

Surprise! Our Court Does That Too?

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What We Will Cover

- Deed Restriction Cases
- Lien Foreclosures
- HOAs
 - fee calculations
 - violations of covenants
 - compelling production of records
- Distress Warrants
- Public Nuisance Cases
- Dangerous Wild Animals
- Resources

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Deed Restriction Cases

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What is a Deed Restriction?

- Deed restrictions are written agreements that restrict or limit the use or activities that may take place on real property in a subdivision.
 - For example:
 - No livestock, chickens or pigs
 - No mobile homes
 - No commercial or industrial use of the property
 - No outdoor storage of junk, RVs or trailers

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What is a Deed Restriction?



Deed restrictions are private agreements among the property owners in a subdivision and are binding on each owner.



They appear in the real property records of the county in which the property is located.



If a person violates the deed restrictions on their property, a suit may be brought to enforce the restrictions.

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May a Justice Court Hear a Deed Restriction Case?

- Yes!
- A justice court has “jurisdiction of suits relating to enforcement of a deed restriction of a residential subdivision that does not concern a structural change to a dwelling.”

-- Section 27.034(a), Government Code

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What About the Amount in Controversy?

- Does not matter!
- “A justice court has jurisdiction of suits under this section regardless of the amount in controversy.”

-- Section 27.034(e), Government Code

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What About Areas Outside the House?

- “A ‘dwelling’ does not include an external structure such as a carport, fence, storage building, or unattached garage.”
- So a deed restriction over these things **may be enforced** because they do not concern “a structural change to a dwelling!”

-- Section 27.034(i), Government Code

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Procedure for Hearing a Deed Restriction Case

- A deed restriction case is filed in justice court as a small claims case.
- It should be handled as any other small claims case.
- The issue for the court to decide is whether or not the defendant is complying with the deed restrictions at issue.
- Either party may request a jury!

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May the Court Order the Defendant to Comply with the Deed Restriction?

- No! A justice court may not grant injunctive relief in a deed restriction case.
 - Section 27.034(j) states: “Nothing in this section authorizes a justice of the peace to grant a writ of injunction.”
- This means the court may not order the defendant to comply with the deed restriction.
 - For example, the court can’t order the defendant to get rid of their chickens, goats or pigs!

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What Can the Court Order?

- If the defendant is not complying with the deed restrictions, the court may assess civil damages in an amount not to exceed \$200 for each day of each violation.
 - Property Code § 202.004(c)
- Ultimately the threat of these civil penalties could cause the defendant to comply with the deed restrictions.

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Lien Foreclosures

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What is a Lien Foreclosure?

- A **lien** is an interest that a creditor has in another person's property. It often secures a debt and lasts until the debt is satisfied.
 - What are some common examples of a lien?
- If the person defaults on the debt, the person holding the lien has a right to foreclose and sell the property subject to the lien to satisfy the debt.

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What is a Lien Foreclosure?

For example, if John Smith buys a car from a car dealer and signs a loan to pay for the car, John's obligation to pay back the loan will be secured by a lien on the car.

If John defaults on the loan, the car dealer may enforce the lien and repossess and sell the car to pay the amount John owes.

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What is a Lien Foreclosure?

- Or if John takes the car to a mechanic for repairs, the mechanic has a lien on the car for the value of the repairs performed (a mechanic's lien).
- If John doesn't pay the mechanic for the work he performed, the mechanic may foreclose on the lien and sell the car to pay for the repairs.

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What is a Lien Foreclosure?

- If the property that is subject to the lien is sold in a foreclosure sale for more than the amount of the lien, the property owner gets the remaining money, not the lienholder (the foreclosing party).
- But if the property is sold for less than the amount owed, then the property owner is still liable for the deficiency.

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What is a Lien Foreclosure?

- In some cases, the person holding the lien may have a statutory right to seize and sell the property without filing a suit for a judicial foreclosure of the lien.
 - Where a “repo man” comes in.
- But in other cases the person holding the lien may need to file a suit to foreclose the lien and obtain possession of the property.

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May a Justice Court Hear a Lien Foreclosure Case?

- Yes!
- A justice court has jurisdiction to enforce a lien on **personal property** provided the amount in controversy is within the court’s jurisdictional limit (\$20,000).
 - Govt. Code § 27.031(a)(3)
- The court does **not** have jurisdiction to foreclose a lien on real property.
- A lien foreclosure suit on personal property is filed and treated as a small claims case.

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Amount in Controversy

- In a lien foreclosure case the amount in controversy is the value of the property subject to the lien.
- Not the amount of the debt claimed!

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Amount in Controversy

- For example, suppose John Smith bought a car for \$22,000 two years ago and has defaulted on his loan and the car is currently worth \$18,000.
- The court has jurisdiction in a suit to foreclose the lien and recover possession of the car.
- Evidence of the current value of the car (e.g. the blue book value from Edmund's) should be submitted by the plaintiff.
- The court may take testimony if necessary.

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Possession of the Property

- The plaintiff does not have to possess the property to file a lien foreclosure case.
- For example, a mechanic may give the car back to the owner but he still has a right to ask a court to foreclose his mechanic's lien if he does not get paid.
- A plaintiff may request a writ of sequestration to make sure the property subject to the lien is not removed during the pendency of the case.

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Suit for Deficiency

- A lienholder may have a statutory right to sell property subject to a lien.
 - For example, a mechanic may have this right after giving notice to the car's owner.
-- Property Code § 70.006

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Suit for Deficiency

- But if the sale does not result in enough to pay for the cost of the repairs, the mechanic could still sue for the balance (the deficiency) in justice court.
- In this case the mechanic is not asking the court to foreclose the lien but only to recover the difference between the amount owed and the amount he was able to sell the car for.

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Title to a Vehicle

- In a lien foreclosure proceeding a justice court may issue an order related to title to a motor vehicle.
 - Transportation Code § 501.0521(a)
- Note: the only other time a justice court may issue an order related to title to a motor vehicle is in a disposition of stolen property proceeding under Chapter 47 of the CCP.

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HOAs

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HOA: Fee Calculations

- HOAs sometimes file suit in justice court for late fees allegedly owed by a resident.
- Such a case should be treated as a small claims case.
- It may be heard as long as the HOA is seeking monetary damages (not a declaratory judgment) and the amount in controversy is within the court's jurisdictional limit.

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HOA: Fee Calculations

- In one case an HOA filed suit in justice court asking for \$8,000 in late fees for an annual \$200 HOA fee.
- What are the issues?
 - How did they calculate the late fees?
 - Is that consistent with the HOA Bylaws?
 - Is it enforceable or unconscionable?

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HOA Fee Calculations

In another case a resident sued the HOA claiming that a \$300 maintenance fee was not properly set.

The court could hear this case if they are suing for the \$300.

But if they are asking for injunctive relief or a declaratory judgment, the court can't grant that relief.

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HOA: Violation of Covenants

- Sometimes an HOA will sue to enforce covenants that the members have agreed to.
- For example, in one case an HOA filed suit in justice court to require the defendant to remove a mobile home from their property.
- These cases are just like the deed restriction cases discussed above.

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HOA: Violation of Covenants

- A justice court may not grant an injunction ordering the defendant to comply with the covenants.
- But a justice court may assess a civil penalty for violation of a restrictive covenant in an amount not to exceed \$200 per day for each day of the violation.

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HOA: Compelling Production of Records

- If a member of an HOA (or property owners' association) is denied access to or copies of association books or records to which they are entitled, they may file a petition with the justice court in which all or part of the property that is governed by the HOA is located.

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Notice Before Filing Suit

- Before filing suit the resident must send a written notice to the HOA of their intent to bring the suit.
- The notice must be sent by certified mail, return receipt requested, or USPS signature confirmation, on or before the 10th day before the suit is filed.
- The notice must describe the books and records requested.

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Suit to Compel Records

- Standard civil filing fee (\$54) applies.
- Only issue to decide is whether the resident is entitled to access to the records.
- If the court finds they are entitled to the records, the judge may enter a judgment:
 - Ordering the HOA to release or allow access to the records;
 - Against the HOA for costs and attorney's fees; and
 - Authorizing the resident to deduct the amount awarded as costs and attorney's fees from future assessments.

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Suit to Compel Records

- If the court finds in favor of the HOA, it is entitled to a judgment for court costs and attorney's fees.
- There is no specific provision for appeal in the statute.
- But TJCTC suggests allowing a party to appeal under Rule 506.1 of the TRCP.

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Exceptions for Certain Counties

- Certain Property Associations in Harris County and adjacent counties (Galveston, Brazoria, Fort Bend, Waller, Montgomery, Liberty and Chambers County) are not subject to the document production requirements but are subject to the Texas Public Information Act.
- See the Civil Deskbok at page 165 for details.

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Knowledge Check!

- A deed restriction prohibits a homeowner from putting a car up on blocks in their front yard.
- If a neighbor files suit in justice court to enforce the deed restriction, the court could:
 - A. Order the homeowner to remove the car from their front yard.
 - B. Assess civil damages of \$200 for each day of the violation.

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Knowledge Check!

- A deed restriction prohibits all the homeowners in a subdivision from having a car port instead of a garage.
- If a neighbor files suit in justice court to enforce this deed restriction, could a justice court hear the case?
 - A. No; this deed restriction concerns a structural change to the dwelling.
 - B. Yes; as long as the court does not issue an injunction ordering the defendant to construct a garage.

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Knowledge Check!

- ABC Home Repair installs aluminum siding on John Smith's house. John fails to pay for the aluminum siding and ABC files suit in justice court to foreclose a lien they claim to have on the house.
- Can a justice court hear this case?
 - A. No; this is a suit to foreclose a lien on real property, not on personal property.
 - B. Yes; since the lien is from installing the aluminum siding and not from a mortgage on the house itself.

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Knowledge Check!

- Billy buys a 2014 Ford Mustang from Used-Cars-R-Us. Billy signs a loan that is secured by the car. Unfortunately, Billy falls behind on his payments and Used-Cars-R-Us forecloses their lien on the car. Billy owes \$13,000 on the loan but after foreclosing Used-Cars-R-Us is only able to sell the car for \$10,000.
- Used-Cars-R-Us files suit in justice court for the \$3,000 deficiency plus costs and attorney's fees. Can a justice court hear this case?
 - A. No; they should have included this in a suit to foreclose the lien.
 - B. Yes; this is a separate small claims case for the deficiency after foreclosing on the car and selling it to pay off the loan. .

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Knowledge Check!

- An HOA files suit in justice court claiming that the defendant failed to pay their HOA dues and the HOA has a lien on their house and may foreclose and sell the house to obtain the dues they are owed.
- Can a justice court hear this case?
 - A. No; it is a suit to foreclose a lien on real property, not personal property.
 - B. Yes; the court can hear the case since it's an HOA.

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Distress Warrants

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What is a Distress Warrant?

A landlord who leases all or part of a building for non-residential use (i.e. a commercial landlord) has a lien on the property of the tenant for rent that is due or will become due for 12 months after the rental agreement is made.

The lien exists while the tenant occupies the building and for one month after the tenant abandons the building.

- -- Property Code §§ 54.021, 54.024, 54.025

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What is a Distress Warrant?

- A distress warrant is a way to protect the landlord's interest in the tenant's property that is subject to the lien until the landlord is able to foreclose the lien to satisfy the tenant's obligation for the rent.
- A distress warrant gives the landlord a "simple, inexpensive, speedy and effective way" to hold the tenant's property until the landlord can foreclose the lien on that property in the court having jurisdiction over the matter.

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Jurisdiction to Issue the Distress Warrant

- A justice court has jurisdiction to issue a distress warrant even if, after it is executed, the warrant will be returned to a different court that has jurisdiction over the lien foreclosure case.

-- Property Code § 54.025

- The justice court also has jurisdiction regardless of where the property subject to the lien is now located.

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Application for a Distress Warrant

- The person to whom rent is payable under a building lease may apply to a justice court in the precinct where the building is located for a distress warrant if the tenant:
 - Owes rent;
 - Is about to abandon the building; or
 - Is about to remove the tenant's property from the building.
 - Property Code § 54.025

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Issuance of the Distress Warrant

- The hearing may be ex parte.
- In an order granting an application, the court must:
 - Make specific findings to support the statutory grounds;
 - Specify the maximum value of the property that may be seized and the amount of the bond required by the plaintiff;
 - Order the property to be kept safe and preserved until further order of the court; and
 - Set the amount of a replevy bond, which must be the amount of the plaintiff's claim, one year's accrual of interest (if allowed) and estimated court costs.
 - Rule 610, TRCP

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Plaintiff's Bond

- If the distress warrant is issued before final judgment on the lien foreclosure case, then the plaintiff must post a bond payable to the defendant in the amount set by the justice of the peace and conditioned on pursuing the case to effect and paying all costs and damages ordered against him if the warrant was wrongfully sought.

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The Distress Warrant

- Directed to a sheriff or constable and orders them to attach and hold as much of the defendant's property in the approximate amount set by the justice of the peace, found in the officer's county, unless the property is exempt or replevied by the defendant.

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Issuance of Citation

- When the justice of the peace issues the distress warrant, a citation must also be issued to the defendant:
 - If the justice court has jurisdiction to finally try the case (the amount owed is within the court's jurisdiction), then the defendant must answer in justice court "on the first day of the next succeeding term of court" and stating the time and place.

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Issuance of Citation

- If the justice court does not have jurisdiction to finally try the case (the amount owed exceeds the court's jurisdiction), then the defendant must answer in the court to which the warrant is returnable before 10:00 a.m. on the Monday following the expiration of 20 days from the date of service and stating the place.
-- Rule 619, TRCP

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Plaintiff Must File Petition for Lien Foreclosure Case

- If the distress warrant is returnable to a district or county court, the plaintiff must file a petition seeking a lien foreclosure in that court within 10 days from the date of issuance of the distress warrant.

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Amount in Controversy

- The amount in controversy is the amount or value of the rent sued for.
- It is not the value of the property seized because the foreclosure of the lien is only on so much of the property as is necessary to satisfy the debt.

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Who Hears
the Case after
the Distress
Warrant is
Issued?

- If the amount of rent and other items included in calculating the amount in controversy, such as attorney's fees and court costs, is more than \$20,000, then the justice court will not have jurisdiction to hear the suit to foreclose the lien – even though it does have jurisdiction to issue the distress warrant!
- The warrant is returnable to a district or county court that does have jurisdiction.

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Replevy
Bond

- A replevy bond allows a defendant to get his property back by posting a bond to protect the plaintiff.
- The amount of the replevy bond is set by the justice court.
-- Rule 614, TRCP
- For further details see the Civil Deskbook at pages 144 – 159.

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Public Nuisance Cases

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Two Types of Cases

Administrative Public
Nuisance Case



Criminal Public Nuisance Case

Chapter 343 of Health and Safety Code;	Chapter 341 of Health and Safety Code;	Chapter 7 of Water Code.
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Administrative Case



A county may abate a public nuisance in certain situations by following abatement procedures set out in Chapter 343 of the Health and Safety Code.



But before it may abate the nuisance, it has to provide a hearing if one is requested.



A JP may preside over the hearing if the commissioners court has designated them to hear the issue.

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What is a Public Nuisance?

- See Handout 1: List of Public Nuisances Chart
- Examples:
 - Refuse or rubbish (e.g. refrigerators, stoves, furniture, tires)
 - Structurally unsafe building
 - Flea market
 - Surface discharge from a septic system
 - Unsanitary conditions that promote mosquitos, rodents, vermin or disease-carrying pests

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How is a Case Initiated?

- Written notice of the public nuisance must be given to the owner of the property or person in charge of the premises.
- The person may request a hearing.
- The hearing may be conducted before the commissioners court or any board, commission or official (including a JP) designated by the commissioners court.
- There is no filing fee.

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Issue at the Hearing

- The issue to be decided at the hearing is:
 - Whether a public nuisance exists; and if so
 - Whether the county has the authority to abate the nuisance.
 - Health and Safety Code § 343.023(b), (e)

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Order

- If the court finds a public nuisance exists and the county has authority to abate the nuisance, the court may assess:
 - The cost of abating the nuisance and damages and expenses incurred by the county;
 - The cost of legal notification by publication; and
 - An administrative fee of not more than \$100 on the person receiving notice.
 - Health and Safety Code § 343.023(a)
- No appeal.
- For more information see Handout 2: Public Nuisance and Environmental Hearings Chart

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Criminal Public Nuisance Case

- What if the person causing the nuisance does not request a hearing?
- Or just refuses to clean up their mess?
- A criminal case may be filed against that person and heard in justice court.
- Many of these cases involve septic systems but they may involve other public nuisances.
- May be brought under one of three statutes.

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Chapter 343
Public
Nuisance

- “A person commits an offense if they cause, permit or allow a public nuisance and fail to abate it within 30 days after receiving an abatement notice.”

-- Section 343.012(a), H&S Code

- Definition of “public nuisance” is same as above. See Handout 1.

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Chapter 343
Public
Nuisance

- Fine of not less than \$50 or more than \$200.
- Each day a violation occurs is a separate offense.
 - So if a person is convicted and the nuisance remained unabated for 20 days after the 30-day notice period, then the fine could be \$200 per day x 20 days = \$4,000!
- If defendant is convicted the court **must** order abatement.
- Deferred disposition may be effective here.

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Chapter 341

- Sanitation Standard offenses: minimum standards of sanitation and health protection measures, including for drinking water and in public restaurants.

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Chapter 341

- Two offenses:
 - Section 341.091(a): offense if a person violates Chapter 341; fine of not less than \$10 or more than \$200 per offense; each day of violation is a separate offense.
 - Section 341.047(b): offense if a person violates provisions relating to safe drinking water; fine of up to \$500 per offense; each day of violation is a separate offense.
 - No provision allowing court to order abatement.

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Water Code Chapter 7

- These are septic system offenses.
- Section 7.173(a) of the Water Code makes it an offense to violate a rule adopted by the Natural Resources Conservation Commission concerning septic systems or an order adopted by an authorized agent.
- Offense is a Class C misdemeanor.
- But no provision that each day of violation is a separate offense or to order an abatement.

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Know Which Statute!

- In criminal public nuisance cases it is very important to know which statute the defendant is being prosecuted under!
- If it is Chapter 343 of the Health & Safety Code, the court must order abatement.
- If it is Chapter 341 of the Health & Safety Code or Chapter 7 of the Water Code the court may not order abatement!

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Knowledge Check!

- After a distress warrant is served on a commercial tenant, the return is filed:
 - A. With the justice court that issued the distress warrant.
 - B. With the court that will hear the lien foreclosure suit filed by the landlord.

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Knowledge Check!

- If a person is convicted of an offense under Section 343 of the Health & Safety Code, the court **must** order the defendant to abate the nuisance in addition to a fine of \$50 - \$200 for each day the violation occurred:
 - A. True.
 - B. False; a justice court can't order injunctive relief like abatement.

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Dangerous Wild Animals

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What is a Dangerous
Wild Animal
Proceeding?

- A person needs a certificate of registration from a local animal registration agency to own a “dangerous wild animal.”
- If a certificate of registration is denied by an animal registration agency, the person may appeal the denial/revocation to a justice or municipal court.

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What is a Dangerous Wild Animal?

- They are listed in the Health and Safety Code:
 - Lion Tiger Ocelot
 - Cougar Leopard Cheetah
 - Jaguar Bobcat Lynx
 - Serval Caracal Hyena
 - Bear Coyote Jackal
 - Baboon Chimpanzee Orangutan
 - Gorilla Any hybrid

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How is a Case Initiated?

- An appeal of the denial or revocation of a certificate of registration must be filed in the justice court for the precinct where the dangerous animal is located not later than the 15th day after the date the certificate of registration is denied or revoked.
- No filing fee
- The filing of the appeal stays the denial or revocation of the certificate until the court rules.

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The Hearing

- The statute does not state by what date the court must hold a hearing.
- But the court should give reasonable notice of the date, time and location of the hearing.
- The issue for the court to decide is whether the certificate of registration should have been denied or revoked.

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Reasons for Denying or Revoking a Certificate

- The agency found that the certificate did not meet the requirements of Section 822.104 of the Health and Safety Code (see Handout 3);
- The agency found that the owner provided false information on an application; or
- The agency found that the owner has not complied with requirements for keeping a dangerous wild animal (see Handout 3).

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Appeal of Justice Court Decision

- Either party may appeal the decision of the justice court to a county court or county court at law in the same county.
- Since no filing fee is required to initiate a case, the requirement that went into effect on 1/1/22 to pay a filing fee in justice court when appealing a civil case does not apply to a dangerous wild animal case.

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Knowledge Check!

- Which of the following are NOT dangerous wild animals:
 - A. Baboon
 - B. Boa Constrictor
 - C. Badger
 - D. Chimpanzee
 - E. Coyote
 - F. Fox
 - G. Alligator

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Resources

- TJCTC Deskbooks:
 - Civil
 - Magistration
 - Administrative Proceedings
 - Criminal
- Legal Board
- Webinars