

Supreme Court of Texas

Misc. Docket No. 23-9011

Emergency Order Regarding the Texas Eviction Diversion Program

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. On November 5, 2021, the Texas Department of Housing and Community Affairs (“TDHCA”) closed the Texas Eviction Diversion Program to new applications because TDHCA had successfully paid or obligated all rental assistance funds available to date. On March 14, 2022, the U.S. Department of Treasury (“Treasury Department”) allocated TDHCA and eight local jurisdictions in Texas additional rental assistance funds, totaling \$89,679,746. On September 26, 2022, the Treasury Department announced that TDHCA and seven local jurisdictions in Texas would receive additional rental assistance funds, totaling \$59,421,239. On October 18, 2022, the Treasury Department announced that TDHCA and three local jurisdictions in Texas would receive additional rental assistance funds, totaling \$32,898,397. On October 28, 2022, the Treasury Department announced that TDHCA and three local jurisdictions in Texas would receive additional rental assistance funds, totaling \$42,896,234. On January 24, 2023, the Treasury Department announced that TDHCA and six local jurisdictions in Texas would receive additional rental assistance funds, totaling \$49,216,323. TDHCA continues to process previously submitted applications, and some cities and counties have rental assistance funds available. Accordingly, the Fifty-Eighth Emergency Order (Misc. Dkt. No. 22-9119) is renewed.

3. 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 Rule of Civil Procedure 510.4(a), the citation must include the following or substantially similar language:

i. the following statement: “You may be able to have some of the rent you owe paid and stop your eviction. Find out more about available rental assistance programs in your area at <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/find-help-with-rent-and-utilities/>. If there is an available rental assistance program in your area, tell the judge you are interested in participating. To find out more about what to tell the judge and what may happen with your eviction, visit www.TexasLawHelp.org or call Texas Legal Services Center for assistance at 855-270-7655.”; and

ii. the following Spanish translation of the statement in (i): “Usted podrá ser elegible para recibir asistencia en algunos pagos vencidos de su alquiler y detener su desalojo. Visite el siguiente enlace para mayor información sobre los programas de asistencia para pagos de alquiler disponibles en su localidad <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/find-help-with-rent-and-utilities/>. Si hay programas disponibles en su localidad, informe usted al juez que desea participar en alguno de ellos. Puede visitar el siguiente enlace www.TexasLawHelp.org para mayor información sobre qué decir ante el juez y qué puede ocurrir en un proceso de desalojo, o puede llamar al Centro de Servicios Legales de Texas (en inglés, Texas Legal Services Center) al teléfono 855-270-7655.”; and

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

i. must 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. must confirm whether or not the plaintiff-landlord has any pending applications for rental assistance involving the defendant-tenant, including applications for rental assistance through the Texas Eviction Diversion Program, or has provided any information or documentation directly to a rental assistance provider for the purpose of receiving rental assistance involving the defendant-tenant;

iii. should, if rental assistance is available:

(A) discuss the available rental assistance programs and the procedures in this Order with the plaintiff-landlord and defendant-tenant;

(B) ask each plaintiff-landlord and defendant-tenant individually whether they are interested in participating in an available rental assistance program; and

iv. must, if the plaintiff-landlord has a pending application for rental assistance involving the defendant-tenant, has provided any information or documentation directly to a rental assistance provider for the purpose of receiving rental assistance involving the defendant-tenant, or the plaintiff-landlord and defendant-tenant both express an interest in participating in an available rental assistance program:

(A) immediately abate the eviction action for 60 days or until the plaintiff-landlord reinstates the eviction action under Paragraph 5, whichever is first;

(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 4, 5, and 6 of this Order; and

c. at the trial required by Texas Rule of Civil Procedure 510.10(c), if the plaintiff-landlord has a pending application for rental assistance involving the defendant-tenant, the plaintiff-landlord has provided any information or documentation directly to a rental assistance provider for the purpose of receiving rental assistance involving the defendant-tenant, or the plaintiff-landlord and defendant-tenant both express an interest in participating in an available rental assistance 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.

4. The judge may extend the abatement period under Paragraph 3(b)(iv) upon the plaintiff-landlord's request. Each extension must not exceed 60 days.

5. To reinstate an eviction action abated under Paragraph 3(b)(iv), the plaintiff-landlord must file a motion to reinstate with the court within the abatement period and serve a copy of the motion on the defendant-tenant. The motion must show that the application for rental assistance involving the defendant-tenant, including an application to participate in the Texas Eviction Diversion Program, has been denied,

canceled, or withdrawn or that the plaintiff-landlord has communicated to the rental assistance program that the plaintiff-landlord no longer wishes to participate in and receive funds from the program. 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.

6. If the plaintiff-landlord does not file and serve a motion to reinstate an action abated under Paragraph 3(b)(iv) 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.

7. Paragraph 6 does not prohibit the plaintiff-landlord from filing an action for eviction based on future events or acts that are an independent basis for eviction.

8. Even if the plaintiff-landlord and defendant-tenant do not express an interest in participating in an available rental assistance program at trial under Paragraph 3(b), they may later inform the judge of their interest in participating in an available rental assistance program or their actual participation in a rental assistance program, including the Texas Eviction Diversion 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.

9. The procedures for reinstating the judgment under Paragraph 8(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.

10. This Order is effective immediately and expires May 1, 2023, unless extended by the Chief Justice of the Supreme Court.

11. Nothing in this Order requires the plaintiff-landlord to participate in a rental assistance program.

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

a. post a copy of this Order on www.txcourts.gov;

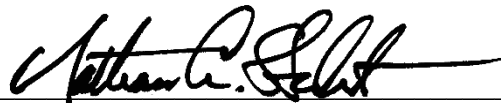
b. file a copy of this Order with the Secretary of State; and

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

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

Dated: February 28, 2023.

JUSTICE DEVINE dissents.

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht, Chief Justice