



January 11, 2021

COVID-19 – NAVIGATING EVICTIONS IN TEXAS

All eyes are focused on February 1, 2021 as the date evictions will proceed. Justice Court evictions are constantly evolving. What occurs in Harris County is different from Travis County, Potter County, Dallas County, etc. It is important to remember: **DO NOT PRACTICE LAW – DO NOT GIVE LEGAL ADVICE!**

EVICTIONS IN THE STATE OF TEXAS:

1. The CDC has issued and may issue future orders governing and/or halting evictions (specifically the CDC COVID-19 Order), see also CDC Declaration Form and Contest CDC Declaration Form;
2. The CARES Act affects evictions;
3. The Texas Supreme Court has and may issue Emergency Orders that affect evictions;
4. Texas has a Texas Evictions Diversion Program (TEDP);
5. Each county has and/or may issue orders, Standing Orders, and implement procedures that govern evictions in that county;
6. Each city has and/or may issue orders, ordinances, implement procedures that govern evictions in that city;
7. Each Justice Court, within a certain jurisdiction, may implement procedures, requirements, additional Standing Orders and/or modifications that affect evictions;
8. The Texas Evictions Diversion Program imposes requirements on the judge;
9. Some protection may be provided in certain instances to commercial tenants as well; and,
10. All orders, rules, etc. can and are likely to change.

REAL ESTATE BROKERS AND AGENTS: When asked by a Landlord: “Should I evict or not?” your best piece of advice is to tell the Landlord to seek the counsel of a competent **real estate** attorney. When asked by a Tenant, “Can I avoid being evicted?” your best option is to tell the Tenant to seek the counsel of a competent **real estate** attorney. This is not meant to generate business for real estate attorneys, but to keep YOU out of trouble. Does this make you seem like you are not knowledgeable in your field? NO. Explain to your client the reality of evictions in Texas.

Tenants:

- There are actions a tenant is required to undertake to avail themselves of some of the protections.
- May be able to have 6 months of rent owed, paid and eviction stopped.
- Large number of Tenants do not know, understand, and/or meet the required deadlines, and/or do not appear as required in Court, and therefore do not receive any relief for evictions.
- If paying an attorney is not feasible there are lawyer referral services such as the Texas Lawyer Referral Service as well as various local Legal Aid Clinics, local area lawyer referral services (generally supported by the local bar associations).

Landlords/Property Managers:

- Be mindful of all of the laws, orders, ordinances, and rules that govern both the Landlord and the Tenant aspect of the eviction process. Consult a competent real estate attorney that you will use to handle evictions; or, at a minimum that can consult with you

concerning the process you are undertaking and to help you with your forms, process, and checklist.

- Read the State, county, and local websites, as well as the specific Court's website.
- Prior eviction forms, including terminations, notices to vacate, and petitions, likely do not meet current requirements. While some justice courts post detailed instructions and "form" petitions for use in evictions (also referred to as action for forcible entry and detainer) those "forms" may or may not have been updated to include all of the language/verbiage now required. Specific language is **required** and must be incorporated word-for-word.
- Know whether the CARES Act afforded tenant protection for the specific property. Confirm expiration of protection from eviction. Fines for violating an Order are severe: Landlord: fine up to \$100,000 per event, one year in jail, or both (if the event results in death, up to \$250,000); Rental Company: fine up to \$200,000 per event (if the event results in death, up to \$500,000).
- **TEXAS EVICTION DIVERSION PROGRAM – READ:** txcourts.gov/eviction-diversion website. If Landlord and Tenant qualify and agree to participate (both must agree and execute document); Court must abate eviction proceeding for 60 days; court must make proceeding confidential; but, Landlord can elect to put the case back on the docket (with proper notice to Tenant) and case must be set within 21 days.
- Be aware of the deadlines and forms required; you must be informed and should have discussed with your client (Landlord/Owner) whether or not to attempt to use the Texas Eviction Diversion Program (in the instance where Tenant does not apply but Landlord may choose to apply, or, when Tenant applies and Landlord needs to determine whether or not to agree); and whether, the Landlord/Owner should agree to participate.
- **READ THE SPECIFIC COURT'S WEBSITE; CALL CLERK IF NECESSARY.** Some proceedings may be conducted in person, while others may be conducted virtually. Be prepared. Putting your file together the night before and planning to "hand" documents to the Judge are not options in a virtual proceeding – plan in advance and speak to the clerk so that the process is not delayed.

GOOD NEWS: Justice Courts in Texas now have jurisdiction of up to \$20,000 (as of September 1, 2020).

MISCONCEPTIONS: Evictions have not come to a halt in all Texas jurisdictions. In Harris County, Texas (Houston area) over 10,000 eviction cases have been heard since September 2020; over 9300 of those were not stopped by the moratorium.¹ JanuaryAdvisors (JanuaryAdvisors.com) compiles eviction information for Harris County which can be found on their website. According to their website, approximately 3600 eviction cases have been filed in Harris County between 12/1/20 and 1/8/21. *Id.*

Here are some of the sources I highly encourage you to read immediately and continue to check as information changes at least daily: txcourts.gov/eviction-diversion; tdhca.state.tx.us/TEDP; cdc.gov; TREC.texas.gov; texasrealestate.com (TAR), as well as your specific local governing entity's and court's website.

As I always advise: When clients look to you for advice, remember to focus on your duties, responsibilities, and ethical standards, and who you represent. Stay informed. Rely on the resources available to you.

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¹ Reported by Jan Rice, Houston Public Media, December 2020; referencing data published by JanuaryAdvisors.

Disclaimer: This article is meant to provide general guidelines and points of consideration only. It is not exhaustive of the available and applicable resources, rules, regulations, or factual situations. Further, it does not constitute legal advice. Readers should consult with a licensed experienced attorney for specific legal advice.