Aug. 24.
 - Requires plaintiffs in eviction cases to include information in the petition about whether the CARES Act applies to the suit and if a proper notice to vacate was given.
 - Discussed further below.

Currently Active Emergency Orders

- 21st Emergency Order:
 - Effective July 31; expires Sept. 15.
 - Extends Statute of Limitations deadlines that fall between **March 13 and September 1** until September 15.

Currently Active Emergency Orders

- 22nd Emergency Order:
 - Effective Aug. 6; expires Sept. 30.
 - Broad order authorizing delay of hearings and proceedings, and modification of procedures, through Sept. 30 when necessary to ensure safety of the public, parties, witnesses and the court.
 - Prohibits most jury trials until Oct. 1.
 - Requires courts to follow OCA guidance concerning in-person and remote hearings.
 - Discussed further below.

Currently Active Emergency Orders

- Practical Guide to the Supreme Court Orders:
 - This guide was written by the COVID-19 Justice Court Workgroup created by the Texas Supreme Court to help address issues affecting justice courts during the pandemic.
 - Although the 18th Order is no longer in effect, many of its provisions have been extended.
- Links to each of the Orders and the Practical Guide may be found here: www.tjctc.org/coronavirus > Supreme Court Emergency Orders



**WHERE ARE WE
UNDER THE
CARES ACT?**

Is the Moratorium Over?

- The CARES Act went into effect on March 27.
- It prohibited the filing of an eviction suit:
 - based on non-payment of rent or other fees and charges
 - for the properties covered by the Act
 - for 120 days from the effective date of the Act.

Is the Moratorium Over?

- The 120th day after the effective date (counting March 27 as the first day) was:

July 24!

- So the moratorium is over, right?
- Not quite!

Notice to Vacate!

- The Act says **NO** notices to vacate may be issued for any of the properties covered by the Act for evictions based on non-payment of rent or other fees or charges **until after the 120-day period expires!**
 - This means the first day a notice to vacate could be served was **July 25!**
 - And it has to be for **30 days!**

So the First Day an Eviction Case May be Filed for a Property Covered by the Act is . . .

- August 25, 2020!
 - 30 days after July 25 is August 24.
 - Landlord must wait until notice to vacate period runs out before filing the eviction suit.

When Does
the 30-Day
NTV
Requirement
Expire?

- It doesn't!
 - So if the landlord waits until August 15 to serve a notice to vacate, he may not file the eviction suit until Sept. 15.
- But remember: this only applies to properties covered by the CARES Act (explained below).

What Cases Were Subject to the Moratorium?

- Eviction suits based upon non-payment of rent or other fees or charges (e.g. utility payments or parking fees).
 - But during the 120-day moratorium period the landlord may not charge the tenant fees, penalties or other charges related to non-payment of rent.

What Cases Were Subject to the Moratorium?

- The moratorium did not apply to eviction suits:
 - Based on grounds other than non-payment of rent or other fees or charges;
 - Filed before March 27;
 - That are not for properties covered by the Act; or
 - For commercial evictions.

What Cases Were Subject to the Moratorium?

- The moratorium also applies to a borrower of a federally backed multifamily mortgage loan who has received “forbearance” assistance – meaning he won’t be foreclosed upon.
- But while he is under forbearance he may not evict a tenant from a covered property for nonpayment of rent or other fees or charges.
 - This did not end on July 24!
 - It ends on Dec. 31 or when the President lifts the national emergency.

One Issue Has
Come Up
Concerning
the 30-Day
NTV
Requirement

- Does it apply to ALL evictions for any covered property?
 - For example, the tenant has a pet.
- Or does it only apply to evictions for nonpayment of rent and other fees and charges?
- CARES Act is not entirely clear.
 - HUD says only for nonpayment evictions.
 - TJCTC has followed HUD position.

What Properties Are Covered?

- The Act applies **if** the property or tenant receives any federal assistance or the property has a federally-backed mortgage.
- This includes all federally subsidized housing programs including:
 - public housing
 - project-based Section 8 housing
 - Section 8 Housing Choice Vouchers
 - Low Income Housing Tax Credit (LIHTC) properties and
 - the rural voucher program.

What Properties Are Covered?

- It also includes all properties with federally-backed mortgages (such as HUD, VA, FHA, USDA, Fannie Mae or Freddie Mac) including properties:
 - with loans that were made in whole or in part, insured guaranteed, supplemented, or assisted in any way by the federal government, and
 - that were purchased or securitized by Fannie Mae or Freddie Mac.

What Properties Are Covered?

- What if a property has some tenants who receive a Section 8 housing voucher but not all of the tenants receive housing vouchers?
- Is the entire property covered or just the apartments for those tenants who receive vouchers?

What Properties Are Covered?

- The plain language of the Act would appear to make the entire property covered.
 - Section 4024(a)(2): “Covered property” means “any property that **participates** in . . . a covered housing program” (as defined by VAWA).
- But HUD has issued an interpretation stating that if the property does not have a federally-backed mortgage, then the Act applies only to the voucher holder.

How Do You Know Whether a Property is Covered by the Act?

- **The plaintiff must include a sworn statement in their petition (or amend the petition after filing) stating whether or not:**
 - **the premises is a “covered” dwelling;**
 - **the plaintiff is a “multifamily borrower” under forbearance of a federal mortgage; and**
 - **the plaintiff has provided the defendant with 30 days’ notice to vacate.**

-- Twentieth Emergency Order (July 21, 2020)

How Do You Know Whether a Property is Covered by the Act?

- The Texas Supreme Court has stated:
“A judge continues to have the authority under Texas Rule of Civil Procedure 500.6 to develop the facts of the case, including whether or not the premises is a ‘covered dwelling’ and the plaintiff is a ‘multifamily borrower’ under forbearance”

-- Twentieth Emergency Order (July 21, 2020)

Sworn Statement by Plaintiff

- Best practice is for the court to provide the plaintiff with an affidavit to submit to the court regarding coverage of the CARES Act.
- Here is the Affidavit (available on the TJCTC website at <https://www.tjctc.org/coronavirus> > Determining if an Eviction Case is Subject to Federal Moratorium):

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. _____
§
§
§ _____ COUNTY, TEXAS

**VERIFICATION OF COMPLIANCE
WITH SECTIONS 4023 AND 4024 OF THE CARES ACT**

My name is: _____
First Middle Last

I am (check one) the Plaintiff or an authorized agent of the Plaintiff in the eviction case described at the top of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

1. Verification:

a. Plaintiff is seeking to recover possession of the following property:

Name of Apartment Complex (if any)

Street Address & Unit No. (if any) City County State ZIP

b. I verify that this property (select the one that applies): is is not a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act. The facts on which I base my conclusion are as follows:

(Please identify whether the property has a federally backed mortgage loan or federally backed multifamily mortgage loan, and if not, which database or information you have used to determine that fact.)

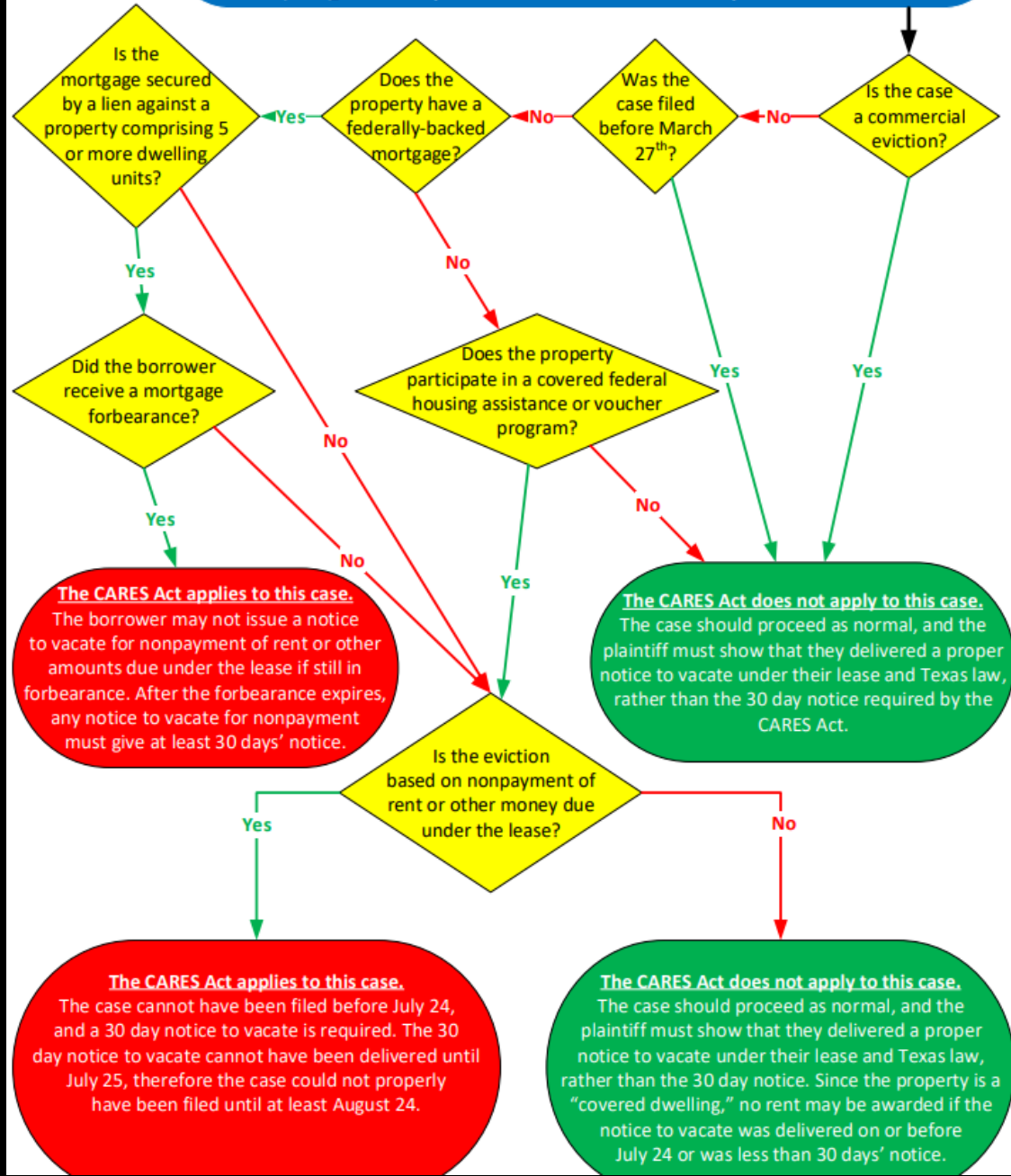
How do Landlords Know if the Property is Covered?

- They should know whether it has a federally-backed mortgage or financing.
- The TJCTC website provides links to websites that may be searched to determine if the property is covered (go to www.tjctc.org/coronavirus > Eviction Cases > Residential Eviction Guidance > How Can it be Determined if a Property is a Covered Dwelling?):
 - TDCHA website;
 - Multi-family housing database;
 - Texas Rio Grande Legal Aid map.

CARES Act Flowchart

CARES Act Flowchart

ALL eviction cases must include in the petition (either original or amended) whether:
 1) the premises is a "covered dwelling" subject to Section 4024 of the CARES Act;
 2) the plaintiff is a "multifamily borrower" in forbearance under Section 4023 of the CARES Act;
 3) the plaintiff has provided the defendant with 30 days' notice to vacate.



The President's Executive Order

- On August 8, President Trump issued an Executive Order relating to evictions.
 - The Order is available on the TJCTC website.
- The Order **does not** itself extend or impose a moratorium on evictions.

The President's Executive Order

- Instead, it orders:
 - HUD and the CDC to consider measures temporarily halting residential evictions for failure to pay rent;
 - HUD and the Treasury Department to identify federal funds to provide temporary financial assistance to renters and homeowners;
 - HUD to take action to promote the ability of renters to avoid eviction; and
 - The Federal Housing Finance Agency (FHFA) to review existing authorities to prevent evictions.
- Should changes in eviction procedures be implemented, TJCTC will update our website.

Atty. Gen. Op. KP-0324

- On August 7, Attorney General Paxton issued Opinion KP-0324 (available at www.tjctc.org/coronavirus).
- The Opinion states that cities and counties do not have the authority to “rewrite the Property Code.”
 - No ordinances or laws are identified that do this.

Atty. Gen. Op. KP-0324

- Prop. Code § 24.005(e): “If a lease or **other applicable law** requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction before giving notice to vacate,” then the notice to vacate may not be served until after the period for the tenant to respond has expired.
 - Many of the ordinances or laws do exactly that.
 - If there are ordinances or laws that prohibit evictions or notices to vacate altogether, those may be more difficult to reconcile with the Property Code.

Remote Hearings

- Courts must continue to hold hearings remotely via Zoom or telephone unless the parties and court are unable to do so.
- In-person hearings may only be held consistent with the Mandatory Operating Plan and OCA Guidance.

How to Conduct Zoom Hearings

- Please see the information at www.tjctc.org/coronavirus > Guidance for Remote Hearings for information and forms concerning how to conduct remote hearings, Zoom hearing notices, sample Zoom instructions, and best practices for Zoom hearings.

Jury Trials

- No jury trials until after Oct. 1, 2020, unless special requirements are met.
- See www.tjctc.org/coronavirus > Guidance for In-Person Proceedings > Jury Trials

Garnishment and Receivership Proceedings

- The 16th Emergency Order, dated May 14, required:
 - The release or refund of any stimulus payments affected by garnishment or receivership;
 - Notices to judgment debtors in garnishment and receivership proceedings concerning protection of stimulus payments; and
 - The right to a hearing within two business days.
- But this Order expired on Aug. 12 and has not been extended by the Supreme Court.

Helpful Resources

- TJCTC Coronavirus webpage at <https://www.tjctc.org/coronavirus>
- Practical Guide to the Supreme Court of Texas's 18th Emergency Order, available at TJCTC or OCA webpage (<https://www.txcourts.gov/oca/>)
- OCA Guidance Regarding Handling Court Cases, available at TJCTC or OCA webpage.
- Livestream Bench Card, available at TJCTC or OCA webpage.

- The deadlines and terms of the Emergency Orders may change!

Check the TJCTC coronavirus webpage frequently for updates!
www.tjctc.org/coronavirus





THANK YOU!

STAY SAFE!





NOW FOR YOUR
QUESTIONS!!

