

August 19, 2020

Via mail and email to Kathryn Miller: Kathryn.Miller@txcourts.gov

Supreme Court of Texas

PO Box 12248

Austin, Texas 78711

To the Honorable Members of the Supreme Court of Texas:

On behalf of the members of our respective associations, we would like to extend our sincerest gratitude to you for your commitment to ensure that justice continues to be served to all Texans during the current pandemic situation. We understand the Court is considering potentially renewing the Twentieth Emergency Order relating to the federal temporary moratorium on eviction filings under the CARES Act and we are submitting this letter to comment on the Act and to offer suggested language on issues relating to current justice court practices under the Twenty-second Emergency Order.

Supreme Court of Texas Orders relating to the Federal CARES Act

Since the passage of the CARES Act, attorneys, judges, tenant advocates, property owners, and renters across the country have been grappling with questions about the Act, specifically the section entitled **"TEMPORARY MORATORIUM ON EVICTION FILINGS" or Section 4024**. Such questions include:

- When do property owners go back to the "standard" eviction process under state law?
- If a market rate property has a voucher holder in one unit who is receiving federal subsidies, does Section 4024 extend to the entire multifamily property or only the unit in which the voucher holder resides?
- If the dwelling is a "covered dwelling" under Section 4024, does the law require property owners to provide the resident with 30 days' notice to vacate for all types of evictions or only those for evictions for nonpayment of rent which occurred during the temporary moratorium period (March 27, 2020 through July 24, 2020)?
- How are late fees to be handled? Can they accrue during and be charged after the temporary moratorium?

We believe answers to important questions like these should be clarified by congressional action and absent congressional action, developed by case law.

We appreciate the Court's orders relating to the CARES Act's moratorium. But now that it has expired, our interpretation is that the standard eviction process in Texas will resume. This interpretation is supported by HUD's Q&A on HUD.gov and the temporary designation of Section 4024. Nothing in the CARES Act requires affidavits or additional pleading requirements on the part of the property owner.

Any additional Texas Supreme Court orders on the Act could be construed as making a substantive interpretation about the federal law and may lead to further confusion and the inconsistent and incorrect application of the law.

We respectfully request the Court allow the Twentieth Order to expire and instead rely on the Texas Rules of Civil Procedure which grant broad authority to justices of the peace to develop the facts of the case, including the applicability of Section 4024 of the CARES Act. We should have confidence in our justice courts to effectively and appropriately utilize that specific authority granted to them under the TRCP to develop the case and interpret the law based upon facts and issues presented.

In lieu of an emergency order from the Court and because of all of the confusion and disparate interpretations of Section 4024, our suggestion is to offer statewide educational guidance (released through the OCA or Justice Court Training Center) to justices of the peace so that they may stay informed of the relevant language and issues. This would allow justice to be served in a consistent and fair manner across the state.

If the Court believes additional CARES Act orders are warranted, then we request the current paragraph 3 in the # Emergency Order be clarified as follows:

“For residential eviction proceedings **for non-payment of rent** or fees, penalties or other charges due from **March 27, 2020 through July 24, 2020**, a sworn original, amended, or supplemental petition containing “a description of the facts and grounds for eviction” required by Texas Rule of Civil Procedure 510.3(a)(2) must state whether or not:

- a. the premises is a “covered dwelling” subject to Section 4024 of the CARES Act;
- b. the plaintiff is a “multifamily borrower” under forbearance subject to Section 4023 of the CARES Act; and
- c. the plaintiff has provided the defendant 30 days’ notice to vacate under Sections 4024(c) and 4023(e) of the CARES Act.”

Note, subsection (c) above should be deleted if the requirements of the paragraph are not limited to instances of non-payment of rent, fees, penalties, or other charges due from March 27, 2020 through July 27, 2020 because its inclusion would then further the confusion regarding the applicability of the 30-day notice to vacate requirement.

Supreme Court of Texas Orders relating to the Modification of Rules

Maintaining access to justice and keeping the doors to the courthouse open to all Texans, even in the midst of a pandemic, is vital to restoring the health of the economy and sustaining constitutional, limited government. We appreciate your careful attention to balancing the health and safety of court personnel, jurors, attorneys, and litigants with maintaining access to justice for all who require it. We understand the need for the initial statewide eviction moratorium and the continued flexibility for courts to modify rules so they can safely operate their courts.

Some courts, however, have interpreted your orders to give them the authority to issue – whether formally or informally – blanket “eviction bans” in their jurisdictions. We realize that many Texans have been economically impacted by COVID-19 and we want to help them stay in their homes whenever possible. Evictions can be a difficult process for everyone involved.

Our members do not take those steps lightly and it is a last resort when all other options have been exhausted. At the same time, however, the inability of property owners to collect rent and access the eviction remedy impairs their ability to maintain the property, provide services to the residents who do pay their rent, make their own mortgage payments, and pay their property taxes to local governments. There are public policy and political concerns on both sides of the issue, but the judiciary is not the place to debate them.

Justice courts should be focused on safely operating their courts and ensuring that justice can be delivered equally to all parties at a time when face-to-face proceedings may be impracticable or severely restricted, they should not be allowed to make public policy decisions that discriminate against one type of litigant over another or one type of case over another. Continuing to allow eviction bans on a local level will only further exacerbate docket backlog, add to the confusion regarding overlapping and inconsistent laws and orders, and not solve any underlying problems for renters.

This issue will only worsen until it is addressed as it has resulted in property owners seeking to enforce their lease agreements with their residents being denied due process for lawful eviction proceedings in justice of the peace courts and some county courts. While the modification of procedures and deadlines is clearly authorized and appropriate in order to protect public health and safety of persons present during a hearing, this authority should not be used to block, postpone, or delay otherwise valid eviction proceedings based upon factors that have nothing to do with the actual operation and functioning of courts. Such action deprives property owners of their constitutional entitlement to access to the courts and has serious public policy implications for the operation of our judicial system during statewide emergencies.

We therefore request the Court to clarify the Twenty-second Emergency Order to require eviction proceedings to proceed in accordance with Rules 500-507 and Rule 510 of the Texas Rules of Civil Procedure, subject to modification for the sole purpose of avoiding or mitigating risk of transmission of COVID-19 to court staff, parties, attorneys, jurors, and the public involved in the case. We further request that if a court makes such modifications, it must issue a written order to all parties identifying the rule and explaining how the rule is modified.

Thank you again for your judicious leadership in these unprecedented times.



Texas Affiliation of Affordable Housing Providers (TAAHP)

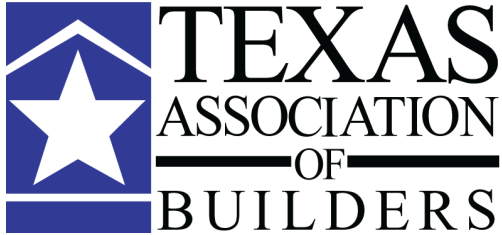
Janine Sisak, President



TEXAS APARTMENT ASSOCIATION

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