



“TAMU Law Answers” Webinar Series:
LEGAL ISSUES IN THE AGE OF THE CORONAVIRUS

“Residential Eviction and Foreclosure Prevention after the CARES Act”

Presented July 16, 2020

Panelists:

- Lisa T. Alexander, Professor of Law and Co-Director, Program in Real Estate and Community Development Law, Texas A&M School of Law, 2018 Texas A&M University Presidential Impact Fellow
- Stuart Campbell, Legal Aid of NorthWest Texas
- Fred Fuchs, Housing Group Coordinator, Texas RioGrande Legal Aid; Adjunct Professor and Housing Clinic Director, University of Texas School of Law

While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.

TRANSCRIPT:

- OK. So I think I'm going to start us off so that we're not too late. I think our moderator is having technical difficulties. So I'm Professor Lisa Alexander from Texas A&M School of Law. And we want to welcome you to this webinar.

Today, I have with me two other presenters who are going to help us discuss eviction and foreclosure prevention when the CARES Act ends. And it's Stuart Campbell of Legal Aid of Northwest Texas. He's also an alum of the law school. And-- [AUDIO OUT]

- Are the technical difficulties going all the way—

[AUDIO OUT during introduction of Fred Fuchs, Housing Group Coordinator, Texas RioGrande Legal Aid (TRLA); Adjunct Professor and Housing Clinic Director, University of Texas School of Law]

--School of Law. And Thomas Mitchell, who will be getting on in a few minutes and acting as the moderator, is a professor of law and a co-director of the Program in Real Estate and Community Development Law at Texas A&M Law School.

So I think I will be the first presenter. I just have to share my screen. And so, "Eviction and Foreclosure Prevention after the CARES Act?"

So I hate to be, actually, the bearer of bad news. But it does seem that we're on the precipice of a pretty major eviction and foreclosure crisis on the horizon. Approximately 20 million to 28 million people may be facing a eviction between now and September, as a study done by Princeton University and Columbia University School of Law.

And the last time that we had a major housing crisis was in 2008. And approximately 10 million people were displaced from their homes over a period of years during the 2008 foreclosure crisis and Great Recession.

And so what that means is that if something, perhaps, doesn't change at the federal level, if things aren't different, we may be facing an eviction and foreclosure crisis of really historic proportions, and much more significant than the 2008 crisis, which it took us several years to get out of. So that's one thing.

One of the reasons that we haven't seen the effects of this impending crisis yet is because the federal government enacted an act called the CARES Act, which provided about \$6 trillion of direct and indirect federal aid for housing. But the problem is that the CARES Act protections that it provides are going to end on July 25 of this summer, 2020. And it's not clear yet what other protections will be in place.

So what did the CARES Act provide? Well, it provided a foreclosure moratorium where, people who have federally backed mortgages, for 60 days, basically, lenders were not able to foreclose on individuals who had federally backed mortgages for 60 days from March 18, ending on May 18.

So that foreclosure moratorium has technically ended. But the other thing that the CARES Act provided was that, for owners who have federally backed mortgages, they could request from their lenders a forbearance of 180 days. And then they could ask for an extension for up to 360 days. That's something that owners have to request from their lenders. And you were able to request it from the enactment of the CARES Act, which was March 27. And so, technically, there should still be some forbearance. But the question is, this only applies to people with federally backed mortgages, which we'll talk about in a few minutes.

The eviction moratorium was another thing the CARES Act provided for renters. So for 120 days, from March 27, 2020, to July 25, renters cannot be evicted from their homes for 120 days. And so that protection is basically going to end on July 25. There were local and state moratoria on eviction. But this was the federal moratoria. And it's going to be ending in a few days.

What's true is that landlords of covered properties, without 30 days' notice, may not evict tenants after the moratorium period expires. So when this moratorium expires, landlords will be able to evict. But they shouldn't do it without 30 days' notice. And this applies, again, only to covered properties.

So what does it mean to be a federally backed mortgage? Well, it basically is any mortgage that's insured, guaranteed, made, purchased, or securitized by one of the following federal agencies-- Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Fair Housing Administration, HUD, the Veterans Administration, the USDA, and some other federal organizations. So these are the primary ones.

And what this means is that if your lender is one of these federal agencies, then you're a federally backed mortgage. But it also applies to private mortgages that are insured or guaranteed by one of these agencies, like the FHA and Fannie Mae and Freddie Mac.

And in the United States, about almost 50% of the mortgages are usually federally backed in some way. So this applies to a lot of mortgages, but not all. And therefore, they don't apply to purely private mortgage loans. So if you have a purely private mortgage loan, since it's not federally backed, the CARES Act did not protect you.

How do you know if you're federally backed? Well, you should call your mortgage servicer if you own a mortgage. And you might think, well, who's that? Well, technically, banks make loans to homeowners.

So for example, say Citibank was a bank that made a loan to a homeowner. And then usually that bank sells the loan to a government agency. And the government agency might sell it to another group that creates securities, and then gives the monthly payments to investors to make money.

And so what that means is that the bank that originally made the loan to you-- say, Citibank-- might not be your mortgage servicer. They might be a different bank, for example. The mortgage servicer collects the payments from the homeowner and sends them to the securitization trust.

But the point is that your mortgage servicer is the bank or the entity to whom you give your monthly payments. And that's usually who you get your statements from. That's usually who you're interacting with, is the mortgage servicer. And that's the person you need to ask to find out if your mortgage is federally backed.

They're pretty busy. So if they don't get back to you, there's ways that you can look up that we'll discuss who your mortgage is backed by if you can't get in touch with your mortgage servicer. But that's the first place to start.

OK. So for renters, renters who are in covered properties are covered by the CARES Act. And so one of the questions is, are you being evicted for nonpayment of rent? If the answer is yes on this graphic, then if you live in the types of housing listed below-- public housing, Project-Based Section 8, HUD, low-income housing, tax credit housing, or LIHTC, Section 8, rural housing, property covered by the Violence Against Women Act-- if your rental housing is covered by any

of those things, then you're covered by the CARES Act and they should not have been able to evict you or initiate evictions until July 25 of 2020.

However, what's important to realize is that this only is if your reason you can't pay is because you can't pay your rent, or you can't pay your rent due to something having to do with COVID. There are other reasons that people could try to evict-- for physical harm, criminal activity, other things-- at least under the CARES Act. But nonpayment of rent is the major reason that you're covered under the CARES Act.

Additionally, if you don't live in one of those types of projects, but you do live in a home where your landlord has a federally backed mortgage, you're also covered by the CARES Act. And those expire on July 25. And so if it's a HUD-insured program, USDA, Fannie Mae, Freddie Mac, you're covered. And they should not try to evict you before July 25. But, again, that date is coming up soon.

There are also local protections and state protections that were in place. But most of those in Texas, at least, have expired. And my other presenters will talk about that later.

Here is the semi-good news. Although there are no federal laws at this point enacted by Congress that will extend these protections beyond July 25, Fannie Mae and Freddie Mac have been talking about extending their moratorium on foreclosures and evictions through August 31.

So if you have a Fannie Mae, Freddie Mac insured mortgage, then you may have an extension till August 31. The FHA has also done the same thing. And Fannie Mae and Freddie Mac are offering new kinds of payment deferral options for people who can't pay their mortgage right now and don't want to have it all come due at the end of the period. So allowing homeowners to repay their missed payments when the home is sold, refinanced, or at maturity.

So the point is that there's some relief, but not a lot of relief. You can look up Fannie Mae, Freddie Mac, or the Mortgage Electronic Registration System to see if these protections apply to you. And if they do, it only means they apply to you till July 25.

There's also a lot of stuff happening at the state and local level. But a lot of that does not extend much further than July 6 in Bexar County or July 25. A lot of it doesn't extend beyond that. However, as my other presenters will talk about, Dallas County did cancel some foreclosure sales and has halted property tax litigation. And Travis County did that. But it's not clear how long that will be the case. And my other presenters will speak to that.

The last thing I wanted to say is that there are resources within Texas for you to get more information about whether these apply to you, what you could possibly do if you are covered by the CARES Act, but it's expiring on July 25. And our program in real estate and development law will have these webinars on our website, as well as the Texas A&M Law School website that has these webinars.

UT, University of Texas Law School, has also got a great job of putting up protections for Texas renters under COVID and what you might be able to do. Texas Housers, Texas Rio Grande Legal

Aid, from which Fred is from, and BASTA are all resources within the state to help you get more guidance.

Lastly, the Consumer Financial Protection Bureau, the National Low-Income Housing Law Project, HUD, and Princeton University's Eviction Lab have more sort of federal information about what might be possible, what other states are doing, how well Texas compares. Sadly, Texas, on the Princeton University Eviction Lab study, has gotten a pretty low score for the kinds of protections that it's providing to people against foreclosure or against eviction compared to some other states.

And so with that, watch out for scams. There's a lot of scammers trying to say that they'll help you out of this situation. And what they're selling is actually not going to solve the problem. And I'll let my other presenters talk more in detail about what's available at the local and county level if you're facing an eviction or a foreclosure.

- All right. I guess I'll take over from here. I don't have a presentation, y'all. So you just get to look at my dumb face. And hopefully I'm not boring enough.

But I do want to say upfront, we can't answer-- I can't answer, Professor Alexander can't answer, and Mr. Fuchs at TRLA, he also can't answer specific, individualized questions about seeking legal advice. We do look forward to answering some questions about the general CARES Act and evictions going on in Texas. But we received a lot of questions that are asking very specific, sometimes too specific, fact patterns. And so we are going to try to answer as best we can in general ways. But we cannot provide legal advice.

That said, I've been tasked at covering Tarrant County and Dallas County-- DFW, basically. And so I'm going to start with my least favorite of the two, which is Dallas County, so I get that out of the way and talk about what I want to talk about.

So what's going on in Dallas County is that, on the statewide level, the eviction moratorium ended on May 18.

[LOUD DING]

Whoa, that was loud.

- Sorry.

- That's OK. And in Dallas, what they did, they extended it to June 15. So they give you another almost month. But unfortunately, they started allowing eviction hearings to start in June. And they were heard up until the beginning of July. And now, at the beginning of this month, on the county-wide level, they have not scheduled new court hearings for those filed starting at the beginning of July. And they will not be scheduled until after August 5.

That's a lot of weird dates with a lot of sliding scales. But basically what's going on is, the ones that were filed during the moratorium are actually being held currently. They're being heard and held currently in JP eviction court.

The new filings, starting at the beginning of this month, though, are going to be postponed until after August. So if you're in that window between June 15 and the beginning of July, unfortunately your eviction hearing is most likely going to be heard. But if your new case was filed from July through today, it will be postponed until the second half of August, most likely. August 5 is the day they'll start scheduling hearings.

Now, that's on the county level. And on the county level, I have to say one thing. JPs vary wildly in how they manage their court. They have a complete control, basically, over their dockets, unless there's some overriding county or federal or statewide rule.

And so some of them might postpone even further. Some of them might start hearing it on August 5. Some of them might want to wait until September. You just never know. It's going to vary wildly. So call your JP court if you have an eviction question about scheduling a docket in.

That's on the county level. On the city level in Dallas, the city council passed their "emergency eviction ordinance." And I'm looking at my notes here because it was kind of extensive. And I believe Fred can back me up. I think Austin passed a very similar one back in mid-April, as well.

This emergency eviction ordinance only impacts folks that are in Dallas proper, in Dallas city limits. Not in the rest of Dallas county, but only in Dallas city limits. And it's for nonpayment of rent evictions only.

And it requires that the landlord in a nonpayment of rent eviction give a 21-day notice of "proposed evictions" that gives the tenant a period to respond. And in that period to respond, the tenant needs to show documentation that they have suffered financial harm because of COVID-19. If they do that, then the tenant gets a 60-day window to make a payment plan.

So if you're counting, you're getting about 81 days total. If you're able to show that you've been economically harmed from COVID-19. And then you can enter into a payment plan that gives you the option to cure, as well, if you can, which is not afforded on the statewide level.

But if you do default on that eviction payment plan, or that rent payment plan, they can evict you. And some courts are enforcing that. So if you do make a payment plan with your landlord, make sure it's something that you can actually honor. Because if you don't, then you could be evicted.

That's what's going on in Dallas. I don't practice in Dallas. I have a whole bunch of people in my firm that are practicing in Dallas. But I want to focus on Tarrant County because that seems to be where most of our audience is listening from, is the city of Fort Worth in Tarrant County.

So what I can say about Tarrant County is that Tarrant County has one of the best systems of tracking eviction data in the state. And what that means is that we at Legal Aid have been

tracking what's been filed in every JP court across Tarrant County for evictions since COVID started really getting to be a big threat here in March.

And what we have seen is, since the enactment and enforcement of the CARES Act, there's been a significant drop in eviction filings. That's good. Right, that indicates to us that, for the most part, landlords are following the law and not filing evictions. In fact, it's been a little bit more than a 50% drop in filings.

What that means, though, is that, as Professor Alexander said at the top of the presentation, we're going to see a huge, huge wave in the next 60 to 90 days-- a huge influx, dockets that we probably never have seen before-- once the CARES Act protections expire. That's what concerns us, that's what concerns Fred, and that's what concerns the law school, is that we're going to see a potentially large wave coming in September of new eviction filings.

And so that's what we're seeing in Tarrant County. And there's a huge question in Tarrant County as to CARES Act enforcement. The CARES Act, it protects roughly 30% to 40% of the multifamily residential complexes across the United States. And that's a huge, huge chunk of apartments.

Unfortunately, there hasn't been a uniform enforcement of that across the United States, across the state, or even at the county level. A JP in an urban district might enforce it. A JP in a suburban district might not enforce it. It's not that uniform. It could be flipped.

But you never really know if your JP at the eviction court hearing is going to be aware of the CARES Act protections. And so you as the tenant really need to come equipped to say, my property is covered. I looked it up on the link provided in the chat. My property is covered. This eviction should not be taking place.

Unfortunately, a lot of times, it becomes incumbent on the tenant, his or herself, to provide that information to the justice court. And so what we have seen in Tarrant County is, unfortunately, some people have been evicted from CARES-Act-covered properties. We've seen it roughly 30 evictions filed in violation of the CARES Act and at least two who have been evicted from CARES Act properties. So it's happening. And it probably will continue to happen as we get closer to the end of July and into September.

So here in Tarrant County, that's kind of the state of affairs. Evictions started happening on May 19. And continue to happen. Courts are allowing you to do Zoom and telephone hearings if they were requested at least 24 hours before the eviction hearings. And the in-person dockets are limited usually to 10 cases per docket. Again, it's going to vary wildly from the bigger JPs to the smaller ones. But most of the bigger ones are doing 10 persons per docket to try to allow for social distancing.

So that's what I've got for what's going on in Tarrant County. I look forward to hearing some questions that are proposed from the audience. And hopefully we can answer some questions and get some good information out there for some tenants.

- It's great to be here. Delighted on one of the dog days of summer to take a few minutes to talk about what is happening in Austin. And I would begin initially by saying three things.

First, if you're a landlord and you violate the CARES Act, either knowingly or unknowingly, even though the Act itself doesn't create a claim for damages, under Texas law you're opening yourself up to liability under the Deceptive Trade Practices Act for damages and injunctive relief. So it's incumbent upon you as a landlord or management company to be very careful and not violate the Act.

Second, if you are a tenant and you have fallen behind on the rent as a result of losing income, I would encourage you, first, to keep in mind that the Act does not eliminate your obligation to pay the rent. What it does do is give you a little breathing space to try to work things out with the landlord. And that means talking to the landlord and not ignoring landlord inquiries about your ability to pay.

And then, third, with respect to landlords, I would say, given this extraordinary pandemic, this is certainly a time to enter into liberal, affordable repayment agreements. If you're not going to enter into a repayment agreement that the tenant can afford and that the tenant is going to default on, you're simply going to end up back in eviction court.

And one of the questions you have to look at, I think, from a financial perspective, is, who are you going to lease to in this time? And aren't you better off as a landlord if you can get the tenant back on track and give the tenant some breathing room as long as the tenant is making good faith efforts to pay?

Having said that now, with respect to Austin and Travis County, there are three sources of protection that have been embodied in Austin-- one by city council ordinance, a second by mayor's orders, and a third by the Travis County Justices of the Peace. Because the Justices of the Peace in Travis County early on issued standing orders about hearing cases. And the protections for tenants under all three of these resulted in postponement of eviction hearings, a complete ban on notices to vacate, except for criminal activity or activity that is an imminent threat, and also provides a 60-day right to cure to tenants.

So let's begin with, in Austin and Travis County, what the Travis County Justices of the Peace did. Well, under their most recent order of June the 16th, they have put all evictions, except those for criminal activity or imminent harm activity, on hold until July 22. So they're not holding any eviction trials at this point in time, unless, again, it's a case of imminent threat or imminent criminal activity. So that hold on eviction trials in Austin ends on July 22.

The second thing that the Justices of the Peace did in Austin was to put a hold on all writs of possession until July 29. That means that if a landlord had obtained a judgment prior to the order, the constable and the landlord cannot execute the writ of possession until July 29. And that's a hold on all writs of possession except those, again, for criminal activity or imminent threat activity.

The third thing the order did is not only put that hold on writs of possession and say no writs could issue until July 29, but ordered that any writs that had been issued prior to June 16 were also put on hold. And the order of the Justice of the Peace also requires compliance with the CARES Act in that it requires landlords to include an affidavit. And this is in addition to the Texas Supreme Court order requiring a sworn statement that the CARES Act doesn't apply to the property.

The Travis County Justice of the Peace requires that the landlords submit with the eviction filing in a separate affidavit confirming that the CARES Act does not apply. So landlords have been able to file here in Travis County. But all evictions have been on hold and are on hold until July 22. And no writs may be executed except for the criminal and imminent threat until after July 29.

Hearings that have been held have been Zoom hearings. And they intend to continue with Zoom hearings after the expiration of the orders. They're not going to do, in Travis County, in-person orders. So eviction trials are going to begin unless the Justices of Peace extend the order. And they'll begin again after July 22, which is next week-- I believe Wednesday.

And what has the city council done in Austin? And how has that affected evictions? Well, it enacted three different ordinances, with the most recent being on May 15. The second one on May 7 extended an earlier order.

But essentially, the ordinance, it provides tenants a 60-day right to cure. They're entitled [AUDIO OUT] notice of right to cure. And they are also-- the last ordinance, which I'll discuss in a moment, requires that landlords disclose to tenants who make a written request whether the property is covered under the CARES Act-- that landlords disclose that to the tenants within five days.

So let's talk just very briefly on the 60-day right to cure ordinance. It ends August the 24th. In a nutshell, if you are a landlord in Austin or you are a tenant in Austin, the city ordinance requires landlords to give the tenants a notice of proposed eviction before giving the notice to vacate that informs the tenant they've got a right to respond to the notice, and that that right to respond includes a right to cure that rent delinquency. And the period to cure the rent delinquency before giving the notice to vacate is 60 days.

And, again, that ordinance, which is currently in effect, will end August 24. But if you have a landlord in a non CARES Act covered property and a landlord wants to proceed with nonpayment of rent eviction, the landlord has to give the tenant in Austin the 60-day right to cure.

The right to cure notice, that has to be given before the notice to vacate under the ordinance. And it has to be given to any impacted tenant, which is defined broadly to include any tenant who has lost income during the disaster or who incurs a rent delinquency during the disaster. So essentially, all tenants who fall behind on their rent, even in a non-CARES Act covered property are entitled in Austin to the 60-day right to cure through August the 24th.

The third city ordinance is the disclosure ordinance that I mentioned. And it expires the end of September. And it, in a nutshell, gives tenants the right to request of the landlord in writing a notice whether the property is covered under the CARES Act. The landlord is obligated to reply within 60 days whether the property is under the CARES Act. And if the landlord doesn't disclose that information, the landlord, for violations under both of these ordinances, is subject to a \$500 fine that continues on a daily basis.

Now, in addition to the Travis County Justices of the Peace order and the ordinance enacted by the city council, we have a mayor's order that was originally issued March the 26th and extended May the 7th. And it ends on July 27. So July 27, the mayor's order in Austin ends. And we also have a Travis County judge's order that says exactly the same thing as the mayor's order. And it also ends on July 25.

But both of those orders-- the mayor's order and the Travis County judge's order-- prohibit landlords from issuing a notice to vacate through July 25, except for imminent threat evictions or criminal action evictions that pose an imminent threat. They prohibit lockouts by landlords, even if the landlord may otherwise legally lock out in accordance with the property code. And they prohibit the exercise of a landlord's lien by a landlord with a valid lien in a lease, such as the Texas Apartment Association lease.

So, again, that order by the Austin mayor expires after July 25. And that same order of the Travis County judge also expires after July 25.

I might add, in conclusion, that there's been a state attorney general opinion requested by State Senator Brandon Creighton, who has asked Attorney General Paxton's office to issue an opinion on whether local governmental orders' delay in evictions are legal under Texas law. So that's an interesting question.

Regardless of what the attorney general says, that is not binding on any court or litigant or party, but is simply the attorney general's opinion. But that request was made on June the 25th. And so, Lisa and Stuart, I'll turn it back over to you and be glad to answer any questions anybody might have with respect to Austin or Travis County.

- OK. Thank you so much, Fred and Stuart. So I'm sort of acting as a moderator right now. And I think I've looked at some of the questions in the chat room. And what I'd like to do is answer myself one of the broad questions that was asked, and then let some of our other panelists answer with a more specific question.

But one question was that in 2008, the housing crisis created a kind of domino effect, collapsing our entire economy. And could there be a similar problem when the CARES Act lapses? And what kinds of resources are available for landlords that are unable to make mortgage payments because renters are unable to pay?

And it's a great question. And the answer is, yes, in the sense that, if there isn't some kind of action at the federal level like a second CARES Act or a second stimulus bill that addresses housing issues and problems in terms of providing either relief to landlords and providing forms

of eviction moratoria for renters, we are looking at a housing crisis that probably will outpace the housing crisis that we had in 2008.

Because in 2008, as I said, it had affected 10 million people. That was an awful lot of people and had the potential to bring down our whole economy. But we didn't quite have that happen.

Now we're talking about 20 to 28 million people. And their issues are so intertwined with our economy that in the absence of any federal action, we may have a major problem.

What you've seen from our panelists is that, because there's been some federal action through the CARES Act-- but that's expiring-- different cities and localities and different counties have tried to do different things to kind of stave off a massive eviction crisis, which could lead to homelessness. They're all doing it in different ways based on their local priorities and what they think their local residents will want and tolerate.

But what is true is that there's not a lot at all those local levels for landlords or to help tenants who really just don't have the money to pay, right. And so if tenants don't have the money to pay, they're not going to be paying landlords.

And the only coverage for landlords right now is if a landlord does have a guaranteed mortgage for them to go through the CARES Act and request that forbearance that I was mentioning-- that forbearance for 180 days and up to 360 days. If they're not covered and can't do that, then there isn't really a very clear set of protection for landlords or for their tenants.

Because if landlords don't get the coverage to meet their mortgage obligations, if they're not able to forgo their mortgage payments, then they're going to try to force evictions on people to get tenants who can pay. And it's going to kind of create a cycle.

So at the federal level, we need to see something. What is true is that different states have tried to do different things. So in New York right now, everything in terms of evictions and payments of mortgages and rents is on hold until this crisis, this COVID crisis, is ceased. Some other states have tried to take other actions.

But in Texas, we don't have anything quite yet at the state level. And as Fred said, there's also some push to say that localities shouldn't be able to take actions that go further than what the state has provided. And while that's not going to be law in the AG's case, there has been this struggle about what the state can do and what cities can do. And that's kind of putting tenants and landlords in a difficult position until there's some kind of second federal help.

The last thing I'll say before I turn it over to my colleagues is, there is another federal act called the HEROES Act that was passed in the House. But it's kind of been held up. The Senate has not passed it. And it doesn't look like they will anytime soon unless some things change politically.

But what is true is that that act seeks to extend the moratoria protection for another 12 months so that people are not being kicked out of their homes. And it also seeks to provide some kinds of protections to tenants and to landlords, and also provide more stimulus money. But that has not

been enacted and is not law. And so we're sort of in this space that we're talking about where we have to deal with different county and state laws.

- OK.

- I don't know if you guys want to say anything.

- Yeah.

- I saw there was one question-- and I'll answer it very quickly and let Stuart answer some of the Tarrant County questions-- but on whether the CARES Act applies to single family houses. The answer is, no. The CARES Act applies to multifamily properties designed for occupancy by five or more individuals.

It could come into play if the single family house is occupied by a tenant with a voucher, because all voucher participants are protected under the CARES Act. But if you're a landlord leasing a duplex or a single family unit and the tenants are non-voucher tenants, the CARES Act is not going to come into play. You will be covered then by whatever county ordinances, mayors' orders, or judges' orders have been enacted in your location.

- Sorry, there is one exception to that that I just wanted to clarify. Fred's absolutely right. The one exception is that if you [INAUDIBLE] mortgage, you're a landlord, and you have a federally backed mortgage of one to four properties.

And you therefore apply for the forbearance under the CARES Act. And you've taken advantage of that forbearance by asking [INAUDIBLE] lender. But the landlord is taking advantage of that forbearance by asking their lender for an extension or a forbearance.

If they are doing that, then they're not supposed to, technically, under the CARES Act, they'll evict you. So you might not be a federal property in the way that Fred described. But if you are taking advantage of the CARES Act protections as a landlord, you are having your mortgage suspended or forbearance for 180 or 360 days, you're technically not supposed to be able to evict anyone while you're getting that forbearance.

And so knowing this as a tenant is tough, because you've got to figure out what your landlord is doing and how they're covered. There are some resources in the state where they're trying to map out properties that might be rental properties in Texas that might be covered by the CARES Act.

And that's a website from-- I believe it's Texas Housers that has this map of where the properties are. And that's a place you could see if your property might be covered. Or if you're a landlord, you need to find out if your mortgage is federal in order to take advantage of that forbearance.

- Good point. Thank you, Lisa.

- I'd like to address something that someone smarter than me in the comments asks-- George from Legal Aid, thank you for calling me out-- that, yes, what you asserted in the question is

correct, that for the Dallas City ordinance that applies just to the folks in Dallas city proper, that the 60-day notice to cure does start at the day that the notice of proposed eviction is, that 60-day period starts the day the notice of proposed eviction is served, and the 21-day and 60-day periods run concurrently, not consecutively. So thank you for pointing that out.

I do want to make one thing apparent before I answer any more questions, is that, as Fred has detailed very well about what's going on in Travis County and Austin and in the Austin JP courts, and as we can see what's going on in Dallas County and in the Dallas City Council, Fort Worth has not enacted any of those similar protections. And neither has Tarrant County.

And so though there might be some protections at the local level in some of the other, bigger counties-- Harris, Travis, Dallas County-- in Tarrant County and in Fort Worth, we don't have any of those protections. So landlords are free to evict. The only protection that a tenant might have at this current moment is the CARES Act. And so CARES-Act-covered properties cannot evict for nonpayment of rent. But that's the only one that exists here in Tarrant County. And I just want to make that clear to those on the call right now.

I got another question from an attorney that asks, does the City of Dallas ordinance still apply? Yes, it does still apply. I think it was July 8, the governor of Texas, Governor Abbott, extended the emergency disaster declaration. And so what the ordinance does is, it actually hitches itself onto that. And as long as that declaration was extended, so was the city ordinance. And so it will be extended for another 30 days. I think it's good until August 8 or August 7.

- There was a question I saw about whether it's proven that the property is covered under the CARES Act. It's simply a matter of printing out something from the website showing that it's a covered property.

And if I were a tenant, I absolutely would take that to the court as proof that the property is a covered property. And that should certainly require, then, that the Justice of the Peace, if the landlord is asserting otherwise, do an additional inquiry.

But in the end, it's the landlord's burden to prove that the property is not covered under the CARES Act. So that's a great question. And if you are the tenant, yes, you absolutely should print that out from the website.

- Thank you, yeah. And I was going to answer two of the other questions. One, is there any Bexar County updates? At this point, other than what I had on my slide about what Bexar County has done, I'm not familiar with any others. That doesn't mean they don't exist. But at this time, I'm not familiar with that. So you should probably relook at the slide. But we don't have more information on that.

And then the second question was, what happens if you're a landlord that doesn't request or exercise the forbearance under the CARES Act? So I guess you would be eligible to exercise forbearance, but you don't. Well then if you don't, and you have a tenant in your property and you're not a multi-family property covered under the CARES Act, then you could proceed with your eviction as per the various state and local and county requirements and laws.

But what is also an issue that I think is important to communicate to people listening is that this is a really good time to do something that we call a workout, a workout meaning if you're an owner with a mortgage and you want to talk to your lender, and you just feel like you're not going to get paid. You're not going to be able to pay out August 31 because you just don't have a job right now, or you have a problem.

This is really the time to go to your lender and try to negotiate some kind of repayment plan or workout that will allow you to pay at a time when you might be able to or when you think you could or to delay it until later. And the reason I say that is not that every lender will grant that if you own a mortgage, but this problem is so pervasive.

And so many people are facing the same problem at the same time that it's not necessarily in the lender's interest to basically just foreclose on everyone and evict everyone, especially if it's going to be harder for them to find another tenant to help them meet their obligations. So to the extent that you can work something out with them, it's good to try to discuss that.

And I think the same applies for a renter. If you think that you can't do it right now but you might be able to do something later, try it. I mean, it might not work. It probably won't in many cases. And Stuart and Fred can speak to their experience with it. But because this problem is so pervasive, it's not as if any time a landlord has a tenant that can't pay they're just going to be able to go find 50 million other tenants that can. It's a much more pervasive problem.

And so in 2008, workouts were difficult. And a lot of lenders and a lot of landlords did not want to work with tenants. But I think this problem is more pervasive. And perhaps there's more people that will want to work with their tenants.

- There was a question, also, I saw, about whether the CARES Act protection applies regardless of legal status. The answer is, yes. The CARES Act doesn't address the question of immigration status in applying the protections to tenants. It simply details covered properties and says tenants and those covered properties are protected from eviction in an [INAUDIBLE] after the end of July 25 to a 30-day notice to vacate.

- I see a question that's Fort Worth and Tarrant County specific about appeals. I'm going to try to address that one. I'm glad you kept in general so I can talk about it. But, yeah. So after the appeal is perfected by filing the statement of inability to pay, it normally takes-- for the county court of law here-- it will normally-- the appeal transcripts will be sent over to the county court of law within two weeks.

And then the tenant is then sent a letter out. That letter gives them a deadline of eight days from the day that letter was sent out to file an answer that they have to-- they're supposed to file a written answer in eight days for the property code.

And after that, actually in this county, it's different than a lot of counties throughout Texas. In Tarrant County, the way the county courts of law operate is that it is now incumbent upon the plaintiff-- in this case, the landlord-- to request a trial.

So the best answer to your question is, it depends on how fast you can get an attorney. Well, if you're a corporation, how fast you can get an attorney and request a trial. If you're not a corporation, you can do it without an attorney-- well, depending on your judge. But yeah, so it depends on how fast you want to move that forward as the plaintiff.

- Yeah. I'm just making sure I don't see other questions. Yeah, I wanted to make, also, another comment, which is that one of the holes in the CARES Act and the federal legislation that did exist is that there is a little bit of a mismatch between the needs of landlords and what is provided to renters, right, because the landlords could technically, perhaps, be covered under some of the small business provisions that were in the CARES Act, which we're not going over today. That was another webinar that we did at Texas A&M that you can look at.

So perhaps landlords could be covered under some of the small business provisions. But once those expire, unless landlords can work out something or negotiate something else, they are going to have incentives to evict.

And also, there are servicers, for example. So when we're talking about mortgages, servicers make their money from collecting payments from owners. And so if they can't collect payments from owners because owners can't pay, then they can't really get paid. And so as a business entity, they're a little bit left out in the cold, too.

And so these are all issues that have been debated at the federal level. What do we need to do as a federal matter to cover landlords and cover servicers so that they don't have massive incentives to evict large numbers of people?

The other thing that's really important is that, in this crisis-- I think this is always the case, but more than any other time-- this impending housing crisis is intimately connected to the public health crisis that we have. If lots of people are suddenly being evicted and out on the street and we're stepping over people in the city who might potentially have COVID-19, if those people are filling up hospitals and shelters, that's a public health problem. That's a public health problem even for people who may be able to pay their rent or may be able to pay their mortgage.

And so this eviction crisis is intimately connected with the public health crisis and other things. And so I do think we need to figure out how to keep people in their homes so that they could shelter in place and keep 6 feet of distance and stay away from people.

And if we can't do that, we not only will have a housing crisis, we might have a massive crisis of pretty epic proportions. So I do hope that we see some movement on the federal level, the state level, the local level to stave off what could be a big problem.

- Fred, are you trying to answer a question?

[LAUGHTER]

- I saw there was a question about whether a property covered by the CARES Act can evict a squatter. The answer is, yes, if you can prove that the person is a squatter and not a tenant, because the protections apply to tenants.

But if there's a valid lease, either oral or written, then the person is not a squatter. If someone simply trespassed on and moved into a property without any permission, either from the landlord or from a tenant who had been in the unit, then that person would not be considered a tenant and the protections of the CARES Act wouldn't apply.

To the extent there is a question whether someone is, indeed, a tenant or whether the person is a squatter, then a judge would have to decide. But, again, the Act just applies to tenants, not to squatters.

- There is an important comment that I'd like to echo that was mentioned in the questions. And it's in regards to rental assistance. The Tarrant County Community Development has been working closely with some JPs to help to provide for rental assistance for folks that have been filed against. There's also Tarrant County Human Services and Tarrant County Housing that also offer rental assistance.

I know on the call we have some folks from the City of Fort Worth Community Action Partners, who have helped a lot of my clients in the past. So thank you for joining on the call. They're also a great resource for folks who need rental assistance.

And there's a smattering of great organizations in Fort Worth and Tarrant County that offer rental assistance, including Catholic Charities, Community Frontline, Center for Transforming Lives, and Salvation Army. And so if you have any questions after this, please feel free to contact me if you have any issues trying to get resources for rent.

- Lisa, I don't have anything more unless either you or Stuart have something further to add or there were more, additional questions.

- There was one question that was submitted with the RSVP form. It was from a law firm. And it asked how to volunteer. Basically, contact the law school or me at Legal Aid. Legal Aid recently did a webinar with the Tarrant County Bar Association, where we went over eviction defense, the 101s. We got a good turnout. We got roughly 20 volunteer attorneys from that. And we are assigning cases every week to volunteer attorneys. And we're getting some really good results from that, too. And so if you want to volunteer to do pro bono work, please, please, please contact [AUDIO OUT]

- Oh, he froze for a second, I think.

Hello? OK, yeah. So can you hear me? I think he froze for a second. So go ahead, Fred. Oh, I was just going to follow up on that, Lisa. And then I'll let you finish.

And that is, with respect to attorneys asking about volunteering in their county, one of the great needs here is for lawyers who are willing to represent tenants who can explain to them whether

they have any legal defenses in a case-- and if not, help try to negotiate a resolution-- either payment resolution that the tenant can afford or, in some cases, a move-out resolution that will minimize the damages to the tenant's tenancy history and credit history.

So additional lawyers are so badly needed in the legal services. Attorneys can provide the advice and guidance. And lawyers can pick these up and make a huge difference for clients in these cases. There is no question about it. And that's been shown on a nationwide basis over and over.

- OK. So I was going to answer a question where someone said, what happens if my landlord has properties that are financed by federally backed loans and some that are not? Does the CARES Act apply only to the individual property or to all of their properties?

My understanding is that it would apply only to the properties that are covered properties of that landlord. If there are other properties that are not covered properties or where the landlord doesn't have a federally backed mortgage, then they could proceed through the private channels. The only thing that would put a limit is whether or not the county or the city or the state forbids moving forward with evictions. And you'd have to look at where you're located to figure that out based on the different dates. But, yes, they could move forward with that.

There was another question about whether UT or Texas A&M professors are interested in co-counseling on impact or plaintiff defense work. And what is true is, we do have clinics. But at this point, I'm not sure that they're developing that. But we do have clinics where people can get involved in these issues. We are basically, primarily researchers that also try to give assistance. But you'd have to really speak to our clinics about that.

And then the last thing I wanted to speak to is someone said, are there any protections for McKinney or Collin County? We focused on counties in which we practice and where the law school is located. But I would say, consult those resources that I directed you to in my PowerPoint from Texas Housers or others which will tell you if there's anything specifically in your particular county that might provide a moratorium. But otherwise, I don't have specific information about McKinney or Collin County.

And then lastly what I was going to say, is that the transcripts and the PowerPoints and the recording of this webinar will be available on Texas A&M Law School's website, as well as on the program that I co-direct in real estate and community development law, so that if there was something that you needed to consult or see from the slides that you missed, that should be up there.

In addition, there's all the other webinars that Texas A&M Law School has done that also cover things like small businesses and landlords and bankruptcy and other issues. So I encourage you to look at that.

Anybody else have anything else to say? All right.

- [INAUDIBLE]

- All right, go ahead. No? OK.

- Thank you.

- Yeah. So I want to thank all of you for participating. And we hope that you got some good information. Again, we don't do any specific counseling of specific situations. And we're only providing general, know-your-rights information, not legal advice. But hopefully this will point you in the right direction. And once again, we wish you all the best of luck and health and safety. OK, thanks. Bye.

- Thank you. Goodbye.

- Bye.

While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.