TEXAS APARTMENT ASSOCIATION

SB 38: Texas Eviction Reform

Frequently Asked Questions

Updated as of November 24, 2025

The 2025 Texas Legislature enacted SB 38, a comprehensive reform of the state's civil eviction process. The purpose of this law is to address inefficiencies, streamline procedures, and create a specialized expedited pathway for certain types of cases—particularly situations involving "squatter-type" circumstances—while also improving clarity and consistency for all eviction actions statewide.

These FAQs are intended to help owners, managers, association staff, and related housing professionals understand the key provisions of SB 38 and how they may affect day-to-day operations once the law takes effect.

Important Disclaimer:

- ***Effective Date:*** The law takes effect January 1, 2026 (applies to all suits filed on or after 1/1).
- ***Evolving Guidance:*** These FAQs reflect our best current understanding of SB 38 based on the statutory text. However, interpretations can evolve.
- ***Ongoing Updates:*** TAA will continue refining, expanding, and updating these FAQs as new information becomes available, as rulemaking progresses, and as practical issues arise during implementation.
- ***Not Legal Advice:*** This resource is designed for general informational purposes and should not be considered legal advice for any specific situation.

Pre-Suit Notice

1. What is the difference between a "notice to pay rent or vacate" and a "notice to vacate?"

A "notice to pay rent or vacate" is required to be given if:

- the default involves non-payment of rent;
- there is no non-monetary default; and
- the resident was not previously late or delinquent in paying rent before the month in which the notice is given.

A "notice to vacate" may be given if:

- the default involves something other than non-payment of rent; or
- the resident was previously late or delinquent in paying rent before the month in which the notice was given.

2. What is considered "Rent?"

The eviction chapter of the Property Code does not define what is meant by rent. However, paragraph 1.6 of the TAA Lease defines "Rent" as the monthly base rent plus additional monthly recurring fixed charges. Both the monthly base rent and the monthly recurring fixed charges are identified on page 1 of the lease. Consequently, any amounts that are due that are not part of either the monthly base rent or the recurring fixed charges could be argued to not be considered as Rent. This could justify giving a notice to vacate even though the only default is a monetary default but consists of, for example, rent and utilities.

3. I sent out a notice to pay rent or vacate and the resident pays the amount considered to be rent, but does not pay other amounts that are also due, can I just apply the amounts paid to the non-rent items first, leaving the delinquency in rent?

Perhaps. Paragraph 3.2 of the lease provides that when you receive money, other than water and wastewater payments subject to government regulation, you may apply the payment at your option first to any of the resident's unpaid obligations, then to accrued rent. You may do so regardless of notations on checks or money orders and regardless of when the obligations arose.

In light of the lease provision and certain PUC rules relating to water and wastewater charges, if your application of payments does not involve water and wastewater charges, you could apply any monies received to any unpaid obligations and then to accrued rent.

4. Can I still give a "notice to pay rent or vacate" if the resident was previously late or delinquent in paying rent?

Yes, but it is not required. If you would like to give the resident the choice of either paying rent or vacating within the time prescribed in the notice, you may, but are not obligated to, give a "notice to pay rent or vacate" even if the resident was previously late or delinquent in paying rent.

5. If a resident is the subject of numerous noise complaints and has failed to pay rent, do I have to give the resident a "notice to pay rent or vacate" to allow the resident to cure the monetary default?

No. If the default involves a non-payment of rent issue (such as the noise complaints), you may give the resident a "notice to vacate." The resident will then be required to vacate without being given the choice of paying rent or vacating.

6. If the resident has previously received a "notice to pay rent or vacate," do I still have to give the resident a "notice to pay rent or vacate" the next time the resident is delinquent in paying rent?

No. If the resident was previously late or delinquent in paying rent, even though the default only involves non-payment of rent, you may give the resident a notice to vacate.

7. If I give the resident a "notice to pay rent or vacate" and the resident makes a partial payment, do I have to accept the money and refrain from going forward with the eviction process?

No, while these types of issues will be up to the judge, offer or acceptance of a partial payment should not waive your ability to continue with the eviction process.

Paragraph 23.2 of the lease provides that, after giving a pre-suit notice, you may still accept rent or other sums due and that the filing of an eviction suit or accepting rent or other sums due doesn't waive or diminish your right of eviction or any other contractual or statutory right. Accepting money at any time does not waive your right to damages, to past or future rent or other sums, or to your continuing eviction proceedings.

Regardless of the non-waiver provisions in the lease, you still would have to convince the judge in the eviction case that your acceptance of a partial payment did not waive your right to go forward with the eviction process. To strengthen your position with the judge, you may want to consider notifying the resident in writing when partial payment is accepted clarifying that your acceptance does not waive your right to go forward with the eviction process.

8. If the lease was terminated but the resident has held over beyond the end of the lease term, do I have to give a "notice to pay rent or vacate" or a "notice to vacate?"

Since the holdover default did not involve a non-payment of rent issue, you would give a notice to vacate. A "notice to pay rent or vacate" would only be a consideration when the default is solely the non-payment of rent.

9. Does the new law get rid of the CARES Act?

No. However, the new law provides that if a federal law or rule requires an owner to give notice to a resident before the owner requires the resident to vacate:

- an owner who satisfies the notice requirements of the state law is not required to delay the filing of an eviction suit based on the federal requirements;
- the federal requirement is not a basis for a court to delay or abate the eviction suit; and
- a writ of possession may not be served on the resident until the period between the delivery of the notice and the service of the writ of possession equals or exceeds the period prescribed by the federal requirement.

In other words, if a federal law or rule (such as the CARES Act) prohibits requiring the resident to vacate before 30 days after the owner provides the resident with a notice to vacate, the federal law would be satisfied as long as there are at least 30 days between the date the notice was given and the date the writ is served.

Please note that in order to create a "forcible detainer" under state law, you would still need to give the required pre-suit notice and not file the eviction until that notice period expires. However, while you would still give, for example, a 3-day pre-suit notice, you would not request the writ to be served before 30 days after the date the notice was given.

You also have to be aware that there are certain other federal requirements, such as a HUD rule that requires a 30-day notice and is applicable to properties participating in certain HUD-related programs. If you are subject to a federal rule, the applicable rule would need to be examined to determine whether the new law would apply to avoid the extended pre-suit notice period.

Caution should be taken with respect to who your judge is in any eviction suit. Judges may have different interpretations of this new law. You may want to consult counsel to make a decision in any particular case whether to use the new state law to allow the CARES Act period to run during the eviction process.

10. If my property is subject to the HUD model lease that requires a 10-day notice of proposed eviction before the eviction petition is filed, can the 10 days run concurrently with the 3-day notice?

Yes, under the new law. While the current law requires that the notice to vacate may not be given until the period for the resident to respond to the notice of proposed eviction expires, the new law allows these two notices to run concurrently and the pre-suit notice required under state law may include the required opportunity to respond to the notice of proposed eviction.

11. Can a pre-suit notice be delivered by email?

Yes. The new law allows a pre-suit notice to be delivered by electronic communication, including email or other electronic means, but only if the parties have agreed in writing.

Under paragraph 21.1 of the lease, notice may be given electronically by the owner to the resident if allowed by law. The resident represents in this section that the resident has provided the resident's current email address and agrees that the owner can use that email address until resident notifies the owner that the email address has changed and provides a new one.

The new lease specifically provides that a notice to pay rent or vacate or a notice to vacate may be given by electronic communication including email or other electronic means. However, until the new form is signed by your resident, if you want to email the pre-suit notice, you would need to argue that paragraph 21.1 constitutes the required agreement.

12. Besides electronic communication, how else can a pre-suit notice be served?

The new law allows the notice to be delivered by any one of the following methods:

- mail, including first-class mail, registered mail, certified mail or a delivery service;
- delivery to the inside of the unit, in a conspicuous space; or
- hand delivery to any resident of the unit who is 16 years of age or older.

13. If I have a threatening resident, can I deliver the notice by putting it on the outside of the door?

No. While this delivery method can be used under current law (with certain additional conditions), the new law does not allow for a notice to be delivered by affixing it to the outside of the door.

If you have a threatening resident, it would be best to serve the notice either by mail (which could include a delivery service) or by email.

14. Can I deliver the pre-suit notice by sliding it under the door?

One of the new methods of delivery includes delivering the notice to the inside of the unit in a conspicuous place. However, unless you are comfortable arguing that sliding the notice under the door would constitute inside delivery in a conspicuous place, you would not want to slide the notice under the door.

15. When delivering the notice on the inside of the unit, does the notice have to be affixed to the inside of the main entry door?

No. The notice can be placed anywhere inside the unit in a conspicuous place. While you cannot hide the notice by placing it in an area where the resident would be unable to find it, you can place the notice on a counter, table or other open space in the unit.

16. How can I prove that notice was delivered?

Similar to current law, proof of delivery of the notice would be accomplished through the testimony of someone who delivered the notice or someone who has knowledge of how the notice was delivered. That person would come to court and testify that the notice was delivered, including how the notice was delivered. Although receipt of the notice is not required, you will have to prove that the notice was delivered under one of the acceptable methods.

17. If I email the pre-suit notice, but the resident says in court: "I don't have that email address anymore" or "I have a new email address", what should I do?

Paragraph 21 of the lease provides for electronic notice. Pursuant to the old lease, notice may be given electronically by the owner to the resident if allowed by law, the resident represents that the resident has provided the resident's current email address to you and the resident will notify you in the event the resident's email address changes.

Under the new lease, if allowed by law and in accordance with the lease, the owner may give the resident notice electronically, by email, by phone or by delivery to the resident's physical address. The resident agrees that the email address provided in the rental application process or any other email address that the resident has used to communicate with you may be used for receiving a notice to vacate or a notice to pay rent or vacate. The resident agrees that any notice sent to the email address the resident designated in the rental application or to any other email address the resident has used to communicate with you is considered delivered when sent.

You should be prepared in court to show that the email address you used was an email address that the resident has provided to you in the rental application or is otherwise used by the resident to communicate with you.

18. If the resident has actually received the notice, can the resident dispute that the notice was not delivered properly?

No. The new law provides that the methods of delivery of a notice do not apply if the resident actually receives the notice. In other words, if you have proof that the resident actually received the notice, the resident cannot object to how the notice was delivered.

Computation of Time

1. If I give a 3-day "notice to pay rent or vacate," when can I file the eviction?
The new law provides that time periods under the statute:

- do not include the day of the event that begins the period;
- include Saturdays, Sundays, and state or federal holidays;
- include the last day of the period; and

- if the last day of the period is a Saturday, Sunday, or state or federal holiday, are extended so that the last day of the period is the next day that is not a Saturday, Sunday, or state or federal holiday.

For example, if you give a 3-day notice on a Wednesday or Thursday, you would count 3 days after the notice is given and file your petition on the 4th day. However, since the 4th day after a notice given on either a Wednesday or Thursday would be a Saturday or Sunday, the resident would have until Monday to vacate the unit. Consequently, you would need to file on the following Tuesday. Keep in mind that paragraph 23.2 of the TAA Lease provides that if the resident defaults, the right of occupancy can be ended by giving the resident at lease a 24-hour notice.

2. Can we deliver a pre-suit notice on a Saturday, Sunday or federal holiday, or do we need to wait until the next business day?

There is nothing in the law that prohibits you from giving a pre-suit notice on a Saturday, Sunday, or state or federal holiday. Under the statute, if the last day of the period is a Saturday, Sunday, or state or federal holiday, the last day is extended such that the period will be the next day that is not a Saturday, Sunday, or state or federal holiday. However, new TAA Lease paragraph 23.2 provides that the notice period in a notice to vacate or notice to pay or vacate that ends on a weekday or holiday will end on that day, and it will NOT be extended to the next business day.

3. Is there any way to shorten the time period so that I can file on a Monday after giving a notice on a Wednesday or Thursday?

Yes. The new law and the current law provide that the notice is to be a 3-day notice unless the parties have contracted for a shorter or longer notice period in a written lease. Paragraph 23.2 of the TAA Lease provides that if the resident defaults, the right of occupancy can be ended by giving the resident at least a 24-hour notice.

Shortening the time may be achieved in one of two ways. An owner may provide a one or two-day notice (or any period of time) such that the last day of the period would not be on Saturday, Sunday or a holiday; in which case, the eviction could be filed on the following day. Alternatively, you could agree in the ease or provide in the notice that you are shortening the time such that the last day is Saturday or Sunday, as opposed to extending the date as prescribed by the statute.

Authority to Modify or Extend Eviction Procedures

1. Can the Supreme Court modify or suspend the eviction procedures?

During Covid, the Supreme Court modified a number of court procedures applicable to justice courts. The Supreme Court issued over 50 orders that created a number of requirements relating to evictions that were not required in other types of cases. At one point, the Supreme Court issued a temporary moratorium on all evictions while other types of cases proceeded.

The new law provides that, with one exception, only the legislature can modify or suspend eviction procedures. The Supreme Court retains the right, during an emergency, to modify or suspend certain proceedings affected by a disaster, as long as the modification or suspension is applicable to all courts similarly affected by the disaster without regard to the subject matter of the case. This would prevent the Supreme Court from requiring that evictions be stopped, even in a disaster situation, if other types of cases are not similarly stopped.

Rules of Court

1. Can a JP require me to mediate an eviction case before I go to trial?

No. The court may not adopt a local rule, form or standing order for eviction suits that require any mediation, pre-trial conference, or other proceedings before trial. While the court can "request" or "suggest" that you tried to mediate the case before trial, the court cannot require you to do so.

2. Can a JP require me to add things to the petition that are not required by other JPs around the state, such as making it a requirement to identify whether I manage a CARES property?

No. A court may not adopt local rules, forms or standing orders for eviction suits that require content in a petition other than the content required by the state Rules of Civil Procedure.

Further, a court cannot adopt a local rule, form or standing order that authorizes the dismissal of an eviction suit on the basis that the petition was improper if the petition meets the requirements of the Rules of Civil Procedure or can be amended to meet those requirements.

JP Eviction Timetable

1. When is the eviction trial required to be held?

Similar to the current rule, the new law provides that the trial must be held not earlier than the 10th day or later than the 21st day after the date the petition was filed. However, the court may not hold the trial earlier than the 4th day after the resident is served with the petition. Consequently, while the court is required to hold the trial within 3 weeks after the petition is filed, that timetable must be coordinated with the timetable requiring the resident to have at least 4 days to prepare for trial.

2. What if the resident is not served in time for the trial to be held within 21 days after the petition is filed?

The eviction trial will be postponed until 4 days has passed since the resident was served.

3. Can the court postpone the trial?

Yes. However, the court may not postpone the date of trial for more than 7 days unless the parties agree to the postponement in writing.

4. What is the deadline for service? What if the constable (or sheriff) does not timely serve the petition or writ?

Under the new law, a sheriff or constable must make a diligent effort to serve the petition not later than the 5th business day after the date the petition is filed. If the petition is not served on or before the 5th business day after the date the petition is filed, the owner may, but is not obligated to, have the petition served by any other law enforcement officer that has received appropriate training in the service of process, eviction procedures and the execution of writs.

5. If I have been waiting for the constable to serve the petition and it has been longer than 5 business days, how can I have the petition served by another law enforcement officer?

The petition will need to be obtained from the court and delivered to the qualified law enforcement officer whom you want to provide service.

The Supreme Court is in the process of finalizing rules to supplement the new law. These rules should include details of how the petition would be obtained from the court and delivered to the law enforcement officer of your choice to provide service.

The law enforcement officer must have the appropriate training.

6. Why would an owner use another law enforcement officer (other than a sheriff or constable) for service?

If a constable fails to serve the petition in a timely manner, the new law gives owners an option for service by other qualified law enforcement.

7. Can you appear remotely to trial?

You can ask the judge. However, it will be up to the judge. The new law provides that if the parties agree, a justice court may allow the parties to appear in a court proceeding by video conference, teleconference, or other available electronic means. However, while the judge may allow the parties to attend in this fashion, the judge is not required to.

Additionally, new TAA Lease paragraph 23.6 provides that the resident agrees to electronic court appearances, and it also notes that either party may request or agree to an in-person appearance in a specific proceeding.

Squatters

1. What is a squatter?

Although the term "squatter" is not defined in Texas law, the term generally refers to a person who commits what is known as a "forcible entry and detainer." This is a term the law uses to describe a person who has entered property without authority and who continues to occupy the property thereafter. The key difference between a "squatter" and a resident who is being evicted, is that a "squatter" entered without permission whereas a resident entered with permission. With a few exceptions, many aspects of the eviction process are the same for each.

2. How can I get rid of a squatter?

A new Texas law allows a sheriff or constable authority to address a squatter situation without judicial intervention. However, if a sheriff or constable does not resolve the situation (sometimes, sheriffs or constables may refer to it as a "civil matter"), you have to go through the eviction process to get rid of a squatter. The new law provides an expedited summary disposition process that pertains only to those persons who committed a "forcible entry and detainer" (a "squatter").

This procedure allows you to file a motion for summary disposition with the petition and have the case considered by the judge in an expedited fashion without a trial. If the judge determines

that service on the squatter was proper and, based on the petition and response, if any, there are no generally disputed facts that would prevent a judgment in favor of the owner, the judge may enter judgment for the owner without a trial.

3. Can you use the expedited summary disposition process in a non-payment of rent case?

No. The expedited summary disposition process only pertains to squatters. Although the rules applicable to justice courts in general (as opposed to only eviction actions) has a summary disposition process that can be used, that process would probably not save you time if the trial was set in accordance with the new law within 21 days of the date the petition was filed.

Appeals

1. How is an appeal perfected?

Similar to the current rule, the statute provides that a party may appeal the judgment of a justice court in an eviction suit by filing a bond, cash deposit or statement of inability to afford payment of court costs (statement of inability to afford payment of court costs, previously known as the "pauper's affidavit"). The appeal is perfected when the bond, cash deposit or statement of inability to afford payment of court costs is filed with the justice court within 5 days after the date the judgment is signed.

2. Can a resident appeal a case even though the appeal is only for the purposes of delaying the owner getting possession of the unit?

Maybe. The new law provides that a resident who files an appeal must affirm under penalty of perjury the resident's good faith belief that the resident has a meritorious defense and that the appeal is not for the purpose of delay.

However, there is nothing in the new law that prevents a perfected appeal from going forward if the resident has not given truthful information with respect to a meritorious defense or delay. Consequently, it is up to the parties to raise the issue before the appropriate judge, and it is up to the judge to determine how to deal with a resident that has falsified this statement.

3. Does the resident have to pay rent during the appeal?

Yes. No matter how the resident appeals (whether the appeal is perfected by filing a bond, cash deposit or statement of inability to afford payment of court costs) or the type of eviction (monetary or non-monetary), the resident is required to pay rent into the court registry.

The first payment is to be made by the resident not later than the 5th day after the date the resident files the appeal. The resident is then required to pay one month's rent on or before the beginning of each rental pay period during the pendency of the appeal. If the case is pending in the justice court, the payment is to be made into the justice court registry. If the case is pending in the county court, the payment is to be made in the county court registry.

4. How will the court determine how much rent is to be paid per month?

If the justice court enters judgment for the owner, the court is required to determine the amount of rent to be paid each rental pay period during the pendency of the appeal. If a portion of the

rent is payable by a government agency, the court is required to determine in the judgment the portion of the rent to be paid by the agency and the portion to be paid by the resident.

The court's determination of the amount of rent is required to be in accordance with the terms of the lease. If there is no lease, the court is required to determine the rental pay period and the amount of rent to be paid by the resident. However, the amount to be paid by the resident must be the greater of $250.00 or the fair market rent.

5. What if the resident doesn't pay rent into the applicable registry?

During an appeal, the justice court or county court, as applicable, on request shall immediately issue a writ of possession without a hearing if the resident fails to pay rent into the appropriate court registry as long as the justice court provided written notice to the resident of the rent requirement. In addition, the new law provides that the issuance of a writ is a ministerial act not subject to review or delay.

6. Does the justice court still send the appeal to the county court even if the payment is not made into the court registry within 5 days after the appeal is perfected?

Yes. A resident perfects an appeal by filing a bond, cash deposit or statement of inability to afford payment of court costs (otherwise known as the "paupers affidavit") with the justice court no later than the fifth day after the date the judgement is signed.

Once the appeal is perfected, the justice court is required to forward the case to the county court no later than 4 p.m. on the 6th day and no later than 4 p.m. on the 10th day after the date the resident files the appeal.

If the payment is not timely made into the justice court registry, the owner is authorized to request the writ of possession. However, whether or not the writ is requested or served, once the appeal is perfected, the case will go to the county court.

7. When will the county court set the appeal case for trial?

Under the new law, the county court is required to hold a trial on an eviction appeal not later than the 21st day after the date the transcript and original papers are delivered to the county court.

8. Is the resident required to continue to pay rent to the owner during the pendency of an appeal?

No. A resident's payment of rent into the court registry relieves the resident of the obligation to pay rent to the owner, and the owner is entitled to retrieve that rent from the court registry.

9. How do you get the money paid into the court registry?

The justice court or county court, as applicable, is required to disburse rent paid into the court registry to the owner on request at any time during or after the appeal.

If rent is paid into the court registry, you should contact the court and make the request required by the clerk of the court to obtain the money paid into the court registry. Please keep in mind

that payment of the money may be somewhat delayed based upon the process the court has for payment of funds.

Writ of Possession

1. When can you request a writ of possession?

The writ of possession can be requested if:

- a judgment of the justice court becomes final because there has been no properly perfected appeal;
- the appropriate payment has not been made into the court registry; or
- a judgment of the county court becomes final on appeal.

2. How long should it take to serve a writ of possession after one is requested?

A sheriff or constable is required to serve the writ of possession not later than the fifth business day after the date the writ is issued. If the writ is not served on or before the fifth business day, the owner may, but is not obligated to, have the writ served by any other law enforcement officer who has received proper training in service of process, eviction procedures and the execution of writs.

3. If I am not sure if the resident has vacated after a judgment for possession is rendered, should I get the writ of possession?

Yes. The law provides that an owner is not liable for damages to the resident resulting from the enforcement of a judgment in favor of the owner, including the execution of a writ of possession by an officer under the law. Consequently, if there is any doubt whether that the resident has vacated the unit after a judgment for possession is rendered, it would be beneficial to have the writ served as opposed to moving personal property of a resident out without the authority of the officer.

Non-lawyer Representation

1. Can I represent my owner in the justice court eviction trial without an attorney?

In an eviction suit in the justice court, a party may represent themselves or be represented by the party's authorized agent, who need not be an attorney.

If you are an onsite manager for a management company who has been retained by an owner to manage the property, you can represent the owner in an eviction suit in the justice court as the owner's authorized agent.

2. Can I represent my owner without an attorney in an appealed eviction case?

In an appeal of an eviction suit for non-payment of rent, an owner of a multifamily property may be represented by the owner's authorized agent, who need not be an attorney.

If you are an onsite manager for a management company who has been retained by an owner to manage the property, you can represent the owner in an eviction suit in the justice court as the owner's authorized agent. However, be careful! The rules of evidence and procedure apply in the county court, so you may want the assistance of legal counsel in an appeal.

Effective Date

1. When does the new eviction process take effect?

The new law applies only to an eviction suit in which the petition is filed on or after January 1, 2026. An eviction suit in which the petition is filed before January 1, 2026 is governed by the law currently in effect.

If you are going to file your eviction on or after January 1, 2026, you should be giving the proper pre-suit notice under the new law (a "notice to pay rent or vacate" or a "notice to vacate"). Additionally, if the lawsuit is filed on or after January 1, 2026, the new manner of delivery of a notice to vacate should be followed.

2. If my lease does not state that a notice to pay rent or vacate or notice to vacate can be emailed, how can I deliver the pre-suit notice until a new lease is signed?

When you give a pre-suit notice under the new law, you will need to confirm that your lease has the proper language whereby you and the resident agreed that the pre-suit notice could be given by email or other electronic communication. If you are not convinced that this agreement has been made, you can still deliver the notice under the new law in any other authorized way. This may include mailing the notice, delivering it to the inside of the premises in a conspicuous place or hand delivering the notice to the resident.