



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)?

On Sept. 1, 2020, the U.S. Centers for Disease Control took emergency action and issued an order intended to prevent further spread of COVID-19 throughout the country. Under the order, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any jurisdiction through December 31, 2020 for nonpayment of rent.

A tenant, lessee, or resident of a residential property must provide the person with a legal right to pursue eviction a declaration under penalty of perjury indicating that:

1. The individual has used best efforts to obtain all available government assistance for rent or housing;
2. The individual either (i) expects to earn no more than \$99,000 in annual income for calendar year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
3. The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a layoff, or extraordinary out-of-pocket medical expenses;
4. The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
5. Eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

The order does not relieve any obligation to pay rent, make a housing payment, or comply with any other housing-related contractual obligations. Nothing in the order precludes the charging or collecting of fees, penalties, or interest due to the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract. Additionally, a person may still be evicted for reasons other than nonpayment of rent.

When does the CARES Act require a landlord to provide a 30-day notice to vacate?

The temporary eviction moratorium in the CARES Act ended on July 24. However, for tenants in covered properties, the CARES Act requires landlords to provide at least 30-day notice to vacate before filing eviction based on nonpayment of rent that accrued during the temporary eviction moratorium under the act. Strictly applied, this means that if a landlord's eviction filing requests judgment for unpaid rent that accrued from March 18 to July 24, the landlord should provide a 30-day notice to vacate. However, two things to note:

- 1) It is unclear if courts will interpret and enforce the act in this manner.
- 2) Many evictions of residential tenants will be otherwise prohibited by the CDC, in which case the landlord should not be seeking eviction at all.

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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