



TAMULawAnswers.info Webinar Series



Panelists:

Tisha Lynn Dodge – Attorney, Dodge Legal Group, PC

Luz E. Herrera – Attorney & Professor, Texas A&M University School of Law

Kathryn D. McGlinchey – Attorney, Broude, Smith, Jennings, & McGlinchey PC

Moderator: **Peter Reilly** – Professor of Law, Texas A&M University School of Law



COMMERCIAL LEASING IN THE TIME OF COVID:

SEVEN STEPS TO AN EFFECTIVE LEASE WORKOUT

July 8, 2020

1. Understand your lease.

- a. Look for affirmative abatements and termination rights.
- b. Review force majeure language.
 - i. Identify covered perils.
 - ii. Confirm carveouts.
 - iii. Consider other limiting language.
- c. Review business interruption insurance requirements (and policy language).

2. Consider external factors.

- a. CARES Act and PPP loans.
- b. COVID-specific laws and regulations.
- c. Common law remedies.
- d. Courthouse delays.

3. Understand where you fall on the “sympathy spectrum.”



What are Essential Businesses?

Established by Tarrant County Executive Order on March 24, 2020



Essential Health Care
Services



Essential Government
Functions



Essential Critical
Infrastructure



Essential Retail
(includes Grocery Stores)



Financial Institutions



Essential Services
Necessary to Maintain
Essential Operations of
Residences or Other
Essential Businesses
(includes Trash and Recycling)



News Media



Providers of Basic
Necessities to Economically
Disadvantaged Populations
(includes Social Services)



Animal Shelters, Zoos,
and Other Businesses
that Maintain
Live Animals



Childcare Services



Construction



Funeral Services
(No More Than 10 People)



Wedding Services
(No More Than 10 People)



Moving Services
and Supply



Worship Services
(Closed to the Public)



Real Estate Transactions

4. Craft your request for relief.

- a. Application of security deposit.
- b. Acceleration of existing rental abatement.
- c. New rental abatement.
- d. Rental deferral.

DON'T FORGET ABOUT PPP DOLLARS

5. Ask for permission, not forgiveness.

6. Be prepared to respond to landlord requests for additional information and documents.

7. Understand the landlord's position.





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DODGE LEGAL GROUP, SPC

Beyond Covidity Series: Commercial Leases Buy/Sell Investors

This informational session is not intended to
be, or replace, the legal advice.

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Prepare Your Business BEFORE YOU MEET WITH POTENTIAL BUYERS OR INVESTORS 6 Cs

Covidity Series:

Buying & Selling Businesses

Advanced Legal Entities

Joint Ventures/Collaboration

Insurance Premium Relief Options

Texas

Source of Relief/Effective Date	Relief Available
<p>Texas Department of Insurance Commissioner's Bulletin # B-0007-20.</p> <p>Effective Date:</p> <p>March 23, 2020.</p> <p>Expiration Date:</p> <p>None stated.</p>	<p>All insurance carriers are encouraged to consider:</p> <ul style="list-style-type: none">• Grace periods for payments.• Temporarily suspending premium payments (the term "suspend" is not intended to mean premium forgiveness).• Payment plans.• Other actions to allow continuing insurance coverage as appropriate.

Forbearance for Mortgages

<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>



CARES Act Mortgage Forbearance: What You Need to Know

If you are experiencing a financial hardship due to the coronavirus national emergency, or having difficulty making on time mortgage payments, forbearance may be an option for you.



Relief for all federally or GSE-backed mortgages



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Prepare Your Business Due Diligence

- Original Lease & all Amendments
- Contact Landlord (Why so early? See next slide)
- Plan for a New Lease



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Prepare Your Business Key Provisions in Your Lease

- Permitted Use
- *Memorandum of Lease in county records/Exclusive Use
- Term (and Option to Extend)
- Security Deposit
- Assignment
- Subleases
- Change in Control/Ownership/Management
- Guaranty (can waive statutory rights to offset)



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Guaranty

Waiver of All Defenses Including Offset

7. Guarantor further agrees that this Guaranty shall not be discharged, impaired or affected by (a) the transfer by the Borrower of all or any portion of the real estate or improvements thereon, or of any security or collateral described in the Deed of Trust or in any other security document, or (b) **any defense (other than the full payment of the indebtedness** hereby guaranteed in accordance with the terms hereof) that the Guarantor may or might have as to Guarantor's respective undertakings, liabilities and obligations hereunder, **each and every such defense being hereby waived** by the undersigned Guarantor.



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Prepare Your Business Due Diligence

- Tenant conducts due diligence of buyer/investor
- Consider exclusivity period for negotiations with firm deadline
- Decide which party is responsible for the first draft of relevant documents (your lawyer will thank you)



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Essential Issues for Buyers

Normal Due Diligence

Essential Issues for Investors

- Normal Due Diligence
- Equity or Non-Equity Investment
- Potential for Third-Party Financing
- Operational or Management Control
- Exit Strategies



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Last Resort Evictions



Commercial Tenant Evictions

Luz E. Herrera
Professor
Community Development &
Entrepreneurship Law Clinic

Eviction Moratoria

- Most moratoria on evictions did not explicitly include commercial tenants.
- Trials are backlogged
- Jury Trials – 9/1/2020



Rental Payments

- Most leases are landlord friendly. Few provisions to withhold rent. If you have the money, pay the rent.
- Landlord can begin eviction process for nonpayment of rent.
- Attempt to negotiate a payment plan or new lease terms.



Late Fees or Penalties

Landlords can charge late fees or penalties if the lease provides for them, unless there is an order limiting them. *Tex. Prop. Code, Section 92.012*



Dallas County Order, 4/6/2020

“Landlords *should* cap late fees for delayed payment of rent at fifteen dollars (\$15) per month.” (italics added)

Lockouts



Not recommended but permitted
by Texas Property Code §93.002(c):

“A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.”

Lockouts



Landlord must place a written notice on the tenant's front door stating:

1. the name; and
2. the address or telephone number of the individual or company that can provide tenant with the new key.

The new key must only be provided, during tenant's regular business hours, if the tenant pays the delinquent rent.



Texas Eviction Forms

3 Day Notice to Vacate

TEXAS 3-DAY NOTICE TO VACATE
(NONPAYMENT OF RENT)

STATE OF TEXAS
COUNTY OF _____
TO: _____
ADDRESS: _____

As outlined in Article 24.005, Texas Property Code, you are hereby notified that three (3) days after delivery of this notice, I demand possession of said property listed above, now occupied by you, unless payment for all rent (including any back rent) is paid within the three (3) day period. If not I shall proceed to repossess said property which you now owe \$_____ for rent thru the ____ day of _____, 20____.

I HEREBY DEMAND that you pay all past due rent or vacate the property at once or I shall proceed against you as the law directs.

SIGNED this ____ day of _____, 20____.

Signature of Landlord _____
Address _____
This notice was executed at the above address on the ____ day of _____, 20____ at _____ o'clock ____ PM, by:

☐ - Delivering a true copy of this notice to Defendant in person.
☐ - Leaving a true copy of this notice with person over the age of 15 years, at the address listed above.
☐ - Posting a true copy of this notice to the premises according to the law.

SIGNED this ____ day of _____, 20____.

Signature of person serving this notice _____


Eviction Complaint

WRITEN COMPLAINT FOR EVICTION

CASE NO. _____ With suit for Rent COURT DATE: _____
Plaintiff: _____ In the Justice Court, Precinct _____, Tarrant County, Texas
vs. (Landlord/Owner Name) Rental Exclusion (if any) \$ _____
DEFENDANT(S): Tenant's Portion \$ _____
TOTAL MONTHLY RENT \$ _____
The amt. of the rent per day is \$ _____

COMPLAINT: Plaintiff (Landlord) hereby complains of the defendant(s) named above for eviction of plaintiff's premises (including structures and parking areas) located in the above precinct. Address of the property is:

Street Address _____ Unit No. (if any) _____ City _____ State _____ Zip _____

1. **SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other service at proper address(es) (if known) are _____.

2. ☐ **UNPAID RENT AS GROUNDS FOR EVICTION:** Defendant(s) failed to pay rent for the following time period(s):
TOTAL DELINQUENT RENT AS OF DATE OF FILING IS: \$ _____
Plaintiff reserves the right to collect interest on amounts due to include rent due thru the date of filing through the date of trial.

3. ☐ **OTHER GROUNDS FOR EVICTION/LEASE VIOLATIONS:** Lease Violations (if other than non-paid rent - for lease violations) _____

4. ☐ **HOLDOVER AS GROUNDS FOR EVICTION:** Defendant(s) are unlawfully holding over since they failed to vacate at the end of the rental term or renewal of extension period, which was the ____ day of _____, 20____.

5. **NOTICE TO VACATE:** Plaintiff has given defendant(s) a written notice to vacate (according to Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was delivered on the ____ day of _____, and delivered by this method: _____.

6. **ATTORNEY'S FEES:** Plaintiff will be ☐ or will NOT be ☐ seeking applicable attorney's fees. Attorney's name, address phone & fax numbers are _____.

7. ☐ **BOND FOR POSSESSION:** If Plaintiff has filed a bond for possession, plaintiff requests (1) that the amount of plaintiff's bond and defendant's counter bond be set, (2) that plaintiff's bond be approved by the Court, and (3) that proper notice as required by the Texas Justice Court Rules are given to Defendant(s).

REQUEST FOR JUDGMENT: Plaintiff prays that defendant(s) be served with citation and that plaintiff have judgment against defendant(s) for possession of premises, including removal of defendants and defendant's possessions from the premises, unpaid rent if set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the rental contract, or if not so stated, at the statutory rate for judgments under the Texas Finance Code Chapter 33A.

☐ I give my consent for the answer and any other motions or pleadings to be sent to my email address which is: _____

Plaintiff's Printed Name _____ Signature of Plaintiff (Landlord/Property Owner) or Agent _____
DEFENDANT(S) INFORMATION (if known): Address of Plaintiff (Landlord/Property Owner) or Agent _____
DATE OF BIRTH _____ City _____ State _____ Zip _____
LAST 3 NUMBERS OF DRIVER LICENSE _____
LAST 3 NUMBERS OF SOCIAL SECURITY _____ Phone & Fax No. of Plaintiff (Landlord/Property Owner) or agent _____
DEFENDANT'S PHONE NUMBER _____ Day of _____, 20____

Signed to and subscribed before me this ____ day of _____, 20____.

Not. 1-00-02 CLERK OF THE JUSTICE COURT OR NOTARY

Eviction Process – Part I

Notice of Eviction



File Eviction



Court Appearance



Eviction Process – Part II

Writ of Possession



Eviction Appeal



Debt Collection



Bankruptcy

- Chapter 7
 - Liquidation

Chapter 13

- Repayment over 3-5 years. Possibly 7 years

- Chapter 11
 - Reorganization





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