

# Commercial Landlords in Texas Should Expect Delays in the Eviction Process during the COVID-19 Pandemic

05.01.20

In response to forced business shutdowns, layoffs and closings that have occurred due to the COVID-19 pandemic, state and local governments have implemented temporary stays on evictions as a way to protect individuals and businesses reeling from the effects of the stay at home orders put in place over the past two months. Although the current stays on evictions put in place by the State of Texas apply to residential leases, the actions taken by local government and local courts are also delaying the ability of commercial landlords to evict commercial tenants. Despite these actions taken by local government and local courts, commercial landlords can take steps to minimize any further delay once these temporary stays are lifted.

Before making the decision to initiate an eviction proceeding during the COVID-19 pandemic, commercial landlords should consider, among other things, the practicality of a temporary rent deferral arrangement or similar solution, the availability of another tenant to fill the vacated space, the cost of re-letting the premises (including the cost of any build-out that may be required), the overall financial health of the tenant and its ability to rebound from the temporary shutdown, and any restrictions on lease termination or consent requirements found in the landlord's loan documents. As is always the case, once the decision has been made by a landlord to evict a defaulting tenant, the landlord needs to ensure that any notice and cure requirements in the lease have been observed prior to beginning the eviction process. The landlord must also strictly follow the lease as well as statutory requirements contained in the Texas Property Code, which typically include delivering a notice to vacate to the tenant providing tenant with at least three (3) days to vacate the premises, filing a forcible detainer lawsuit in the proper justice court, serving the tenant with process, trial in the justice court to obtain a judgment and writ of possession, and then enforcing a writ of possession to remove a tenant from the premises. It is at the justice court stage of the eviction process that recent actions taken by local governments and local courts have delayed the commercial eviction process.

The Office of Court Administration has issued guidance to Texas state courts recommending that all in-person proceedings of any size be delayed until at least June 1, 2020. While some courts have the ability to conduct hearings remotely using electronic telecommunication services such as Zoom, many courts, and specifically many justice courts, have instead elected to suspend certain non-essential proceedings entirely until a later date, which has effectively suspended commercial evictions and the issuance of writs of possession. Even if these procedures are available in the county in which a commercial landlord's premises are located, commercial landlords are likely to run into other issues with the eviction process at this time such as a lack of availability of constables to enforce writs of possession. While the situation is fluid and is often changing, below is a list of some of the current court closures and suspensions on proceedings put in place by local governments in some of the more populous Texas counties that have affected commercial evictions:

- Harris County – The latest order from the justice courts of Harris County, the Third Amended Order Regarding Court Proceedings Pending COVID-19 State of Emergency dated April 30<sup>th</sup>, 2020, only references a suspension of residential forcible entry and detainer cases, which runs through May 18<sup>th</sup>; however, the previous order issued on April 6, 2020, extended to all forcible entry and detainer cases and ran through April 30<sup>th</sup>, 2020. It appears based on the language in the Third Amended Order that the justice courts in Harris County may be handling the suspension of commercial forcible entry and detainer cases on an individual, court-by-court bases; however, eviction cases can still be filed in Harris County at this time.
- Bexar County – Pursuant to the Third Order Regarding Court Proceedings Pending COVID-19 State of Emergency signed on April 28, 2020, by Judge Rogelio Lopez, Jr., on behalf of the Justices of the Peace in Bexar County, Texas, all scheduled court proceedings except for essential proceedings and certain residential eviction proceedings are reset to a date after June 1, 2020. Eviction cases can still be filed at this time.

- Dallas County – Dallas County Justices of the Peace have suspended all eviction hearings and writs of possession until at least May 8<sup>th</sup>. Eviction cases can still be filed at this time.
- Tarrant County – Effective March 17, 2020, per the Tarrant County Justice Courts Temporary Standing Order #1 issued by Administrative Judge William P. Brandt, all non-essential proceedings in Tarrant County Justice Courts, including evictions, were suspended indefinitely. In eviction cases, no writs of possession will be issued until the Court receives a new directive.
- Travis County – No eviction settings will be held in Travis County until after May 8, 2020, and no writs of possession will be issued by a Justice Court until May 13, 2020 per the Standing Order Regarding Coronavirus Disease (COVID-19) Mitigation to all Travis County Justices of the Peace (Justice Court) Updated March 17, 2020 (Order No. 02). Additionally, the prohibition on the issuance of notices to vacate (with limited exceptions for instances involving criminal activity or imminent threats of personal harm), the removal of property and the exclusion of a tenant by a property owner in Travis County until May 8, 2020, per the Stay Home – Work Safe Order issued by the County Judge of Travis County on April 10, 2020 (County Judge Order 2020-6) may affect the commercial eviction process as well.
  - City of Austin – Per Austin City Counsel Ordinance No. 20200326-090, in cases involving the failure to pay rent, landlords must now provide an impacted tenant with a notice of proposed eviction and a 60-day cure period prior to providing the tenant with a notice to vacate. This requirement applies to a landlord who may evict an impacted tenant because of delinquent payments that occur between March 26, 2020, and May 8, 2020, and this ordinance is currently set to expire on July 8, 2020.

Additionally, in some instances, individual Justices of the Peace within a county are establishing their own court procedures which can have the effect of further delaying the eviction process such as the indefinite cancellation of all court dockets. As a result, the location of the leased premises, including its location within an individual precinct within a county, is a crucial factor in determining the speed with which a commercial landlord may ultimately be able to evict a defaulting tenant.

When venturing down the path of a potential eviction during the COVID-19 pandemic, it is important for commercial landlords to first determine if any local ordinances or regulations, which are constantly changing, have been enacted by any local governments with jurisdiction over the premises that might modify or suspend the statutory eviction requirements or eviction requirements under the applicable lease. Despite the effect that these current suspensions and requirements may have in delaying the eviction process, a commercial landlord that desires to evict a tenant can minimize the delay once these suspensions are lifted by moving as far forward in the eviction process now as permitted under the current regulations affecting the premises, such as sending out all notices of default and notices to vacate and even filing a forcible detainer lawsuit. Many counties are still allowing evictions to be filed at this time so, if that is the case with the justice court having jurisdiction over the premises, a commercial landlord can still file the forcible detainer lawsuit once all requirements under the applicable lease and the Texas Property Code have been met. Because there will likely be a backlog of eviction lawsuits that need to be set for trial once any applicable stays are lifted, a commercial landlord that has made the decision to evict a defaulting tenant would be wise start the eviction process now, including sending any required notices to vacate to the extent such are permitted in the applicable jurisdiction and filing a forcible detainer lawsuit.

**Contact:**

Nick Gerner | 214.745.5807 | [ngerner@winstead.com](mailto:ngerner@winstead.com)

*Disclaimer: Content contained within this news alert provides information on general legal issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it*

*does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.*