



Concerned About Paying Rent During COVID-19? Here's What You Can Do.

With unemployment rising to historic numbers, many Bexar County residents are concerned about their ability to pay rent and what the consequences will be.

These concerns have not gone unheard, as the city and county have quickly mobilized resources to assist. Tens of thousands of families have requested rent or mortgage relief through the [San Antonio Emergency Housing Assistance Program](#). The City has approved nearly \$70 million in additional funding towards rental and mortgage assistance through the Recovery and Resiliency Plan for the ongoing COVID-19 pandemic.

While many citizens have received counseling and financial assistance, others are still searching for help or may be facing new financial realities. We are with you. We evaluated some of the most common questions received about moratoriums on evictions and foreclosures due to the pandemic, and let our experts provide their insight.

Q: Do I still need to pay rent during the COVID-19 pandemic?

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

Q: If I am unable to pay rent during this time, what should I do?

A: Communicate with the landlord or property manager as soon as possible. Your landlord or property manager may be able to set up a payment plan, waiver, or a rental forbearance for tenants that are facing financial difficulties due to the COVID-19 pandemic. Note: The landlord or property manager is under no legal obligation to enter into a payment plan or other modification of the lease.

Q: Can I be evicted for failure to pay rent?

A: On September 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 January 30, 2021 for nonpayment of rent. It is important for you to communicate with your landlord as soon as you can to come to an understanding about the payment of rent.

Q: Have residential evictions been put on hold statewide due to COVID-19?

A: Yes. On September 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 January 30, 2021 for nonpayment of rent.

Q: Who is covered under this order?

A: A covered person is a tenant, lessee, or resident of a residential property. The covered person 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.

Q: In what jurisdiction does this order apply?

A: The order applies to any jurisdiction without a current eviction moratorium.

Q: Does the order relieve tenants of the obligation to make payments?

A: 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.

Q: Are tenants automatically protected from eviction under the CDC's order?

A: No. Under the Centers for Disease Control and Prevention's order, tenants who want to be protected from eviction must provide a [declaration](#) to their landlords, owners of the residential property where they live, or other people who have a right to have them evicted.

The order, which is in effect from September 4 through January, 30, 2021, prohibits a landlord, owner of a residential property, or other person with a legal right to pursue eviction from evicting any covered person for nonpayment of rent. A covered person is a tenant, lessee, or resident of a residential property.

Q: Has the Texas Supreme Court issued any guidance on the Centers for Disease Control and Prevention's eviction order?

A: Yes, the Texas Supreme Court on September 17, 2020 issued an order that will be in effect until March 15, 2021. In the order, the court clarifies what landlords must provide in a sworn statement before proceeding with the eviction process. An eviction petition must include a sworn statement on whether or not:

1. the premises is a "covered dwelling" subject to Section 4024 of the CARES Act;
2. the plaintiff is a "multifamily borrower" under forbearance subject to Section 4023 of the CARES Act;
3. the landlord has provided the defendant with 30 days notice to vacate under Sections 4024(c) and 4023(e) of the CARES Act;
4. and the tenant has provided the landlord with a declaration under the Centers for Disease Control and Prevention's agency order, Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, that took effect September 4, 2020.

The citation issued by a court must also include language providing notice of the CDC's order to the tenant, and the order states that a judge has authority to ask whether a tenant facing eviction is aware of the CDC's order. Furthermore, the order clarifies that if a tenant files the declaration with the court and serves a copy of the declaration on the landlord after an eviction petition has been filed, the court must abate the eviction action, including the issuance and execution of any writ of possession.

Q: What is the Texas Eviction Diversion Program?

A: On September 25 the Texas Supreme Court on September 25 established the Texas Eviction Diversion Program with funding allocated by Governor Greg Abbott. The voluntary program permits eligible landlords and tenants to resolve issues raised in an eviction case by providing up to six months of rental assistance for eligible tenants who are behind on their rent due to the COVID-19 pandemic. If eligibility requirements are met, assistance can be used to pay the full contracted rent that is past due (up to five months), and the remainder may be used to pay for subsequent months of assistance (up to a total of six months) and the eviction case will be dismissed.

The Texas Supreme Court now requires a sworn original, amended, or supplemental eviction petition to state that the landlord has reviewed the [information about the Texas Eviction Diversion Program](#). Also, the eviction citation given to the tenant by the court must include the following:

- “You may be able to stop your eviction if you and your landlord agree to participate in the Texas Eviction Diversion Program. At your trial, the court will tell you about the program and ask if you are interested in participating. Find out more about the program in the attached brochure, ‘State of Texas Eviction Diversion Program,’ and at www.txcourts.gov/eviction-diversion.”
- A copy of the informational brochure “[State of Texas Eviction Diversion Program](#),” prepared by the Texas Department of Housing and Community Affairs.

If the eviction goes to trial, the judge must discuss the Texas Eviction Diversion Program with the landlord and tenant and ask whether the landlord and tenant are interested in the program. If both the landlord and tenant indicate they are interested in the program, the judge is required to delay the proceedings for 60 days, make the records and information on the eviction case confidential, and inform the landlord and tenant about the reinstatement procedure.

At any time during the 60-day abatement period, the landlord can file a motion to reinstate the eviction case with the judge. The motion must be served on the tenant. The judge is then required to reinstate the eviction case, set it for trial within 21 days, inform the parties how to proceed, and make the records and information non-confidential. If the landlord does not file and serve a motion to reinstate an action abated within the 60-day abatement period, the judge must dismiss the action, including any claims that do not involve the nonpayment of rent, with prejudice. All court records, files, and information—including information stored by electronic means—relating to the dismissed eviction action must remain confidential.

Q: What are the Texas Eviction Diversion Program eligibility requirements?

A: To be eligible for the eviction diversion program, landlords must meet the following criteria:

- Assistance for rent no older than April 2020
- Rent for the household assisted may not exceed the TDHCA maximum limits established per zip code
- Must have a bank account and accept direct deposit
- Units that are already receiving project-based assistance or are public housing units are ineligible
- Units that are owned by a unit of government may be ineligible.

To be eligible for the eviction diversion pilot program, tenants must meet the following criteria:

- Household income at or below 200% of poverty
- Household has been financially affected by COVID-19 pandemic
- Tenants are ineligible if they are receiving tenant-based voucher assistance, are in a unit receiving project-based assistance, or are in public housing.

The Texas Legal Services Center has established a toll-free hotline to assist individuals seeking legal assistance at 855-270-7655. The Texas Department of Housing and Community Affairs has established a [website](#) and a toll-free hotline to provide information at 800-525-0657 or 512-475-3800 (pick option 4).

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

A: 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.

Q: I am having trouble paying my rent or mortgage. What local help is available?

A: The City of San Antonio has established the [Emergency Housing Assistance Program](#) to help families pay rent, mortgage, utilities and internet bills by paying the landlord, financial institution, internet provider and utility provider directly. It also provides assistance to purchase groceries, gas and medicine as they cope with the COVID-19 pandemic.

- Renters and Homeowners at or Below 50% AMI
 - Applicants with a household income at or below 50% of the Area Median Income (AMI) who have not received previous EHAP assistance will be eligible to receive up to two (2) months of rent or mortgage assistance, up to two (2) months of utility assistance, and up to two (2) months direct cash assistance, capped at \$300 per month (see table B).
 - After two (2) months of assistance, if a proof of hardship persists, the household can receive \$500 in direct cash assistance in the third month.
 - After three (3) months of assistance, the applicant is no longer eligible for additional assistance.
- Renters and Homeowners Between 51%-80% AMI
 - Applicants with a household income between 51%-80% of the Area Median Income (AMI) who have not received previous EHAP assistance will be eligible to receive up to two (2) months of rent or mortgage assistance.
 - After two (2) months of assistance, if a proof of hardship persists, the household can receive \$200 in direct cash assistance in the third month.
 - After three months of assistance, the applicant is no longer eligible for additional assistance. Households with an income between 51% and 80% AMI are not eligible for utility, internet, or direct cash assistance, with the exception of \$200 direct cash available if a third month of assistance is needed.

Q: What if I do not have an FHA loan or one backed by Fannie Mae and Freddie Mac?

A: If you have a mortgage loan that is not backed by one of the federal agencies covered by the CARES Act, contact your loan servicer. You can find your servicer's name on your mortgage statement or by searching the Mortgage Electronic Registration Systems (MERS) website. Have the following questions you want to ask, have your account number ready, and check their website before you call to see if there is a list provided of information you may need or if you can apply online.

- What options are accessible to help temporarily reduce or suspend payments?
- Is there forbearance, loan modification, or other options applicable to my situation?
- Can you waive late fees on my mortgage account?

Your servicer should help you identify alternatives that may be available to you given specific circumstances. Once you are able to secure forbearance or another mortgage relief option, ask your servicer to provide written documentation that confirms the details of your forbearance agreement and that you're clear on what the terms are.

Q: What do I do if I am receiving some sort of mortgage relief?

A: There are several things to do to continue to protect yourself while you are in the CARES Act forbearance period or working under another mortgage relief option.

- Keep written documentation on hand and make sure that you have this documentation available in case there are any errors on your monthly mortgage statements to ensure that your statement reflects the assistance provided.
- Pay attention to your monthly mortgage statement. Continue monitoring your monthly mortgage statements to make sure you do not see any errors.
- Stop or change auto-payments for your mortgage. If you are having your mortgage payment deducted automatically from your bank account, ensure you make any necessary adjustments to avoid any fees or charges.
- Keep an eye on your credit and check your credit reports to ensure there are no mistakes or errors. If you stop making mortgage payments without a forbearance agreement, the servicer will report this information to the credit reporting companies, and it can have a lasting negative impact on your credit history.

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