




EVICTIONS DISCUSSION: COVID-19 AND BEYOND

Hon. Mandy Hays, Justice of the Peace, Wise County
Hon. Nicholas Chu, Justice of the Peace, Travis County
Bronson Tucker, Director of Curriculum, TJCTC





SUPREME COURT
EMERGENCY ORDERS
THAT ARE IN EFFECT



Currently Active Emergency Orders

- *25th Emergency Order.*
 - *Relates specifically to eviction cases (effects discussed below);*
 - *Effective September 17, 2020;*
 - *Expires Dec. 15, 2020.*

Currently Active Emergency Orders

■ 26th Emergency Order.

- *Effective Oct. 1; expires Dec. 1.*
- *Broad order authorizing delay of hearings and proceedings, and modification of procedures, through Dec. 1 when necessary to ensure safety of the public, parties, witnesses and the court.*
- *Prohibits all in-person jury trials in justice court until Dec. 1.*
- *Requires courts to follow OCA guidance concerning in-person and remote hearings.*

Panel Discussion

How have you
implemented
the 26th Order
in your court?



Currently Active Emergency Order

■ 27th Emergency Order.

- *Effective Oct. 12; expires Dec. 18.*
- *This order, in conjunction with an order from Gov. Abbott, creates the Texas Eviction Diversion Program, which is designed to curb a surge of COVID-related evictions, assist vulnerable tenants, and provide an alternative to eviction for landlords.*
- *Pilot counties begin Oct. 12, statewide Nov. 9.*

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.*
- Links to each of the Orders and the Practical Guide may be found here:
www.tjctc.org/coronavirus > Supreme Court Emergency Orders



CDC MORATORIUM

What is the CDC Moratorium?

- On Sept. 1, the Centers for Disease Control (CDC) issued an Order prohibiting a landlord, owner or other person with a right to possession from evicting any “covered person” from any residential property for nonpayment of rent from Sept. 4 (the effective date of the Order) through Dec. 31.

Who is a “Covered Person?”

- A “covered person” is a tenant, lessee, or resident of a residential property who provides a Declaration under penalty of perjury to their landlord, owner or other person who has a right to pursue an eviction action.

What Must the Declaration Say?

- The person has used best efforts to obtain all available government assistance for rent or housing;
- The person: expects to earn no more than \$99,000 in 2020 (or \$198,000 if filing jointly); or was not required to report any income in 2019; or received a stimulus payment;

What Must the Declaration Say?

- The person is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses.

What Must the Declaration Say?

- The person is using best efforts to make timely partial payments that are as close to the full payment as the person's circumstances permit; and
- Eviction would likely render the person homeless or force the person to move into and live in close quarters in a shared living setting.

Who Has to Sign the Declaration?

Each tenant listed on the lease or other agreement must provide a Declaration in order to be a “covered person.”

If only one tenant provides a Declaration, that tenant is a “covered person”, but other tenants could be evicted.

Does the CDC Moratorium Prevent Evictions for Reasons Other than Nonpayment of Rent?

- No! The CDC Moratorium only applies to evictions for nonpayment of rent or similar fees due to the landlord (like utility or parking fees, or penalties for late payment).

Panel Discussion

What if a
Declaration is filed
in a case that is
not for
nonpayment?



Does the Tenant Still Owe Rent During the CDC Moratorium?

- Yes!
- Rent continues to accrue during the moratorium even for a “covered person.”
 - *And late fees, penalties, and interest may continue to accumulate.*
- But the landlord may not evict the tenant for failure to pay rent or other amounts due under the lease during the moratorium.

Procedure under CDC Moratorium:
25th Emergency Order – effective 9/17/20
through 12/15/20

- In any action for eviction to recover possession of **residential property**, a *sworn original, amended, or supplemental petition must state **whether or not***
 - The premises are a “covered dwelling” under the CARES Act;
 - The plaintiff is a “multifamily borrower” under forbearance subject to the CARES Act;
 - The plaintiff has provided the defendant with 30 days’ notice to vacate under the CARES Act; **and**
 - The defendant has provided the plaintiff with a Declaration under the CDC Moratorium Order

Panel Discussion

How are you
handling cases
filed before the
25th Emergency
Order?



Procedure under CDC Moratorium: 25th Emergency Order

- The citation must include:
 - *A statement telling the defendant that they may be able to stop the eviction if they sign the Declaration under penalty of perjury and give it to their landlord and the court (and admonishing them to read it to make sure it is true and of the consequences of signing it if not true); and*
 - *A copy of the Declaration form.*

Important Note

- The petition and citation **must** contain this information in all residential eviction cases, even ones that ultimately should not be impacted by the CARES Act or the CDC Moratorium.

Procedure under CDC Moratorium: 25th Emergency Order

- If a defendant provides the CDC Declaration (or a similar declaration) to the plaintiff **after a petition is filed**:
 - The defendant must file the declaration with the court and serve a copy of the declaration on the plaintiff; and
 - The court must abate the eviction case, including the issuance and execution of any writ of possession (unless it falls within the exception on the next slide).

Procedure under CDC Moratorium: 25th Emergency Order

- An eviction where the defendant provides a Declaration to the plaintiff after an eviction case is filed may proceed if:
 - *The plaintiff contests the defendant's Declaration or the CDC Order;*
 - *The judge holds a hearing to determine whether the action should proceed; and*
 - *The judge determines that the action should proceed and signs a written order stating:*
 - The reasons for the determination that the action should proceed; and
 - Procedures for the action to proceed.

Procedure under CDC Moratorium: 25th Emergency Order

- A judge continues to have the authority to develop the facts of the case under Rule 500.6, including the authority to question:
 - Whether the premises is a “covered dwelling”, or the plaintiff is a “multifamily borrower” under the CARES Act; and
 - Whether the defendant is aware of the CDC Order and has had an opportunity to complete the CDC Declaration.

Panel Discussion

What are things you would consider when developing the facts in a Declaration contest hearing?





CARES ACT 30-DAY
NOTICE TO VACATE



When Does the 30-Day CARES Act NTV Requirement Expire?

- It doesn't!
 - *So if the landlord waited until October 15 to serve a notice to vacate, he could not file the eviction suit until November 15.*
- But remember: this **only** applies to properties **covered** by the CARES Act, and **only** to evictions for nonpayment.

**Does the
CARES Act
apply if the
Tenant is
not a
“Covered
Person”
Under the
CDC Order?**

- It might!
 - *If the tenant is not a “covered person” under the CDC Order, the CARES Act NTV requirement still applies if the property is a “covered property.”*
 - *See the CARES Act Flowchart on the TJCTC website.*

If the Tenant is a “Covered Person” Under the CDC Order, do we Have to Worry About the CARES Act?

■ Not yet!

- *If the tenant is a “covered person” under the CDC Order (meaning they have filed a Declaration), the CARES Act becomes irrelevant.*
- *The case has to be stayed until the moratorium is over.*
- However, once the case resumes, the CARES Act protections will still apply to covered dwellings.

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.

```
mirror_mod = modifier_ob.  
set mirror object to mirror.  
mirror_mod.mirror_object  
operation == "MIRROR_X":  
mirror_mod.use_x = True  
mirror_mod.use_y = False  
mirror_mod.use_z = False  
operation == "MIRROR_Y":  
mirror_mod.use_x = False  
mirror_mod.use_y = True  
mirror_mod.use_z = False  
operation == "MIRROR_Z":  
mirror_mod.use_x = False  
mirror_mod.use_y = False  
mirror_mod.use_z = True  
  
selection at the end -add  
mirror_ob.select= 1  
modifier_ob.select=1  
context.scene.objects.active  
("Selected" + str(modifier_ob.  
mirror_ob.select = 0  
= bpy.context.selected_object  
data.objects[one.name].select  
  
print("please select exactly  
  
-- OPERATOR CLASSES ----  
  
types.Operator):  
on X mirror to the selected  
object.mirror_mirror_x"  
mirror X"  
  
context):  
context.active_object is not
```

EVICTIION DIVERSION PROGRAM

What is the Eviction Diversion Program?

- Funding has been allocated to certain community agencies to distribute to eligible landlord/tenants and can cover up to 6 months of rent. The money can be used to cover both past due rent and future rent up to that 6 months total (for example, 5 months past due rent and 1 month rent going forward).
- Tenants must meet income eligibility requirements and certify that they have been impacted by COVID.

What is the Eviction Diversion Program?

- Landlords must agree to waive late payment fees and their claims (both for non-payment of rent or others), and the funding will be direct deposited to the landlord.
- For courts, new citation and petition forms are required (see the Eviction Diversion Program section for these forms), and the court **must** inform parties of the program at any eviction trial.
- If parties wish to participate, abate the case for 60 days, and the records become confidential.

For More Information

- Stay tuned to our Eviction Diversion Program section at www.tjctc.org/coronavirus!
- <https://www.txcourts.gov/programs-services/eviction-diversion-program/>

REMOTE HEARINGS



Remote Hearings

- Courts must continue to hold hearings remotely via Zoom or other electronic means or via telephone unless the parties and court are unable to do so for reasons outside the court's control.
- 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

- Currently, no in-person jury trials in justice court may be held until after Dec. 1, 2020.
 - See www.tjctc.org/coronavirus > *Guidance for In-Person Proceedings > Jury Trials*
- OCA is working with courts to conduct virtual jury trials, reach out to them if interested.
 - See www.tjctc.org/coronavirus > *Guidance for Remote Proceedings > Jury Trials*

Panel Discussion

What are the pros and cons of virtual hearings? How could the process be improved?





FORMS,
INFORMATION,
AND
RESOURCES

Helpful Resources

- Forms and Documents Section under CDC Moratorium
FAQ
 - *Declaration Form (multiple languages)*
 - *CDC/CARES Affidavit*
 - *Petition Form*
 - *Citation Form*
 - *Order Abating Eviction Case*
 - *Landlord's Contest Form*
 - *Hearing Notices with Cover Letters*
 - *Order Forms for Contest Hearing*
 - *Diversion Program Forms*
- Supreme Court Orders Section
- Coronavirus Webinars Section
- SRL page (www.tjctc.org/SRL)



THANK YOU!

STAY SAFE!

QUESTIONS?