



Information for Landlords Concerning the Lease and COVID-19

The COVID-19 pandemic is causing unprecedented impact and uncertainty for tenants and landlords. To address these uncertainties, Texas REALTORS® is providing answers to several frequently asked questions regarding rental properties and the COVID-19 pandemic.

Does a tenant still need to pay rent during the COVID-19 pandemic?

Yes. There have been no laws passed or decrees that freeze rental payments. Tenants are still contractually obligated to make rent payments according to the terms of their lease.

If the tenant is unable to pay his rent during this time, what are my options as a landlord?

You may be able to set up a payment plan, waiver, or a rental forbearance for tenants who are facing financial difficulties due to the COVID-19 pandemic. The *COVID-19 Lease Payment Plan Agreement* (TXR-2227) allows tenants who are facing financial difficulties to come to an agreement with their landlord regarding a rent payment plan to ensure they are not found in violation of their lease. Proof of a financial hardship is required, and it will be up to the landlord whether the proof offered by the tenant is sufficient. The landlord's acceptance of the *COVID-19 Lease Payment Plan Agreement* does not amend the lease or waive any of the landlord's rights to enforce the lease against the tenant. Note: A landlord is under no legal obligation to enter into a payment plan or other modification of the lease with a tenant.

Have residential evictions been put on hold statewide due to the coronavirus (COVID-19)?

Yes, the Texas Supreme Court has suspended all proceedings and deadlines for residential evictions through April 19, 2020, with an exception for certain residential evictions involving an imminent threat of criminal activity or physical harm. The court has also prohibited writs of possession—a court order allowing a sheriff to seize the property and return it to the landlord—from being posted or executed through April 26, 2020. And while this emergency order allows Texas courts to continue accepting new eviction filings, the CARES Act—passed by the federal government—prohibits landlords of certain residential properties from making such filings and charging late fees or other charges related to nonpayment of rent from March 27, 2020, through July 24, 2020, if the eviction is based on nonpayment of rent or other amounts due under the lease. Importantly, many residential properties (but not all) will be covered by both the CARES Act and the Texas Supreme Court order.

Furthermore, local governments may take action to limit evictions that goes beyond the actions taken by the Texas Supreme Court and the CARES Act. Therefore, it is important for property managers to continue to monitor actions taken by cities and counties relating to evictions.

Which properties are subject to the temporary moratorium on eviction filings and late fees under the CARES Act?

The temporary moratorium on eviction filings and late fees under the CARES Act applies to a property occupied by a tenant pursuant to a residential lease if the property:

- 1) Participates in a covered housing program or the rural housing voucher program, or
- 2) Has a federally backed mortgage loan or a federally backed multifamily mortgage loan.

For a tenant in a CARES ACT covered property, is the tenant required to provide any proof of financial hardship due to COVID-19 for the temporary moratorium on evictions to apply?

No, the moratorium through July 24, 2020, on filing evictions for nonpayment of rent or other amounts due under the lease is not conditioned on the proof of (or even the existence of) financial hardship due to COVID-19. Rather, the moratorium applies based on the characteristics of the property.

Can a tenant request an accommodation to not allow viewings under the ADA and Fair Housing Act requirements if the tenant is a member of the community at higher risk of developing severe illness due to COVID-19 exposure?

Possibly. A previously diagnosed compromised immune system could be considered a disability for FHA purposes. A reasonable accommodation in the rules, practices, or services may be requested to afford the person equal opportunity to use and enjoy a dwelling. You must grant a tenant's request for a reasonable accommodation unless the request is: 1) unduly burdensome, a fundamental alteration of the landlord's program, or there is another accommodation that is just as reasonable; or 2) the tenant poses a direct threat to the health or safety of other residents or when the tenancy would result in substantial physical damage to the property of others. There may be other reasonable accommodations available to the tenant, such as screening a prospect for coronavirus exposure or implementing cleaning protocols after the prospect has viewed the property. Questions about a specific request should be directed to an attorney.

Can residential tenants refuse to allow access to property due to fear of contracting COVID-19?

No. Subparagraph B of Paragraph 14 of the *Residential Lease* (TXR 2001) and *Residential Lease for Multi-family Property Unit* (TXR 2011) states that landlords or anyone authorized by landlords will first attempt to contact the tenant before accessing the property, but may enter the property at reasonable times without notice to make repairs or to show the property to prospective tenants or buyers, inspectors, fire marshals, lenders, appraisers, or insurance agents. Subparagraph C allows landlords to charge a fee if a tenant refuses access or fails to make the property accessible.

However, to ensure health and safety and to reduce property owners' potential liability, landlords or property managers may want to screen those wishing to view the property for coronavirus exposure. If implementing a screening process, remember to adhere to fair housing guidelines, which dictate that landlords and property managers may not discriminate against anyone based on race, color, national origin, religion, sex, familial status, or disability. Property managers should also encourage property owners to speak to their own risk advisors or attorneys on these matters related to COVID-19.

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