

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;

iii. discuss the Texas Eviction Diversion Program with the plaintiff and defendant;

iv. ask each plaintiff and defendant individually whether they are interested in participating in the Texas Eviction Diversion Program; and

v. if the plaintiff has a pending application for rental assistance or the plaintiff and defendant both express an interest in participating in the Texas Eviction Diversion Program:

(A) immediately abate the eviction action for 60 days;

(B) immediately make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public; and

(C) inform the parties of the extension, reinstatement, and dismissal procedures outlined in Paragraphs 6, 7, and 8 of this Order; and

d. at the trial required by Texas Rule of Civil Procedure 510.10(c), if the plaintiff has a pending application for rental assistance, the plaintiff has provided any information or documentation directly to a rental assistance provider for the purpose of receiving rental assistance, or the plaintiff and defendant both express an interest in participating in the Texas Eviction Diversion Program, the judge must also immediately instruct the justice court to make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public.

6. The judge may extend the 60-day abatement period under Paragraph 5(c)(v) upon the plaintiff's request. Each extension must not exceed 60 days.

7. To reinstate an eviction action abated under Paragraph 5(c)(v), the plaintiff must file a motion to reinstate with the court within the abatement period and serve a copy of the motion on the defendant. The motion must show that the application for rental assistance or to participate in the Texas Eviction Diversion Program, whichever is applicable, has been denied, canceled, or withdrawn. Upon the filing and

service of the motion, the judge must sign and serve—in a method provided by Texas Rule of Civil Procedure 510.4—a written order that:

- a. reinstates the eviction action;
- b. sets the eviction action for trial as soon as practicable, but no later than 21 days after the date the order is signed;
- c. states the procedures for the action to proceed; and
- d. makes all court records, files, and information—including information stored by electronic means—relating to the eviction action non-confidential to allow disclosure to the public.

8. If the plaintiff does not file and serve a motion to reinstate an action abated under Paragraph 5(c)(v) within the abatement period, the judge must dismiss the action, including any claims that do not involve the nonpayment of rent, with prejudice. The judge must dismiss the action the day after the abatement period expires, without requiring either party to file a motion or make a request. All court records, files, and information—including information stored by electronic means—relating to the dismissed eviction action must remain confidential.

9. Paragraph 8 does not prohibit the plaintiff from filing an action for eviction based on future events or acts that are an independent basis for eviction.

10. Even if the plaintiff and defendant do not express an interest in participating in the Texas Eviction Diversion Program at trial under Paragraph 5(c), they may later inform the judge of their interest in participating in the Texas Eviction Diversion Program or their actual participation in a rental assistance program and, so long as a writ of possession has not issued, the judge must:

- a. set aside any judgment;
- b. immediately make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public; and
- c. sign a written order stating the procedures that apply for reinstating the judgment or dismissing the eviction action.

11. The procedures for reinstating the judgment under Paragraph 10(c) must include making all court records, files, and information—including information stored by electronic means—relating to the eviction action non-confidential to allow disclosure to the public.

12. This Order is effective immediately and expires December 1, 2021, unless extended by the Chief Justice of the Supreme Court.

13. The Clerk of the Supreme Court is directed to:

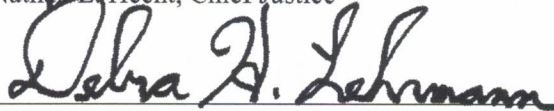
- a. post a copy of this Order on www.txcourts.gov;
- b. file a copy of this Order with the Secretary of State; and
- c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

14. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

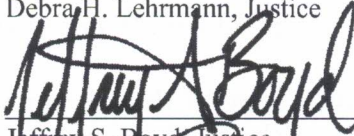
Dated: September 21, 2021.



Nathan L. Hecht, Chief Justice



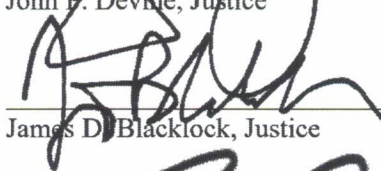
Debra H. Lehrmann, Justice



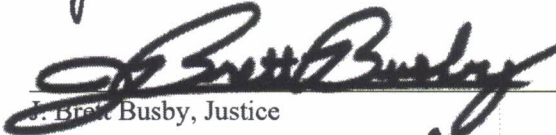
Jeffrey S. Boyd, Justice



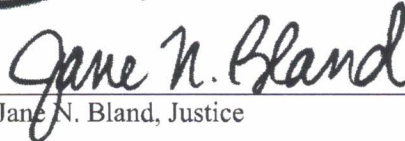
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice