



Know Your Rights: Evictions Under COVID-19

What are courts doing about evictions during COVID-19?

Because of COVID-19, the Texas Supreme Court has prohibited all eviction proceedings until after May 18th, and the execution of writs of possession until after May 25th, except for cases that involve a threat of physical harm or criminal activity. For these cases landlords must file a sworn complaint, and the eviction case may proceed if the court determines that the actions of the tenant, guest, or household member pose an imminent threat of (i) physical harm to the plaintiff, the plaintiff's employees, or other tenants, or (ii) criminal activity. Some courts have made a decision to stop hearing eviction cases for a longer period.

Do I have to pay rent during this time?

Yes. You are still obligated to pay rent and follow all the obligations in your lease. While the courts are currently closed, you can still be evicted for not paying rent once the courts reopen.

Can my landlord file an eviction case against me if the courts are not hearing cases?

Yes. Although the courts are not hearing cases, most courts are still accepting filings of eviction cases. This means that your landlord may file an eviction case against you now even if the case is not set for trial until after the current emergency Supreme Court order is lifted.

As of now, the Texas Supreme Court has prohibited evictions until May 18th. This means that, when the Supreme Court orders are lifted, it is presumed that all cases will likely proceed in the usual way.

Can my landlord physically remove me from my residence?

No. This is known as a self-help eviction and is not allowed in Texas. The landlord must follow the procedures set out by Texas law to evict you.

How do I know if my landlord is evicting me?

Your landlord is legally required to give you a written notice to vacate before filing a lawsuit to evict you. This notice to vacate must give you at least three days to move out. If you are month-to-month tenant, then the landlord must give you a 30-day notice to move.

The notice can be delivered by hand to you or anyone in the unit over age 16, by mail, or posted on the inside of your front door. There are limited circumstances where the notice can be attached to the outside of your door if the other methods are not possible by landlord.

The date on the notice to vacate is not the date you will be kicked out; it is that date the landlord has to give you till they file an eviction. After that deadline to vacate date, your landlord still has to go to court to evict you.

I live in public housing. Do these same eviction laws apply to me?

Public housing is governed under federal law. Under the CARES Act there is temporary moratorium on evictions, as well as a moratorium on fees and penalties related to nonpayment of rent. The eviction moratorium is in effect for a 120-day period that began on March 27, 2020.

After the moratorium expires, the public housing authority can proceed with the standard eviction process. However, you cannot be required to vacate for at least 30 days after the end of the moratorium, and the public housing authority cannot issue a notice to vacate until the moratorium expires on July 24, 2020.

What happens if I don't leave by the date on the notice to vacate?

If you don't leave after you get the notice to vacate, your landlord can file an eviction lawsuit in Justice Court. A constable will serve the papers on you, or anyone on the property over 16 years of age. Although the Texas Supreme Court's orders delay service of these papers (except in cases of harm/criminal activity) until after May 18th, you may still be served during this time. If personal service fails after two attempts, the constable can post it on your door or slip it underneath.

I've been served with the eviction lawsuit. What now?

Review the court papers carefully. The document must state exactly why you are being evicted. The document may tell you when you must appear in Justice Court to explain your side of the case to the judge. As of now, because of Covid-19, there are no hearings being set for evictions, but it is possible your trial may be set for the future.

What if I want a jury in my trial?

If you would like a jury to hear your case, you may pay \$22.00 or submit a sworn statement of inability to pay that fee. This has to be done at least three days before the date set for your trial.

What if I miss my court date?

You must appear in court at the date and time listed in the court papers. If you fail to attend the hearing, the landlord can ask for a default judgment against you, which is a decision in their favor which will allow them to evict you.

What happens if I lose in Justice Court?

If you are evicted in the Justice Court, you have the right to appeal the decision to the County Court for a new trial. The appeal must be filed within 5 calendar days of the final judgment of eviction against you. You will be required to either file a cash bond in an amount set by the Court or you must file a Sworn Statement of Inability to Pay Court Costs or Appeal Bond. If you file a Sworn Statement of Inability to Pay Court Costs or an Appeal Bond in your eviction appeal and you were living in the property at the time the eviction case was filed against you, you have the right to request that attorney be appointed to represent you in the County Court at Law appeal case. If you were evicted for non-payment of rent, the Court will decide how much rent you must pay monthly while your appeal is pending. The amount of rent required to be paid monthly will be listed in the judgment and should be paid into the registry of the court. If part of your rent is being subsidized by the government, the court will state in the judgment the amount that the government must pay and the amount that you are required to pay.

If the eviction is upheld, the landlord can get a writ of possession. If you don't pay the required rent while the appeal is pending, your landlord can file a sworn motion with the court stating that you failed to pay the rent as required. There will be another hearing and, if the court finds that you did not pay the rent during the appeal and any attorney's fees that your landlord incurred, the court will issue a writ of possession. If you have not moved after the writ of possession is issued by the court, the writ of possession will allow the landlord to request that the constable or sheriff physically remove you and your belongings from the property.

What happens if I ignore the lawsuit completely?

If you ignore the lawsuit, or do not appeal a judgment against you, the landlord can get a writ of possession. This is an order from the court telling the constable or sheriff to give the landlord possession of the property. Before the constable comes to remove you and your belongings, they must give at least 24 hours' notice and post the notice on your front door. Your property can be placed outside of the unit. Your landlord is not required to store it.

Under the current Texas Supreme Court order, no writs of possession may be executed until after May 25, 2020 although it may be issued but not executed before that date.

If you are concerned about being able to stay in your home or believe that you are at risk of eviction or foreclosure due to economic issues caused by loss of employment or other financial implications resulting from COVID-19, please contact our office for assistance with eviction defense, landlord/tenant issues and foreclosure defense. The Opal Mitchell Lee Property Preservation Project located at the Thurgood Marshall School of Law at Texas Southern University will advocate for you so that you and your family can continue to be safe in your own home. We can also assist with estate planning so that you can be certain that your affairs are in order during these uncertain times. For more information on our services call 713.313.1158 or to fill out an application please go to: http://www.tsulaw.edu/centers/ECI/apply_for_legal_services.html.

