

# COVID-19 TRAINING

## *Civil Legal Aid Attorneys and Volunteers*

May 2020

## HOUSING

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These materials were designed to assist Louisiana civil legal aid and volunteer attorneys respond to the most common housing law questions during the COVID-19 pandemic.



**IMPORTANT:** This information is changing rapidly and attorneys using these materials should research updates and changes to the law before applying the information provided.

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## ACKNOWLEDGMENTS

This guide was made possible by Southeast Louisiana Legal Services Attorney, Hannah Adams. Hannah presented four short videos designed to accompany each section below. A link to each video is included in the *Table of Contents* and at the beginning of each section.

This guide is structured to give civil legal aid and volunteer attorneys the most relevant information needed to respond timely to common questions raised amid the public health crisis, known as the COVID-19 pandemic. Included below is information on legal questions related to evictions for private housing tenants, subsidized tenants, and hotel/motel occupants during the pandemic. A section on options for early lease termination is also included. At the end of each section, there is a list of relevant resources.

A big thank you to Louisiana Appleseed volunteer, Margaret Viator, Phelps Dunbar Associate, for her copyediting contributions.



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**View videos for each section [here](#) (password: ATJ)**

## EVICTIONS DURING THE COVID-19 PANDEMIC (VIDEO)

The following is information on tenants' rights, specifically eviction law during the COVID-19 pandemic. It is designed to help legal aid and volunteer attorneys to respond to the most common questions clients have under this topic during the public health crisis. This section will cover:

- Changes in the law regarding evictions
- Advice for tenants unable to pay rent
- Renter payment assistance
- Illegal evictions and what to do if or when it happens
- Additional Resources

The information included was adapted from the [Tenants' Rights COVID-19 Legal Updates](#) Frequently Asked Questions (FAQ) page developed by the attorneys of Southeast Louisiana Legal Service, a Legal Service Corporation program covering 22 parishes in Southeast Louisiana. Links and webpages for many of the resources shared are available at the end of this section. Please note that some of the information below is specific to the law in Louisiana and may not be applicable in other states.

### Changes in the law regarding evictions

COVID-19 pandemic has had a dramatic impact on household finances, particularly for Louisiana's most vulnerable populations at risk of homelessness. Recognizing this, the state has put protections in place to ensure tenants can stay safely in their homes and avoid the risk of exposure to the virus. Through [Proclamation No. JBE 2020-41](#), and an order by the Louisiana Supreme Court, the state announced that evictions for all Louisiana tenants will be suspended. It is unclear when evictions will be set to commence.<sup>1</sup>

Tenants will *still owe rent* for the suspended period and failure to pay once the suspension is lifted can result in an eviction. With some exceptions mentioned below, it is still legal for a landlord to issue a "Notice to Vacate" or "Eviction Notice" during the suspension—however, if the tenant does not move, the landlord does not have a legal mechanism to evict the person until the courts reopen. The court closures prevent the filing of a court petition to evict anywhere in the state until the scheduled reopen date.

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<sup>1</sup> [LA Sup. Ct. Order released April 29, 2020](#), states that the prohibition on in-person proceedings is extended to May 18, 2020.

This information can vary by city or parish. Please make sure to check for updates on this from the Governor or city leadership.

In addition to the state’s suspension of evictions, the Federal Stimulus Law, *Coronavirus Aid, Relief and Economic Security Act*, or the CARES Act, signed on March 27, 2020, contains additional protections for many tenants. The CARES Act bans:

- evictions for nonpayment,
- the charging of late fees, and
- and the issuance of notices to vacate for any reason

for 120 days, or until July 25, properties that “participate in” a federal subsidy program covered by the Violence Against Women Act (“VAWA”), properties that “participate in” the rural housing voucher program, and properties with federally backed mortgages. This includes the following properties:

- Properties that rent to any Section 8 voucher holders
- Properties that rent to any VASH (Veterans Affairs Supportive Housing) voucher holders
- Properties that rent to anyone with a U.S. Dept. of Agricultural rural housing voucher
- All HUD-subsidized properties like Project-Based Section 8 and Project-Based Voucher properties, HOME properties, HUD-subsidized senior housing, and public housing
- Rental properties subsidized by the U.S. Dept. of Agriculture
- Properties that receive Low Income Housing Tax Credits (“LIHTC” or “tax credit”)
- Properties that have a mortgage backed by the federal government (like an FHA or other HUD mortgage, a VA mortgage, or a U.S. Dept. of Agriculture mortgage), or a mortgage owned by Fannie Mae / Freddie Mac

After July 25, 2020, covered properties must give a 30-day notice. If you speak with someone who receives an eviction notice before July 25th and who lives in a property mentioned above, that person has a defense to eviction, but it will help to have a lawyer involved. Please have them contact a legal aid organization in the parish they reside.<sup>2</sup>

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<sup>2</sup> For SLLS, direct them to the COVID-19 Hotline at 1-844-244-7871. In the New Orleans area, tenants can also call 1-504-529-1000 x.223. For Acadiana Legal Service Corporation, direct them to the online

Under some circumstances, evictions for violations other than not paying rent, like criminal activity, can be filed after eviction court reopens.

The CARES Act states that *Notices to Vacate* cannot be issued until after July 25, 2020, which would bar evictions unless the landlord has a “Waiver of Notice” in the lease.<sup>3</sup> Note that notice is required for Section 8 tenants.<sup>4</sup>

### **Advice for tenants unable to pay rent due to the COVID-19 Crisis**

If a renter cannot pay rent due to the loss of income as a result of the COVID-19 Crisis, advise them to communicate with their landlord about their situation and try to work out a payment plan. If they work out a payment plan with the landlord, they should try to get it in writing.

Many tenants may be able to start making payments, or partial payments, when they receive their federal stimulus check and/or unemployment benefits. However, currently it is unclear when people will receive these funds. People who are eligible should apply for unemployment if they are out of work. During COVID-19, more people qualify for unemployment, restrictions are relaxed, and payments are higher due to changes in the law.

Landlords may qualify for forbearance and other mortgage assistance during the COVID-19 Crisis<sup>5</sup> and, for this reason, be willing to reduce or waive rent for certain months. No law currently requires them to reduce or waive rent, but it is always worth asking. This is another reason why it is a good idea for people to try to open lines of communication with their landlords and build a good rapport.

It is important to emphasize that even though the landlord cannot evict the tenant, if the tenant does not make arrangements to pay the rent and fees, the landlord may file a petition to evict when courts reopen.

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intake at [www.la-law.org](http://www.la-law.org) or to call the appropriate office using the contact information provided at this link: <https://www.la-law.org/get-in-touch/>.

<sup>3</sup> CARES Act §4024(c) is silent as to whether eviction prohibition and 30-day notice requirement applies to evictions for cause other than non-payment of rent. If the court finds that §4024(c) applies, then the first day the eviction can be filed is August 25 and a hearing set for August 28. If the court finds that §4024(c) does not apply, then the eviction can be filed after the completion of any remaining notice to vacate period (may have been suspended).

<sup>4</sup> See *infra* Section II *Protections for Tenants in Subsidized Housing*. Please refer to this section when working with someone who receives a federal housing subsidy.

<sup>5</sup> Louisiana Housing Corporation, *Help for Homeowners: COVID-19 Mortgage Relief* (April 24, 2020), available at [https://www.lhc.la.gov/hubfs/LHC\\_COVID19%20Help%20for%20Homeowners\\_04-24-2020.pdf](https://www.lhc.la.gov/hubfs/LHC_COVID19%20Help%20for%20Homeowners_04-24-2020.pdf)

A link to a rent relief letter generator resource tool for people unable to pay their rent is available online through the following links:

- English version: <https://bit.ly/COVIDrentrelief>
- Spanish version: <https://bit.ly/COVIDaliviodealquiler>

### **Can renters receive assistance paying rent?**

Under the Federal Stimulus Law (“CARES” Act), many taxpayers will receive a check for around \$1,200, plus \$500 per minor child, in the coming weeks. To qualify for payment, you must have filed taxes for 2018 or 2019. The 2019 filing deadline has been extended until July 15, so you can still file. Exceptions may apply.<sup>6</sup>

If the tenant lives in the City of New Orleans, rents from a private landlord, and does not have a housing subsidy, then they might qualify for rental assistance. Advise them to call the City of N.O. Office of Community Development at 504-658-4200 to see if they do.

### **What is an illegal eviction and what to do if it happens?**

Landlords cannot lock out a renter, throw out renters’ belongings, or cut off utilities without going through the court eviction process. A landlord must get a court order to evict a tenant. If a landlord is trying to physically remove the renter or their belongings from the property, that person can call the police if they feel comfortable.

If a landlord tries to evict a renter without a court judgment or tries to force the renter out by doing other things, the tenant should seek the advice of an attorney and representation from a legal aid organization. In some situations, the tenant can obtain an injunction, or court order, to let them back into the property. The landlord could also be liable for damages. To find out if a tenant is eligible, they should contact the legal aid office in their parish. Due to the COVID-19 crisis, it might be a while before a court can schedule an in- person hearing on a preliminary injunction. For this reason, consider moving for a Temporary Restraining Order (TRO). In order to get a TRO, you will need to plead irreparable harm and likelihood of success on the merits. Be sure to highlight any pre-existing medical conditions that make the tenant vulnerable to infection during the COVID-19 crisis should they become homeless.

Remember that in seeking a TRO you must ask the court to set a bond. Depending on the circumstances, this may pose a problem for low income tenants.

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<sup>6</sup> More information on stimulus payments is available under *Additional Resources* at the end of this section.

If a renter receives an eviction notice from a court or a Justice of the Peace while evictions are suspended they should seek the advice of an attorney immediately by calling or going online to apply for services with the legal aid organizations mentioned above and below.<sup>7</sup>

### **Additional Resources**

For questions about the information in this section, contact Hannah Adams at [hadams@slls.org](mailto:hadams@slls.org).

Additional helpful resources can be found on the following website links:

- For Southeast Louisiana Legal Services call COVID-19 Hotline at 1-844-244-7871. SLLS also has the Tenants' Rights FAQ page available at: [www.slls.org/news/blog](http://www.slls.org/news/blog).
- For Acadiana Legal Service Corporation go to <https://www.la-law.org/get-help/> or <https://www.la-law.org/get-in-touch/>
- Information for the public is available under the COVID-19 Help Center link on [www.louisianalawhelp.org](http://www.louisianalawhelp.org) under the home page. Rent relief letters and scripts for those unable to pay rent are available at:
  - English version: <https://bit.ly/COVIDrentrelief>
  - Spanish version: <https://bit.ly/COVIDaliviodealquiler>
- For information about the stimulus package go to: <https://crescentcarehealth.org/stimulus-checks-what-you-should-know/>
- The LSBA Find Legal Help portal lists legal aid and resources available throughout the state by parish.

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<sup>7</sup> In New Orleans, a renter can dial 311 if an illegal eviction is in process. The Orleans Constable's office will respond.

## **PROTECTIONS FOR TENANTS IN SUBSIDIZED HOUSING DURING THE COVID-19 PANDEMIC (VIDEO)**

The following section includes information on legal protections for tenants in subsidized housing during the COVID-19 pandemic. It is designed to help legal aid and volunteer attorneys respond to the most common questions clients have under this topic, during this time. This section will cover:

- Determining whether someone is a subsidized tenant
- Changes in the law regarding evictions for subsidized tenants
- How to inform the housing provider or housing authority of changes in income
- Additional resources

The information was adapted from the Tenants' Rights COVID-19 Legal Updates FAQ page developed by the attorneys of Southeast Louisiana Legal Service. Links and webpages for many of the resources shared are available at the end of this section. Some of the information below is specific to the law in Louisiana and may not be applicable in other jurisdictions.

### **How do I know if someone is a subsidized tenant?**

There are a few ways to identify if someone is considered a subsidized tenant:<sup>8</sup>

- If the person receives assistance through the Housing Authority, like a Section 8 voucher, they are a subsidized tenant.
- If the person must recertify their income with their housing provider every year, and if their rent changes as their income goes up and down, they likely receive a government housing subsidy.
- The person might be a subsidized tenant even if their rent does not change based on their income. For example, they might pay a flat reduced, below-market rent in a Low-Income Housing Tax Credit, or “tax credit” unit.
- Their lease most likely will say if they are in a subsidized housing program (check for a lease addendum specific to a housing program).
- If they live in an apartment complex, you can look up whether it receives a government subsidy on the *National Housing Preservation Database*.<sup>9</sup>

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<sup>8</sup> See also Renae Davis, Amanda Golob & Hardell Ward, Louisiana Legal Services and Pro Bono Desk Manual *Federally Subsidized Housing* pp.455 – 98 (2013), available at: [https://law.loyno.edu/sites/default/files/federally\\_subsidized\\_housing.pdf](https://law.loyno.edu/sites/default/files/federally_subsidized_housing.pdf)

<sup>9</sup> Use to search for multifamily properties with certain federal subsidies <https://preservationdatabase.org/>

## Changes in the law regarding evictions for subsidized tenants

COVID-19 pandemic has had a dramatic impact on household finances, particularly for Louisiana families most at-risk of homelessness. Recognizing this, the federal government has put protections in place to ensure tenants can stay safely in their homes and avoid the risk of exposure to the virus. The federal stimulus law, the Coronavirus Aid, Relief and Economic Security Act (also known as the CARES Act), signed on March 27, 2020 contains additional protections for many tenants. The CARES Act bans:

- evictions for nonpayment of rent,
- the charging of late fees, and
- the issuance of notices to vacate for any reason

for 120 days, or until July 25, 2020 for the following properties:<sup>10</sup>

- properties that rent to any Section 8 voucher holders;
- properties that rent to any VASH (Veterans Affairs Supportive Housing) voucher holders;
- properties that rent to anyone with a U.S. Dept. of Agricultural Rural Development voucher;
- all HUD-subsidized properties like Project-Based Section 8 and Project-Based Voucher properties, HOME properties, HUD-subsidized senior housing, and public housing;
- rental properties subsidized by the U.S. Department of Agriculture;
- properties that receive Low Income Housing Tax Credits (“LIHTC” or “tax credit”); and
- tenants whose landlords<sup>11</sup> have a mortgage backed by the federal government (like an FHA or other HUD mortgage, a VA mortgage, or a U.S. Dept. of Agriculture mortgage), or a mortgage owned by Fannie Mae / Freddie Mac.<sup>12</sup>

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<sup>10</sup> A non-exhaustive database of covered multifamily properties can be found at the National Low-Income Housing Coalition: <https://www.nlihc.org/federal-moratoriums>. However, this database does not cover single-family properties with 1-4 units and does not reflect all multifamily properties with Fannie Mae and Freddie Mac mortgages.

<sup>11</sup> A landlord may call the FHA VA, USDA, Fannie Mae or Freddie Mac escalation number listed on this [website](#) to inquire as to the status of their mortgage. A landlord may also research if Fannie Mae or Freddie Mac owns their mortgage through this [link](#).

<sup>12</sup> The Federal Housing Finance Agency has provided an online database to search Multifamily properties with a Fannie Mae or Freddie Mac mortgage. For Fannie Mae go to this [link](#). For Freddie Mac use this [link](#). These tools do not include single-family properties with 1-4 units.

After July 25, 2020, covered properties must give a 30-day notice. If you speak with someone who receives an eviction notice before July 25th and who lives in a property mentioned above, that person has a defense to eviction, but it will help to have a lawyer involved. Please have them contact a legal aid organization in the parish they reside.<sup>13</sup>

Under some circumstances, evictions for violations other than nonpayment of rent, like criminal activity, can be filed after eviction court reopens.<sup>14</sup>

However, because the CARES Act states that Notices to Vacate for any reason (not limited to nonpayment) cannot be issued until after July 25, 2020, this would bar most evictions from subsidized properties. This is because most subsidy programs require a Notice to Vacate or Notice of Termination before eviction. While many Louisiana leases waive the statutory 5-day notice under Louisiana Code of Civil Procedure article 4701, these waivers are unenforceable where the subsidy program requires notice, for example the Section 8 program.

***Can the Housing Authority terminate Section 8 or public housing assistance?***

All evictions of tenants with Section 8 vouchers or who live in public housing or other federally subsidized housing are banned until July 25, 2020 as previously mentioned.

The following Housing Authorities have said they are suspending Section 8 terminations during the COVID-19 crisis: Housing Authority of New Orleans, Housing Authority of Jefferson Parish (does not cover Kenner), St. Bernard Parish Dep't of Housing, and St. Charles Parish Housing Authority. Other Housing Authorities may be suspending terminations during this time as well. Also, because in-person hearings may be on hold at some Housing Authorities due to social distancing requirements, and a tenant is entitled to a hearing prior to termination, termination proceedings may be delayed at some Housing Authorities.

***Can the Housing Authority delay hearings, inspections, and contract signings due to COVID-19?***

Initial inspections, emergency inspections, and contract signings should still be happening at Housing Authorities. HUD has released guidance and waivers that should make it easier for Housing Authorities to complete and process these activities remotely.

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<sup>13</sup> For SLLS, direct them to the COVID-19 Hotline at 1-844-244-7871. In the New Orleans area, tenants can also call 1-504-529-1000 x.223. For Acadiana Legal Service Corporation, direct them to the online intake at [www.la-law.org](http://www.la-law.org) or to call the appropriate office using the contact information provided at this link: <https://www.la-law.org/get-in-touch/>

<sup>14</sup> See La. Supreme Court Website for information on court closures and re-openings: [www.lasc.org](http://www.lasc.org).

When a tenant receives a proposed termination prior to the COVID-19 crisis, is waiting on a hearing, and is currently unhoused, some Housing Authorities are issuing “provisional vouchers” until hearings can be held. If a delayed hearing, inspection, or contract signing is causing a tenant serious hardship or homelessness, they should call a legal aid organization in their parish.

### **How a subsidized tenant should inform the housing provider or housing authority of a change in income**

If a tenant lives in Section 8, public, or other subsidized housing where rent is based on income, and the tenant has lost income, the tenant must report the loss right away. If the office is closed, the tenant should email, text, or mail notice to their caseworker or landlord. Advise the tenant to keep a copy of any notice sent for their records. If their only option is to call the Housing Authority, they should record the call or voicemail, so they have a record of reporting. The tenant should give notice even if all the documents needed are not available. In most cases, rent should be reduced the first day of the month after the loss of income is reported. If the landlord or caseworker is not able to process the rent reduction now, timely reporting will affect the amount owed later once the change is processed. If the landlord or Housing Authority fails or refuses to reduce the rent, an attorney may be able to assist.

Additionally, if a tenant begins receiving new income, like unemployment benefits, they should report it and keep a record of reporting it.

HUD has released guidance making it easier for Housing Authorities to process income adjustments. For example, Housing Authorities can accept self-certifications over the phone and by email for income changes rather than doing third party verifications. However, if a discrepancy shows up later, for example a tenant reported they lost a job but a year later the PHA finds out they were working, HUD requires the PHA to take disciplinary action and recoup the overpaid assistance.

## **Additional resources**

If you have questions, please feel free to contact Hannah Adams by email at [hadams@slls.org](mailto:hadams@slls.org).

Additional helpful resources can be found on the following website links:

- For Southeast Louisiana Legal Services call COVID-19 Hotline at 1-844-244-7871. SLLS also has the Tenants' Rights FAQ page available at: [www.slls.org/news/blog](http://www.slls.org/news/blog).
- For Acadiana Legal Service Corporation go to <https://www.la-law.org/get-help/> or <https://www.la-law.org/get-in-touch/>
- Information for the public is available under the COVID-19 Help Center link on [www.louisianalawhelp.org](http://www.louisianalawhelp.org) under the home page.
- The LSBA Find Legal Help portal lists legal aid and resources available throughout the state by parish

## **REMOVAL OF OCCUPANTS FROM HOTELS/MOTELS DURING THE COVID-19 PANDEMIC (VIDEO)**

This section covers the removal of occupants from hotels and motels during the COVID-19 pandemic. The following information is designed to help legal aid and volunteer attorneys respond to the most common questions clients have under this topic, during this time. This section will cover:

- The legal requirements for removal from a hotel for nonpayment
- Legal provisions that affect hotel removal during a public health crisis
- Certain situations where a hotel occupant might be considered a tenant
- Legal options where a hotel or motel attempts to evict in violation of the law
- Additional resources

The information was adapted from the [Can I Be Evicted from a Hotel During the COVID-19 crisis in Louisiana](#) FAQ page developed by the attorneys of Southeast Louisiana Legal Service. Links and webpages for many of the resources shared at the end of this section. Please note that some of the information is specific to the law in Louisiana<sup>15</sup> and may not be applicable in other jurisdictions.

### **What are the legal requirements for removal from a hotel for nonpayment?**

La. Rev. Stat. 21:75 states that a hotel must give written notice to an occupant of his agreed departure date and checkout time at the time he registered and give written or oral notice to leave at least one hour before required time to leave.

La. Rev. Stat. 21:76 states that only “appropriate lawful authority” can remove an individual. This means a sheriff or police officer. Appropriate lawful authority does not include hotel staff.

### **Legal provisions that affect hotel removal during a public health crisis**

La. Rev. Stat. 21:76 states, “This Chapter shall not apply in case of serious medical emergency requiring the continued use of the room or campsite.”

The Governor’s declaration of public health emergency or personal medical emergency may qualify. A personal medical emergency could include:

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<sup>15</sup> This information is changing rapidly. Before advising a client, you are encouraged to identify any updates to the law pertaining to evictions. Updates will likely come through an Executive Order from the Governor or an Emergency Order for a particular parish. Alternatively, you may contact an attorney with SLLS at [www.slls.org](http://www.slls.org).

- Pre-existing condition that makes individual vulnerable to infection, like diabetes, a respiratory condition, or an immune system disorder
- COVID-19 diagnosis
- COVID-19 quarantine
- Heightened risk of infection because individual has nowhere else to go besides household with an infected person

### **Certain situations where a hotel occupant might be considered a tenant**

In certain situations, a hotel occupant might be considered a lessee:

- Long-term occupant<sup>16</sup>
- Pays by the week or month
- No written departure date and time at time of registration or original date has long passed and is not repeatedly extended in writing

Under these circumstances you may be able to argue that the individual is a tenant and the hotel owner must go through the legal eviction process. However, this theory has not been tested in court and it is not clear how a judge would rule.

### **Legal options where a hotel or motel attempts to evict in violation of the law**

If a hotel attempts to remove an occupant in violation of any of the laws discussed in this section, you may seek injunctive relief and potentially damages from a court. Due to the COVID-19 crisis, it might be a while before a court can schedule an in person hearing on a preliminary injunction, so you will want to move for a Temporary Restraining Order (TRO). In order to get a TRO, you will need to plead irreparable harm and likelihood of success on the merits. Be sure to highlight any pre-existing medical conditions that make the tenant vulnerable to infection during COVID-19 crisis should they become homeless.

Remember that in seeking a TRO you must ask the court to set a bond. Depending on the circumstances, this may pose a problem for low-income tenants.

Also, hotel fees are still due and owed during this time. No law has been passed to lift or waive hotel fees. Checking into a hotel with the intent not to pay is considered defrauding an innkeeper and is an offense under La. Rev. Stat. 21:21. Therefore, consider the potential for a reconventional demand for unpaid hotel fees, and discuss this with the client.

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<sup>16</sup> For example, a person that occupies the hotel for one month or more as their only place of residence.

## **Additional resources**

If you have questions, please feel free to contact Hannah Adams by email at [hadams@slls.org](mailto:hadams@slls.org).

Additional helpful resources can be found on the following website links:

- For Southeast Louisiana Legal Services call COVID-19 Hotline at 1-844-244-7871. SLLS also has the Tenants' Rights FAQ page available at: [www.slls.org/news/blog](http://www.slls.org/news/blog).
- For Acadiana Legal Service Corporation go to <https://www.la-law.org/get-help/> or <https://www.la-law.org/get-in-touch/>
- Information for the public is available under the COVID-19 Help Center link on [www.louisianalawhelp.org](http://www.louisianalawhelp.org) under the home page.
- The LSBA Find Legal Help portal lists legal aid and resources available throughout the state by parish

## **EARLY LEASE TERMINATION (VIDEO)**

The following is information on early lease termination during the COVID-19 pandemic. This section is designed to help legal aid and volunteer attorneys respond to the most common questions clients have under this topic, during this time. This section will cover:

- Risks of early lease termination
- Early termination options under a tenant's lease agreement
- Early termination under La. Civ. Code art. 1873
- Early lease termination options under the Fair Housing Act
- Early termination options under a VAWA and the Louisiana Violence Against Women Act

This information was adapted from the [FAQ: Can I Get Out of My Lease During the COVID-19 Crisis?](#) page developed by the attorneys of Southeast Louisiana Legal Service. Links and webpages for many of the resources will be shared at the end of this section. Please note that some of the information below is specific to the law in Louisiana and may not be applicable in other jurisdictions.

### **Risks of early lease termination**

Some tenants may choose to move out early during the COVID-19 pandemic. The risk of moving out before the end of a lease is that the landlord can hold the tenant liable for the rent due during the remainder of the lease term. Under most leases, the landlord can also keep a tenant's security deposit if the tenant moves out early. However, the landlord has a duty to mitigate damages under La. Civ. Code article 2002. This means that if the tenant moves out three months into the lease, the landlord is required to make a reasonable effort to re-rent the apartment.

The tenant may, however, have options to terminate the lease early. The first and best option is to talk to the landlord and ask them if they would be willing to execute a lease amendment that ends the lease early. Some landlords may be willing under the circumstances. If they are willing, make sure there is an amendment made in writing and signed by both parties.

### **Early termination options under a tenant's lease agreement**

The first step is to check the tenant's lease agreement. It is possible that the lease has a "force majeure" or "act of god" clause that could be construed to permit early lease termination amid a pandemic.

### **Early termination under La. Civ. Code art. 1873**

If there is no provision provided for in the lease, early termination may be argued under La. Civ. Code art. 1873. This is the Civil Code article that governs “impossibility of performance.”

The article provides that an obligor is not liable for his failure to perform when it is caused by a fortuitous event that makes performance impossible. An obligor is, however, liable for his failure to perform when he has assumed the risk of such a fortuitous event.

An obligor is liable also when the fortuitous event occurred after he has been put in default. If the tenant was already in default, for example behind on rent, this may not apply.

La. Civ. Code art. 1873 may allow early lease termination for a tenant who lost their job due to the COVID-19 crisis and simply cannot meet their obligations under the lease anymore. However, this argument has not been tested in court and it is not clear how a judge would rule.

### **Early lease termination options under the Fair Housing Act**

Another option for early lease termination is under the Fair Housing Act. The Fair Housing Act requires that a landlord provide a “reasonable accommodation,” or exception to normal rules and policies, for a person with disabilities, when they need the accommodation as a result of their disability.<sup>17</sup>

Discrimination includes “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” An accommodation is reasonable if it does not create an undue administrative or financial burden for the landlord.

Disability is defined broadly, as a “physical or mental impairment that substantially limits one or more major life activities.” You must be able to show the “nexus” between the accommodation request and the disability.

If a tenant has an underlying chronic health condition(s) that make them more vulnerable to COVID-19 infection, like diabetes, a respiratory condition, and/or an immune system disorder, and the tenant needs to move to avoid possible infection or seek medical

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<sup>17</sup> 42 U.S.C. 3604(f)(3)(B)

treatment, the tenant could request early lease release as a reasonable accommodation for their disability.

Similarly, if a tenant has anxiety, depression, or other mental health disability, and the tenant needs to move because their disability has been aggravated by their current living situation, they could request early lease release as a reasonable accommodation.<sup>18</sup>

The landlord is entitled to verification from a qualified professional,<sup>19</sup> so that could be a doctor, nurse, social worker, or therapist. The landlord is not entitled to detailed medical records.

After making a request, the landlord is required to engage in an interactive process with the tenant to determine whether the requested accommodation is feasible, or if not, whether an alternative accommodation would meet their disability-related needs.

### **Early termination options under a Violence Against Women Act and the Louisiana Violence Against Women Act**

Survivors of domestic abuse, dating violence, stalking and sexual assault also have options for early lease termination. Quarantine can be a dangerous time for survivors, and the law does provide for early release when necessary for safety reasons.

For most federally subsidized tenants, including tenants in Low Income Housing Tax Credit (LIHTC) units, the Violence Against Women Act (VAWA) applies. Subsidized tenants are entitled to an emergency transfer under VAWA.<sup>20</sup>

In order to qualify for a transfer, tenants must provide documentation. They can provide a protective order, police report, a document signed under penalty of perjury by a victim service provider, an attorney, or medical professional, or a mental health professional, or a self-certification form. The HUD self-certification form is available on HUD's website and is HUD form 5382.<sup>21</sup>

Private tenants also have some protections under the Louisiana Violence Against Women Act (LAVAWA).<sup>22</sup> The Louisiana law only covers "domestic abuse" which is abuse involving a family member, defined as a spouse, former spouse, parent, child,

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<sup>18</sup> A sample letter request for reasonable accommodation under the Fair Housing Act is available at: <https://slls.org/wp-content/uploads/Form-tenant-reasonable-accommodation-letter-Covid-19.docx>.

<sup>19</sup> A sample reasonable accommodation qualified professional letter is available at: <https://slls.org/wp-content/uploads/Reasonable-Accommodation-Qualified-Professional-Letter.docx>.

<sup>20</sup> These regulations begin at 24 CFR 5.2005.

<sup>21</sup> HUD forms are available at [https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a).

<sup>22</sup> See La. Revised Statute 9:3261.1.

stepparent, stepchild, foster parent, and foster child. The current law does not cover sexual assault, stalking, or dating violence by a non-family member.

Under LAVAWA, if the lessee requests early termination of the lease agreement, the lessor shall terminate the lease agreement as a matter of law on a mutually agreed-upon date within thirty days of the written request for accommodation.

The survivor must provide documentation in the form of a protective order, or a certification form signed by a victim services professional. The certification form is in the statute. This law does not apply to properties with fewer than 6 units. It also doesn't apply to properties with 10 or fewer units where one unit is occupied by the lessor. Again, subsidized tenants who occupy such properties are protected by VAWA.

If you have questions, please feel free to contact Hannah Adams by email at [hadams@slls.org](mailto:hadams@slls.org).

#### **Additional helpful resources:**

- *FAQ: Can I Get Out of My Lease During the COVID-19 Crisis?* is available at: <https://slls.org/endleasecovid/>
- Sample Early Lease Termination Amendment is available at: <https://slls.org/wp-content/uploads/Sample-early-lease-termination-amendment.docx>
- Sample La. Civ. Code art.1873 Letter is available at: <https://slls.org/wp-content/uploads/Article-1873-letter.docx>
- Sample letter request for reasonable accommodation under the Fair Housing Act is available at: <https://slls.org/wp-content/uploads/Form-tenant-reasonable-accommodation-letter-Covid-19.docx>
- Sample reasonable accommodation qualified professional letter is available at: <https://slls.org/wp-content/uploads/Reasonable-Accommodation-Qualified-Professional-Letter.docx>
- Link to HUD Forms: [https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a)