



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

The Supreme Court of Texas issued a [25th emergency order](#) relating to the CDC Order, 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 Declaration has been provided to the property owner. It also added additional requirements related to the CDC Order including a requirement that, once a Declaration is provided to the property owner and the court, the eviction proceeding must be abated. Additionally, the 25th Order 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.

Remember, the CDC order temporarily halts residential evictions of *covered persons* for the non-payment of rent during September 4 through December 31, 2020. This means that a property owner cannot *evict* for non-payment of rent any *covered person* from any residential property during this time period. The CDC Order defines "Evict" or "Eviction" to mean any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property.

Further, the CDC's FAQs (as discussed immediately below) include the following clarification: *"The Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the Order."*

Applying the CDC's interpretation to the eviction process in Texas, it would follow that even if a valid Declaration is provided, an owner may continue to issue notices to vacate for the non-payment of rent, file for eviction, have a trial and proceed with the eviction process **as long as the writ is not executed until after December 31, 2020** (subject to other state and local law).

However, an owner may *not* proceed all the way to writ execution under the Texas Supreme Court's 25th Order because it requires the court to abate eviction proceedings if and when a valid Declaration is provided.

On Friday, October 9, 2020, the CDC issued an [FAQ guidance document](#) clarifying its Order which included the following interpretations:

1. All evictions may continue to be filed and be prosecuted through judgment, but the writ of possession cannot be served during the time the CDC Order is in effect (unless successfully contested in court);

2. Each resident/signatory on a lease must sign a Declaration; and
3. A landlord is entitled to contest the Declaration (as set forth in the Texas Supreme Court's 25th Emergency Order).

In light of this clarification, TAA has updated the below Q&A and its [guidance on the CDC order](#). TAA also continues to communicate with the Supreme Court of Texas and to request it issue an amended order that is consistent with the CDC's Order and FAQ.

1. What does the Supreme Court's 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 of covered persons.

Here are two resources for owners:

- Updated [TAA Eviction Petition](#) with the information included (as well as the disclosure regarding the Eviction Diversion Program).
- [Sample form for contesting the CDC Declaration](#).

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?

Under the 25th Order and clarified by the CDC's guidance, the landlord may review the Declaration to evaluate the content and truthfulness of the Declaration provided. If the Declaration does not contain all of the required statements under penalty of perjury, or if any required statements are untrue, it may be contested.

The 25th Order sets out the following procedures:

- If a Declaration has been provided to the property owner, a court may not proceed with an eviction based upon non-payment of rent or other amounts due under the lease unless the landlord contests the Declaration.

- If contested, a judge *must* hold a hearing to determine whether the eviction can proceed and enter a written order detailing why and how the case may proceed.
- If a resident provides a Declaration after an eviction suit is filed, the resident *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.

Note: This is required by the Supreme Court’s 25th order and NOT the CDC Order. The CDC guidance makes clear that the CDC Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the *actual eviction* of a covered person for non-payment of rent does not take place during the period of the CDC Order.

4. May I challenge a Declaration I believe to be inaccurate or incomplete?

Yes. The 25th Order from the Texas Supreme Court allows a property owner to contest a Declaration and this was clarified by the CDC’s FAQ guidance. Remember that the CDC Order includes criminal and administrative penalties for violating the Order. However, making a legitimate challenge to a resident’s Declaration is expressly authorized by the CDC’s FAQ which states such challenges are permissible in any state court.

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 also available on the TAA website and in the TAA REDBOOK Online, and was 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. Section 4024 of the CARES Act, the Temporary Moratorium on Eviction Filings, applies to “covered properties.” The CDC Order applies to “covered persons.” The two laws are distinct.

Additionally, the CDC Order only applies to certain residents and to those evictions for non-payment of rent or other amounts due under the lease, such as late fees or utility payments. **HOWEVER**, the pleading requirements in the Supreme Court’s 25th Order 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. **What does CDC mean by “evicted” or “eviction”?** See the introduction to this FAQ above.

Further, in order to be a “covered person” under the CDC 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 (under the penalty of perjury) 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 meets the criteria and provides a valid 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/covid-eviction-declaration.html>. This specific form **does not** have to be used, but the Declaration **must** be sworn under penalty of perjury and the tenant must actually meet the qualifications to be covered by the Order.

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 valid Declaration to the owner, the court must immediately halt proceedings. This is required by the Supreme Court's 25th order and NOT the CDC Order. See the introduction to this FAQ above for more explanation.

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 Declaration is valid. 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/have not received a Declaration claiming protection under the CDC Order and whether you wish to contest the Declaration.

The court has full authority to develop the facts of the case under Rule 500.6. Per the 25th order, if a valid Declaration is provided, the court will abate the case until the CDC Order expires on December 31, as is required by the Supreme Court's 25th order and NOT the CDC Order. See the introduction to this FAQ above for more explanation.

Note that unless the owner contests a Declaration which 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 violate the lease for reasons other than non-payment?

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.

Evictions for non-payment of rent can continue if the resident does not provide the required Declaration. Even if an owner receives a valid Declaration, the eviction process may still proceed as long as the **actual eviction** of the tenant from the property does not take place until after December 31, 2020 (subject to other state and local law). See the introduction to this FAQ above for more explanation.

Nothing in the CDC order precludes evictions based on the following:

- for engaging in criminal activity while on the premises;
- threatening the health or safety of other residents;
- damaging or posing an immediate or significant risk of damage to property;
- violating any applicable building code, health ordinance or similar regulation relating to health and safety; or
- violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

However, under the 25th Order, an owner in these cases still must include in an original, amended, or supplemental petition whether or not a Declaration has been provided, and the court is still required to follow the procedures as discussed in FAQ #3 above.

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 go forward with a non-monetary default eviction and receive a judgment for possession.

In these cases, owners 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 by the 25th Order 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 guidance 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.