

# Eviction and Notice to Vacate Regulations during COVID-19

In response to the public health emergency caused by the COVID-19 pandemic the federal government and local jurisdictions in Central Texas have implemented the following protections for tenants. Below is a summary of most of the applicable COVID-19 tenant regulations, from the various levels of government, to help Central Texas housing providers navigate the current landscape.

We're not attorneys, **and agents should speak with their broker, and brokers with their legal counsel**, to ensure no additional regulations apply for a particular residential property. **Housing providers are also encouraged to speak with their legal counsel** to ensure they are complying with all regulations.

## FEDERAL REGULATIONS

### Federal Eviction Moratorium

The U.S. Centers for Disease Control and Prevention (CDC) order protecting renters from eviction for nonpayment ended on August 26, 2021. The [U.S. Supreme Court](#) issued a [decision](#) ending the CDC's nationwide eviction moratorium stating that the CDC exceeded its authority. Find rental assistance resources [here](#) and at [consumerfinance.gov/renthelp](https://consumerfinance.gov/renthelp).

**Effective Dates.** Ended August 26, 2021.

### Federal 30-Day Notice Requirement: CARES Act

Although the 120-day moratorium on evictions from the CARES Act has expired, for some properties that were covered under the moratorium or are in a forbearance period a 30-day notice of proposed eviction may still be required to be provided to tenants before proceeding with an eviction action.

### Additional Federal Protections

Housing providers should check with the [Federal Housing Finance Agency \(FHFA\)](#) to understand if their property is subject to any additional regulations while in forbearance.

## STATE OF TEXAS

### [Supreme Court of Texas – 45th Emergency Order](#)

The Texas Supreme Court issued an order renewing the forty-third (general) emergency order. The forty-fifth emergency [order](#) includes a key item that reduces the time period for justice and municipal courts' authority to modify or suspend trial-related or pretrial hearing-related deadlines and procedures for a stated period ending no later than March 1, 2022 (the Forty-Third Order had extended this authority for a stated period ending no later than April 1, 2022).

The order also, subject to constitutional limitations and review for abuse of discretion, continues the authority of all courts, without a participant's consent, to require or allow remote hearings, consider sworn statements made out of court or sworn testimony given remotely, conduct proceedings away from the court, require participants to provide certain COVID-related information to the court, and take any other reasonable action to avoid exposing court proceedings and participants to the threat of COVID-19.

**Effective Dates.** November 23, 2021 through February 1, 2022.

## LOCAL GOVERNMENTS IN CENTRAL TEXAS

### [Travis County Justices of the Peace – Order Abating Eviction Trails](#)

The Travis County Justices of the Peace issued an [order](#) related to eviction trails. Under the order, an eviction case trial related to non-payment of rent will not occur for at least 30 days after the petition is filed. The order applies to cases filed from January 1, 2022 through March 1, 2022, as follows:

- a. Effective for any residential eviction case where the grounds for eviction are solely for non-payment of rent filed on January 1, 2022 through March 1, 2022, a trial under Texas Rules of Civil Procedure 510.7 will not occur until at least 30 days after the petition is filed. All Texas Rules of Civil Procedure contrary to this paragraph are modified accordingly under the authority granted to the Justices Courts by the Texas Supreme Court emergency orders.
  - i. All parties are encouraged during the time prior to a trial to apply for rental assistance, seek legal counsel, and/or settle the case prior to trial.
  - ii. A Justice Court can set any eviction case for pretrial to discuss rental assistance programs, the possibility of receiving pro bono legal counsel, handle matters that may be dispositive as a matter of law, or any other pretrial matter in the opinion of the Justice Court.

In addition, the order applies the following standard to cases filed prior to December 31, 2021:

- b. Regarding a case filed prior to December 31, 2021 and under an abatement under a previous standing order (such as Order No. 17), a party must request to set the case for trial under Texas Rules of Civil Procedure 510.7 if the circumstances for the abatement no longer apply.
  - i. If a party does not make the request, then the Justice Court may continue to not set the case for trial until a request is made.
  - ii. If it appears that the circumstances for the abatement no longer apply, a Justice Court may send notice to the parties in an eviction case that does not have a trial setting that the parties have 10 days from the date of the notice to request a trial setting or else the case will be dismissed for want of prosecution. After the 10th day if no request for a trial setting has been made then the Justice Court may dismiss the case for want of prosecution.

The order also allows the justice court to sanction a landlord, or its agents, if the court finds:

*“that the plaintiff/landlord has alleged grounds for the eviction case other than nonpayment of rent/housing payments as a pretext to circumvent paragraph 3 of this order or past orders, the Justice Court shall abate or dismiss the case. The Justice Court may also sanction the plaintiff/landlord or its agents for the pretextual filing.”*

**Effective Dates.** January 1, 2022 through March 1, 2022.

### [Travis County & City of Austin Orders Prohibiting Notices to Vacate](#)

The Travis County Judge and the Mayor of Austin orders related to the [County's](#) and [City's](#) eviction moratoriums ended on December 31, 2021. The orders contained a phased approach that allowed some eviction cases to proceed. Below is a high-level summary of the third final phase from the order:

**Effective Dates.** December 1, 2021 through December 31, 2021.

### **Third phase (December 1 – December 31)**

Beginning December 1, landlords with residents who have unpaid rent and who have exhausted all rental assistance remedies, are no longer prohibited from filing a Notice to Vacate. During this time, the orders prohibit the issuance of Notices to Vacate for non-payment of rent to:

- (1) a residential tenant who fails to pay rent and the amount of the tenant's rent is \$2,475 or less per month; or
- (2) a commercial tenant.

**What Notices to Vacate are allowed December 1 – December 31.** A landlord may issue a notice to vacate for a tenant described above if:

- (1) the actions of the tenant, or the tenant's household members, customers, employees, or guests, pose an imminent threat of (a) physical harm to the property owner, the property owner's employees, or other tenants, including other tenants within the household; (b) criminal activity; (c) property damage that interferes with the use a dwelling that is occupied by other tenants; or (d) willful destruction of property;
- (2) an insured casualty loss such as fire, smoke, hail, explosion, or a similar cause creates a condition that makes the residential premises totally unusable;
- (3) the property at issue is the subject of a homestead exemption and the name on the homestead exemption matches the landlord's name; or
- (4) the residential tenant owes rent that was due on or after April 1, 2020, and, as declared on the Verification of Compliance (attached as Exhibits, in the orders), that:
  - a. the landlord has exhausted all available rental assistance remedies (as defined in the orders); or
  - b. the landlord or tenant is not eligible for any rental assistance remedies; and
  - c. the landlord notified the tenant that an application for rental assistance remedies was submitted within seven (7) days from the date of application.

### **Definitions of "Exhausted"**

The orders provide two definitions for the term "exhausted" that apply during the three phase as follows:

**Third phase (December 1 – December 31).** As defined in the orders, "exhausted" means between December 1, 2021 and December 31, 2021 that all applications for all available Rental Assistance Remedies have been denied or are still pending after 28 days as follows for named Rental Assistance Remedies:

- (i) County's Emergency Rental Assistance Program (ERAP): Applications have been denied, are still pending 28 days from the email notice sent by the Travis County Emergency Rental Assistance Team confirming that the preliminary Landlord application has been received.
- (ii) City of Austin's Relief of Emergency Needs for Tenants (RENT): Applications have been denied or are still pending after 28 days from the date of application.
- (iii) State of Texas Rent Relief Program: Applications have been denied or are still pending after 28 days from the date of application.

## City of Austin Notice of Proposed Eviction Requirement

The Austin City Council approved an ordinance extending and modifying the requirement for landlords to give a tenant notice of proposed eviction prior to sending an impacted tenant a notice to vacate. The approved ordinance includes a stairstep down process that decreases the minimum time period to respond to a notice of proposed eviction from 60 days to 28 days. The approved ordinance requires the notice of proposed eviction to include:

(1) the following statement:

- For a notice of proposed eviction given between October 15 – October 31, 2021:

*“A notice of proposed eviction and opportunity to pay to avoid eviction – this notice does not excuse your obligation to pay and you can be evicted if you fail to pay by the payment deadline below.”*

- For a notice of proposed eviction given on or after November 1, 2021:

*“A notice of proposed eviction and opportunity to pay to avoid eviction – this notice does not excuse your obligation to pay. You do not have to move when you get this notice. You may qualify for rental assistance. You can contact the City of Austin at (512) 488-1397 or the State of Texas at 1-833-989-7368 to learn more. Una notificación de potencial desalojo y de oportunidad para efectuar el pago y evitar su desalojo. Esta notificación no lo libera de su obligación de cumplir con el pago. No es necesario mudarse al recibir esta notificación. Puede calificar para recibir asistencia de alquiler. Para más información puede comunicarse con la Ciudad de Austin al teléfono (512) 488-1397, o el Estado De Texas al - (833) 989-7368.”*

(2) a right for the impacted tenant to respond, which includes curing any delinquent payments, and;

(3) the time period to respond. The minimum time period is as follows:

- 60 days for a notice of proposed eviction given between October 15 – October 31, 2021;
- 45 days for a notice of proposed eviction given between November 1– November 30, 2021;
- 28 days for a notice of proposed eviction given on or after December 1, 2021.

**Effective Dates.** March 26, 2020 through December 31, 2021.

## City of San Marcos 90-Day Notice of Proposed Eviction

The San Marcos City Council approved an ordinance requiring landlords to give a tenant notice of proposed eviction 90 days prior to sending an impacted tenant a notice to vacate. The approved ordinance requires the 90-day notice of proposed eviction to be in writing and include a statement informing the tenant of their right to respond and cure any delinquent rental payments due for a period of at least 90 days.

**Effective Dates.** April 7, 2020 until there is no longer a Declaration of Local Disaster in effect in San Marcos due to the COVID-19 pandemic.