

Landlord Tenant Relations and COVID-19 in Louisiana and Texas

As April 1 slipped by, perhaps more mischievously than usual in this time of government mandated lockdowns and business closings, what happens if a tenant fails to pay rent when due? Recent actions by federal, state, and local governments may change or suspend the usual rules fixed by law or the provisions of the lease.

- Under the CARES Act, tenants, such as those under Section 8, who receive federal assistance with rent can't be evicted for 120 days, March 27-July 25.
- The CARES Act also prohibits during this 120-day period evicting tenants of dwellings whose owners have mortgages that are federally owned, federally backed, or federally serviced, such as those of Fannie Mae, Freddie Mac, or HUD. The rent due continues to accrue, however. After that period, it is necessary to give a tenant a 30 day notice of intent to evict for failure to pay rent.
- The CARES Act does not prohibit evictions for other breaches of the lease, or in the case of month to month tenancy, or when the lease expires by its terms.
- The owners of multifamily properties who receive mortgage forbearance by Fannie Mae or Freddie Mac must likewise forbear eviction of tenants unable to pay rent, for as long as the owner itself enjoys mortgage forbearance, to date available for 60 days.
- In **Louisiana**, no legislation or executive order relating to COVID-19 directly addresses a tenant's obligation to pay rent or to the landlord's right to evict a tenant who breaches the lease.
- At a press conference on March 18, 2020, Governor Edwards announced that his "proclamation of public health emergency has been amended several times" and that "one change to point out is that eviction and foreclosure proceedings will not be moving forward at this time." However, "the obligation to pay your mortgage and your rent is not suspended so people should make their payments." These changes are not reflected in the text of the original proclamation or any subsequent amendment.
- On March 13, 2020, the Civil District Court for the Parish of Orleans entered an en banc general order providing that the First and Second City Courts have suspended all eviction hearings until April 24, 2020. On April 1, 2020, the First City Court entered an order establishing emergency filing procedures pertaining to unlawful evictions.

- Governor Edwards' Proclamation No. 30 of March 16, 2020, specifies that the Proclamation's general suspension of all legal deadlines, including liberative prescription and preemptive periods, does not prohibit a landlord from reclaiming abandoned property or from making necessary repairs. The Proclamation ordered the closing of certain businesses, such as casinos, bars, movie theaters and gyms.
- Governor Edwards' Proclamation No. 33 of March 22, 2020, closes certain additional businesses, such as barber shops, beauty salons, public amusement parks and certain shopping malls.
- Many commercial leases have force majeure provisions, typically relieving an otherwise breaching party from performing its obligations as long as it is prevented from doing so by, for example, restrictive governmental laws or regulations.
- Some Katrina vintage cases refused to recognize a negative business climate as constituting a substantial impairment of use as would allow a tenant to get diminution of rent under Louisiana Civil Code article 2715. *See, e.g., Meadowcrest Professional Business Partnership v. Toursarkissian*, No. 08-450 (La. App. 5 Cir., 11/25/08), 1 So. 3d 555.
- In **Texas**, Governor Abbott declared a state of disaster in all 254 Texas counties due to the COVID-19 pandemic, and the Texas Supreme Court issued emergency orders on March 19 and April 6, 2020, barring eviction proceedings until after April 30, 2020, unless the action involves an immediate threat of physical harm or criminal activity.
- The Texas Supreme Court's emergency order specifies:
 - No trial, hearing, or other proceeding may be conducted, and all deadlines are tolled, until after April 19, 2020;
 - Writs of possession will be issued, but the posting of the writs' written warnings and executions are stayed until after April 26, 2020;
 - New eviction filings are allowed, but the time period for issuing and serving citations is suspended until after April 19, 2020; and
 - Certain exceptions exist to allow some eviction cases to proceed.

This emergency order applies only to residential evictions, not to commercial leases. And notably, despite these extensions, tenants are still obligated to timely pay rent and follow all requirements of their leases.

- Essentially, all Texas residential eviction proceedings are paused until April 19, 2020 and the execution of any existing writs is suspended until April 26, 2020, except for cases involving a threat of physical harm or criminal activity. To establish an exception, the landlord must file a sworn complaint and the eviction case may forward if the court determines the actions of the

tenant, guest, or household member pose an imminent threat of (a) physical harm to the plaintiff, plaintiff's employees, or other tenants, or (b) criminal activity.

- Some Texas counties and courts have issued a longer pause on eviction cases, so it is important to check with your local justice court if you have questions regarding specific deadlines and/or extensions that may apply to you. Similarly, because the threat of the COVID-19 pandemic continues to evolve, the deadlines included in the Texas Supreme Court's March 19, 2020 may be extended.

If you have questions, need help navigating the eviction process in Louisiana or Texas, or want to know what your rights as a landlord or tenant are related to the various COVID-19 emergency orders, please contact us to discuss.