

COVID-19 Emergency
Orders and CARES Act:
Evictions Update
(April 29, 2020)

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COVID-19 Emergency
Orders Concerning
Evictions

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COVID-19 Emergency Orders: Residential Eviction Cases

- No residential eviction case may be heard through **May 18, 2020**, unless there is criminal activity or an imminent threat of harm to the plaintiff, their employees or other tenants.
 - Applies even if a case was filed, a citation was issued or a judgment was entered before the Emergency Orders.
 - No trial, hearing or other proceeding may be conducted (unless there is an imminent threat).
 - All pending cases must be placed on hold.

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COVID-19 Emergency Orders: Filing of Eviction Cases

- Courts should still accept filings, but courts are prohibited from issuing citations or holding trials or hearings through **May 18, 2020** (except for imminent threat evictions).

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COVID-19
Emergency
Orders:
Writs of
Possession

- Posting of a written warning and execution of a writ of possession are **prohibited** through **May 25, 2020**.

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What Happens After May 18?

- Residential eviction cases will still be non-essential proceedings.
- OCA Guidance states:
 - **In-person proceedings** of any size should be delayed until at least **June 1**.
 - No non-essential proceedings should be held **in-person**.
- Most non-essential proceedings may be conducted remotely using video (Zoom) or telephone conference.
 - See Tech Tools and Zoom information at <https://tictc.org/coronavirus>

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What About Essential Proceedings?

- “Essential proceedings” conducted by justice courts include criminal magistrations, juvenile detention hearings (if designated by the juvenile court) and mental health proceedings.
 - Many courts have also designated writs of retrieval, writs of re-entry, writs of restoration and repair and remedy cases as essential proceedings.
 - And many imminent threat evictions (discussed below) could (and should) also be considered essential proceedings.

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What About Essential Proceedings?

- Essential proceedings **must** be held remotely if that is possible.
- If that is not possible or feasible, then an essential proceeding may be held in-person, but the court must ensure that:
 - No more than 10 persons are gathered in the courtroom or in areas around the courtroom;
 - Participants wear face coverings where possible; and
 - Participants in the courtroom are separated consistent with social distancing and other precautions.

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Imminent Threat Evictions

- A court may hold a trial, hearing or other proceeding in an eviction case **only** if the following three actions are met:
 - The plaintiff files a “sworn complaint for forcible detainer for threat to person or for cause;”
 - The court determines the facts and grounds for eviction stated in the complaint, under oath with personal knowledge, taken as true, show that the actions of the tenant, or the tenant’s household members or guests, pose an imminent threat of:
 - Physical harm to the plaintiff, the plaintiff’s employees or other tenants; or
 - Criminal activity; **and**
 - The court signs an order stating procedures for the case to proceed.

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Imminent Threat Evictions

- Imminent threat evictions have not been expressly defined as “essential proceedings” although a court could (and in many cases should) treat them as “essential.”
- If an imminent threat eviction is deemed essential, it could be held in-person but only if it cannot be held by telephone or video conference, and only in accordance with OCA’s Court Proceedings Guidance (discussed above).

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Imminent Threat Evictions

- If an imminent threat eviction is not deemed essential (but still meets the requirements for “imminent threat”), the case may go forward immediately but only if it can be held by telephone or video conference, since OCA’s Guidance prohibits in-person non-essential hearings through June 1.

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Imminent Threat Evictions: Procedures

- If your court has an imminent threat eviction, the judge must enter an order detailing the procedures and timeframes for the case to proceed.
- Travis County has issued a standing order describing a specific procedure, including forms, which you may wish to adopt or consider in adopting your practices.
 - These procedures are available at:
<https://tjctc.org/coronavirus> (Eviction Case Issues: How Should the Courts Handle “Imminent Threat” Evictions?)

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What About Commercial Evictions?

- Commercial evictions are not on hold like residential evictions.
 - But they are still considered non-essential proceedings.
- So the rules covering non-essential proceedings apply to them.

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CARES Act

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The CARES Act

- Signed by President Trump on March 27, 2020 and took effect the same day.
- It applies to all housing programs to which the Violence Against Women's Act applies.

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The CARES Act

- This includes public housing, project-based Section 8 housing, Housing Choice Vouchers, Low Income Housing Tax Credit (LIHTC), the rural voucher program, and all properties with federally-backed mortgages (HUD, Fannie Mae and Freddie Mac).

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The CARES Act

- No non-payment of rent evictions may be filed for any of these properties for 120 days from the effective date of the Act.
 - This means until July 25.

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The CARES Act

- No notices to vacate for non-payment of rent may be issued for any of these properties until after the 120-day period expires AND such NTV must be for 30 days.
 - So the NTV cannot be up before August 24.

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The CARES Act

- These properties may not charge late fees or other penalties for late payment of rent during the 120-day period.

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The CARES Act

- The 30-day NTV requirement does not have an end date.
- So even after July 25, a landlord will still have to give a 30-day NTV for a non-payment of rent eviction for covered properties.

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The CARES Act

- The federal eviction moratorium does not apply to:
 - Eviction cases that were filed before March 27, 2020.
 - Eviction cases with purely private landlords with none of the funding listed above.
 - Eviction cases where the grounds for eviction are other than non-payment of rent.

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The CARES Act

- To ensure the court is not evicting a tenant in violation of the CARES Act, an affidavit is available at www.tjctc.org/coronavirus for plaintiffs to fill out before receiving a judgment, swearing that their property is not subject to the Act.

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The CARES Act

- Landlords can go to the TDCHA website and click on “HTC Property Inventory (XLSX) under Additional Guidance and Resources to search a database to determine if their property is subject to the LIHTC restrictions.
- Another link is available on the TJCTC webpage above to check their property against a multi-family housing database.

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The deadlines and terms of the Emergency Orders and CARES Act may change! Check the TJCTC coronavirus webpage frequently for updates! www.tjctc.org/coronavirus

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**THANK YOU!
STAY SAFE!**