

**Coronavirus Conversations:
CDC Moratorium and Current Supreme
Court Emergency Orders**

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CDC Moratorium

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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.

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What is the CDC Moratorium?

- A copy of the Order is available at this link: www.tjctc.org/coronavirus > CDC Issues Moratorium Order > Contents of the Moratorium Order

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Who is a “Covered Person?”

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

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What must the Declaration say?

- CDC has created a Declaration form that a tenant may use.
- A copy of the form is available at this link: www.tjctc.org/coronavirus > CDC Issues Moratorium Order for Residential Evictions for Nonpayment > What Evictions Are Affected by The Moratorium?
- It must say the following:

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**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;

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**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.

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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.

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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.

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Does the
CDC
Moratorium
Apply Only
to CARES Act
Properties?

- No! The CDC Moratorium is separate from the CARES Act.
- It applies to any “covered person” without regard to whether or not the person is living in a CARES Act “covered property.”

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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 (like utility or parking fees, or penalties for late payment).

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

• The CDC Order does **not**
preclude an eviction based on
a tenant:

- Engaging in criminal activity on the premises;
- Threatening the health or safety of other residents;
- Damaging or posing an immediate and significant risk of damage to property;

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

- Violating any applicable building code, health ordinance or similar regulation; or
- Violating any contractual obligation other than the timely payment of rent or similar housing-related payments.

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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 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.

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Does CDC Have Authority to Do this?

- Courts should assume CDC does have authority to impose the moratorium unless the Order is overturned by a final decision of a higher court.

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If the Tenant is a “Covered Person” Under the CDC Order does the CARES Act still apply?

• **No!**

- If the tenant is a “covered person” under the CDC Order, the CARES Act becomes irrelevant.
- The case has to be stayed until the moratorium is over.

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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 may still apply if the property is a “covered property.”
- See the CARES Act Flowchart (below).

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Procedure under CDC Moratorium: 25th Emergency Order

- 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

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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.

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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” and 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.

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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).

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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.

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Procedure under CDC Moratorium: 25th Emergency Order

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT

v. _____ §

DEFENDANT _____ § PRECINCT NO. _____

_____ COUNTY, TEXAS

ORDER ON CONTEST OF CDC ORDER DECLARATION

After a hearing considering the Plaintiff's Contest to Defendant's Declaration pursuant to the Centers for Disease Control and Prevention's agency order, titled Temporary Halt in Residential Evictions to prevent the Further Spread of COVID-19 (CDC Order) that took effect on September 4, 2020 and the Texas Supreme Court's 25th Emergency Order, and information submitted by the parties, if any, the court:

- FINDS the Declaration is VALID, or
- FINDS the Declaration is INVALID for the following reasons:

AND the Court will proceed with the eviction matter in the above cause in the following manner:

ISSUED AND SIGNED this the _____ day of _____, 20__.

JUSTICE OF THE PEACE, PRECINCT _____
 _____ COUNTY, TEXAS

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New Verification Form

c. I verify that plaintiff (select the one that applies): is is not a "multifamily borrower" currently under forbearance under Section 4023 of the CARES Act.

d. I verify that plaintiff (select the one that applies):
 has provided the defendant with 30 days' notice to vacate as required under Section 4024(c) and 4023(e) of the CARES Act.
 has not provided the 30 days' notice, because the property is not a "covered dwelling."

e. I certify that the plaintiff: has has not received a CDC Sworn Declaration from the tenant stating that they are a "covered person" under the CDC issued Federal Eviction Moratorium Order. *Any landlord proceeding with a nonpayment eviction of a "covered person" despite receiving a Declaration can be fined up to \$100,000 under federal law.*

2. **Declaration or Notary:** Complete only one of the two following sections:

a. **Declaration:** I declare under penalty of perjury that everything in this verification is true and correct. My name is: _____
First Middle Last
 My birthdate is: ____/____/____
Month Day Year
 My address is: _____
 Street Address & Unit No. (if any) City County State ZIP
 Signed on ____/____/____ in _____ County, Texas.
Month Day Year

Your Signature

OR

b. **Notary:** I declare under penalty of perjury that everything in this verification is true and correct

Your Printed Name

Your Signature *(sign only before a notary)*

Sworn to and subscribed before me this ____ day of _____, 20__.

CLERK OF THE COURT OR NOTARY

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New Citation Form

CAUSE NO. _____

PLAINTIFF _____ IN THE JUSTICE COURT

v. _____ PRECINCT NO. _____

DEFENDANT _____ COUNTY, TEXAS

CITATION (EVICTON CASE)

THE STATE OF TEXAS
 TO: _____, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on ____/____/20__. In addition to possession of the property the Plaintiff is seeking the following relief in this case: back rent; attorney's fees; court costs; other (specify: _____). The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are: _____

_____. You must appear in this court, located at _____, TX _____, on the date and time stated below.

YOU HAVE BEEN SUED FOR EVICTION FROM YOUR RESIDENCE. THE ABOVE-NAMED PLAINTIFF SEEKS POSSESSION OF THE PREMISES AND THE OTHER RELIEF STATED ABOVE. YOU MUST APPEAR IN PERSON FOR TRIAL IN COURT AT THE LOCATION STATED ABOVE AT ____ M. ON ____/____/20__. YOU MAY, BUT ARE NOT REQUIRED TO, FILE A WRITTEN ANSWER WITH THE COURT ON OR BEFORE THE DAY SET FOR TRIAL, UPON TIMELY REQUEST AND PAYMENT OF A JURY FEE NO LATER THAN THREE (3) DAYS BEFORE THE DAY SET FOR TRIAL, THE CASE WILL BE HEARD BY A JURY. DO NOT IGNORE THESE PAPERS. FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V. OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL

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New Citation Form

RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ) OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

DEMANDA PARA DESALOJAR

ESTA DEMANDA PARA DESALOJAR INVOLUCRA PLAZOS INMEDIATOS. UN INQUILINO QUE ESTA EN SERVICIO MILITAR ACTIVO PUEDE TENER DERECHOS ESPECIALES O SOCORRO EN RELACION CON ESTE TRAJE POR LA LEY FEDERAL, INCLUIDOS LOS MIEMBROS DEL SERVICIO CIVIL RELIEF ACTUAR (50 U.S.C. APP. SECCION 501 Y SS.) O LA LEY DEL ESTADO, INCLUIDA LA SECCION 92.017, TEXAS CODIGO DE LA PROPIEDAD. LLAME AL COLEGIO DE ABOGADOS DE TEXAS (STATE BAR OF TEXAS), LLAMADA GRATUITA AL 1-877-9TEXBAR SI USTED NECESITA AYUDA PARA LOCALIZAR A UN ABOGADO. SI NO ESTÁ A SU ALCANCE CONTRATAR A UN ABOGADO, USTED PUDIERA SER ELEGIBLE PARA ASESORIA LEGAL GRATUITA O DE BAJO COSTO.

TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19

The Centers for Disease Control issued an order stopping some evictions. You may be able to stop your eviction if you sign the attached Declaration under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19 and provide it to your landlord and the court. Before signing the Declaration, read it carefully and make sure all the statements are true. The Declaration is sworn, meaning you can be prosecuted, go to jail, or pay a fine if any of the statements are not true. Find out more about the order at [TexasLawHelp.org](https://www.texaslawhelp.org).

ISSUED AND SIGNED this the _____ day of _____, 20__.

JUSTICE OF THE PEACE, PRECINCT _____

COUNTY, TEXAS

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What if a Constable is Notified that Tenant Served a Declaration on the Landlord?

- If a tenant tells a Constable who is executing a writ of possession that they provided a Declaration to the landlord, the Constable should hold off on executing the writ of possession, notify the court, and await an order from the court.

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Emergency orders
that are in effect

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Currently
Active
Emergency
Orders

- 25th Emergency Order:
 - Discussed above;
 - Effective September 17, 2020;
 - Expires Dec. 15, 2020.

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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.

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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 most jury trials until Dec. 1.
 - Requires courts to follow OCA guidance concerning in-person and remote hearings.

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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

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Where are we
under the CARES
ACT?

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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.

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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!

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 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!**

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

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

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When Does
the 30-Day
NTV
Requirement
Expire?

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

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

- **As discussed above, 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.

-- 25th Emergency Order (September 17, 2020)

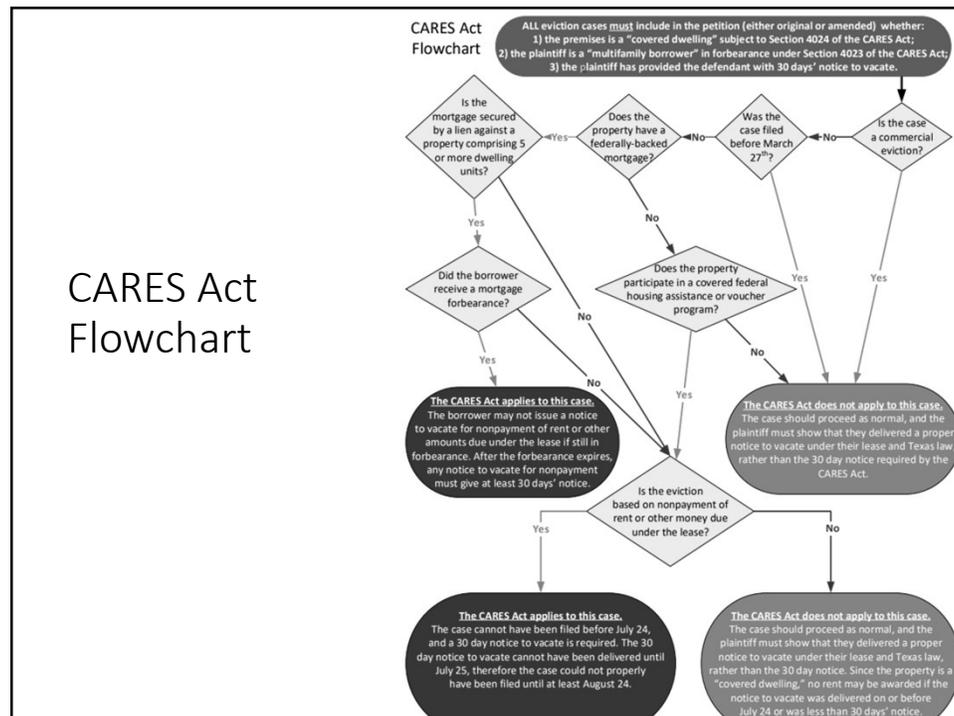
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How do Landlords Know if the Property is Covered?

- 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.

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CARES Act Flowchart



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Remote Hearings

- Courts must continue to hold hearings remotely via Zoom or 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.

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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.

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Jury Trials

- Currently, no jury trials until after Dec. 1, 2020, unless special requirements are met (working with COA).
- See www.tjctc.org/coronavirus > Guidance for In-Person Proceedings > Jury Trials

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Helpful Resources

- TJCTC Coronavirus webpage at <https://www.tjctc.org/coronavirus>
- Practical Guide to the Supreme Court of Texas's Emergency Orders, 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.

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

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

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THANK YOU!

STAY SAFE!

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NOW FOR YOUR
QUESTIONS!!