

# Evictions Update

## CDC Moratorium

- The CDC has extended its moratorium on evictions until June 30, 2021.
- Here is a link to the CDC Order: [CDC-Eviction-Moratorium-03292021.pdf](#)

# Expiration of 34<sup>th</sup> Emergency Order

- But the Texas Supreme Court has allowed the 34<sup>th</sup> Emergency Order, which implemented the CDC Moratorium in justice courts, to expire by its own terms as of March 31, 2021.
- Up to now justice courts have operated under the Supreme Court Emergency Orders to effectuate the CDC Moratorium.
- That authority and direction is now gone.

# Does the CDC Order Directly Apply to Justice Courts?

- The CDC Order directs **landlords** not to evict tenants who are covered by the moratorium.
- It provides civil and criminal penalties for landlords who violate the moratorium.
- TJCTC believes that is a matter between the tenant, the landlord and potentially a federal prosecutor.
- Therefore, it is primarily up to the landlord to decide whether they wish to proceed with an eviction case or not.

Does the  
CDC Order  
Directly  
Apply to  
Justice  
Courts?

- It is not a matter that a justice court can or should enforce in the absence of authority from the Texas Supreme Court.
- A CDC FAQ dated Jan. 29. 2021 states: “As indicated in the Order, courts should take into account the Order’s instruction not to evict a covered person from rental properties where the Order applies.”

# Does the CDC Order Directly Apply to Justice Courts?

- But we believe courts may only do this to the extent that it is allowed by state law, as explained by the statement that appears just before the one on the previous slide: "The judicial process will be carried out according to state and local laws and rules. The Order is not intended to terminate or suspend the operations of any state or local court."
- It is the state law, as expressed in the 34th Emergency Order, that justice courts were applying prior to April 1 but that is no longer in effect.

# Does the CDC Order Directly Apply to Justice Courts?

The rules applicable to eviction cases in justice court are set forth primarily in Rule 510 of the Texas Rules of Civil Procedure.

The Texas Supreme Court had issued a series of emergency orders modifying those rules to accommodate the CDC Moratorium.

The Supreme Court decided not to extend the current emergency order.

Therefore, eviction cases are again governed by Rule 510 (with suggested best practices discussed below).

# Another Point of View

- Certain Legal Aid Providers and Tenant Advocacy Groups disagree with TJCTC's position and have provided a statement to TJCTC and the media expressing their views.
- TJCTC has responded to this statement explaining further our position.
- We have posted the statement and our response on the coronavirus page of our website.
- A judge is free to come to their own conclusion concerning which position is correct.

## How To Handle a Case that has been on Hold

- TJCTC recommends setting a status hearing to determine if a landlord wishes to proceed with a case that was abated due to the CDC Moratorium.
  - The landlord may decide to wait until the moratorium expires on June 30.
  - Or they may wish to move forward with the case because they don't believe the moratorium applies to their case or they are not concerned with the potential consequences.

## How To Handle a Case that has been on Hold

- TJCTC has prepared a hearing notice, script and order form for courts to use:
  - These are located at [tjctc.org/coronavirus](https://tjctc.org/coronavirus) > CDC Moratorium FAQ and Forms > Documents and Forms Related to the CDC Moratorium
- If the landlord wishes to consult an attorney before deciding whether to proceed or not, the court should reasonably accommodate that request.

## What if a Tenant Files a Declaration with the Court?

Justice courts no longer have authority from the Texas Supreme Court to place a case on hold based on the CDC Moratorium.

Therefore, there are no actions for the court to take if a tenant provides a Declaration to the court.

TJCTC has developed a script for the court to use in this situation.

What if a  
Tenant  
Notifies  
a Constable  
of a  
Declaration?

- If a tenant notifies a Constable of a Declaration when a writ of possession is being executed, the Constable should notify the landlord of the Declaration and ask for instructions concerning execution of the writ of possession.
- There is no longer any role for the court in this matter and no need for the Constable to notify the court.

Must a  
Landlord  
Still File  
an  
Affidavit  
with the  
Petition?

- No.
- The Texas Supreme Court no longer requires a landlord to include in an eviction petition information concerning whether they have received a Declaration, whether the premises are a covered property under the CARES Act or if a 30-day notice to vacate was given.
- The petition does still require information concerning the Eviction Diversion Program (discussed below).

# What About the Notice to Vacate?

- As always, the plaintiff must prove that they have given the proper notice to vacate in order to receive a judgment of possession.
- If the premises are a "covered property" and the eviction is based on nonpayment of rent or other amounts due under a lease, the plaintiff is still required to give a 30-day notice to vacate.
  - This requirement of the CARES Act did not expire on March 31!

# What About the Notice to Vacate?

- If a petition describes the notice to vacate given as well as the reason why that notice to vacate is proper, and the defendant does not appear or answer, the petition **must** be taken as true. This means that the plaintiff would have proven proper notice to vacate.
- If instead the petition does not describe the notice given and why it is proper, or the defendant answers or appears, the petition is not sufficient to prove proper notice to vacate.
  - Rule 500.6 makes clear that justice courts may develop the facts of the case at trial to determine whether a proper notice to vacate was given.

# Should the Court Still Send a Declaration Form with the Citation?

- No.
- There is no longer any authority from the Texas Supreme Court for a justice court to send a Declaration with a citation in an eviction case.
- That is a matter between the tenant and the landlord (and potentially a federal prosecutor).

May a  
Landlord Still  
Request  
a Contest  
Hearing on a  
Declaration?

- No.
- Justice courts no longer have any authority from the Texas Supreme Court to determine whether or not a Declaration is valid.
- This is a matter between the tenant and the landlord.
- If a landlord is not certain what to do, they may consult an attorney.

# Eviction Diversion Program

- This program remains in effect under the 35<sup>th</sup> Emergency Order.
- That order currently expires on May 12.
- However, it is likely to be extended into July.

# Eviction Diversion Program

- Courts must include information about the program with the citation and ask the parties if they wish to participate in the program at trial.
- If both the landlord and tenant indicate they are interested in the program, the judge must stay the case for 60 days, and make the record confidential.

# Eviction Diversion Program

- The landlord may file a motion to reinstate the case at any time within the 60-day period.
- The judge must then reinstate the case and set it for trial within 21 days.
  - The case is no longer confidential.

# Eviction Diversion Program

- If the landlord does not file a motion to reinstate the case within the 60-day period, then the judge is required to dismiss the case with prejudice.
  - All records remain confidential.

# Eviction Diversion Program

- Forms for all phases of the Eviction Diversion program are on our website.
- OCA webinar concerning the statewide rollout of the program may be accessed on our website:  
[www.tjctc.org/coronavirus](http://www.tjctc.org/coronavirus) >  
Texas Eviction Diversion  
Program