

Taking Care of Texas During COVID-19

A plan to keep Texans healthy and secure in their communities during and after the coronavirus outbreak



**TEXAS
HOUSERS**
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE

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In times of disaster – wildfires, hurricanes, and tornadoes – Texans come together. We rescue our neighbor, raise funds for the vulnerable, and give our time and labor to rebuild our communities.

Now we are in the middle of a pandemic and dealing with this disaster has taken on a different, more uncertain form with no clear path for stability ahead. Our uncertainty is not unwarranted: The state last issued a public health disaster in 1901.¹ Because of serious health risks, Texans remain isolated from one another and limited supplies and hospital beds are a sign of a crisis. On March 19, Governor Abbott issued an executive order prohibiting eating and drinking in bars and restaurants and closing gyms and schools.² Cities and counties across Texas have issued shelter in place orders leading to further layoffs. As businesses shut down and workers stay home to care for themselves and loved ones, federal officials warn of unemployment rates as high as 20%³ – most of which are coming from hospitality, service and retail industries. One in four Texans is employed in this sector. The number of Texans filing for unemployment jumped 860% within one week.⁴ Losing a job or falling ill with no protections may leave many struggling to make the rent or mortgage for months or pay for essential health care, nutrition or utilities. This high chance of instability that threatens Texas families is why it is important that Governor Greg Abbott, statewide leaders and local governments create and implement plans that support every Texan during this coronavirus outbreak.

It is not enough to rely solely on the generosity of private businesses or wait on a federal stimulus package to bail out Texans. Every level of government has a role in ensuring that our communities are whole, and our policy actions reflect the great value we hold for every Texan, no matter where they live or how much money they make.

¹ Texas Tribune, “Gov. Greg Abbott closes bars, restaurants and schools as he anticipates tens of thousands could test positive for coronavirus,” March 19, 2020. Retrieved from: <https://www.texastribune.org/2020/03/19/texas-restaurants-bars-closed-greg-abbott/>

² Executive Order GA O8, March 19, 2020. Retrieved from https://gov.texas.gov/uploads/files/press/EO-GA_08_COVID-19_preparedness_and_mitigation_FINAL_03-19-2020_1.pdf

³ Washington Post, “Layoffs intensify, leading to soaring unemployment claims as coronavirus closures continue,” March 18, 2020. Retrieved from: <https://www.washingtonpost.com/business/2020/03/18/unemployment-insurance-coronavirus/>

⁴ Texas Tribune, “The number of Texans filing for unemployment increased 860% in a week,” March 26, 2020. Retrieved from: <https://www.texastribune.org/2020/03/26/texas-unemployment-claims-jump-800-week/>

Texas also needs strong state leadership. While the governing style of the state is to devolve many decisions to local bodies, during a public health crisis, local officials and constituents need the strong foundation of a state government to dictate the tone and priorities during this pandemic. Diseases don't respect city limits - the decisions of one community can impact the lives and health of the whole state. Disparate attitudes about public health across the state can put 30 million people at risk and could mean further chaos, prolonging the length and deepening the impact of the pandemic. Texas should take care of Texans.

The following are recommendations from a group of housing experts and community advocates that could help bolster our ability to recover from the health and financial toll levied by the COVID-19 virus.

Texas renters need protections and relief.

1. The Texas Supreme Court or Governor Abbott should extend the order halting eviction proceedings for one month after the emergency declaration ends.

The Texas Supreme Court took statewide action by halting eviction proceedings, excepting instances of criminal activity, through April 19.⁵ This order followed a flurry of local actions from individual courts and county orders intended to curb displacement during the pandemic. The Texas Supreme Court can and should extend the order for one month after the emergency declaration ends.⁶

In addition, the Governor has broad powers during an emergency that would allow for him to issue an executive order to suspend eviction proceedings⁷ during the length of the disaster. The purposes of Chapter 418 are broad and include: "reduc[ing] vulnerability of people and communities of this state to damage, injury, and loss of life

⁵ Texas Supreme Court, March 19, 2020. Retrieved from: <https://www.txcourts.gov/media/1446203/209045.pdf>

⁶ Texas Government Code Section 22.0035(b): "The supreme court may modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor. An order under this section may not extend for more than 90 days from the date the order was signed unless renewed by the chief justice of the supreme court." Retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.22.htm>

⁷ Texas Government Code Chapter 418 (Texas Disaster Act of 1975). Retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.418.htm>. See also: National Housing Law Project, "Summary and Analysis of Federal CARES Act Eviction Moratorium," March 28, 2020. Retrieved from: <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf>

and property; and (2) provid[ing] a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”⁸ Under Sec. 418.020(c) of the chapter, the Governor may also “temporarily suspend or modify for a period of not more than 60 days any public health, safety, zoning, intrastate transportation, or other law or regulation if by proclamation the governor considers the suspension or modification essential to provide temporary housing or emergency shelter for disaster victims.” A mass eviction of tenants during and immediately following the end of an emergency declaration would almost certainly exacerbate the existing public health crisis and put people and communities at increased risk of injury, loss of life, and potentially restart the pandemic. Continuing a moratorium on evictions for the period following the disaster is also more conducive for allowing impacted Texans to get back to normal. If the Supreme Court does not take such action, Governor Abbott should extend the moratorium on evictions, with exceptions for criminal activity, until one month following the end of the emergency declaration.

The federal government has recently taken steps to protect tenants living in federally subsidized properties from eviction. Section 4024 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), signed into law on March 27, 2020 by President Trump, mandates a 120-day eviction moratorium for tenants living in covered properties for cases related to nonpayment of rent.⁹ The moratorium will extend until July 25, 2020. The CARES Act also requires landlords to issue a 30-day notice of evictions to tenants, which cannot be issued until after the moratorium period ends, during which time the tenant has an opportunity to cure. Additionally, the CARES ACT prohibits a landlord of a covered property from charging tenants a late fee for late payment of rent. Although the CARES Act provides valuable protections for tenants living in federally-subsidized or supported housing, it leaves out thousands of tenants in private units. The Governor should also use his powers under Chapter 418 to take additional actions to protect all Texas tenants in this unprecedented time.

- 2. During the emergency declaration, Governor Abbott should implement a 60-day “opportunity to cure” period for Texas renters to pay back delinquent rent before they can be evicted for non-payment. No notice to vacate should be issued to tenants until the 60-day period expires.**

⁸ Texas Government Code Section 418.002. Retrieved from: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.418.htm>

⁹ Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), H.R. 748, 116th Cong. (2020), Retrieved from: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748eas.pdf>

No Texas families should be kicked out of their homes and no small business owners should lose their businesses because of this pandemic. The Texas Supreme Court's order protecting Texans from displacement was an essential first step to provide relief to those struggling to pay the rent after being laid-off or under-employed as a result of this unprecedented disaster, but a second catastrophe awaits these Texans once this order is lifted and families and small businesses don't have the money to pay the arrears. Governor Abbott should use his powers under Chapter 418 of the Government Code to implement a 60-day period to give impacted tenants who can't pay rent an opportunity to cure or pay back any delinquent payments before an eviction action can begin. Landlords should be required to send to impacted tenants a notice of proposed eviction at least 60 days before they can issue a notice to vacate.¹⁰ The notice of proposed eviction should advise tenants of their opportunity to cure during that 60-day period. For the time being, this emergency action should apply to rents for April 1 and May 1 but should be extended if the disaster persists.

3. Governor Abbott and the TDHCA should take immediate steps to halt non-essential landlord entry into properties.

Texas Housers has heard from our community partners that landlord inspections of tenants' units are still occurring during the outbreak despite the obvious risks to the health and lives of tenants and their families. Because Texas does not have a Right to Notice of Entry law, landlords or agents can enter a tenant's unit on the spot without warning. To protect the safety, health, property rights and dignity of tenants during the pandemic, landlords and their agents should only enter a tenant's unit to address dangers to life or perform essential maintenance.

Governor Abbott should use his power under Chapter 418 of the Texas Government Code to issue an executive order prohibiting landlords and their agents from entering a tenant's units except under essential circumstances. The Texas Department of Housing and Urban Affairs ("TDHCA") should immediately issue guidance to landlords and managers participating in the agency's programs stating the same prohibition. As COVID-19 spreads through our communities, the State must do as much as possible to limit tenants, landlords, and maintenance workers from being unnecessarily exposed.

¹⁰ Section 24.005(e) of the Texas Property Code states: "If the lease or *applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction*, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired" (emphasis added). Retrieved from: <https://statutes.capitol.texas.gov/Docs/PR/htm/PR.24.htm>

4. Governor Abbott should prohibit late fees for delinquent rent accrued during the disaster declaration and 60 days after the declaration ends.

Under Section 92.019 of the Texas Property Code¹¹, a landlord may charge a late fee of up to 12% of the total rent for dwellings in structures with four or fewer units, or up to 10% of the rent for dwellings in structures with more than four units.¹² Landlords may and often do charge late fees higher than these safe-harbors as long as they are “not more than uncertain damages related to the late payment of rent...” It’s indisputable that COVID-19 has left thousands of Texans in precarious financial situations. Although the federal government is working to deliver expanded unemployment benefits and stimulus checks to those who are suffering, there is no date certain as to when these funds will reach Texans’ wallets. Low-income renters are particularly vulnerable. Those living paycheck to paycheck do not have savings to cover the loss of income caused by this massive economic disruption. Low-income renters are also less likely to have a bank account to immediately receive emergency funds when they are distributed. No one impacted by this disaster, especially those whom the government asked to sacrifice their jobs for the sake of our public health, should be forced to pay a late fee if they cannot pay the rent on time. In accordance with his powers under Chapter 418 and for the purpose of rapidly restoring and rehabilitating those impacted, we ask the Governor to prohibit late fees for the duration of the emergency declaration and 60 days after the declaration ends.

5. Governor Abbott should quickly approve rent control ordinances passed by cities to give impacted tenants a chance to get back on their feet.

Under Section 214.902 of the Local Government Code,¹³ a municipality may establish rent control if: (1) the governing body finds that a housing emergency exists due to a disaster; and (2) the governor approves the ordinance. Cities across the state are doing all they can to blunt the impact of COVID-19. Should they decide that it is necessary to

¹¹ Texas Property Code Section 92.019. Retrieved from:

<https://statutes.capitol.texas.gov/Docs/PR/htm/PR.92.htm>

¹² To estimate the average late fee in Texas metro areas see: U.S. Department of Housing and Urban Development, “FY 2020 Fair Market Rent Documentation System.” Retrieved from:

https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2020_code/2020state_summary.odn. In Fort Worth, the HUD fair market rent for a 2-bedroom unit is \$1,165. A tenant paying that price could owe up to a \$116.50 monthly late fee.

¹³ Local Government Code Section 214.902. Retrieved from:

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.214.htm>

limit rent increases to protect tenants as the crisis continues, the Governor should give quick approval to the efforts.

6. Governor Abbott should call a special session to provide Texas families impacted by COVID-19 with emergency rent, mortgage, and utility assistance.

As soon as it is safe to do so, the Governor should call a special session of the Texas Legislature to tap the Economic Stabilization Fund (Rainy Day Fund) to help people whose jobs were lost and livelihoods were sacrificed to protect public health. These Texans should not be expected to bear the brunt of these necessary but painful measures. It's only right that all Texans should share in the cost.

Like most economic shocks, the statewide financial downturn caused by COVID-19 is likely to disproportionately affect Texans who were already teetering on the edge of economic instability before the disaster. In Texas there are about 860,000 renter households who are cost-burdened, spending more than 30% and up to 50% of their income on rent. There are 876,000 renter households who are severely cost-burdened, spending more than half their income on housing.¹⁴ Altogether, 46.5% of all Texas renter households are cost-burdened or severely cost-burdened. These Texans, already on the brink of financial calamity, will likely need further assistance in the coming months and years to recover from this economic shock.

Governor Abbott and the Texas Legislature must act quickly in a special session to allocate funding for emergency rental, mortgage, and utility assistance. As unemployment spikes, emergency rental, mortgage, and utility assistance funds administered by local jurisdictions¹⁵ and charitable organizations will be depleted. It is also likely that federal aid allocated for this purpose under the CARES Act will not be enough to cover the costs. Additional state assistance is essential. The state's allocation could be administered by the Texas Department of Housing and Community Affairs which could then distribute the funds through grants to counties most impacted by COVID-19.

Texas should help preserve homeownership in uncertain times.

¹⁴ Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," January 2020. Retrieved from <https://www.jchs.harvard.edu/americas-rental-housing-2020> (See Table W-7 in Excel Data)

¹⁵ See <https://www.traviscountytx.gov/health-human-services/individuals-families/apply>

Homeownership is the largest source of wealth for many Texans. For many families, short-term assistance to help stay in their home can ward off long-term devastating consequences such as damaged credit, diminished wealth, and the loss of a family home. Helping families keep their homes will also help safeguard a community from being hollowed out during an economic downturn. The federal government has acted to stay foreclosures through mid-May for homeowners with federally-backed mortgages affected by COVID-19.¹⁶ However, those Texans with private mortgages are not guaranteed any relief. The State of Texas should take the following action to do its part to help stabilize Texas families, especially those without federally-backed mortgages.

7. The state should allocate money from the Rainy Day Fund for short-term mortgage assistance for homeowners struggling to catch up on payments.

Several states across the country administer emergency homeowner loans with below-market interest rates or are interest-free. One such example is the Pennsylvania Homeowners Emergency Mortgage Assistance Program.¹⁷ The program helps homeowners who have experienced a short-term hardship and are likely to recover and pay back a loan from the state. The program is funded through state appropriations and repaid with loans from borrowers. Other states, including Georgia, Delaware, and Connecticut, have similar programs. The State of Texas can combine federal stimulus dollars intended with at least \$150 million¹⁸ from the Rainy Day Fund to provide short-term relief for homeowners with the expectation that the state can recover much of those funds.

8. Texas should do all it can to prevent a widespread foreclosures crisis and, if foreclosures do occur, make the process fair and just for vulnerable homeowners.

¹⁶ U.S. Department of Housing and Urban Development, "Foreclosure and Eviction Moratorium in connection with the Presidentially Declared COVID-19 National Emergency," March 18, 2020. Retrieved from: <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-04hsgml.pdf>. See also: Federal Housing Finance Agency, "Mortgage Help for Homeowners Impacted by the Coronavirus," March 24, 2020. Retrieved from: <https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance>

¹⁷ Pennsylvania Housing Finance Agency, "Homeowners' Emergency Mortgage Assistance Program." Retrieved from: <https://www.phfa.org/counseling/hemap.aspx>

¹⁸ Texas received \$135 million in 2011 to help homeowners recover from the subprime mortgage crisis. Considering the rise in housing costs since then, \$150 million is appropriate. Retrieved from: <https://www.prnewswire.com/news-releases/tx-foreclosure-prevention-task-force-urges-homeowners-to-look-for-help-with-emergency-homeowners-loan-program-ehlp-124727793.html>

The process for foreclosure proceedings is governed by individual states. “The state has the power to impose fees, time frames, notice, and information requirements,” on courts, borrowers and creditors involved in foreclosure proceedings.¹⁹ The Texas legislature can modify laws governing foreclosure in order to help homeowners struggling with the threat of losing their home. After the 2008 economic downturn, states across the country passed laws to help homeowners gain a grace period during which they can negotiate repayment plans to avoid foreclosure altogether. The state can also require lenders to adopt targeted loan modifications and programs to mitigate loss. Research shows that when lenders deploy proactive, early and consistent strategies to work with distressed borrowers, homeowners can make a plan and get caught up.²⁰ The state should extend protections to people who rent their homes with the hope of owning them some day, also known as contract-for-deed properties, or other seller-financed transactions with interest rates above 10 percent. Many tenants who enter into contract-for-deed transactions are prospective homeowners who stand to lose all of their investment because they have such limited access to homeownership and will not be covered by any of the federal protections or relief. Governor Abbott should ban fees and other penalties on these transactions for late payments caused by the COVID-19 crisis and grant families a 120-day grace period before the seller can proceed with an acceleration or foreclosure action. Texans must not lose their homes because of COVID-19. The state and all other stakeholders must do all they can to make sure that homeowners remain homeowners.

Texans' ability to emerge from this crisis stronger than ever will require robust leadership from state leaders.

Our state must take care of its citizens at all times, but especially now. This crisis reveals the gaps in our policies that leave vulnerable people behind and we must act quickly to meet our communities' needs. Our state's survival depends on every Texan doing their part: parents balancing full-time work and homeschooling children, warehouse workers keeping essentials on the shelves, grocery store clerks serving the community, healthcare providers tending to the vulnerable in the time of crisis, and all of us maintaining physical distance to keep our neighbors safe. Our leaders should

¹⁹ Brookings Institution, “Tackling the Mortgage Crisis: 10 Action Steps for State Government,” May 2008. Retrieved from: https://www.brookings.edu/wp-content/uploads/2016/06/0529_mortgage_crisis_vey.pdf

²⁰ Prosperity Now, “Preventing Foreclosure, Preserving Homeownership,” September 2018. Retrieved from: https://prosperitynow.org/sites/default/files/resources/Preventing_Foreclosure_Perserving_Homeowners_hjp.pdf

ensure that each Texan is protected from catastrophe and instability. In times of disaster, whether statewide or personal, Texans help their fellow Texans weather the crisis. Our laws must do the same.