

The Community Development Clinic at Texas A&M University School of Law has collected some frequently asked questions that residential tenants have about how the COVID-19 pandemic and social distancing guidelines affect their lease obligations.

I left my dwelling and no longer use it as a result of COVID-19. Am I still required to pay my rent?

Yes, you are still bound by the terms of your rental agreement until your lease terminates. Always review your lease to determine what you and your landlord agreed to before making a decision about how to proceed.

I left my dwelling and no longer use it as a result of COVID-19. I am unable to continue paying rent. What are my options?

Your obligation to pay rent may not change but ask your landlord for an accommodation or attempt to reach an agreement. It is best to document your communications with your landlord or property manager in writing, through a letter or an email. Even if you talk with your landlord in person or by phone, it is important to follow up in an email to document your understanding of any agreements or representations made during the conversation.

I am unable to continue paying rent, but my lease will expire soon. Can I use my security deposit to offset some of my balance owed?

Texas law forbids a tenant from withholding the last month's rent on the grounds that the security deposit will cover the balance owed.¹ Texas considers withholding last month's rent as a "bad faith" move. However, your landlord may work with you to accept the security deposit if you return the property in good condition with no need to offset any part of the existing security deposit for repairs.

I did not pay rent and my landlord locked me out. Is this legal?

Yes. A landlord can lock you out for not paying rent or abandoning the property. Abandonment is not clearly defined² but if you vacated your premises for more than 5 days and you took most of your belongings with you, a landlord can use that as evidence to show a court that you abandoned the dwelling. Your landlord has the legal obligation to notify you of the intent to lock you out, and must provide the name, number, address, and times that someone can provide you a key to enter the dwelling and remove your belongings.³

¹ Tex. Prop. Code § 92.108 (2019).

² Mere non-use of your apartment, such as leaving your apartment with only some of your belongings with the intent to return, is likely insufficient evidence to determine abandonment. The court, not your landlord, will determine if you had abandoned your dwelling.

³ Tex. Prop. Code § 92.0081(b) (2019).

My landlord locked me out but I paid rent. What are my rights?

If your landlord does not follow the proper procedure set forth by Texas law, you may be able to recover damages or possession of your suite/unit.

I want to vacate my dwelling and I don't know how to go about it. What steps should I take?

Letting your landlord know that you would like to terminate your lease is the best possible route to take. Your landlord has every right to continue expecting rental payments for the entire lease term, but the landlord can also choose to reach an agreement with you and permit early termination. Your landlord has the right to accelerate all expected rental payments if you default on your lease, so take care in approaching the situation.⁴ Review your lease carefully to understand your landlord's expectations and rights.

I know there is a moratorium on actual eviction proceedings until May 18, 2020. What does that mean for me?

The Texas Supreme Court has directed all courts in the state to halt eviction proceedings until May 18, 2020. That is the earliest date a landlord may proceed with an eviction in a court. Individual courts may extend the moratorium on evictions, but they are not required to. Contact your county courthouse for more information. Further, writs of possession for residential properties may not be executed until May 25, 2020. This means that a constable cannot come and remove your belongings until after that date.

I am late on my rent and my landlord has indicated that she wants to evict me. What does that mean, and how can she do that?

The moratorium on eviction proceedings does not mean that evictions cases can no longer be filed.⁵ The Texas Supreme Court has allowed some proceedings to go ahead if they involve cases of violence or severe property destruction. However, eviction proceedings are merely halted. Landlords are able to continue posting notices to vacate if you are delinquent in paying rent or are in default for violating another portion of your lease. The actual eviction proceeding in court must wait until after the moratorium is over, however. Your landlord is prohibited by state law to take matters into her own hands without a court order.

I read somewhere that landlords are not supposed to charge late fees during COVID-19, but my landlord is still charging me for my balance due. Why is that?

One of the provisions in the federal CARES Act has directed the U.S. Department of Housing and Urban Development ("HUD") to place a moratorium on eviction proceedings and charging late fees until July 24, 2020. This moratorium only applies to properties that either "(1) participate in a covered housing program or the rural housing voucher program, or, (2) has received a federally backed mortgage loan or a federally backed multifamily

⁴ This is typically a lease provision. Look at your lease for what your landlord's abilities to mitigate losses are if you are in default.

⁵ *Twelfth Emergency Order Regarding the COVID-19 State of Disaster*, SUP. CT. TEX. (Misc. Docket No. 20-9059) (Apr. 27, 2020), <https://www.txcourts.gov/media/1446470/209059.pdf>.

mortgage loan.”⁶ Check with your local housing authority or regional HUD office for more information to see if your apartment complex has participated in any one of these programs.

If your apartment complex does participate in one of the housing programs mentioned above, then you can still be charged for late fees if you are late once the moratorium has been lifted. You can ask your landlord to complete a COVID-19 Payment Plan Agreement⁷, which would allow you to set up a payment plan for things such as rent, utilities, and trash. Late fees cannot be charged under a Payment Plan Agreement, but again, if you are still late once the payment plan has terminated, then your landlord can charge you late fees on anything owed.

The Texas Apartment Association has advised rental property owners to waive late fees until further notice but it is up to property owners to determine whether to follow that advice.⁸ Ask your property manager or landlord if they have any plans to waive late fees during the COVID-19 pandemic.

I moved out of my apartment as a result of the quarantine, and my landlord/property manager is willing to work with me on paying off my rent owed in installments. What steps should I take to protect myself from liability?

You should make sure the agreement for installment payments is in writing. Most residential leases (such as Texas Apartment Association leases) require that all substantive communications regarding your lease be in writing. Sending correspondence by certified mail is a good way to communicate with your landlord or property manager, while texting is less preferable.

I moved out of my apartment as a result of the quarantine, but I found someone who is willing to take over my lease. Is that allowed given the circumstances, and if so, what steps should I take?

Texas law states that it is illegal to sublet your dwelling without prior consent from your landlord, typically done so in writing. However, if a lease says something to the effect of you waiving your ability to sublet (even with landlord consent), you can still attempt to negotiate with your landlord to sublease the unit/suite.⁹ A sublease creates a relationship between you, your landlord, and your sublessee, or the replacement tenant. You will still be liable for rent under the terms of a sublease.

If you wish to not be liable for rental payments, then you should consider a assigning your lease to a third party. A lease assignment is an option for you if you do not want to, or are unable to, continue paying your rent. If your landlord can agree to release you of liability or agree only if you guarantee the assignee or replacement tenant. As always, maintaining an open and honest dialog with your landlord is key.

⁶ *COVID-19 Late Fees and the CARES Act*, TEX. REALTORS, <https://www.texasrealestate.com/wp-content/uploads/COVID-19LateFeesCARESAct.pdf> (last visited Apr. 19, 2020).

⁷ *COVID-19 Payment Plan Agreement*, NAT'L APARTMENT ASS'N, https://www.naahq.org/sites/default/files/naa-documents/final_-_naa_payment_plan_agreement.pdf (last visited Apr. 19, 2020).

⁸ *Coronavirus Renter Resources*, TEX. APARTMENT ASS'N, <https://www.taa.org/wp-content/uploads/2020/03/TAA-Coronavirus-Renter-Resources-1.pdf> (last visited Apr. 19, 2020).

⁹ Tex. Prop. Code § 91.005 (2019).

My apartment complex wants to charge me a ‘reletting fee’ for leaving my apartment before my lease ended. What is that, and what are my options?

A reletting fee is not a way for you to ‘buy out’ of your lease. A subletting fee is usually calculated as an estimate of what your apartment complex will spend in order to find a new resident. Standard Texas Apartment Association Agreements mention a subletting fee that usually ranges between 70%-85% of the highest rent charge for the term of your lease. Your landlord may still accelerate the rest of your future rent charges in addition to the reletting fee. It is always good to talk to your landlord about options in scenarios like this and see if she is willing to negotiate with you.

I moved out of my apartment as a result of the quarantine and do not plan to pay my apartment complex any more rent, past or present. Does my landlord have any obligations to me?

Your landlord has a legal duty to mitigate damages if you are no longer paying rent and you moved out of your apartment. Any lease provision that waives this duty is void under Texas law.¹⁰ If your landlord is able to lease your dwelling after you vacate and is receiving the same or more rent than you paid, then the amount you owe the landlord should be reduced. Essentially, Texas law does not permit your landlord to be “unjustly enriched” by still charging you for rent on your lease while also collecting rent from a new tenant who replaced you.

I do not have any assets, so should I care if my landlord proceeds with an eviction?

An eviction is usually reported to credit agencies and appears on your record indefinitely. A history of evictions, even if it is just one, can often count against you when a prospective landlord is screening you as a new tenant. Also, you should consider whether a family member, friend, or significant other, is a guarantor on your lease. If they are, they will also be liable for any outstanding debt.

Since I am not working, I will not be able to make my rent payment next month. I intend to stay in my dwelling but don’t know if my roommates will continue to pay rent. How do I deal with this situation?

Review your lease and determine what you are obligated to pay. Most leases make all tenants liable for the entire rental amount, as opposed to taking individual payments for each tenant’s ‘portion’ of the rent. Your landlord has the right to evict you if full rental payment is not made, and landlord may also charge late fees or penalties if there is a provision in the lease that allows for it.

My landlord notified me that they will proceed with an eviction as soon as the court permits it as a result of not paying my rent. What should I expect from the court process?

The landlord must give you at least 3 days’ notice that he intends to proceed to file a lawsuit to recover possession of your dwelling. Weekends and holidays are included from the three days’ notice.¹¹

¹⁰ Tex. Prop. Code § 91.006 (2019).

¹¹ Tex. Prop. Code § 24.005 (2019).

Once the landlord files an eviction (called a “forcible detainer” suit) in the County Justice of the Peace Court, tenants typically have 10-21 days before the court determines possession and rent. It is possible that it will take courts longer to schedule these trials as a result of a backlog, particularly in cases that request juries.

If the landlord gets a court order for possession, as a result of proving that rent is owed or because the tenant did not show up to court, the tenant usually has about 5 days to appeal the order with the County Court.

What happens if I lose the forcible detainer suit (a.k.a. the eviction)?

If, after losing your initial eviction suit, do not appeal or lose the appeal, your landlord can obtain an order for possession after 6 days of the court order.¹² A sheriff or constable will post a notice outside of your dwelling indicating the date and time they will return to remove tenants and their possession from the unit. The notice is placed not less than 24 hours before execution.

Where can I get more legal information or advice?

There are a number of websites that contain general information about legal rights and responsibilities. These websites provide information based on Texas law and legal practice. Please note that your lease or other rental agreement may contain provisions that are contrary to Texas law and therefore an attorney will need to review your lease to properly advise you.

LegalLine is a free legal advice hotline that operates on Tuesday between 5:30 PM and 7:30 PM to answer basic legal questions. Call 512-472-8303 during that time period for more information. Here are some additional resources:

Tarrant County Eviction Resources:

- Tarrant County Eviction Self-Help Packet (English):
<https://www.tarrantcounty.com/content/dam/main/justices-of-the-peace/IP1/SelfHelpLegalInfoPktEvDefn.pdf>
- Tarrant County Eviction Self-Help Packet (Spanish):
https://www.tarrantcounty.com/content/dam/main/justices-of-the-peace/IP1/SRLPaquetedeautoayuda_casodedesalojoensucontra_final_WhenanEvictionCaseHasBeenFiledAgainstYou.pdf

Legal Assistance:

- Texas A&M Legal Clinics
<https://law.tamu.edu/legal-assistance>
- Legal Aid of Northwest Texas
<https://internet.lanwt.org/locations/fortworth>
- Tarrant County Bar Association Lawyer Referral Service
<https://texaslawhelp.org/directory/legal-resource/tarrant-county-bar-association-lawyer-referral-service>

Other Legal Resources:

¹² Tex. Prop Code § 24.007 (2019).

- Texas Law Help:
<https://texaslawhelp.org/house-apartment/eviction-other-landlord-issues>
- Texas State Law Library:
<https://guides.sll.texas.gov/disaster-emergency/landlord-tenant>
- Attorney General of Texas:
<https://www.texasattorneygeneral.gov/consumer-protection/home-real-estate-and-travel/renters-rights>
- Texas Young Lawyers' Association:
<https://www.housing.af.mil/portals/79/documents/AFD-160628-021.pdf>
- Texas Tenants' Union
<https://txtenants.org/>