

New Resident Notice Requirements Passed By City of Austin Amid COVID-19 Crisis

On Thursday, March 26 the Austin City Council has passed an ordinance requiring a 60-day “Notice of Proposed Eviction” before an official “Notice to Vacate” can be posted using the normal procedures outlined in the Texas Property Code. The new notice requirement does not apply to any evictions necessary for resident or guest bad conduct or criminal activity. Related to the ordinance enactment, a Mayor’s Order also issued yesterday, March 26, prohibits the issuance of any Notice to Vacate until May 8, which further prevents any eviction actions for non-payment of rent from occurring under the current Disaster Order issued for the City of Austin. The council has also left open the possibility of extending the ordinance past the current end date. The ordinance provides no relief for property owners from any of the normal expenses they incur each month operating their properties.

A copy of both the Ordinance and Mayor’s Order are [HERE](#).

Before the vote the Austin Apartment Association (AAA) reminded the Council that the Texas Supreme Court has already addressed these issues with orders preventing new evictions from happening through the end of April, along with the new forms and tools that the industry is already using to address individual situations unique to each resident. This ordinance is unnecessary, redundant and we believe illegal. The AAA also submitted a legal brief to the city outlining the many legal questions raised by enacting the new 60-day notice requirement. We are working with the Texas Apartment Association to determine whether this ordinance should be challenged in court.

The Austin Apartment Association remains committed to being a resource for property owners and we are seeking guidance from the city about the new requirement.

It is the AAA’s current understanding that:

- The ordinance applies to any “Impacted Tenant” defined as: “A person, or a member of their household, who is authorized by a lease to occupy property to the exclusion of others and loses wages or income during the local disaster”. Properties can ascertain if an impacted resident “has lost wages or income” in the manner they deem necessary including: verification from an employer, paystub verification, unemployment claim documentation or other verification method.
- Properties can craft their own 60-day notice form so long as it contains this language in 16pt bold font:

“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.”

- Language in the ordinance giving residents a right to cure for rent missing or delayed does not relieve a tenant from liability for late fees if no other agreement has been entered into such as the Waiver of Late Fee form the AAA and Texas Apartment Association (TAA) recently began promulgating. We continue to encourage members

to address late fees by waiving them using the form that can be found on the TAA website.

- Any Notice of Proposed Eviction shall be provided like a notice to vacate which means hand-delivery to anyone over 16 living in the unit, posted on the inside of the door, by mail, or using the alternative posting methods outlined the Texas Property Code.
- The posting of a 60-day “Notice Proposed Eviction” requirement ends on May 8, 2020. However, the ordinance itself expires the 61st day after May 8, 2020 (July 7).

Additional guidance and information will be released as it becomes available.

A generic notice form for AAA members may soon be made available.

The AAA will continue to say to any residents or media that this 60-day notice is not a rent “grace period” nor any moratorium on rent due. We believe that the best approach to the challenges created by the COVID-19 issue is for property owners to work with residents on an individual basis to address these issues in accordance with the needs of both parties. We encourage anyone impacted through a job loss or lost wages to begin talking with property owners and in order to craft solutions in the best interest of all.