

Pawnshop Advisory Bulletin: COVID-19 Emergency Measures

This bulletin discusses emergency measures for pawnshops to consider in response to the COVID-19 pandemic. It explains requirements for protecting pledged goods from loss or damage, emergency closings, disaster recovery plans, safeguarding of business records, temporary relocations, and effect of closings on pawn redemptions.

On March 13, Governor Greg Abbott declared a state of disaster for all Texas counties due to COVID-19. Because of COVID-19, some pawnshops may be implementing disaster recovery plans.

The legal requirements for emergency closings and disaster recovery plans are located in the OCCC's rules at Texas Administrative Code, Title 7, Section 85.401 and Section 85.402.

Working with Consumers:

The OCCC urges pawnshops to work with consumers during this crisis, and to be practical, flexible, and empathetic. Efforts to work with consumers in communities under stress may contribute to the health and recovery of these communities. These types of efforts serve the long-term interests of both consumers and pawnshops, provided the efforts are performed in a reasonable manner with proper controls and management oversight.

The OCCC encourages pawnshops to carefully consider increasing communication with consumers regarding COVID-19 and the recommended methods for consumers to contact the pawnshop, especially if the pawnshop has altered operations due to COVID-19.

Electronic Signatures:

Some OCCC licensees are considering using electronic signatures in response to COVID-19. Electronic signatures are generally allowed under Texas and federal law. If the pawnshop uses an electronic recordkeeping system, then the pawnshop must maintain information about the transaction, as described by the OCCC's rule at Title 7, Section 85.402(g) of the Texas Administrative Code.

The federal E-Sign Act, 15 U.S.C. §§ 7001–7006, includes requirements for electronic disclosures and signatures. The E-Sign Act allows a disclosure to be made electronically only if the consumer consents to an electronic disclosure using a specified procedure that demonstrates the consumer's ability to receive the disclosure electronically. 15 U.S.C. § 7001(c)(1)(A).

Before consenting, the consumer must be given a clear and conspicuous statement of:

- Any right or option to get the disclosure in non-electronic form;
- The right to withdraw consent and the procedures for and consequences of doing so;
- What transactions the consumer's consent applies to;

- The procedures for updating the information needed to contact the consumer electronically; and
 - How, after consenting to electronic disclosures, to obtain a paper copy of any disclosures, and whether any fee will be imposed.
- 15 U.S.C. § 7001(c)(1)(B).

The consumer must be given a statement of the hardware and software requirements for access to and retention of electronic records, and must either give consent electronically to receive electronic disclosures, or must confirm consent electronically. 15 U.S.C. § 7001(c)(1)(C).

When disclosures are provided electronically, the E-Sign Act requires that the record be retained in a manner that “accurately reflects” the information in the record, and “remains accessible” to all persons in a form that is capable of being accurately reproduced for later reference. 15 U.S.C. § 7001(d). This means that consumers must have a way to keep electronic disclosures for use at a later time.

Protecting Pledged Goods:

A pawnshop must exercise reasonable care to protect pledged goods from loss or damage. To protect the pledged goods, a pawnshop may need to move or relocate the pledged goods to a safe and secure location to prevent damage or loss (e.g., another licensed pawnshop location if the pawnbroker has other licensed locations).

Emergency Closing:

A pawnshop may close as necessary for an emergency. If possible, a notice of closing should be posted so that it is visible from the main public entrance. A pawnshop is not required to notify the OCCC of emergency closings under this bulletin. However, if a pawnshop is anticipated to be closed longer than 21 days, the following information should be submitted to the OCCC in writing by email (to info@occc.texas.gov) or by mail (to Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705):

- Name and physical address of closed location;
- License number of the affected pawnshop location;
- Name and contact information of responsible party;
- Information regarding the number and types of outstanding pawn loans as of the closure date; and
- Location where the pledged goods are presently stored.

Disaster Recovery Plan:

A pawnshop must maintain a sufficient disaster recovery plan to ensure that pawn and purchase ticket information is not destroyed, lost, or damaged. As soon as possible, a pawnshop should review its disaster recovery plan and implement the necessary actions to avoid loss or damage to the pawnshop records or pledged goods.

Safeguarding of Business Records:

A pawnshop in the affected disaster areas has a duty to safeguard the business and pawn records. If records are relocated, the pawnshop must make an effort to protect the records from loss or damage.

Temporary Relocation:

A pawnshop may temporarily relocate for this emergency. The following information should be submitted to the OCCC in writing, by email (to info@occc.texas.gov) or by mail (to Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705) as soon as feasible:

- Name and physical address of closed location;
- Name, physical address, and phone number of the new location; and
- Name and contact information of responsible party at new location.

Effect of Closing on Pawn Redemptions:

If a pawnshop is closed on the “last day of grace,” the pledgor must have a reasonable opportunity to redeem the pledged goods at a time when the pawnshop resumes its normal business operation. A pawnshop should waive the pawn service charge that is scheduled to accrue during the period of emergency closing for pawn transactions that have a last day of grace during the emergency closing, or for any pledgor who states an attempt was made to redeem the pledged goods during the closing.

OCCC Assistance:

The OCCC is available for further information or assistance regarding any emergency closing of a pawnshop. Links to statutes and regulations can be located on the OCCC’s website at occc.texas.gov.

This bulletin is effective through November 30, 2020, but is subject to earlier revision or withdrawal.

The OCCC encourages all Texas citizens to be safe. Additional guidance and updates about the coronavirus are available on the website of the Texas Department of State Health Services.