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SCOTUS shuts down the CDC eviction moratorium...so what's next and how do practitioners navigate evictions?

KRISTOPHER L. BOWEN
THE BOWEN PARTNERS, ATTORNEYS
SAN ANTONIO, TX

The Bowen Partners, Attorneys at Law
4940 Broadway St. Ste. 215
San Antonio, TX 78209
210.733.4399 | office
210.733.9819 | fax
Kris@TheBowenPartners.com

Supreme Court of Texas

Misc. Docket No. 21-9118

Forty-Second Emergency Order Regarding The COVID-19 State of Disaster

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Thirty-Ninth Emergency Order (Misc. Dkt. No. 21-9078) is renewed as amended.

3. In consultation with Governor Abbott, who has directed federal funding from the CARES Act, Community Development Block Grant, and Emergency Solutions Grant to rental assistance and eviction diversion, and the Texas Department of Housing and Community Affairs, and in an effort to curb the possible surge of evictions due to the COVID-19 pandemic, assist Texas's most vulnerable tenants, and provide landlords with an alternative to eviction, the Court establishes the Texas Eviction Diversion Program and adopts the procedures set forth in this Order.

4. Eligibility for rental assistance under the Texas Eviction Diversion Program will be determined by the Texas Department of Housing and Community Affairs and its providers.

5. In any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure based, in whole or part, on the nonpayment of rent:

a. in addition to the contents required by Texas Rules of Civil Procedure 502.2 and 510.3, a sworn original, amended, or supplemental petition must state that the plaintiff has reviewed the information about the Texas Eviction Diversion Program available at www.txcourts.gov/eviction-diversion/;

b. in addition to the contents required by Texas Rule of Civil Procedure 510.4(a), the citation must include:

i. the following statement: “If you and your landlord agree to participate in the Texas Eviction Diversion Program, you may be able to have up to 15 months of the rent you owe paid and stop your eviction. 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, titled State of Texas Eviction Diversion Program, at www.txcourts.gov/eviction-diversion/; and at <https://texaslawhelp.org/article/texas-eviction-diversion-program>. You may also call Texas Legal Services Center for assistance at 855-270-7655.”; and

ii. the following Spanish translation of the statement in (i): “Si usted y el propietario están de acuerdo en participar en el Programa de Desvío de Desalojo del Estado de Texas, podrá ser elegible para recibir asistencia de hasta quince meses de pagos vencidos de su alquiler y detener su desalojo. En su audiencia de desalojo, el juez le dará información sobre este programa y le preguntará si desea participar en él. Encontrará más información sobre el programa en el folleto adjunto titulado Programa de Desvío de Desalojo del Estado de Texas. Puede visitar los siguientes enlaces para más información www.txcourts.gov/eviction-diversion o <https://texaslawhelp.org/article/texas-eviction-diversion-program>, o llamar al Centro de Servicios Legales de Texas (*en inglés, Texas Legal Services Center*) por teléfono al 855-270-7655.”; and

iii. a copy of the informational brochure, titled State of Texas Eviction Diversion Program, prepared by the Texas Department of Housing and Community Affairs;

c. at the trial required by Texas Rules of Civil Procedure 510.6 and 510.7 or 510.10(c), the judge must:

i. allow, if available, representatives from legal aid organizations or volunteer legal services to be present—in person or remotely—to provide information, advice, intake, referral, or other assistance for eligible litigants;

ii. confirm whether or not the plaintiff has any pending applications for rental assistance or has provided any information or documentation directly to a rental assistance provider for the purpose of receiving rental assistance;

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