



FAQs related to the Texas Supreme Court's 34th Emergency Order

In response to an executive order from President Biden, the CDC has extended its eviction moratorium until March 31, 2021. The Texas Supreme Court's 34th Emergency Order, related to this moratorium, extends procedures in Texas related to the moratorium through March 31 as well.

See information on the rest of this document related to these orders. Also see the general [CDC Order Guidance document](#).

Contents and Effects of the Orders:

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

1. The premises are a "covered dwelling" under Section 4024 of the CARES Act;
2. The plaintiff provided a 30 day notice to vacate as provided by Section 4024(c) of the CARES Act;
3. The premises are a property securing an FHA-insured Single Family Mortgage; **and**
4. The defendant has provided a Declaration under the CDC moratorium.

The requirement to include this information in the petition applies to ALL evictions. However, the moratoriums only apply to evictions for non-payment.

The Supreme Court's Order also includes additional requirements and procedures including a condition that, once a Declaration is provided to the property owner and the court, the court **may not** proceed unless the judge holds a hearing to determine whether they can proceed and enters a written order detailing why the case may proceed. The 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.

If a tenant provides a Declaration *after* an eviction suit is filed, they **must** file it with the court and serve it on the plaintiff/owner. The court **must** then abate the case unless the plaintiff contests the Declaration and the court holds a hearing as described above.

Remember, the CDC order only temporarily halts residential evictions of **covered persons** for the non-payment of rent during September 4 through March 31, 2021. 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.

If a valid CDC Declaration has been provided, then 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 March 31, 2021** (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 Order because it requires the court to abate eviction proceedings if and when a valid Declaration is provided.

On 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 Order).

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](#).
- The CDC created a Declaration form, which is available online at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>. Tenants do not have to use this specific form, but the Declaration **must** be sworn under penalty of perjury and the tenant must actually meet the qualifications to be covered by the Order.

If your petition is already filed and does not include the pleading requirements, you may amend the petition or supplement the petition to include the statements. 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 Supreme

Court's Order, if a valid Declaration is provided, the court will abate the case until the CDC Order expires on March 31.

Reviewing and Contesting a Declaration.

Under the Supreme Court's Order and clarified by the CDC's guidance, the landlord may review a Declaration received to evaluate the content and truthfulness. If the Declaration does not contain all of the required statements and has not been signed under penalty of perjury, or if any required statements are untrue, it may be contested.

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.

Note: This is required by the Supreme Court's 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.

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.

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 has been released in *TAA Click & Lease*.

If you haven't received a Declaration, the case should proceed allowing you to obtain a judgment and recover possession of the apartment. 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 the revised [TAA Eviction Petition](#).

If you receive a Declaration after you file for eviction, inform your legal representative and the court. If a tenant provides a Declaration after an eviction suit is filed, they **must** file it with the court and serve it on the plaintiff. The court **must** then abate the case unless the plaintiff contests the Declaration and the court holds a hearing as described above. 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 Order and NOT the CDC Order.

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 March 31, 2021 (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).

Note: under the Supreme Court's 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 this FAQ above.

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 orders if the resident gave the owner a valid Declaration.

DISCLAIMER: TAA encourages members to consider consulting appropriate legal counsel for evictions. **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.**