



FAQs related to the Supreme Court of Texas 25th Emergency Order

The Supreme Court of Texas issued a [25th emergency order](#) relating to evictions, effective September 17 and expiring December 15.

The 25th Order requires *all plaintiffs (property owners) in residential eviction cases* to include information in the petition about WHETHER or NOT the property is subject to the CARES Act and WHETHER or NOT a CDC eviction moratorium Declaration has been provided to the property owner.

It also provides a procedure to allow eviction cases to proceed if the property owner contests the Declaration and the judge agrees with the property owner's challenge.

1. What does the 25th Order require a residential property owner to do?

In all residential eviction cases, the property owner must include in an original, amended or supplemental petition WHETHER or NOT:

- The premises are a "covered dwelling" subject to Section 4024 of the CARES Act
- The plaintiff is a multifamily borrower in forbearance under Section 4023 of the CARES Act
- The plaintiff provided a 30 days' notice to vacate as provided by Sections 4024(c) and 4023(e) of the CARES Act, **and**
- The defendant (resident) has provided the plaintiff (property owner) a Declaration under the CDC moratorium.

These pleading requirements apply to ALL residential evictions, even though the CDC moratorium only applies to evictions for non-payment.

Here are two resources for owners:

- Updated [TAA Eviction Petition](#) with the information included
- [CARES/CDC Moratorium Affidavit from the Justice Court Training Center](#), which property owners may file to comply with the SCOTX Order.

2. Why are we still obligated to provide CARES Act statements – isn't the CARES Act moratorium over?

The language implementing the 30-day notice to vacate (NTV) requirement of the CARES Act has been interpreted differently by attorneys, tenant advocates and judges.

Unless or until Congress acts to clarify the law, interpretation and application of the CARES Act will be decided by the position taken by individual judges and case law—what appellate courts decide. TAA and NAA continue to seek clarity on this issue, but for the time being the language of the statute regarding the continued application of the CARES Act's 30-day notice to vacate requirement is unclear and care should be exercised.

3. What happens if a Declaration has been provided?

If a Declaration has been provided to the property owner, the court may not proceed with an eviction based upon non-payment of rent or other amounts due under the lease unless the judge holds a hearing to determine whether they can proceed and enters a written order detailing why the case may proceed.

If a resident provides a Declaration after an eviction suit is filed, they must file it with the court and provide a copy to the owner. The court must then abate the case, if it is based upon non-payment of rent or other amounts due under the lease, unless the owner contests the Declaration and the court holds a hearing as described above.

4. Should I challenge a Declaration I believe to be inaccurate?

Maybe. Remember that the CDC Order includes criminal and administrative penalties for violating the order. The 25th Order from the Texas Supreme Court should stop a county or district attorney from prosecuting a property owner for proceeding in an eviction when the Declaration is successfully challenged. However, it would not be binding on a federal court or prosecutor prosecuting an owner for an alleged violation of the Order if they believed that the challenge to a Declaration was wrongly decided by the state court. This is not a likely scenario, but it is possible.

TAA has developed a form that members can use to challenge declarations under the CDC order, entitled ["Owner's Contest to Declaration Under CDC Temporary Halt in Evictions."](#) This form is available on the TAA website and in the TAA REDBOOK Online, and it also will be released in TAA Click & Lease on Wednesday, September 23.

5. How do the CARES Act, CDC Order and 25th Supreme Court order overlap? What evictions are affected by these government actions?

The CDC order is not a continuation of the CARES Act. The CARES Act applies to "covered properties." The CDC Order applies to "covered persons." The two laws are distinct.

Additionally, the CDC Order only applies to evictions for non-payment of rent of qualified residents or other amounts due under the lease, such as late fees or utility payments. **HOWEVER**, the pleading requirement of the Supreme Court's 25th Order for the landlord to state whether or not the resident has filed a Declaration **DOES apply to all residential evictions.**

The CDC order provides that a "covered person" may not be evicted from residential property based on non-payment of rent or other amounts due under a lease or agreement. In order to be a "covered person" under this order, a resident must provide to the landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live, a sworn Declaration with the information required by the CDC order that the resident meets certain qualifications.

Each resident listed on the lease or other agreement must provide a Declaration in order to be covered by this moratorium. If only one resident provides a Declaration, that resident would be a "covered person" but the other residents could be evicted.

The CDC created a Declaration form, which is available online at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>. This specific form **does not** have to be used, but the

Declaration **must** be sworn under penalty of perjury and certify the qualifications of the tenant to be covered by the Order.

If the resident is a “covered person” under the CDC order, the CARES Act becomes moot because the case cannot proceed. However, if the resident is not a “covered person” either because they don’t meet the qualifications or because they failed to provide a Declaration to the property owner, a court may consider the requirements of the CARES Act.

6. What if I haven’t received a Declaration?

The case should proceed. You should give a notice to vacate and file an eviction after the time period in the notice expires. You need to make sure to include answers to the four questions in FAQ # 1.

The revised [TAA Eviction Petition](#) includes all of these statements. You should then be able to proceed, obtain a judgment, and recover possession of the apartment.

7. What if I receive a Declaration after I file an eviction?

Inform your legal representative and the court. If a court is informed by the property owner or resident at any point in the process, including after a judgment but before execution of a writ of possession, that the resident has provided a Declaration to the owner, the court must immediately halt proceedings.

The court will take the Declaration as valid on its face unless contested by the property owner. If the owner contests the Declaration, the court must hold a hearing to determine whether or not the moratorium applies. The court may not move forward unless a written order is issued stating why the Declaration does not prevent the case from going forward (for example, because the case is not based on non-payment or one of the required statements is false) and procedures that will apply to the case.

8. If your petition is already filed and does not include the new CDC order pleading requirements, what should you do?

Amend the petition or supplement the petition to include the statements ideally. If you are unable to do that prior to trial, be prepared to testify that you have not received a Declaration claiming protection under the CDC Order.

The court has full authority to develop the facts of the case under Rule 500.6. If a valid Declaration is provided, the court will abate the case until the CDC Order expires on December 31.

Note that unless the owner raises the issue that the Declaration is not valid, the court will not inquire into the criteria that the resident swore to in the Declaration and will treat the Declaration as valid on its face.

9. What about residents who hold over?

Remember, the CDC Order only stops residential evictions for non-payment of rent, and only if a valid, sworn Declaration has been delivered to the owner by the resident.

Nothing in this order would prevent an owner from:

- not renewing a resident's lease on expiration
- delivering a notice to vacate to a resident at will or by sufferance
- delivering a 30-day termination notice in a month-to-month tenancy, or
- delivering a notice to vacate or filing an eviction suit in these cases.

Additionally, under the 25th Emergency Order, an owner in these cases still must include in an original, amended, or supplemental petition whether or not a Declaration has been provided, even though the CDC Order doesn't apply to these cases.

10. What if a property owner only wants possession or there are breaches for non-payment AND other reasons not related to non-payment?

If a valid Declaration is provided to the owner that the resident meets the qualifications but the owner files an eviction for a reason other than non-payment, the owner could receive a judgment for possession, ***however the owner would not be able to recover rent in that eviction suit through December 31, 2020.***

In these cases, the owner would need to show that the conduct they are evicting the resident for occurred, it was a violation of the lease or agreement, and a proper notice to vacate was delivered. ***Also, remember that even if the owner isn't seeking back rent, but is seeking "possession only" in a case based solely on non-payment of rent, the eviction is still a non-payment of rent eviction, and would be barred if the resident gave the owner a valid Declaration.***

Additionally, under the 25th Emergency Order, an owner in these cases still must include in an original, amended, or supplemental petition whether or not a Declaration has been provided, even though the CDC Order doesn't apply to these cases.

11. Does this order supersede other local orders and ordinances?

No. Other orders or ordinances in your municipality may impact this process. You should check with your city, county, and local court or on their websites for any rules or regulations in addition to those required under the 25TH Order.

TAA encourages members to consider consulting appropriate legal counsel for evictions that may be subject to the CARES Act or the CDC Order.

DISCLAIMER: TAA continues to monitor the developments surrounding Coronavirus (COVID-19). This email is to provide you with general information from TAA's perspective, which does not constitute legal advice. It is informational only and does not replace the advice of your own legal counsel.