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User Notes

This deskbook on *Evictions (3rd ed. September 2021)* represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information, and assistance on issues of importance to Texas justices of the peace and constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

This deskbook is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter handling your inquest duties. It is not intended to replace original sources of authority, such as the Property Code or Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book. Please note that all references to "Rule __" are to the Texas Rules of Civil Procedure.

Rather than including the citations to cases in the text, we have listed only the case name in the text but have included the entire citation in the Appendix of Cases.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in the *Evictions Deskbook.*

Texas Justice Court Training Center
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Chapter 1: What is an Eviction Case?

An **eviction case** is a lawsuit to recover possession of real property (like land, a house, or an apartment building) from someone who is occupying it. The most common eviction case is filed by a landlord to remove a tenant from the landlord's property. *Rule 500.3(d).* If a person is evicted, they are permanently deprived of their right to possession of that property. ***Martinez v. Bal***; ***Charalambous v. Jean Lafitte Corp***.


KEY POINT

Eviction cases provide a simple, speedy, and inexpensive method for determining who is entitled to **possession** of a premises. A court **does not** determine title (who **owns** the property) in an eviction case. *Rule 510.3(e);* ***Holcombe v. Lorino***; ***Haginas v. Malbis Memorial Foundation.***

The **only** issue that a court may consider in an eviction case other than who gets possession of the premises is a claim for back rent (as long as the amount of back rent is within the jurisdiction of the justice court, ***see page 5***). *Rule 510.3(d); Property Code § 24.0051(b).*

There are two types of eviction cases:

Forcible Entry and Detainer Suit
When a "person enters the real property of another without legal authority or by force and refuses to surrender possession on demand." *Property Code § 24.001.*

Forcible Detainer Suit
When a person refuses to surrender possession of real property on demand and the person is:

- "a tenant or subtenant willfully holding over after the termination of the tenant's right of possession;
- a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; **or**
- a tenant of a person who acquired possession by forcible entry."

Property Code § 24.002(a). ***For more information, please see pages 6–11.***

The two types of eviction cases have identical procedures and should be processed the same way. Some courts may refer to cases as "F.E.D.s" or "Forcibles" because of this language from the statute, but these are just other names for eviction cases.

The rules of procedure for eviction cases are found in Rules 500-507 and Rule 510 of the Texas Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the other rules, Rule 510 applies. *Rule 500.3(d).*

"Where can I find these rules?"

Please note that whenever we refer to Rule___ in this deskbook, we are referring to the Texas Rules of Civil Procedure. You may find these rules at this link:

https://www.txcourts.gov/rules-forms/rules-standards/

Chapter 2: Jurisdiction

A. No Jurisdiction if Suit is Filed in Wrong Precinct

KEY POINT

An eviction suit **must** be filed in the precinct where the property is located.

If an eviction suit is filed in the wrong precinct, the court should dismiss the case. *Rule 510.3(b); Property Code § 24.004*. The case should be dismissed without prejudice for lack of jurisdiction so that the plaintiff may re-file the case in a court that has jurisdiction.

COMMON PITFALL

A court **may not** simply "transfer" the case to the correct precinct.

Can the Court Give Information About Where the Property is Located?
Giving information on where a property is located **does not** constitute legal advice, but is instead factual information that is public. If a person wishing to file an eviction case asks if they are in the right precinct, the court personnel may assist them in determining whether the property falls within the precinct's boundary.

Some counties have a directory that allows an address to be entered and then states which precinct that address is located; court personnel may assist the person in using such a directory. A court can and should have information publicly available stating that eviction cases must be filed in the proper precinct.

B. No Jurisdiction to Resolve Title Issues

A justice court does not have jurisdiction to resolve issues regarding title to real property (determining who **owns** the property). *Government Code § 27.031(b)(4); Rule 510.3(e)*.

If a justice court is unable to determine who has the right to possession without resolving a title dispute, then the court **does not** have jurisdiction of that case. ***Aguilar v. Weber; Haith v. Drake.***

In this situation the court should either:

- Abate (or stay) the case pending a determination of the title issue in a court of competent jurisdiction, such as a district court; **or**
- Dismiss the case without prejudice so that the plaintiff can re-file it once the title issue has been resolved.

C. No Jurisdiction if Suit Based on Deed Executed in Violation of Chapter 21A, Business and Commerce Code

Although this is not likely to arise often, if a defendant files a sworn statement alleging the suit is based on a deed executed in violation of Business and Commerce Code, Chapter 21A, then the justice court does not have jurisdiction and must dismiss the suit. *Property Code § 24.004(b).*

Chapter 21A prohibits a seller or lender from requiring a purchaser of residential real estate to convey a deed to the seller or lender before or at the time of the sale or loan.

D. Court May Hear Claim for Back Rent


KEY POINT

A justice court **does** have jurisdiction to hear a claim for back rent in an eviction case as long as the amount of back rent is within the jurisdiction of the justice court. *Rule 510.3(d); Property Code § 24.0051(b);* ***Haginas v. Malbis Memorial Foundation.***

Back rent is within the jurisdiction of the court if the past due amount is not more than the jurisdictional limit **at the time of filing.** This amount **does not** include statutory interest and court costs, but **does** include any attorney's fees. *Rule 500.3(d), 510.3(e).*

Note that the court's jurisdictional limit increased from $10,000 to $20,000 effective September 1,

What if back rent is more than the jurisdictional limit?

If the back rent is above the court's jurisdictional limit, the court **must** dismiss the claim for back rent, but the court **should not** dismiss the suit for possession of the property as the landlord is entitled to proceed with that part of the case. The landlord may file a separate suit for the back rent in a court with jurisdiction.

2020. The court should consider the jurisdictional limit in effect at the time the case was **filed** when determining whether the court has jurisdiction over a back rent claim.

E. No Counterclaims or Third-Party Claims Allowed

A defendant **may not** file a counterclaim or a third-party claim as part of an eviction suit. The claim would need to be brought in a separate suit. *Rule 510.3(e).*

If an eviction defendant attempts to file a counterclaim or third-party claim, the court could notify the defendant that counterclaims are not allowed and determine whether the defendant wishes to file a separate lawsuit.

If the defendant insists on filing the claim, the court should dismiss the counterclaim or third-party claim without prejudice (and this does not affect the original eviction suit). ***Hanks v. Lake Towne Apartments.***

Chapter 3: Landlord-Tenant Relationship

A. Is a Landlord-Tenant Relationship Required to Bring an Eviction Case?

Generally, a "landlord-tenant relationship" is needed to file an eviction case. *Property Code § 24.002(a)(1)(2)*. A landlord-tenant relationship exists when two parties have a lease agreement (which may be written or oral). A landlord-tenant relationship also exists if there was never a lease agreement, but the resident is considered a tenant at will or sufferance due to certain circumstances. See more information and examples of types of tenants below.

There is, however, one situation in which a person **can** bring an eviction suit even though there has **never been a landlord-tenant relationship**:

1. Squatters and Tenants of Squatters

Squatters are people who settle on land or occupy property of another without title, right, or payment of rent. For example, suppose an individual just starts occupying a hunting cabin without any agreement with the owner. A justice court may hear the eviction case even though there has never been any landlord-tenant relationship. *Property Code § 24.001.*

Similarly, a justice court may hear the eviction of a person who is renting property from a squatter, even though no landlord-tenant relationship existed between the person entitled to possession and the tenant of the squatter. *Property Code § 24.002(a)(3).*

B. Types of Tenants

Landlord means "the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease." *Property Code § 92.001(2).*

Lease means "any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling." *Property Code § 92.001(3).*

Tenant means "a person who is authorized by a lease to occupy a dwelling to the exclusion of others..." *Property Code § 92.001(6).*

An **occupant** is a person who is either temporarily staying at a residence or is living there permanently under the legal right to possession of another. Examples of occupants include a tenant's brother-in-law who is temporarily crashing on the tenant's couch, or a tenant's minor children. ***See page 25 for more on the legal rights of occupants.***

Oral Leases

Oral leases are valid in Texas (though of course often difficult to prove in court).

However, an oral lease cannot be for a term of more than one year. *Business & Commerce Code § 26.01(b)(5).*

An oral lease of more than one year should be treated as an oral lease of one year.

1. Tenant for a Fixed Term

A tenant often has a written lease with their landlord that sets out the duration and terms of the tenancy.

For example, a person may rent an apartment under a lease for a term of one year. This means the person has the right to occupy the apartment for one year as long as they do not commit a breach of the lease (for instance, by not paying rent). The lease will also state the amount of rent the tenant must pay and the rental period (for example, monthly). The landlord may not raise the rent above the amount allowed by the lease for the one-year term. Once the year is up the landlord and tenant are free to go their separate ways (the landlord may choose to rent the apartment to someone else or the tenant may move out) or they may renew their existing lease or enter into a new lease with different terms.

2. Tenant at Will

A tenant at will is a person who has the owner's or landlord's consent to use the premises as their residence but there is no set time for how long the tenancy will last. ***Fandey v. Lee***; ***Virani v. Syal***; *Black's Law Dictionary 1604 (9th ed. 2009).*

For example, a person may rent an apartment to someone for an agreed monthly rental amount but there is no agreement as to how many months the person may occupy the apartment. Or a person could allow a friend to move in without talking about any terms or how long the friend may stay.

A tenancy at will may be terminated by either party upon proper notice. ***ICM Mortgage Corp. v. Jacob***; *Black's Law Dictionary, 1604 (9th ed. 2009).* Generally, there is no lease termination notice that must be given; a demand for possession and a three-day notice to vacate (unless the parties agreed on a different time period) are sufficient. *Property Code § 24.005(b).*

a. Month-to-Month Tenancies and Termination Notices

However, in a **month-to-month tenancy,** provided that neither party breaches the terms of the lease (including the payment of rent by the tenant), the lease continues until one of the parties gives a **notice of termination** to the other party. The amount of notice is the same as one rental period (one month in this situation). This means one party must notify the other party that they intend to terminate a month-to-month lease by giving them one month's notice of termination unless the parties agree in the lease to a different amount of time or that no notice is required. *Property Code § 91.001(e).*

Notice of Termination

While month-to-month tenancies are by far the most common, this rule applies to other periodic tenancies, such as where a tenant pays rent weekly or quarterly. In those cases, the termination notice must be at least the length of one rental period.

Then, if the party receiving the notice doesn't vacate at the end of the termination notice period, they are "holding over" and must be given a **notice to vacate** before the eviction case can be filed. For more on notices to vacate, please see ***page 16***.

b. Lodgers v. Tenants at Will

Sometimes a person occupying premises temporarily is a lodger rather than a tenant at will. Spending a night at a hotel, for example, does not make you a tenant of the hotel.

In ***Byrd v. Fielding***, the court drew the following distinctions between a lodger and a tenant:

- "Proof that the owner cares for the rooms, retains a key to the rooms, or resides on the premises in the course of a business of hiring out the rooms indicates a lodging contract."
- Proof "that the occupant exercises complete control over the rooms indicates a lease."

If the occupant is a lodger, the owner should not have to bring an eviction suit to remove a person who refuses to leave the premises. However, law enforcement is sometimes reluctant to force an occupant to leave and may instead tell the owner to file an eviction suit. If an eviction suit is filed against a person who is a lodger rather than a tenant at will, the court may still hear the case and decide the right to possession even though there is technically no landlord/tenant relationship.

What's the Difference?

Tenant at will:
Person has owner's consent to occupy the property without a set time on how long the lease will continue.

- Month to month apartment rental
- Girlfriend/Boyfriend

Tenant by sufferance:
Person had permission to be there, it was revoked, and they won't leave.

- Holdovers
- Post-foreclosure

3. Tenant by Sufferance

A tenant by sufferance is a person who was once in lawful possession of property, but who wrongfully remains as a holdover after his right to

possession has expired. ***ICM Mortgage Corp. v. Jacob****; Black's Law Dictionary, 1604 (9th ed. 2009).*

This includes a tenant who does not move out at the end of a lease, at the end of a termination notice period as described above, or a tenant at the time of a foreclosure of a lien superior to the tenant's lease. *Property Code § 24.002(a)(2).*

C. So, What Happens When…?

1. Friends, Ex-Friends, Family Members, and Unwanted Guests

What happens if a person allows a significant other to move in with them and the "inevitable" occurs and they want the other person out? Or parents allow an adult child to move back in and he has worn out his welcome? The boyfriend/girlfriend or adult child will normally be deemed either a tenant at will or a tenant by sufferance. It does not matter that they were not paying any rent.

The recent case of ***Burden v. Burden*** is a good example. It involved an appeal by a woman who claimed she was the common law wife of the owner of the home. After the owner lost his initial suit for an eviction, he filed a suit for a declaratory judgment, and a district court held that the parties did not have a common law marriage. He then filed another eviction suit. The appellate court upheld the eviction because the owner had obtained a court ruling that no common law marriage had been established (and so she was a tenant at will or by sufferance). The record does not disclose the living arrangements while all these cases were pending!

2. Owner Who Purchases Property with an Occupant in Possession

If a person purchases property and an occupant is in possession under a valid lease, the lease continues under the new owner **unless** a provision of the lease makes the sale of the property an event of termination **or** requires the new owner to assume the lease. Of course, the new owner can negotiate with the tenant to try and get the tenant to vacate early, if desired.

What if a person purchases property and an occupant is in possession of that property at the time, but has no written lease agreement, and won't leave? The occupant can potentially be deemed a tenant by sufferance.

In a recent case, ***Johnson v. Mohammed***, the court held that although the record did not show any evidence as to how the defendant had come to live on the plaintiffs' property (like whether she originally had a lease or not), she was essentially a tenant by sufferance with respect to the purchasers because she was holding over after any right to possession had expired. Therefore, a forcible detainer suit was proper. In order to evict her, the plaintiffs had to prove:

- that they owned the property;
- that the defendant was an occupant at the time they became the owners;
- that their right to possession was superior to the defendant's right of possession;
- that they made a demand for possession; **and**
- the defendant refused to leave (and was thus holding over after she no longer had a right to be there).

3. Foreclosures

a. When the Defendant is the Former Owner

What if a person purchases property at a foreclosure sale and the former owner is in possession of that property at the time and won't leave? The former owner will be treated as a tenant by sufferance.

As in the previous example, a court recently allowed a purchaser at a tax sale to maintain a forcible detainer suit against a former owner/occupant who became a tenant by sufferance after his right to possession ceased and he refused to leave following a demand to vacate. ***Stroman v. Martinez***.

A tenant by sufferance is entitled to a **three-day** notice to vacate, and no termination notice is required. ***(See page 16 for more information on notices to vacate.)***

What if the Defendant Says the Foreclosure is Invalid?

If a defendant complains about defects in the foreclosure process, this **does not** require a justice court to resolve a title dispute before determining the right to immediate possession. Therefore, the justice court has jurisdiction to proceed. The defendant can raise the issue if desired by filing a declaratory judgment action in a district court. If the district court issues a judgment invalidating the foreclosure, the plaintiff would not be able to get a judgment until a proper foreclosure occurs. ***Pinnacle Premier Props., Inc. v. Breton; Glapion v. AH4R I TX, LLC; Maxwell v. U.S. Bank Nat'l Ass'n.; Villalon v. Bank One; Trimble v. Federal National Mortgage Association.***

b. When the Defendant is a Residential Tenant of the Former Owner – Permanently Protecting Tenants at Foreclosure Act of 2018

What if a person purchases a property at a foreclosure sale and the former owner's **residential tenant** is still occupying the property? Federal law provides protection to those tenants under the Permanently Protecting Tenants at Foreclosure Act of 2018 (PTFA).

When Does the PTFA Apply?

The PTFA applies to **all residential tenancies**, not just ones with federally related mortgages, as long as the tenant is a "**bona fide**" (legitimate) tenant. A tenant is considered bona fide if:

- the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor;
- the tenant entered into the lease or tenancy in an arms-length transaction before the date title to the property is transferred to the buyer; **and**
- the rent is not substantially less than fair market rent for the property or, if it is, the rent is reduced or subsidized due to a Federal, State, or local subsidy, including but not limited to a Section 8 housing assistance payment contract.

What Does the PTFA Do?

If the purchaser **will not** occupy the building as their primary residence, the tenant is entitled to **complete the term of the existing lease**, as long as the tenant continues to timely pay rent to the new owner. *Permanently Protecting Tenants at Foreclosure Act of 2018, 12 U.S.C. 5220*.

A tenant is considered to have timely paid the rent if, during the month of the foreclosure sale, the tenant pays the rent for that month to the:

- landlord before receiving any notice that a foreclosure sale is scheduled during the month; **or**
- foreclosing lienholder or purchaser at foreclosure not later than the fifth day after receipt of a written notice of the name and address of a purchaser who requests payment.

Property Code § 24.005(b).

If the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a **residential** tenant **at least 90 days' written notice to vacate** if the purchaser chooses not to continue the lease **and** the purchaser will occupy the building as their primary residence.

Sale and Notice to Vacate Example

So, for example, Morty Mortgagor stops making his house payment, unbeknownst to his tenant Teresa. Teresa still has six months left on her lease. Morty gets foreclosed upon, and the house is sold. If the purchaser will use the property as their primary residence, they must give Teresa 90 days' written notice to vacate. Note that the purchaser **cannot** give this notice before they have received title to the property, since they don't have legal authority to make a demand for possession until then.

If the purchaser instead purchased the property as an investment or secondary property, Teresa is entitled to finish out the six months of her lease, as long as she continues to pay rent and otherwise follow the rules of her lease. Of course, in either situation, the purchaser will often offer Teresa what is called "cash for keys" meaning that they will try to buy her out of possession of the property. Parties are free to negotiate, but the justice court is not involved in that process.

c. When the Defendant is a Commercial Tenant of the Former Owner

The Permanently Protecting Tenants at Foreclosure Act doesn't apply to commercial tenancies. When a commercial tenant's landlord is foreclosed upon, the tenant's lease is generally terminated. ***B.F. Avery & Sons v. Kennerly; ICM Mortg. Corp. v. Jacob***. If the lease has terminated and the tenant refuses to leave, they become a tenant by sufferance.

If the tenant has paid the rent **and** has not breached a term of the lease, the purchaser must give **30 days' written notice** to vacate if he chooses not to continue with the lease. *Property Code § 24.005(b).* ***See page 22.***

However, if the purchaser indicates that they wish to continue the lease, then the lease continues as before the sale with the tenant paying rent to the new owner. ***Coinmach Corp. v. Aspenwood Apartment Complex***; ***Twelve Oaks Tower I, LTD. v. Premier Allergy Inc***.

The purchaser is required to prove the following elements in order to evict the defendant:

- the purchaser is the owner;
- the defendant was an occupant at the time of foreclosure;
- the foreclosure was of a lien superior to the defendant's lease;
- the purchaser made a demand for possession; **and**
- the defendant refused to leave. ***Goggins v. Leo***.

Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure. *Property Code § 24.005(b).*

4. Contract for Deed

What if the parties have a contract for deed? There could be a landlord/tenant relationship either by virtue of a separate lease entered into concurrently with the contract for deed or due to the terms of the contract for deed. Note that in contract for deed cases, the court should be especially careful that the issue of possession is not dependent on a title dispute. ***Contracts for Deed are discussed on page 83.***

Chapter 4: General Eviction Procedures

This chapter covers eviction procedures that generally apply to residential, commercial, and manufactured home evictions. There are some situations, however, where commercial and manufactured home evictions have their own specific issues or procedures which may deviate from the general procedures in this chapter. Please refer to ***Chapter 6*** for Commercial Eviction details and ***Chapter 5*** for Manufactured Homes Eviction details.

A. Procedure for Filing an Eviction Suit

1. Grounds for Eviction

General grounds for an eviction include:

- A tenant breaches a lease term (including not paying rent) and fails to surrender possession upon demand.
- A tenant holds over after termination of their lease and fails to surrender possession upon demand.
- The occupant is a tenant at will or by sufferance and fails to surrender possession upon demand. ***See pages 9-11.***
- The occupant is a squatter or squatter's tenant and fails to surrender possession upon demand. ***See page 7.***

2. Notice to Vacate

A **notice to vacate** tells a tenant or occupant that they must vacate the premises within a certain amount of time. A landlord may not file an eviction suit until **after** a proper notice to vacate has been given, the time period in the notice has expired, and the premises have not been vacated. *Property Code § 24.005.*

What if the Case is Filed Before the Notice to Vacate Expires?

If a suit is filed before the time has run out on the notice to vacate, the court would enter a judgment for the defendant because the defendant had not yet committed the "forcible detainer" when the case was filed. The landlord would not need to deliver a new notice to vacate, but could re-file the case based off of the original notice.

Rule 510.3(a)(3) expressly requires the landlord to include in the petition "a description of when and how the notice to vacate was delivered." Once a notice to vacate has been delivered, the landlord must wait until after the deadline for the tenant to vacate before they can file an eviction suit. For example, if a landlord has to give a tenant a three-day notice to vacate, then he has to wait until those three days have passed *after* the notice to vacate was delivered before he can file a suit.

a. Notice to Vacate vs. Notice of Termination

As discussed on ***page 9***, tenancies at will where rent is paid on a periodic basis, such as month-to-month tenancies, require a notice of termination if either party wishes to discontinue the lease agreement.

A termination notice is required if either:

- the tenant has a written lease that they did not breach, and that lease does not have a set end date; **or**
- the parties do not have a written lease, but there is an agreement that the tenant must pay rent.

The termination notice is a written notice telling the tenant the day that their lease now ends. This notice must be at least one rental payment period. *Property Code § 91.001.* Most agreements without set end dates are "month-to-month" agreements, so the termination notice would need to give at least one month's notice. For example, the landlord could give a termination notice on January 27th informing the tenant that the lease is terminated effective February 28th. Similarly, the tenant would need to give the landlord a termination notice to end their obligation to continue paying rent.

Is a Notice to Vacate Still Required after a Notice of Termination?

If the tenant does not vacate the premises once the time period stated in the termination notice has expired, they are now a "tenant by sufferance" ***(see page 10)***, and the landlord would need to give a three-day notice to vacate prior to filing the eviction, unless the parties agreed to a different notice to vacate time in the lease.

Is a Notice of Termination Required if the Tenant Breached the Lease or Doesn't Pay Rent?

If the tenant breached the lease, or there is no written lease and no agreement to pay rent ***(see page 9 for more discussion on tenants at will)***, then no termination notice is needed, and the landlord can simply deliver a notice to vacate.

b. How Much Notice Is Required?

The proper amount and form of a notice to vacate depends on the circumstances of the case, and any written lease agreement. The court normally does not have sufficient information to know the correct notice to vacate period before the case is filed. This, in addition to the prohibition on giving legal advice, explains why courts or constables **should not** advise how or for how long a landlord should give a notice to vacate to a tenant.

CLICK HERE

As always, parties can be referred to ***www.tjctc.org/SRL*** for forms and information packets, as well as low- and no-cost attorney contact information.

A Tenant under a Written or Oral Lease

The landlord must give a tenant who defaults (breaches a lease term, including not paying rent) or holds over after the end of the rental term or renewal period at least **three days' written notice** to vacate, **unless** the parties have contracted for a shorter or longer notice period in a written lease or agreement. *Property Code § 24.005(a).*

A Tenant at Will or Tenant by Sufferance

The landlord must give the tenant at least **three days' written notice** to vacate, **unless** the parties have contracted for a shorter or longer period in a written lease or agreement. *Property Code § 24.005(b)*

A Tenant of a Squatter

The landlord must give the person at least **three days' written notice** to vacate. *Property Code § 24.005(c).*

Squatters

The person entitled to possession must give the occupant **oral or written notice** to vacate, but the notice may be to vacate **immediately** or by a **specified deadline**. An eviction suit

may be filed immediately upon giving notice in this situation. *Property Code § 24.005(d).* ***See page 7 for more information on squatters and their tenants.***

KEY POINT

A Residential Tenant of a Building That is Foreclosed Upon

If the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a **residential** tenant **at least 90 days' written notice to vacate** if the purchaser chooses not to continue the lease and will occupy the building as their primary residence.

If the purchaser will not occupy the building as their primary residence, the tenant is entitled to complete the term of the existing lease, as long as the tenant continues to timely pay rent to the new owner. *Permanently Protecting Tenants at Foreclosure Act of 2018, 12 U.S.C. 5220*.

A tenant is considered to have timely paid the rent if, during the month of the foreclosure sale, the tenant pays the rent for that month to the:

- landlord before receiving any notice that a foreclosure sale is scheduled during the month; **or**
- foreclosing lienholder or purchaser at foreclosure not later than the fifth day after receipt of a written notice of the name and address of a purchaser who requests payment.

Property Code § 24.005(b).

For more information on procedures and notices in post-foreclosure eviction cases, ***see page 12***.

c. Delivery of the Notice to Vacate

KEY POINT

Generally, the notice to vacate must be given in person or by mail to the premises.

In person delivery means:

- Personally delivered to the tenant or any person residing at the premises who is 16 years of age or older; **or**
- Personally delivered to the premises by attaching the notice to the ***inside*** of the main entry door.

Property Code § 24.005(f).

Delivery by mail means delivery by regular mail, registered mail or certified mail, return receipt requested, to the premises in question. *Property Code § 24.005(f).* The notice period is calculated from the day on which the notice is delivered. *Property Code § 24.005(g).*

If delivery occurs by regular mail, how does the landlord show that the notice was delivered within the required time?

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One way the landlord might attempt to do so is to rely on a presumption that first class mail is received within three days. The United States Postal Service's regulations state that first class mail sent within the contiguous United States will arrive within three days. *39 C.F.R. § 121, App. A.* Federal courts have relied on this presumption in case law. Of course, the burden remains on the landlord to prove that the notice to vacate was timely. ***Mendez v. Knowles***; ***Lindemood v. Comm'r of Internal Revenue***; ***Cook v. Comm'r of Soc. Sec***.

Alternative Delivery of Notice to Vacate

Alternative delivery of the notice to vacate is only an option if:

- The dwelling has no mailbox **and** has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice to vacate on the inside of the main entry door; **or**
- The landlord reasonably believes that harm to a person would result from "in person" delivery as described above.

Property Code § 24.005(f-1).

If one of those conditions exists, the landlord may:

- Securely attach the notice to the outside of the main entry door in an envelope with the tenant's name, address, and the words "**Important Document**" or similar language; **and**
- By 5:00 p.m. of the same day, deposit a copy of the notice to vacate to the tenant in the mail (must be mailed from the same county as the premises).

Property Code § 24.005(f-1).

A notice to vacate delivered in this manner is considered delivered on the date the envelope is attached to the outside of the door and is deposited in the mail, **regardless** of the date the notice is received. *Property Code § 24.005(f-2).* ***Furrer v. Furrer****.*

What About E-mail or Text Delivery of Notices to Vacate?

Generally, these are not options for landlords. However, if a written lease signed by both parties authorizes a method of delivery of a notice to vacate other than that prescribed in Property Code Sec. 24.005, then that method would also be proper delivery.

What is a "Pay or Vacate" Notice?

KEY POINT

Sometimes a landlord will serve a notice to a tenant who is delinquent with their rent stating that the tenant must either "pay or vacate" within a specified time period. Such a "pay or vacate" notice is expressly authorized under Section 24.005(i) of the Property Code as long as before the landlord serves the notice they have given the tenant a written notice or reminder that rent is due and unpaid. If the tenant pays the delinquent rent within the time specified in the "pay or vacate" notice, then the landlord may not evict them. But if the tenant fails to pay the delinquent rent by the time specified in the "pay or vacate" notice, then the landlord may evict them even if they later pay the delinquent rent. Note that on a "regular" notice to vacate, the landlord **may** proceed with the eviction even if the tenant pays the delinquent rent.

What If There Is No Proper Notice to Vacate?

If a landlord does not prove that there was a proper notice to vacate, then the court may not grant a judgment of possession to the landlord. This is because one of the elements of an eviction case that the landlord needs to prove is that there was a demand for possession (the notice to vacate) and the tenant refused to leave in the required timeframe. The landlord cannot prove this and should lose the eviction suit if:

- The landlord failed to serve a notice to vacate at all;
- The landlord served a notice to vacate, but filed the eviction suit before the date by which the tenant was required to move out; **or**
- The landlord served a notice to vacate which had an improper timeframe for the tenant to vacate.

McDonald v. Claremore Apartment Homes*;* ***Goggins v. Leo****;* ***AMC Mortg. Services, Inc. v. Shields****;* ***Gore v. Homecoming Financial Networks, Inc****.*

d. Notice to Vacate Chart

Click Here to Open the Notice to Vacate Chart

3. Filing the Eviction Suit

An eviction suit is initiated when the plaintiff or the plaintiff's authorized agent files a written **sworn** petition with the justice of the peace in the precinct where the premises are located. *Rule 510.3(b).*


KEY POINT

If the petition is filed in a precinct other than the one where the premises are located, the judge must dismiss the case and the plaintiff will not be entitled to a refund of the filing fee but will be refunded any service fees paid if the case is dismissed before service is attempted. *Rule 510.3(b).* See ***page 4*** for a discussion of how the court can handle an eviction suit that the landlord is attempting to file in the wrong precinct. If an eviction suit is filed in the wrong precinct, the court should dismiss the case on its own motion without waiting for a motion to dismiss by the defendant.

a. Representation in an Eviction Suit

An individual in an eviction suit (whether the plaintiff or the defendant) may represent himself or herself, or be represented by an authorized agent or by an attorney. *Rule 500.4(a).*

A corporation or other entity in an eviction suit may be represented by an employee, owner, officer, or partner of the entity who is not an attorney, or be represented by a property manager or other authorized agent, or by an attorney. *Rule 500.4(b).*

The court may also allow an individual who is representing himself or herself, upon showing good cause, to be **assisted** in court by a family member or other individual who is not being compensated. *Rule 500.4(c).*

b. Contents of the Petition and Grounds for Eviction

In addition to the requirements for all civil cases in Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and **must** contain **all** of the following:

- a description, including the address, if any, of the premises that the plaintiff seeks possession;
- a description of the facts and the grounds for eviction; ***(see page 16)***
- a description of when and how the notice to vacate was delivered; ***(see pages 16–22)***
- the total amount of rent due and unpaid at the time of filing, if any; ***(see page 5*** and ***page 44)***
- a statement that attorney's fees are being sought, if applicable. ***(See page 45)***

Rule 510.3(a).

If a petition does not contain everything that is required, the court may allow the plaintiff to amend the petition, as long as the modification doesn't constitute an "unfair surprise" to the defendant. For example, if the landlord said they were evicting someone because they had an unauthorized pet, then right before (or during) the trial, the plaintiff said "oh, yeah, they also owe us six months' rent!" the defendant wouldn't have had time to prepare.

What if the Petition Doesn't Mention the Notice to Vacate?

If the landlord **did** serve a proper notice to vacate, but failed to include the description of when and how it was delivered in the petition as required, the court could allow the landlord to amend the petition, including an amendment at trial which may be oral. If the petition is not amended, however, the court may not grant a judgment of possession to the landlord.

Can the Court Require Additional Information to be Filed with the Petition?

No. Some courts attempt to mandate that plaintiffs file other documents, such as a copy of the lease or notice to vacate, or a Servicemembers Civil Relief Act affidavit ***(see Chapter 7 for more on the SCRA)***. However, Rule 510.4(a) says that when a petition is filed, the court **must immediately issue** a citation directed to each defendant. This means that the court is **not** allowed to create additional requirements for filing an eviction suit.

The landlord will only need an SCRA affidavit in the event of a default judgment. And if the defendant **doesn't** appear, the petition describing lease terms and notice to vacate **must** be taken as true. If the defendant **does** appear, the landlord will want to have that information handy to prove their case at trial. However, that is an issue for the landlord to be concerned with, **not** the court.

c. Who Has to be Listed as Defendants on the Petition?

COMMON PITFALL

If the eviction is based on a written residential lease, the plaintiff must list **all tenants obligated under the lease** whom the plaintiff seeks to evict.

A judgment or writ of possession **may not** be issued or executed against a tenant obligated under a lease who is not named in the petition and served with a citation. *Rule 510.3(c).* This means that while the plaintiff would only pay one filing fee, they must pay service fees for each defendant since each defendant must be separately served with the citation.

If a judgment is entered against a defendant who was not served, the judgment is void and unenforceable against that defendant. ***American Spiritualist Assn. v. Ravkind***.

May A Landlord File A Petition That Lists the Defendants as "John Smith and All Occupants?"

Yes, but a judgment for possession or writ of possession is effective against "all occupants" only if they are guests or subtenants of John Smith, not if they are themselves tenants under a written or oral lease with the landlord. In that case, they must be named separately as defendants and served with a citation.

For example, suppose the landlord has a written residential lease with a husband and wife, John and Mary Smith, both of whom signed the lease as tenants. The landlord may not evict Mary Smith by naming "John Smith and all occupants," thereby hoping to avoid a second service fee for serving a

Tenants v. Occupants

Tenants are persons who are obligated under a lease, which may be oral or written. All tenants must be named and served with a citation in an eviction suit.

Occupants are persons who are not obligated under a lease, including temporary guests and minor children.

citation on Mary Smith. If Mary Smith is a tenant under a written lease, then she must be named as a defendant and served with a citation.

What if an Occupant Wants to Appear in Court or Appeal the Judgment?
Sometimes a person who is not a tenant, but is only an occupant of the premises under a tenant, wishes to appear in court as a party, or to file a motion in the case, or appeal the judgment. A person who is not named as a party may not appear as a party, file motions, or appeal the judgment. Remember that if the person is a tenant and is not named in the suit, the judgment and any writ of possession **will not** be effective against that person.

Also note that a party may be represented in an eviction suit by their authorized agent, who need not be an attorney. *Rule 500.4.* Therefore, an occupant **can** appear as the named tenant's authorized agent, but they would be representing the tenant's interests, not their own.

d. Can the Court Provide Forms and Information to Parties?


KEY POINT

The court **may** provide forms for parties to fill out and file for their cases. This can help parties file petitions and other documents that comply with the Texas Rules of Civil Procedure. But a party **may not** be forced to use the court's forms. *Rule 507.2.*

A court (including the clerk) **should not** assist parties in filling out forms and **must not** give *legal advice*. Legal advice includes answering questions such as "do I need to file an eviction case?" The court **may** give *procedural* information, such as answering "what does plaintiff mean?" A court **may** also direct a party to the Rules of Civil Procedure. The court **must** make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours. *Rule 500.3(f).*


CLICK HERE

Examples of forms that may be provided to parties in eviction cases, as well as information packets for parties, may be found on the TJCTC self-represented litigants page at ***www.tjctc.org/SRL***.

Can the Court Give Information About Which Precinct the Property is Located?
Giving information on which precinct a property is located in does not constitute legal advice, but is instead factual information that is public. A court can and should have information publicly available stating that eviction cases must be filed in the proper precinct. ***See discussion on page 4.***

e. Filing/Service Fees or Statement of Inability to Afford Payment of Court Costs

Filing and Service Fees
On filing the petition, the plaintiff must pay the appropriate filing fee and service fees with the court. *Rule 502.3(a).* Only one filing is required for each case, regardless of the number of defendants, although a service fee must be assessed for each defendant.

Filing Fee
For cases filed on or after January 1, 2022, in most counties the filing fee is $54. For cases filed before that date, it is $46. For more information, see Chapter 3 of the *Fines, Fees, and Costs Deskbook.*

Service Fee

CLICK HERE

Fees for service of civil process are set by the commissioner's court under Local Government Code Section 118.131, and are listed in the Sheriffs' and Constables' fees listing published by the Comptroller's Office, found at: ***https://comptroller.texas.gov/transparency/local/sheriffs/***.

Filing a Statement of Inability to Afford Payment of Court Costs in Lieu of Filing/Service Fees

KEY POINT

A plaintiff who is not able to afford to pay the filing and service fees may file a "Statement of Inability to Afford Payment of Court Costs." Upon filing of the Statement, the clerk of the court must docket the action, issue the citation, and provide any other customary services. *Rule 502.3(a).*

Form for Statement of Inability
The plaintiff must use the Supreme Court form or include the information required by that form. The clerk **must** make the form available to all persons without charge or request. *Rule 502.3(b).* The Statement must either be sworn to before a notary or made under

penalty of perjury and include the following statement: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." *Rule 502.3(a).*

If a plaintiff files a Statement of Inability to Afford Payment of Court Costs at the time they file a petition, then a copy of the Statement should be served on the defendant with the citation.

f. Contesting a Statement of Inability to Afford Payment of Court Costs

COMMON PITFALL

A Statement of Inability to Afford Payment of Court Costs **accompanied by a legal aid provider certificate may not be contested**.

- If the person is represented by an attorney who is providing free legal services because of the person's indigence, without contingency, and the attorney is providing the legal services either directly or by referral from a legal aid provider described in Rule 145(e)(2), the attorney may file a legal aid provider certificate confirming that the provider screened the person for eligibility under the income and asset guidelines established by the provider. *Rule 502.3(c).*

If a legal aid provider certificate is **not** filed, then the defendant may file a contest of a Statement filed with the petition. In other civil cases, the contest must be filed within seven days after the day the defendant's answer is due. *Rule 502.3(d).* In an eviction case, however, a defendant would have to file such a contest before that seven-day deadline due to the expedited time frame of eviction cases discussed below.

Contest if Applicant Claims to be Receiving Government Entitlements Based on Indigence
If the Statement says the plaintiff receives a government entitlement based on indigence, then the only challenge that can be made is to whether or not that is true – in other words, if the person is actually receiving the government entitlement. *Rule 502.3(d).*

Hearing
The judge must hold a hearing on the contest to determine the plaintiff's ability to afford the fees, and the burden is on the plaintiff to prove such inability. **The judge may conduct a hearing on his or her own even if the defendant does not contest the Statement.** *Rule 502.3(d).*

If the judge determines that the plaintiff **is able** to afford the fees, he or she must enter a written order listing the reasons for the determination. The plaintiff must then pay the fees in the time specified in the order or the case will be dismissed without prejudice. *Rule 502.3(d).*

If the judge determines that the plaintiff **is unable** to afford the fees, the case should be processed as usual, including by the constable for service.

4. Setting the Trial Date and Issuing and Serving the Citation

When a petition is filed, the court must immediately issue a citation directed to each defendant. *Rule 510.4(a).*

a. Contents of the Citation

The citation must:

- be styled "The State of Texas;"
- be signed by the clerk under seal of court or by the judge;
- contain the name, location, and address of the court;
- state the date of filing of the petition;
- state the date of issuance of the citation;
- state the file number and names of the parties;
- state the plaintiff's cause of action and relief sought;
- be directed to the defendant;
- state the name and address of the attorney for the plaintiff, or if the plaintiff does not have an attorney, the address of the plaintiff;

- state the day the defendant must appear in person for trial at the court issuing the citation, which **must not be less than 10 days nor more than 21 days after the petition is filed** ***(see page 31 for more information)***;

- notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

- inform the defendant that, upon timely request and payment of a jury fee no later than three days before the day set for trial, the case will be heard by a jury;

- contain all the warnings required by Chapter 24 of the Texas Property Code; **and**

- include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

Rule 510.4(a).

b. Service of Citation on Defendant and Return of Service

KEY POINT

Who May Serve

The citation must be served by a **constable or sheriff**, unless another person is authorized by a written court order. *Rule 510.4(b)(1).* TJCTC strongly recommends **not** authorizing someone other than a sheriff or constable to serve eviction citations unless it is absolutely necessary, based on public safety concerns.

Deadline for Service

The citation must be served on the defendant at least **six days** before the day set for trial. *Rule 510.4(b)(2).* ***See page 37 for a discussion of what to do if this did not occur.***

Required Method of Service

Eviction citations may be served:

- by delivering a copy to the defendant in person along with a copy of the petition and all documents filed with the petition; **or**

- by leaving a copy of the citation, along with a copy of the petition and all documents filed with the petition, with some person other than the plaintiff over the age of 16 years at the defendant's usual place of residence.

Rule 510.4(b)(2).

Return of Service

At least one day before the day set for trial, the constable or sheriff (or other person authorized by written court order) who served the citation must complete and file a return of service with the court that issued the citation. The return must meet the requirements of Rule 501.3. *Rule 510.4(b)(3).*

c. Alternative Service of the Citation by Delivery to the Premises

When Allowed

The citation in an eviction case may be served by delivery to the premises (instead of by one of the methods described above) **if:**

- The constable or sheriff (or other person authorized by a written court order) is unsuccessful in serving the citation on the defendant or by leaving it with a person over the age of 16 at the defendant's usual place of residence;

- The petition lists all the home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; **and**

- The constable or sheriff (or other person authorized by a written court order) files a sworn statement that he or she has made diligent efforts to serve the citation on **at least two occasions** at all addresses of the defendant in the county where the premises are located, stating the time and places of the attempted service.

Rule 510.4(b)(1).

The judge must promptly consider the sworn statement and determine whether the citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service *Rule 510.4(b)(2).*

Method and Deadline

If the judge authorizes service by delivery to the premises, then the constable or sheriff (or other person authorized by written court order) must, **at least six days before the day set for trial**:

- Deliver a copy of the citation with a copy of the petition attached to the premises by:
    - Placing it through a door mail chute or slipping it under the front door; **or**
    - If neither of those methods are possible, by securely attaching the citation to the front door or main entry to the premises; **and**
- Mail a copy of the citation with a copy of the petition attached to the defendant at the premises by first class mail.

Rule 510.4(b)(3).

Return of Service

The constable or sheriff (or other authorized person) must note on the return of service the date the citation was delivered to the premises and the date it was put in the mail. *Rule 510.4(b)(4).*

What if Alternative Service is Requested but the Premises Appear Vacant?

The alternative service procedure described above automatically constitutes valid service if properly followed. The judge **does not** have discretion to substitute other methods of alternative service in eviction cases as they do in civil cases (see Chapter 4 of the *Civil Deskbook*). However, if it is apparent that the defendant may best be served in another location (for example, there is evidence that the defendant is incarcerated), the court may add **additional** methods of service to the above procedure if necessary, such as delivery at the jail, or by email to an address known to belong to the defendant.

d. Trial Date and Computation of Time

KEY POINT

The trial date must be set to be **not less than 10 days and not more than 21 days after the petition is filed.** *Rule 510.4(a)(10).*

To compute time in any case, you should:

- exclude the day of the event that triggers the period;
- count every day, including Saturdays, Sundays, and legal holidays; **and**

- include the last day of the period, **but**
    - if the last day is a Saturday, Sunday or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday or legal holiday; **and**
    - if the last day **for filing a document by a party** falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.

Rule 500.5(a).

Note that the court **does not** need to extend the 10-21 day trial deadline if the court closes before 5:00 p.m., since that is not a deadline for a party to file a document.

On a showing of good cause, the judge may extend any time period under the rules except those relating to new trial and appeal. *Rule 500.5(c).* (But note that a motion for a new trial is not allowed in an eviction case anyway.)

"Mailbox Rule"

COMMON PITFALL

Under the general rules for civil cases, a document that is required to be filed by a given date is considered to be timely filed if it is put in the U.S. mail on or before that date, and received by the court within 10 days of the due date. *Rule 500.5(b).* But in an eviction case, if a document is filed by mail and not received **by the court by the due date**, then the court may take any action authorized by the rules, including issuing a writ of possession requiring the tenant to leave the property. *Rule 510.2.*

For example, say Timmy Tenant's appeal was due on June 22. He drops it in the mail on June 22. Then, Linda Landlord comes in on June 24 wanting her writ of possession. The court, having no appeal on file, issues the writ. Then, the court receives Timmy's appeal on June 26. It was timely filed under the mailbox rule, and the court should send the appeal up. However, the writ of possession was also correctly granted under Rule 510.2, and so Timmy will be conducting his appeal while excluded from the premises, similar to a tenant who fails to pay rent into the registry as directed ***(see pages 60-61 for more information)***.

The following calendar illustrates how to count the days between the filing of a petition in an eviction case and the setting for the trial date:

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 **(Day 0)** **Case Filed**	4 (Day 1) **Independence Day Holiday**	5 (Day 2)	6 (Day 3)	7 (Day 4)	8 (Day 5)
9 (Day 6)	10 (Day 7)	11 (Day 8)	12 (Day 9)	13 **(Day 10)** **First day trial can be set**	14 (Day 11)	15 (Day 12)
16 (Day 13)	17 (Day 14)	18 (Day 15)	19 (Day 16)	20 (Day 17)	21 (Day 18)	22 (Day 19)
23 (Day 20)	24 **(Day 21)** **Last day to set trial**	25	26	27	28	29
30	31					

e. Notice to Plaintiff of Trial Date

The Rules do not state how notice of a trial date is to be given to the plaintiff, but notice could be given as follows:

- Give the plaintiff a copy of the citation with the trial date;
- Mail, email or fax a notice of the trial date to the plaintiff;
- Give the plaintiff written notice of a tentative trial date upon filing the case and confirm via mail/phone/email later.

B. Immediate Possession Bonds

At the time of filing the petition or at any time prior to final judgment, the plaintiff may file a bond for immediate possession. This allows the plaintiff to get a writ of possession (and

thus get possession of the premises) sooner than they normally would, provided certain requirements are met as described below.

Bond Amount and Conditions

The amount of the bond is set by the judge as the probable amount of the costs of suit and damages that may result to the defendant if the suit has been improperly brought. The bond is conditioned that the plaintiff will pay the defendant all such costs and damages that are adjudged against the plaintiff. *Rule 510.5(a).*

Notice Requirements

The court must notify the defendant that the plaintiff has filed an immediate possession bond. This notice must be served on the defendant in the same manner as service of the citation. The notice must inform the defendant that if the defendant does not file an answer or appear at trial, and a judgment for possession is granted by default, then **an officer will place the plaintiff in possession of the property on or after the seventh day after the date the defendant was served with the notice.** *Rule 510.5(b).*

Usually, the Immediate Possession Bond will be filed with the petition, so the notice can be served with the citation. A citation containing the required notice is available on the TJCTC website.

If Defendant *Either* Appears for Trial *or* Files an Answer

The case will be treated just like any other case where no immediate possession bond was filed (no writ of possession may issue before the sixth day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later). *Rule 510.5(d)*.

KEY POINT

In other words, **an immediate possession bond only allows immediate possession if there is a default judgment against the defendant and the defendant has not filed an answer.** This means that if the defendant appears for trial or files an answer, immediate possession pursuant to an immediate possession bond is off the table and the case proceeds like any other eviction case.

If Defendant Does Not Appear for Trial and Does Not File an Answer

A writ of possession must be issued immediately upon demand by the plaintiff and payment of any required fees if:

- An immediate possession bond has been filed and approved and a notice was served on the defendant;
- The defendant did not file an answer or appear for trial; **and**
- A default judgment was rendered against the defendant.

COMMON PITFALL

The writ of possession may not be ***executed***, however, until at least the seventh day after the defendant was served with notice of the immediate possession bond. *Rule 510.5(c).* This means that a plaintiff can't show up for trial, see the defendant isn't present, and then submit an Immediate Possession Bond, and have a writ executed immediately after the default judgment.

1. Immediate Possession Bond Flowchart

Click Here to Open the Immediate Possession Bond Flowchart

C. Default Judgment

1. General Requirements and Procedure

The defendant may, but is not required to, file a written answer with the court on or before the trial date, but the defendant must appear for trial on the day set for trial in the citation. *Rule 510.6(a).* If they don't (and they have been served), a default judgment could be entered against them.

Default When No Answer Has Been Filed

The allegations of the sworn petition **must be taken as true** and judgment by default must be rendered in favor of the plaintiff if:

- The petition contains all required information;
- The defendant fails to appear at trial;
- No answer was filed before the case was called for trial;
- Proof of service has been filed in accordance with Rule 510.4; **and**

- The plaintiff has filed the required military service affidavit and the court is not barred from granting a default judgment under the Servicemembers Civil Relief Act (see next section for more information).

Rule 510.6(b).

Default When an Answer Has Been Filed (Post-Answer Default):

The court may proceed to hear the case just as they would at a normal bench trial and render judgment accordingly if the defendant filed an answer but fails to appear for trial. *Rule 510.6(b).*

Default Procedure if Petition is Missing a Required Element

COMMON PITFALL

If a plaintiff's petition is missing a required fact (such as the description of the proper notice to vacate or proper grounds for the eviction), the court may allow the plaintiff to orally amend the pleadings by providing evidence of the missing information under oath at the default hearing. However, the court can only allow this if the amendment will not operate as an "unfair surprise" to the other party. *Rule 502.1; 502.7(a).*

KEY POINT

Note that adding monetary claims on the day of trial, other than rent that has become due while the case was pending, will generally be an unfair surprise, and would require a continuance. ***This is true even if the defendant isn't present***. The defendant might not have had a defense to the stated grounds for eviction, such as an unauthorized occupant, but **would** have appeared and defended a claim for $4,000 in back rent if it had been mentioned in the petition.

Notice to Defendant

When a default judgment is signed, the clerk of the court must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises. *Rule 510.6(c).*

2. Default Judgment Procedures and Requirements Related to Defendant's Military Status

The Servicemembers Civil Relief Act ("SCRA") imposes certain procedural requirements in all civil cases, including eviction cases in justice courts. *50 U.S.C. § 3911(5).* ***See Chapter 7 for additional information regarding the Servicemembers Civil Relief Act.***

D. Trial Procedure and Remedies

1. No Trial Less Than Six Days after Service

An eviction case should be docketed and tried just as other cases. But a trial in an eviction case may not be held less than six days after service of the citation under Rule 510.4. *Rule 510.7(a).*

2. Limit on Postponement

Trial in an eviction case must not be postponed more than seven days total unless both parties agree in writing. *Rule 510.7(c).*

3. Stay of Eviction When Defendant is in Military Service

The Servicemembers Civil Relief Act ("SCRA") imposes certain procedural requirements in all civil cases, including eviction cases in justice courts. *50 U.S.C. § 3911(5).*

If the defendant has **not** appeared in the case and the court determines that the defendant is in military service, the court **must** grant a stay of proceedings for a minimum of 90 days and appoint counsel under certain circumstances. *50 U.S.C. § 3931(d).* ***For more information, see page 78.***

If the Defendant is Served Less Than Six Days Before Trial…

What should you do if the defendant is served less than six days before the date set for trial?

The court must continue the trial date unless the defendant shows up for trial and waives the six-day rule.

The court should give the defendant the choice to waive the rule if the defendant is ready to proceed, since making arrangements for time off work, childcare, transportation, etc., can be cumbersome.

4. Bankruptcy Filing by Tenant

Bankruptcy Filed Before Final Judgment

If a tenant files a bankruptcy petition **before** a judgment for possession is entered, the eviction suit is automatically stayed and no further proceedings may be held until the

landlord obtains an order from the bankruptcy court lifting the stay. *11 U.S.C. § 362.* The court should consider any evidence of the filing of a bankruptcy petition because there are strict penalties for going forward with a case after a bankruptcy petition has been filed.

Bankruptcy courts have determined that "judgment for possession" for bankruptcy law purposes means a final, non-appealable judgment. ***In re Nicholson***. This means that if a tenant files bankruptcy **after** you render judgment, but **before** the appeal window is closed, the case **is stayed**.

Once the court receives notice from the bankruptcy court that the stay is lifted, the court should proceed with the case as normal.

Bankruptcy Filed After Final Judgment

If a bankruptcy petition is filed **after** a judgment for possession has been entered (and, under bankruptcy law, the appeal window has also run out), then the eviction case is **not stayed** and a writ of possession may issue. *11 U.S.C. § 362(b)(22).*

5. Retaliation and Rent Deduction Defenses (Only in Residential Evictions)

If a tenant raises a retaliation or rent deduction defense in a residential eviction suit, the court will have to resolve it before entering a judgment.

However, if the tenant wishes to recover civil penalties, actual damages, court costs or reasonable attorney's fees either for retaliation under Section 92.333 or for violation of the landlord's obligation to repair or remedy conditions of the premises under Section 92.0563, the tenant must file a separate suit to recover on those claims. They may not be part of the eviction suit. As Property Code § 92.335 makes clear: "Other judicial actions under this chapter [Chapter 92] may not be joined with an eviction suit or asserted as a defense or crossclaim in an eviction suit."

A landlord is not liable for retaliation if he proves that the action was not made for purposes of retaliation.

And the landlord is not liable—unless it violates a prior court order— for a rent increase that is made under an escalation clause in a written lease for utilities, taxes or insurance;

or for a rent increase or service reduction that is part of a pattern of rent increases or service reductions for an entire multi-dwelling project). *Property Code § 92.332(a).*

Rent Deduction Defense

Property Code § 92.335 expressly provides that "a rent deduction lawfully made by the tenant under [Chapter 92] is a defense for nonpayment of the rent to the extent allowed by [Chapter 92]."

What this means is that a tenant may raise as a defense in an eviction suit for nonpayment of rent that the tenant was entitled to a rent deduction because of the exercise of the tenant's:

- repair and deduct remedies under Property Code § 92.0561 ***(see page 119)***.
- rights regarding installing or re-keying security devices under Property Code § 92.164 – 92.166, **or**
- rights regarding utility cutoff in properties where the landlord pays for and provides utilities under Property Code § 92.301.

Note that this rent deduction defense is different than the ability in a repair and remedy case for a court to order a reduction in rent until a condition is remedied. ***See page 130 for information.***

Additionally, a judge cannot reduce the rent owed by a tenant in an eviction suit for any reason other than the three listed above.

If the rent deduction defense negates all of the rent alleged to be due, and nonpayment of rent was the only grounds for eviction, the court should rule for the defendant. However, the rent deduction defense would not prevent a judgment for the plaintiff on other grounds, or for nonpayment of rent that was not authorized by the Property Code.

Retaliation Defense

Property Code § 92.335 expressly provides that retaliation by the landlord "is a defense" in an eviction suit. What this means is that if there has been retaliation by a landlord as described below, a tenant may raise that fact as a defense in an eviction suit.

A landlord **may not** retaliate against a tenant just because the tenant took one of the following "protected actions":

- In good faith exercises or attempts to exercise a right or remedy granted to the tenant by lease, ordinance or statute;
- Gives the landlord a notice to repair or exercises a remedy under Chapter 92; **or**
- Complains in good faith to a governmental entity, public utility or civil or nonprofit agency and claims a building or housing code violation or utility problem and believes in good faith that the complaint is valid and that the violation or problem occurred.

Property Code § 92.331(a).

If the landlord is seeking eviction solely for a ground not listed below within six months of the tenant taking one of the actions listed above, the judge should enter judgment for the defendant.

The following grounds for eviction are not considered retaliation, even if the eviction is filed within six months of the tenant taking a protected action:

- The tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

- The tenant, or family member or guest, intentionally damages property on the premises or threatens the landlord, the landlord's employees or another tenant;

- The tenant has materially breached the lease by serious misconduct or criminal acts;

- The tenant holds over after giving notice of termination or intent to vacate;

- The tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 92.331 until after the landlord gives notice of termination; **or**

- The tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a family member or guest might adversely affect

the quiet enjoyment or health and safety of other tenants or neighbors or damage the property of the landlord, other tenants or neighbors.

Property Code § 92.332(b).

If the tenant takes any of the protected actions listed above, then the landlord may not, within six months of the tenant's actions, retaliate against the tenant by:

- Filing an eviction proceeding **except** for the grounds listed above. This means that an eviction or lease termination based solely on these grounds **does not** constitute retaliation;

- Depriving the tenant of the use of the premises except for reasons authorized by law;

- Decreasing services to the tenant;

- Increasing the tenant's rent or terminating the tenant's lease; **or**

- Engaging in bad faith in a course of conduct that materially interferes with the tenant's rights under the lease.

Property Code § 92.331(b).

6. Bench Trial

The court will call and hear the case just like any other civil case, and has the duty to develop the facts of the case as necessary by asking questions of any witnesses or the parties. *Rule 500.6.*

If the plaintiff does not appear for trial, the court may postpone or dismiss the suit. *Rule 503.6(b).*

For what to do if the defendant does not appear for trial, see the Default Judgment section on ***page 35***.

If both parties are present, (or the requirements for a default judgment are met), the court should award possession to the plaintiff if it can check each of the following four boxes as a result of the hearing (otherwise award possession to the defendant):

- ☐ Filed in the correct precinct – ***see page 4.***
- ☐ Proper notice to vacate – ***see page 16.***
- ☐ Proper service – ***see page 29.***
- ☐ Proper grounds for eviction, such as nonpayment of rent or some other breach of the lease (and no retaliation or rent deduction defense) – ***see page 16*** and ***page 38***.

When making its ruling, the court should award the following along with possession (as applicable):

- Back rent, if any – ***see page 44.***
- Court costs to the prevailing party – ***see page 45.***
- Attorney's fees if allowable – ***see page 45.***

7. Jury Trial

Any party may file a written demand for trial by jury by making a request to the court at least three days before the trial date. The demand must be accompanied by payment of the jury fee ($22) or by filing a statement of inability to afford payment of the jury fee. *Rule 510.7(b).*

If a jury is demanded by either party, it will be impaneled and sworn as in other cases, and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If a jury is not timely demanded by either party, the judge will try the case. *Rule 510.7(b).*

What if the Court Can't Get a Jury in Time for Trial?

The court should exhaust all available resources to conduct a jury trial on the date originally scheduled. Coordinate with county officials to determine how this can best be accomplished. Some counties send "extra" jury panel members from other courts to justice court when needed. Also, the judge does have authority to send the constable out to "round up" potential jurors if there are not enough present. *Government Code § 62.015(b).* See Chapter 4 of the *Trial Notebook* for more information.

8. Judgment

If the judgment is in favor of the plaintiff, the judge must render judgment for the plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of the judgment, if any, attorney's fees if recoverable by law, and post-judgment interest on any amount awarded as part of a money judgment. *Rule 510.8(b).* See Chapter 7 of the *Civil Deskbook*. Additional requirements apply if the eviction was a residential eviction for nonpayment of rent, see below.

COMMON PITFALL

The judgment **should not** include a "move out" date. The plaintiff is awarded possession as of the date of the judgment.

If the judgment is in favor of the defendant, the judge must render judgment for the defendant against the plaintiff for costs and attorney's fees if recoverable by law. *Rule 510.8(c).*

If a party is awarded money damages (back rent, attorney's fees, and costs), the party may file an abstract of judgment just as in other civil suits. *Property Code § 52.003.* Additionally, these judgments can be enforced by writs of execution or garnishment, turnover orders, or other post-judgment remedies available in civil cases. See Chapter 10 of the *Civil Deskbook* for more information.

a. Additional Requirements for Judgments in Residential Evictions for Nonpayment of Rent

Note that these requirements apply to any eviction from residential property where the grounds for eviction are nonpayment of rent, **even if** the plaintiff didn't actually seek or receive a monetary award of back rent. For example, Jim doesn't pay his rent when it is due. The landlord gives a notice to vacate, then timely files an eviction suit. During the eviction process, Jim pays his back rent. However, the landlord can still proceed with the eviction since Jim didn't timely pay rent as provided in the lease. At trial, no new rent is yet due, so the landlord wouldn't be awarded any back rent. But the grounds for eviction would still be nonpayment of rent, so the requirements discussed here ***(as well as on page 58)*** **would** apply to Jim's eviction.

Appeal Bond

In a **residential** eviction suit for **nonpayment of rent**, the judge must state in the judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court's registry under Section 24.0053 (the amount of rent to be paid each rental pay period, typically each month). *Property Code § 24.00511(a).* ***See page 52 for discussion on how to set the appeal bond.***

Amount of Monthly Rent

If the justice court enters judgment **for the landlord** in a **residential** eviction case based on **nonpayment of rent**, the judge must determine the amount of rent to be paid each rental pay period during the pendency of any appeal and must include that amount in the judgment. If a portion of the rent is payable by a government agency, the court must determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination must be in accordance with the terms of the rental agreement and applicable laws and regulations. *Property Code § 24.0053(a).*

b. Back Rent

An award of back rent may be included in the judgment if the claim was within the jurisdiction of the court at the time of filing (excluding statutory interest and court costs, but including attorney's fees). *Rule 500.3(d).*


COMMON PITFALL

The judgment may be for the entire amount of back rent, including any amount that accrued after the petition was filed and before the date of judgment. *Rule 510.8(b).* The court may enter a judgment for back rent that is more than the jurisdictional limit due to the "mere passage of time," as long as it was under the limit at the time of filing. ***Wattley v. Turner***; ***Carlson's Hill Country Beverage v. Westinghouse Road Joint Venture***.

In ***Kendziorski v. Saunders***, the court recognized that a justice court's jurisdiction is not exceeded where "additional damages have been sustained as a result of the passage of time, such as attorney's fees."

c. No Late Fees Awarded in Eviction Suits

The court **may not** award late fees or other penalties in an eviction suit. ***Hanks v. Lake Towne Apartments***.


COMMON PITFALL

Be aware that some leases provide that all amounts paid go first to other outstanding amounts, and only after those are paid, then to rent. If such a clause exists, and a tenant owes a $100 late fee and $1,000 in rent, and they give the landlord $1,000, their lease indicates that they have paid the $100 late fee and $900 of the rent, leaving $100 of rent unpaid. This would mean the landlord could recover the $100, since it is rent and not a late fee. Without such a clause in the lease, however, the court would have to determine what the tenant intended to pay with the $1,000 check.

d. Attorney's Fees and Court Costs


KEY POINT

Court Costs

The prevailing party is entitled to recover court costs in an eviction case, regardless of whether they specifically request court costs. *Property Code § 24.006(d).* The costs should be considered as part of the total award when setting the amount of the appeal bond. *Rule 510.8(b)(c); Rule 510.11.*

Attorney's Fees

A prevailing **landlord** is entitled to recover reasonable attorney's fees from the tenant if:

- A written lease entitles the landlord to recover attorney's fees; **or**
- The landlord gives a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the

Evidence of Attorney's Fees

A party should put on evidence of the attorney's fees claimed. ***Powell v. Mel Powers Inv. Builder.***

This is done by the attorney submitting an affidavit or taking the stand and introducing into evidence the fee statements or testifying as to the amount of the legal fees.

"A trial judge may consider several factors in awarding the amount of attorney's fees, including the quality of legal work, the time and effort required by the attorney, the nature and intricacies of the case and the benefit resulting from the litigation." ***Carlson's Hill Country Beverage v. Westinghouse Road Joint Venture.***

premises stating that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and the landlord files suit, then the landlord may recover attorney's fees. This demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the suit is filed.

Property Code § 24.006(a)(b).

A prevailing **tenant** is entitled to recover reasonable attorney's fees from the landlord if:

- A written lease entitles the landlord or the tenant to recover attorney's fees; **or**
- The landlord gives the tenant a written demand to vacate the premises and a notice that the landlord may recover attorney's fees. (The tenant is not required to give notice to the landlord in order to recover fees.)

Property Code § 24.006(c).

e. Post-Judgment Interest

The court should award post-judgment interest on any amounts awarded as part of a money judgment in an eviction case. See Chapter 7 of the *Civil Deskbook* for more information.

f. Jury Verdict

Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, the judge may render a **judgment notwithstanding the verdict (JNOV)**. *Rule 510.8(a).*

Judgment Notwithstanding the Verdict – Proceed with Caution!

This means that even if the jury finds in favor of the tenant, the judge may render a verdict in favor of the landlord (or vice versa) if the jury verdict conflicts with the law or the evidence. This sometimes happens in eviction cases where all the evidence indicates that the plaintiff is entitled to possession, but the jury finds for the defendant based on sympathy or other factors.

KEY POINT

A judge **must** be **very** cautious to not simply substitute their own opinions and conclusions from that of the jury. Instead, this should be limited to only those situations where the evidence or law simply could never support the jury's decision. Before rendering a

judgment notwithstanding the verdict, TJCTC recommends excusing the jury and thanking them for their service.

9. No Motion for New Trial

A motion for a new trial may not be filed in an eviction case. *Rule 510.8(e)*. This does not, however, prevent the filing of a motion to set aside a default judgment or a motion to reinstate following dismissal.

10. Eviction Procedure Through Judgment Flowchart

Click Here to Open the Eviction Procedure Through Judgment Flowchart

E. Writ of Possession

If the judgment is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees. *Rule 510.8(d)*.

1. Time to Issue Writ of Possession

KEY POINT

Except in the case of an immediate possession bond ***(see page 33)***, a writ of possession **may not issue before the 6th day** after the date a judgment for possession is signed or **the day following the deadline for the defendant to appeal the judgment**, whichever is later. *Rule 510.8(d)(1).* This gives the defendant time to perfect an appeal.

For example, suppose a judgment for possession is signed on Tuesday, September 5. The sixth day after the date the judgment for possession was signed is Monday, September 11. However, the court **may not** issue a writ of possession that day because the defendant has five days to file an appeal and the fifth day after the judgment was signed is Sunday, September 10. Therefore, under the computation of time rule in Rule 500.5, since the last day to file an appeal ends on a Sunday, the "time period is extended to the next day that is not a Saturday, Sunday or legal holiday." This means the defendant has until Monday, September 11, to file an appeal and a writ of possession may not issue until Tuesday, September 12.

COMMON PITFALL

Extension of Time Period When Court Closes Before 5:00 p.m.

In addition, if the court closes before 5:00 p.m. on Monday, September 11, then "the time period is extended to the court's next business day." *Rule 500.5(a)(3)(B).* So, if the court closes before 5:00 p.m. on Monday, then the defendant has until Tuesday, September 12, to file an appeal, and the court must not issue a writ of possession until Wednesday, September 13.

Because of these computation of time rules, it is very important to look at a calendar and determine the day on which the defendant must file an appeal. Then you can figure out what the day after that would be, which would be the first day a writ of possession may be issued.

Here are some examples of how to do this:

First, take the example given above, and suppose the court does **not** close before 5:00 p.m. on Monday, September 11:

September

Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
					1	2
3	4 Labor Day	5 Judgment for Possession Signed	6 (Day 1)	7 (Day 2)	8 (Day 3)	9 (Day 4)
10 (Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal	11 (Day 6) Defendant must file appeal if court does not close before 5:00 p.m.	12 (Day 7) First day of writ of possession may issue	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Now suppose the court does close before 5:00 p.m. on Monday, September 11:

September						
Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
					1	2
3	4 Labor Day	5 Judgment for Possession Signed	6 (Day 1)	7 (Day 2)	8 (Day 3)	9 Day 4)
10 (Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal	11 (Day 6) Court closes before 5:00 p.m.; therefore, defendant has until the next day to file appeal	12 (Day 7) Defendant must file appeal	13 (Day 8) First day a writ of possession may issue	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

KEY POINT

In the above example, suppose the plaintiff comes to the court at 9:00 a.m. on Tuesday, September 12, and requests a writ of possession. If the time calculation rules were not applied correctly, and the court issues the writ of possession, what do you do if the defendant then comes in at 3:00 p.m. and files an appeal? There is no good solution to this problem. This is why it's important to calculate the time periods correctly, and understand when the last day for an appeal to be filed is and when is the first day for a writ of possession to be issued.

COMMON PITFALL

Effect of Appeal

A writ of possession **must not** be issued if an appeal is perfected and, if applicable, rent is paid into the registry of the court, as required by the rules and the Property Code. *Rule 510.8(d)(3).* What happens if the tenant does not pay rent into the court registry after perfecting an appeal is discussed below on ***page 59***.

2. Time Limit on Issuance of Writ of Possession

How long after judgment does a landlord have to request a writ of possession? Generally, a writ of possession may not be issued more than 60 days after a judgment for possession is signed. But for good cause, the court may extend the deadline for issuance of a writ of possession to 90 days after the judgment for possession is signed. *Rule 510.8(d)(1).*

3. Deadline to Execute Writ of Possession

A writ of possession may not be executed (by the sheriff or constable) after the 90th day after a judgment for possession is signed. *Rule 510.8(d)(2).*

4. Execution of the Writ of Possession

CLICK HERE

For more information on execution of writs of possession, please see Part III of the TJCTC Civil Process Field Guide, which may be downloaded at ***https://www.tjctc.org/tjctc-resources/Deskbooks.html.***

Written Warning

The officer (constable or sheriff) executing the writ must post a written warning on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than **24 hours** after the warning is posted. *Property Code § 24.0061(d)(1).*

Execution

A constable or sheriff may use "reasonable force" in executing a writ of possession. *Property Code § 24.0061(h).*

When a tenant's personal belongings are removed, they should be placed in such a way that they do not block a sidewalk or street, and should not be left out in inclement weather. *Property Code § 24.0061(d)(g).*

The writ of possession should authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store part or all of the

tenant's personal property, subject to applicable law, at no cost to the landlord or the officer executing the writ. The officer may not require the landlord to store the property. *Property Code § 24.0061(e)(f).*

A municipality may provide a portable, closed container into which the removed personal property shall be placed by the officer executing the writ. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the owner of the removed personal property does not recover the property from the container within a reasonable time after the time the property is placed in the container. *Property Code § 24.0061(d-1).*

A landlord is not liable for damages to the tenant resulting from the execution of a writ of possession. *Property Code § 24.0061(i).*

5. Post-Judgment Eviction Procedure Flowchart

Click Here to Open the Post-Judgment Eviction Procedure Flowchart

F. Appeal

1. How is a Judgment Appealed?

KEY POINT

A party may appeal a judgment in an eviction case by:

- filing an appeal bond;
- making a cash deposit; **or**
- filing a Statement of Inability to Afford Payment of Court Costs within five days after the judgment is signed.

Rule 510.9(a).

Keep in mind how to calculate the deadline for a party to file an appeal, which is discussed above on ***pages 47 - 50***. Either party is entitled to file an appeal.

An appeal is perfected when an appeal bond, a cash deposit, or a Statement of Inability to Afford Payment of Court Costs is filed in accordance with Rule 510.9. *Rule 510.9(f).*

a. Filing Fees


KEY POINT

Beginning January 1, 2022, to file an appeal, the party must either pay the standard civil filing fee or submit a Statement of Inability either with the application or with the appeal.

2. Appeal by Appeal Bond or Cash Deposit

a. Amount of the Bond or Cash Deposit

The judge must "set the amount of the appeal bond or cash deposit to include the items set out in Rule 510.11." *Rule 510.9(b).* This means the "damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal." Damages may include, but are not limited to, loss of rentals during the pendency of the appeal and any attorney's fees in justice and county court (assuming attorney's fees are allowed – ***see page 45 for more information***). *Rule 510.11.*

For example, if the judgment is for the landlord and the rent is $600 per month, the judge might set the amount of the appeal bond or cash deposit at $1200 (two times the monthly rent). However, the judge has discretion to set the bond or cash deposit at a higher or lower amount based upon the factors listed in Rule 510.11.

Must Consider Rent Paid Into Registry When Setting Amount in Residential Eviction for Nonpayment of Rent

Keep in mind that in a residential eviction for nonpayment of rent the judge **must** take into consideration the money required to be paid into the court registry under Section 24.0053 (the amount of rent to be paid each rental pay period, typically each month). *Property Code § 24.00511(a).* So, in the above example, the judge may decide to consider the $600 required payment into the registry as offsetting potential losses and set the amount of the appeal bond at $600 instead of $1200.

b. Conditions of the Appeal Bond or Cash Deposit

The appeal bond or cash deposit **must** be payable to the appellee and must be conditioned on the appellant's prosecution of the appeal to effect and payment of any judgment and all costs rendered against it on appeal. *Rule 510.9(b).*

The appeal bond **must** require the surety to provide the surety's contact information, including an address, phone number, and e-mail address, if any. If any of the contact information changes, the surety must inform the court of the surety's new contact information. *Property Code § 24.00511(b).*

c. Notice of Filing the Appeal Bond or Making a Cash Deposit

Within five days of filing an appeal bond or making a cash deposit, **the appellant** must serve written notice of the appeal on all other parties using a method approved under Rule 501.4. *Rule 510.9(d).*

d. Contest of Appeal Bond in Residential Eviction Suit for Nonpayment of Rent

If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, the form of the bond, or the financial ability of a surety to pay the bond by filing a written notice with the court contesting the appeal bond on or before the **fifth day** after the date the appeal bond is filed and serving a copy on the other party. *Property Code § 24.00512(b).* However, a party may not contest an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance to engage in business in this state. *Property Code § 24.00512(a).*

Notice

After the notice of the contest is filed, the court must notify the appellant and the surety of the contest. *Property Code § 24.00512(b).*

Hearing

Not later than the 5th day after the date the contest is filed, the judge must hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety. *Property Code § 24.00512(c).*

If a party contests the amount or form of the bond, the contesting party has the burden to prove (by a preponderance of the evidence) that the amount or form of the bond is insufficient. But if a party contests the financial ability of a surety to pay the bond, the party who filed the bond must prove (by a preponderance of the evidence) that the surety has sufficient nonexempt assets to pay the appeal bond. *Property Code § 24.00512(d).*

"Prima Facie Evidence"

Prima facie evidence means evidence that is good enough to prove something if taken at face value, but that could be countered with opposing evidence. "Prima facie" means "at first face" or "at first appearance". So in this situation, the surety not appearing is sufficient to prove that the bond should be disapproved **unless** compelling evidence is presented to counter the "prima facie" evidence.

If the judge determines that the amount or form of the bond is insufficient or the surety does not have sufficient nonexempt assets to pay the appeal bond, the judge must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved. *Property Code § 24.00512(d).* This means that the failure to appear is in and of itself a reason to disapprove the bond unless evidence is provided as to why this should not be the case.

KEY POINT

If the Judge Disapproves the Appeal Bond

Not later than the fifth day after the date of the decision disapproving the bond, the party appealing may:

- Perfect the appeal of the judgment on the eviction suit by:
  - Making a cash deposit, **or**
  - Filing a statement of inability to afford payment of court costs

or

- Appeal the justice court's decision disapproving the appeal bond to the county court.

If the appealing party fails to do one of these things, the judgment of the justice court becomes final and may be enforced. If a writ of possession is requested, it must be issued upon payment of the required fee. *Property Code § 24.00512(e).*

Appeal of Justice Court's Disapproval of Bond

If an appeal is filed of the judge's decision disapproving the appeal bond, the justice court must transmit to the county court the contest to the appeal bond and all relevant documents. The county court must docket the appeal, schedule a hearing to be held not later than the **fifth day** after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo. The failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal.

A writ of possession may not be issued before the county court issues a final decision on the appeal bond. *Property Code § 24.00512(f).*

After the contest is heard by the county court, the county clerk must transmit the transcript and records of the case to the justice court.

If the County Court Disapproves the Appeal Bond

The party may, not later than the fifth day after the date the county court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by:

- making a cash deposit in the justice court in an amount determined by the county court; **or**
- by filing a statement of inability to afford payment of court costs with the justice court.

Property Code § 24.00512(g).

If the appealing party fails to do one of these things, the judgment of the justice court becomes final and may be enforced. If a writ of possession is requested, it must be issued upon payment of the required fee.

If the County Court Approves the Appeal Bond

If the appeal bond is approved by the county court, the court must transmit the transcript and other records of the case to the justice court, and the justice court must proceed as if the appeal bond was originally approved. *Property Code § 24.00512(g).*

3. Appeal by Statement of Inability to Afford Payment of Court Costs

An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a Statement of Inability to Afford Payment of Court Costs. The Statement must be on the form approved by the Supreme Court or include the information required by the court-approved form. *Rule 510.9(b).*

a. Notice of the Statement of Inability to Afford Payment of Court Costs

KEY POINT

If a Statement of Inability to Afford Payment of Court Costs is filed, **the court must provide notice** to all other parties that the Statement was filed **no later than the next business day.** *Rule 510.9(d).*

b. Contest of Statement of Inability to Afford Payment of Court Costs

BEST PRACTICE

There is no requirement for the justice court to "approve" the Statement. While it is technically allowable under the Rules, TJCTC recommends that the court **not** hold a hearing when a Statement is used to appeal an eviction case, **unless** the other party contests the Statement.

The Statement of Inability to Afford Payment of Court Costs may be contested as provided in Rule 502.3(d) within **five days** after the opposing party receives notice that the statement was filed. *Rule 510.9(c).*

As explained on ***page 27*** above, this means that the Statement **may not** be contested if a legal aid provider certificate is filed with the Statement. And if the Statement attests to receipt of a government entitlement based on indigence, then the only challenge that can be made is with respect to whether or not the person is actually receiving the government entitlement. *Rule 502.3(d).*

Hearing

The judge must hold a hearing on the contest to determine the appellant's ability to afford the appeal bond or cash deposit. At the hearing, the burden is on the appellant to prove such inability.

If Judge Sustains Contest of Statement

If the judge sustains the contest, he or she must enter a written order listing the reasons for the determination. *Rule 502.3(d).* The appellant may appeal that decision to the county court by filing a notice with the justice court **within five days** of the justice court's written order. The justice court must then forward all related documents to the county court for resolution. *Rule 510.9(c)(3).*

Appeal of Justice Court's Ruling Sustaining the Contest

The county court must set the matter for hearing within **five days** and hear the contest de novo (as if there had been no previous hearing). If the appeal is granted, the county court must direct the justice court to transmit to the clerk of the county court the transcript, records and papers of the case. *Rule 510.9(c)(3).*

If Appellant Does Not Appeal Ruling Sustaining Contest or if County Court Denies Appeal

If the appellant does not appeal the justice court's ruling sustaining the contest, or if the county court denies the appeal, then the appellant may, **within one business day,** perfect the appeal by:

- posting an appeal bond; **or**
- making a cash deposit in compliance with the rules.

*Rule 510.9(c)(3); **Martinez v. Kanga Park, Inc.***

KEY POINT

Please note that if the justice of the peace sustains a contest, then an appellant has only **one business day** to perfect an appeal by filing an appeal bond or making a cash deposit, but the appellant has **five days** to appeal the decision on the contest to the county court. In order to give effect to both time periods, the appellant should first be allowed five days to appeal the judge's decision disallowing the Statement of Inability to Afford Payment of Court Costs.

If the appellant does not appeal that decision within five days, then the appellant has **one additional business day** in which to perfect the appeal by filing an appeal bond or making a cash deposit. Therefore, if the justice of the peace sustains a contest, a writ of possession should still **not be issued** until both the five-day period to appeal the decision on the contest and the one additional business day to perfect the appeal by filing an appeal bond or cash deposit are up.

4. Payment of Rent in Nonpayment of Rent Appeals

The following subsections apply **only** in an eviction suit **for nonpayment of rent** ***(see page 43 for a discussion of what "evictions for nonpayment of rent" include)***.

a. Notice to Pay Rent into the Justice Court Registry

If a tenant appeals an eviction for nonpayment of rent case by filing **an appeal bond or a Statement of Inability to Afford Payment of Court Costs**, the tenant must pay into the justice court registry, not later than the fifth day after the date the tenant files the appeal bond or Statement, the amount of rent to be paid in one rental pay period as determined by the court. *Property Code § 24.0053(a-2)(a-3); Rule 510.9(c)(5)(A)(iii); Rule 510.9(c)(5)(B)(i).*

Does *Not* Apply to Cash Deposit Appeals or Evictions Other than Nonpayment of Rent
Please note that there is no provision in either the Property Code or Rule 510.9 that requires a tenant who appeals an eviction case by making a cash deposit to pay rent into the registry of the court pending the appeal. Also, the court has **no authority** to order payments into the registry for any other type of eviction other than nonpayment of rent, such as post-foreclosure evictions.


KEY POINT

Justice Court Must Provide Notice to Pay Rent into Registry
The justice court **must** provide a **written notice** to the tenant at the time the appeal bond or Statement is filed that contains the following information in bold or conspicuous type:

- the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
- whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- the calendar date by which the initial deposit must be paid into the justice court registry;
- for a court that closes before 5:00 p.m. on the specified date, the time the court closes; **and**

- a statement that failure to pay the required amount into the justice court registry by the specified date may result in the court issuing a writ of possession without a hearing.

Property Code § 24.0053(a-1); Rule 510.9(c)(5)(A).

Note that these requirements apply to both residential and commercial evictions for nonpayment of rent, while the requirements to include the amount of the appeal bond and the monthly rent in the judgment itself only apply to residential evictions for nonpayment of rent ***(see page 43)******.***

b. Contest over Portion of Rent to be Paid into Registry if Government Agency is Responsible for Some or All of Rent

If a government agency is responsible for all or a portion of the rent, the tenant must pay only that portion of the rent determined by the justice court to be paid during the appeal. *Rule 510.9(c)(5)(B)(iii).*

Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within five days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. *Rule 510.9(c)(5)(B)(iii).*

If the tenant objects to the justice court's ruling at the hearing, **the tenant is required to pay only the portion claimed to be owed by the tenant** until the issue is tried in county court. *Rule 510.9(c)(5)(B)(iii).*

c. Payment of Rent into Registry Not Required to Perfect Appeal


KEY POINT

If a tenant fails to pay rent into the court's registry as described above, it **does not** impact whether the appeal is perfected. Instead, it allows the landlord to obtain a writ of possession before the appeal is sent up to county court, as described below. *Property Code § 24.0053(a-3).*

If the record is transmitted to the county court before the landlord requests a writ of possession, the landlord may file a sworn motion with the county court stating that the tenant has failed to pay rent as required under Property Code Section 24.0053, and the county court may issue a writ of possession *Property Code § 24.0054(a-4).*

d. Writ of Possession May Be Issued When Rent Is Not Paid Into Court Registry


KEY POINT

If a tenant has appealed an eviction for nonpayment of rent by filing an appeal bond, the justice court must issue a writ of possession **immediately and without a hearing** (upon request and payment of the applicable fee) if:

- The tenant fails to timely pay rent into the justice court registry as required; **and**
- The transcript has not yet been transmitted to the county court.

Property Code § 24.0053(a-3).


KEY POINT

If a tenant has appealed an eviction for nonpayment of rent by filing a Sworn Statement of Inability to Afford Payment of Court Costs, the justice court must issue a writ of possession **immediately and without a hearing** (upon request and payment of the applicable fee) if:

- The tenant was provided the notice described on ***page 58*** above;
- The tenant fails to timely pay rent into the justice court registry as required; **and**
- The transcript has not yet been transmitted to the clerk of the county court.

Rule 510.9(c)(5)(B)(i); Property Code § 24.0054(a).


KEY POINT

Regardless of whether a writ of possession is issued, the justice court **must** still transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees. *Property Code § 24.0053(a-3); Property Code § 24.0054(a).* **So even if the rent was not paid into the registry and a writ of possession was issued, the case is still sent to the county court. The tenant will just not have possession during the appeal.**

e. Payment of Rent During the Appeal Process

During the appeal process, as rent becomes due under the rental agreement, a tenant who appealed by filing a Statement of Inability to Afford Payment of Court Costs **must continue to pay** the designated amount into the county court registry within five days of

the rental due date under the terms of the rental agreement. *Rule 510.9(c)(5)(B)(ii).* If the tenant fails to do so, the landlord can request a writ of possession from the county court. *Property Code § 24.0053(a-4).*

A tenant who appeals with a cash deposit or appeal bond is still required to pay rent during the appeal process, but the statute is silent on how this must be accomplished. Any failure to pay rent after the case is transmitted to county court must be resolved at the county court, since the justice court no longer has jurisdiction.

5. Transmission of Case to County Court

Unless otherwise provided by law or the rules of civil procedure, when an appeal has been perfected, the judge **must**:

- Stop all further proceedings on the judgment (once the appeal has been perfected, the justice court judgment is null and void and may not be enforced by a writ of possession or otherwise); **and**
- Immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry.

Rule 510.10(a).

a. Transmission to County Court if Appeal is by Statement of Inability

COMMON PITFALL

Separate procedures apply if the tenant has appealed with a Statement of Inability. In that case, the court **may not** forward the transcript and original papers **before the sixth day after the date the tenant files** a Statement of Inability, **unless** the tenant has timely paid the initial deposit of rent into the justice court registry in accordance with Section 24.0053. Once the tenant pays the rent, the court **should** forward the transcript and original papers (and rent deposit) **immediately.** *Property Code § 24.0054(a-2).*

How Long Should the Justice Court Wait to Send the Case Up *if Rent Is Not Paid*?
The statutes and Rules are silent on how long to wait for the landlord to ask for a writ of possession once the six-day period has expired, and the tenant has failed to pay rent into the registry, before sending the case up on appeal.

If the court doesn't wait long enough, the landlord misses the opportunity to get the writ (though they can still get it from the county court, see Property Code Sec. 24.0054(a-4)).

BEST PRACTICE

If the court waits too long, the case isn't being moved along in a quick fashion, which is the intent for eviction cases. TJCTC recommends waiting **one to two business days** after the six-day period has expired before sending up the appeal if the tenant doesn't pay the rent into the registry.

The Property Code does not contain a similar delay in transmitting the record to the county court if the tenant appeals by filing an appeal bond but fails to pay the first month's rent into the court registry. However, as discussed on ***page 60*** if the court has not yet transmitted the record to the county court, and the tenant fails to pay rent into the court registry within five days after filing the appeal bond, then the plaintiff may request a writ of possession from the justice court.

b. What if the Appeal Was Sent to County Court Even Though it Was Not Properly Perfected?

Remember, as described on ***page 59***, failing to pay rent into the registry **does not** mean the appeal is not perfected.

If the appeal was not properly perfected, but was sent to the county court, then the proper procedure is for the county court to **dismiss** the appeal. ***Cavazos v. Hancock***; ***Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc.***; ***In re A.J.'s Wrecker Service of Dallas***.

For example, suppose a defendant in an eviction case files an appeal bond in the justice court to appeal a judgment for possession but the defendant files the appeal bond three days after the due date. If the case is sent to county court, the county court may dismiss the appeal on the ground that the appeal was not properly perfected. ***Cavazos v. Hancock.*** In that case, the judgment of the justice court is not null and void and may be enforced through a writ of possession issued by the justice court.

c. What if the Appellant Fails to Pay the Filing Fee in the County Court?

According to the general rules, an appellant must pay the county court filing fees on appeal to a county court in accordance with Rule 143a. *Rule 506.1(i).* Since there is nothing in the rules specific to evictions that contradicts this, this rule applies to eviction cases as well.

Note, however, that if the appellant appealed by filing a Statement of Inability to Afford Payment of Court Costs, and the Statement was approved, this will cover the fees in county court. In this case, the tenant is not required to pay the county court filing fee or file a new Statement of Inability. *Property Code § 24.0052.*

Rule 143a states that if the appellant fails to pay the filing fees within 20 days after being told to do so by the county clerk, the appeal "shall be deemed **not perfected** and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted."

So, if the appellant does not pay the filing fee in county court, then the county court will dismiss the appeal as **not perfected**. In that case, the judgment of the justice court is still in effect and may be enforced through a writ of possession issued by the justice court. Once the case has been returned to the justice court, any appeal bond or cash deposit should be returned to the appellant.

d. What if the Defendant Properly Perfects Their Appeal but Fails to File an Answer in the County Court?

When a defendant appeals an eviction case, the clerk of the county court must notify the defendant that he must file a written answer in the county court within eight days if an answer was not filed in justice court. *Rule 510.10(b).* If no answer was filed in the justice court and the defendant fails to file a written answer within eight days after the transcript is filed in the county court, the allegations of the complaint may be taken as true, and a default judgment may be entered accordingly." *Rule 510.12.*

But this does not mean the judgment of the justice court is reinstated. "[I]t is well-settled that perfection of an appeal to county court from a justice court for trial de novo vacates and annuls the judgment of the justice court." ***In re Garza***; ***Williams v. Schneiber***; ***Mullins v. Coussons***; ***Poole v. Goode***.

If an appeal is properly perfected from the justice court to the county court, there is no longer any judgment that may be executed or enforced by the justice court. The justice court judgment is void.

If the defendant fails to file an answer in county court, then a judgment for possession may be entered against the defendant **by the county court** and a writ of possession may be issued **by the county court.**

e. What is a Writ of Procedendo?

A writ of procedendo is "an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment in a case, without attempting to control the inferior court as to what the judgment should be." *38 Tex. Jur. 3d Extraordinary Writs § 408 (2016)*. A writ of procedendo "is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment." *38 Tex. Jur. 3d Extraordinary Writs § 408 (2016).* "While originally 'procedendo' was a writ to compel a judge to proceed to judgment, in Texas... 'procedendo' has come to mean an appeals court's order to an inferior court to execute judgment." *38 Tex. Jur. 3d Extraordinary Writs § 408 (2016)*.

KEY POINT

County courts sometimes issue a writ of procedendo (or "an order of remand") to a justice court without realizing that if an appeal was properly perfected from the judgment of a justice court, then the judgment of the justice court is null and void and there is no longer any judgment that may be executed or enforced! Therefore, if a county court issues a writ of procedendo after an appeal has been **perfected**, there is no judgment pending or that may be revived in the justice court.

"If the appeal was not properly perfected….."

A justice court could treat a writ of procedendo from the county court as an order of dismissal **only if the appeal was not properly perfected** (including as a result of the failure of the appellant to pay filing flees in the county court).

As discussed above, if an appeal is not properly perfected but is sent to the county court, or if the appellant fails to pay the filing fee in the county court (in which case the appeal will be treated as not properly perfected), the proper procedure for the county court is to **dismiss** the appeal. And in that case the justice court judgment is not null and void and may be enforced by the justice court. ***Cavazos v. Hancock***; ***Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc.***; ***In re A.J.'s Wrecker Service of Dallas***.

6. Eviction Appeal and Contest Procedure Flowcharts

Click Here to Open the Eviction Appeal and Contest Procedure Flowcharts

7. Forms for Use in Eviction Cases

Forms and information packets relating to eviction cases may be found on the TJCTC forms and SRL webpages.

Chapter 5: Manufactured Home Evictions

A. When Do the Manufactured Home Eviction Rules Apply?

Manufactured home eviction rules under Chapter 94 of the Property Code apply to a landlord who leases a **lot** in a "**manufactured home community**" to a tenant for the purpose of putting a "**manufactured home**" on the lot. *Property Code § 94.002(a).*

A "manufactured home community" is a parcel of land on which **four** or more lots are offered for lease for installing and occupying manufactured homes. *Property Code § 94.001(4).*

These rules do **not** apply to:

- A landlord who owns a manufactured home and leases the manufactured home to the tenant;
- A tenant who leases a lot from a landlord in a "manufactured home community" for the placement of personal property to be lived in that is **not** a "manufactured home," (such as an RV); **or**
- A landlord who leases to his or her employee or agent.

Property Code § 94.002(b).

A "manufactured home" is defined as a "mobile home" or a "HUD-code manufactured home." *Property Code § 94.001(3); Occupations Code § 1201.003.*

Both a "mobile home" and a "HUD-code manufactured home" are:

- Built on a permanent chassis;
- Designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;
- Transportable in one or more sections;
- In the travelling mode, at least 8 feet in width or at least 40 feet long, or when erected on the site at least 320 square feet; **and**
- Furnished with the plumbing, heating, air conditioning and electrical systems of the home.

Occupations Code § 1201.003(12) (20).

KEY POINT

Recreational Vehicles ("RVs") were previously defined as manufactured homes and subject to manufactured home tenancy laws under Property Code Chapter 94. The legislature changed that in SB 1268 in 2013 by removing all references to recreational vehicles from Chapter 94 of the Property Code. Therefore, RV parks are now treated either as residential tenancies under Chapter 92 of the Property Code or as hotels hosting lodgers ***(see page 10)***, and the rules in Chapter 94 do not apply to RV parks.

B. Manufactured Home Leases

Term Length, Renewal, and Notice of Termination

A landlord of a manufactured home lot must offer a tenant a lease with an initial term of at least six months. But if the tenant requests a lease with a different lease period, the landlord and tenant may mutually agree to a shorter or longer lease period. The landlord and tenant may mutually agree to subsequent lease periods of any length for each renewal of the lease agreement. *Property Code § 94.052(a).*

A landlord must provide a tenant with a notice of termination **or** an offer to renew the lease:

- Not later than the **60th day** before the date the current lease term expires; **or**
- If the lease is a month-to-month lease, not later than the **60th day** before the date the landlord intends to terminate the current term of the lease.

Property Code § 94.055(a).

A landlord may ask a tenant to vacate the leased premises on less than 60 days' notice only if the landlord compensates the tenant in advance for relocation expenses, including the cost of moving and installing the manufactured home to a new location. *Property Code § 94.055(d).*

If the landlord offers to renew the lease, the landlord must notify the tenant of the proposed rent amount and any changes in the lease terms. The landlord must also inform the tenant that the tenant's failure to reject the landlord's offer to renew the lease no later than **30 days** before the current lease expires will result in the renewal of the lease under the modified terms proposed by the landlord. *Property Code § 94.055(b).*

Change in Land Use

If a landlord wants to terminate a lease early in order to change the manufactured home community's land use, he may do so but only if he gives the tenant **180 days'** notice before the date the land use will change. *Property Code § 94.204.* The landlord must send this notice to:

- the tenant;
- the owner of the manufactured home if the owner is not the tenant; **and**
- the holder of any lien on the manufactured home if he received a written notice of the name and address of the owner and lienholder.

Property Code § 94.204.

The notice must specify the date the land use will change and inform the tenant, owner and lienholder, if any, that the owner must relocate the manufactured home. The landlord must also place the notice in a conspicuous place in the manufactured home community. *Property Code § 94.204.*

Community Rules

"Manufactured home community rules" are the rules provided in a written document that establish the policies and regulations of the manufactured home community, including regulations relating to the use, occupancy, and quiet enjoyment and the health, safety and welfare of tenants of the manufactured home community. *Property Code § 94.001(5).*

COMMON PITFALL

May Not Waive Rights/Duties

A provision of a lease agreement or a manufactured home community rule that purports to waive a right or exempt a landlord or a tenant from a duty or from liability under Chapter 94 of the Property Code is void. *Property Code § 94.003.*

C. Manufactured Home Tenancy Eviction Procedures

1. General Procedures for Evictions Apply Except as Modified by Chapter 94

The general procedures and time limits that apply to all eviction cases also apply to manufactured home evictions **except** to the extent that Chapter 94 of the Property Code says something different. This means that, in general, Chapter 24 of the Property Code

and Rule 510 will apply in manufactured home eviction cases, except as specifically altered or addressed by Chapter 94.

a. Grounds for Eviction

A landlord may terminate the lease and evict a tenant for violation of a lease provision, including violation of a manufactured home community rule that was incorporated into the lease. *Property Code § 94.205.*

b. Nonpayment of Rent in Manufactured Home Eviction Cases

A landlord may terminate the lease and evict a tenant for nonpayment of rent if the tenant fails to timely pay:

- rent, **or**
- other amounts due under the lease that total at least the amount of one month's rent.

For example, if Jimmy's rent is $500, and he pays the landlord $300, the landlord could give a notice to vacate as described below and evict Jimmy. However, if Jimmy is current on rent, but owes the landlord a $50 trash fee, and a $75 pet fee, and a $60 late fee, the landlord cannot evict Jimmy since the total of these "other amounts" is less than $500, his monthly rent.

Notice to Vacate and Opportunity to Cure

The landlord must first notify the tenant in writing that the payment is delinquent. If the tenant has not paid the delinquent payment in full to the landlord before the **10th day** after the date the tenant receives the notice from the landlord, then the landlord must give the tenant a three-day notice to vacate (unless the parties have contracted for a shorter or longer period in a written lease or agreement), and the landlord may then file an eviction suit. *Property Code §§ 94.206; 24.005.*

A landlord may also terminate a lease to change the land use of the manufactured home community as long as he gives the tenant, owner and lienholder, if any, the required 180 days' notice discussed above. *Property Code § 94.204.*

c. Notice to Lienholder

In a manufactured home eviction suit, if the tenant has disclosed the name and address of a lienholder of the manufactured home, as required by Property Code § 94.054, then the landlord must give written notice of any eviction proceedings to the lienholder no later than the third day after the date the landlord files a petition for a judgment for possession. *Property Code § 94.203(b).*

d. Default Judgment

The court must notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the leased premises by first class mail not later than 48 hours after entry of the judgment. The court must also send a copy of the judgment to the owner of the manufactured home if the tenant is not the owner and to any person who holds a lien on the manufactured home if the court has been notified in writing of the name and address of the owner and lienholder*. Property Code § 94.203(e).*

e. Retaliation and Rent Deduction Defenses

A tenant in a manufactured home eviction may raise the same retaliation and rent deduction defenses as a tenant in a residential eviction. ***See page 38.***

Property Code § 94.256 expressly provides that retaliation by the landlord "is a defense and a rent deduction lawfully made by the tenant under [Chapter 94] is a defense for nonpayment of the rent to the extent allowed by [Chapter 94]." Section 94.203(c) further provides: "If the court finds that the landlord initiated the eviction proceeding to retaliate against the tenant in violation of Section 94.251, the court may not approve the eviction of the tenant."

Thus, as in a residential eviction case, a tenant may raise retaliation by the landlord as a defense in a manufactured home eviction suit. The tenant may also raise as a defense to a claim of nonpayment of rent that the tenant was entitled to a rent deduction because of the exercise of some other right under Chapter 94, such as the tenant's repair and deduct remedies under Property Code § 94.157. If a tenant raises these issues as a defense to eviction the court will have to resolve them before entering a judgment.

However, if the tenant wishes to recover civil penalties, actual damages, court costs or reasonable attorney's fees either for retaliation under Section 94.251 or for violation of the landlord's obligation to repair or remedy conditions of the premises under Section 94.159, or for some other violation of Chapter 94 under Section 94.301, the tenant must file a separate suit to recover on those claims. As Property Code § 94.256 makes clear: "Other judicial actions under this chapter [Chapter 94], excluding an action that would be permitted under Chapter 24, may not be joined with an eviction suit or asserted as a defense or cross-claim in an eviction suit."

The actions by a landlord that constitute retaliation in a manufactured home eviction are the same as in a residential eviction. *Property Code § 94.251.* So are the actions by the landlord that are expressly defined as non-retaliation. *Property Code § 94.253.* ***For more information, see pages 38–40.***

f. Writ of Possession

A court may not issue a writ of possession in favor of a landlord before the **30th day** after the date the judgment for possession is rendered **if** the tenant has paid the rent amount due under the lease for that 30-day period. *Property Code § 94.203(d).* This is because moving a manufactured home can be difficult to schedule and execute, so the tenant can basically "buy" a month before having to relocate by paying one month's rent.

g. Whose Job is it to Move the Manufactured Home Off of the Lot?


KEY POINT

Sometimes, neither party wants to move the manufactured home, especially if it is dilapidated. In this situation, the tenant will occasionally just leave the home behind, and the landlord wants to know what to do with it. The constable can, but is not required to, remove it from the premises during execution of the writ of possession. The constable will virtually never assume this obligation, especially if the home is unable to be moved in its current condition. The landlord can have a moving company move and store the property during execution of the writ of possession. If neither of these occur, the landlord can then deal with the property just like they would any other discarded personal property, such as a broken-down couch left in a living room or a car that no longer runs left in a driveway or yard.

If the landlord removes the manufactured home from the manufactured home lot after execution of a writ of possession, the landlord must send a written notice to the tenant concerning the location of the manufactured home no later than the 10th day after the manufactured home is removed. *Property Code § 94.203(f).* The notice must be sent to the tenant's most recent mailing address as reflected in the landlord's records. The notice must also be sent to the owner of the manufactured home if the landlord was given written notice of the owner's name and address. *Property Code § 94.203(d).*

D. Landlord's Remedy for Early Termination by Tenant

The maximum amount a landlord may recover as damages for a tenant's early termination of a lease is the amount of rent that remains outstanding for the term of the lease plus any other amounts owed for the remainder of the lease under the terms of the lease. *Property Code § 94.201(a).* However, if the tenant's manufactured home lot is re-occupied before the 21st day after the date the tenant surrenders the lot, the maximum amount the landlord may obtain as damages is one month's rent. *Property Code § 94.201(b).*

A landlord has a duty to mitigate his damages (attempt to re-lease the lot) if a tenant vacates the manufactured home lot before the end of the lease term, and a provision of a lease that purports to waive a tenant's right or to exempt a landlord from this duty is void. *Property Code § 94.202.*

Chapter 6: Commercial Evictions

A. What is Commercial Rental Property?

Property Code § 93.001(b) defines **"**commercial rental property" as "rental property that is not covered by Chapter 92." Chapter 92 is entitled "Residential Tenancies" and applies "only to the relationship between landlords and tenants of residential rental property." *Property Code § 92.002.* Therefore, commercial rental property is defined as any rental property that is not residential rental property!

B. The Eviction Process

KEY POINT

The general procedures and time limits that apply to all eviction cases also apply to commercial evictions. This means that in general, Chapter 24 of the Property Code and Rule 510 will apply, except where Chapter 93 says something different.

Note that the requirements to include the amount of the appeal bond and the monthly rent in the judgment **do not** apply to commercial evictions, but the requirement to pay rent into the registry for nonpayment of rent evictions (unless appealed with a cash deposit) **does**.

COMMON PITFALL

One area that requires special attention in a commercial eviction suit is a claim for back rent. Rule 510 permits a landlord to join a suit for back rent with an eviction suit but only if "the suit for rent is within the jurisdiction of the justice court." In commercial evictions the amount of back rent claimed at the time the petition is filed may very well exceed the jurisdictional limit of a justice court. If so, the justice court must still hear the eviction case in order to determine the right of immediate possession of the premises, but the landlord's claim for back rent would have to be filed in a separate suit in a district or county court having jurisdiction over a claim for that amount.

Keep in mind that the amount in controversy is determined by the plaintiff's good faith pleading at the time the suit is filed. If the court has jurisdiction of a back rent claim because it was less than the jurisdictional limit at the time the suit was filed, but additional damages accrued due to the **mere passage of time** after the suit was filed (such as

additional rent coming due at the beginning of the month), the court continues to have jurisdiction even if the back rent is now more than the limit. ***Peek v. Equipment Serv.***; ***French v. Moore***; ***Flynt v. Garcia***; ***Continental Coffee Prods. v. Cazarez***; ***Kendziorski v. Saunders***; ***Carlson's Hill Country Beverage, L.C. v. Westinghouse Road Joint Venture.***

C. Procedure for Termination of Tenant's Right of Possession Due to Certain Unlawful Uses of Premises

No matter what the lease might say, a tenant's right of possession terminates, and the landlord has a right to recover possession of the leased premises (by filing an eviction case) if the tenant is using the premises or allowing the premises to be used for the purposes of prostitution, solicitation of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution, as described by the Penal Code. *Property Code § 93.013(a).*

A landlord who reasonably believes a tenant is using the leased premises or allowing the leased premises to be used for such a purpose may file an eviction suit under Chapter 24 seeking possession of the premises and unpaid rent, including rent for any period of occupancy ***after*** the tenant's right of possession terminates. *Property Code § 93.013(b).*

No Termination Notice Needed and No Notice to Vacate Longer Than Three Days Needed

Notwithstanding Sections 24.005 or 91.001 of the Property Code, or any other law or a provision in the lease to the contrary, the landlord is not required for purposes of an eviction suit on these grounds:

- to give a notice of proposed eviction or a notice of termination before giving notice to vacate; **or**
- to give the tenant **more than three days' notice** to vacate before filing the suit.

Property Code § 93.013(c).

This means that even if the written lease requires a 14-day notice to vacate, the landlord could instead give just a three-day notice.

A pending suit brought by the attorney general or a district, county, or city attorney under Chapter 125, Civil Practice and Remedies Code, alleging that the activities described above

are taking place on the premises is prima facie evidence (a presumption that may be proved wrong with other evidence) that the tenant's right of possession has terminated, and the landlord has a right to recover possession of the premises. *Property Code § 93.013(d).*

A final, non-appealable determination by a court under Chapter 125, Civil Practice and Remedies Code, that the activities described above are taking place on the premises creates an irrebuttable presumption (cannot be proved wrong) that the tenant's right of possession has terminated, and the landlord has a right to recover possession of the premises. *Property Code § 93.013(e).*

Chapter 7: The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act ("SCRA") *(50 U.S.C. § 3901, et seq)* is a federal law signed by President Bush on December 19, 2003, which imposes certain procedural requirements in all *civil* cases (including eviction cases) to protect members of the armed services and their families. These requirements apply to any court of any state whether or not the court is a court of record. *50 U.S.C. § 3911(5).*

Some of the provisions below apply to eviction cases specifically. For information on the SCRA in other civil cases, please see Chapter 4 of the *Civil Deskbook*.

A. Requirements for a Default Judgment

The SCRA imposes special requirements in any case in which the defendant does not make an appearance in order to protect servicemembers from being subject to a default judgment while they are unable to defend a case due to their service requirements.

1. Affidavit Requirements

In any eviction suit in which the defendant does not make an appearance, **before entering a default judgment**, the court "shall require the plaintiff to file with the court an affidavit:

- Stating whether or not the defendant is in military service **and showing necessary facts to support the affidavit**; **or**
- ...[S]tating that the plaintiff is unable to determine whether or not the defendant is in military service."

50 U.S.C. § 3931(b).

The affidavit may be a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. *50 U.S.C. § 3931(b)(4).*

Note: There is no requirement for an SCRA affidavit to be filed unless the plaintiff is seeking a default judgment.

A court **may not** force a plaintiff to include an SCRA affidavit with the filing of a case. If the plaintiff hasn't provided one, and the defendant doesn't appear, the consequence is there can be no default judgment until the affidavit is filed.

COMMON PITFALL

Typically, plaintiffs will attach a printout from a **Department of Defense web page**, but they are not required to use that form as long as they show "necessary facts" to support the affidavit. For example, in one case a plaintiff submitted an affidavit from the defendant's mother stating that he was not in military service!

A person who files a false affidavit or makes a false statement, declaration, verification, or certificate knowing it to be false is subject to prosecution under Title 18 of the United States Code and may be fined and/or imprisoned for up to one year. 50 U.S.C. § 3931(c).

What if No Affidavit is Filed or Affidavit Doesn't Show "Necessary Facts to Support"?
If the plaintiff fails to file an affidavit under the SCRA in an eviction case, the court **may not** grant a default judgment.

If the plaintiff files an affidavit stating that the defendant is not in military service but fails to "show necessary facts to support the affidavit," the court **may not** grant a default judgment.

2. What Does the Court Do Once the Affidavit is Filed?

If a proper affidavit under the SCRA is filed, there are three possibilities:

- **The defendant is *not* in military service**: The court may enter a default judgment.

- **The court is *unable to determine* whether the defendant is in military service**: The court may – but does not have to – require the plaintiff to post a bond in an amount approved by the court to protect the defendant if it turns out that the defendant is in military service. *50 U.S.C. § 3931(b)(3).* This frequently is the case if a defendant has a common name, and the plaintiff doesn't have identifiers such as birthdate or social security number.

- **It appears that the defendant *is* in military service**: The court may not enter a judgment until after the court **appoints an attorney** to represent the defendant. *50 U.S.C. § 3931(b)(2).*

- In this situation, on the request of the attorney or on the court's own motion, the court must grant a stay of proceedings for a minimum of 90 days under certain circumstances. (See below for additional information)

How Does the Court Find an Attorney to Appoint?

It is best for the court to have a plan in place before the need to appoint counsel arises. Courts have found success using their county's criminal appointment list, contacting local bar associations, contacting local veterans' groups or military bases, JAG attorneys, etc.

3. What if the Court Entered a Default Judgment When It Shouldn't Have?

If a default judgment is entered against a servicemember who did not have notice of the action during his period of military service, or within 60 days after termination of or release from military service, the court **must** re-open the judgment upon application of the servicemember for the purpose of allowing the servicemember to defend the action if it appears that:

- The servicemember was materially affected in making a defense to the action by reason of military service; **and**
- The servicemember has a meritorious or legal defense to the action or some part of it.

50 U.S.C. § 3931(g)(1).

A request to vacate a default judgment must be made by or on behalf of the servicemember no later than 90 days after the date of termination of or release from military service. *50 U.S.C. § 3931(g)(2).*

COMMON PITFALL

Obviously, if this situation arises, a justice court could be faced with setting aside a default judgment and re-opening a case even though the court would – in the absence of the SCRA – have lost plenary power to set aside a default judgment. But the SCRA pre-empts the usual limitations in Rules 507.1 and 510 and allows the court to do this.

4. Stay of Eviction Case if Servicemember Does Not Appear

If the defendant has not appeared in the case and the court determines that **he is in military service** and appoints counsel as described above, **the court shall grant a stay of**

proceedings for a minimum of 90 days upon request of counsel **or** upon the court's own motion if the court determines that:

- There may be a defense to the action, and it cannot be presented without the presence of the defendant; **or**
- After due diligence counsel has been unable to contact the defendant or otherwise determine whether a meritorious defense exists.

50 U.S.C. § 3931(d).

What is a "Meritorious Defense"?

This means that the servicemember must have an actual defense to the claim raised by the plaintiff (though it doesn't mean that the servicemember will necessarily win at trial). For example, say an eviction is filed against a servicemember for having an unauthorized pet. Counsel is appointed, and they determine that the servicemember indeed had the pet. There is no reason to implement a 90 day stay, since the servicemember is not being prevented from presenting a defense to the action. On the other hand, say the eviction is nonpayment of rent, and the servicemember had made some repairs and deducted the expenses from their rent payment. In this case, there is a defense that can be raised, even if it is ultimately shown at trial that the servicemember didn't properly execute their repair and deduct remedy ***(see page 119)***.

5. Stay of Eviction Case if Servicemember Receives *Actual Notice*

If a servicemember receives actual notice of an action against him (such as service of a citation) while he is in military service or within 90 days after the end of his service, then at any time before a final judgment is entered in the case, the court **may** stay the case for not less than 90 days on its own motion.

The court **must** stay the case upon application of the servicemember if the application includes:

- a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemembers' ability to appear and stating a date when the servicemember will be available to appear; **and**

- a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents his appearance and that military leave is not authorized for the servicemember at the time of the letter.

50 U.S.C. § 3932(b).

A servicemember who is granted a stay on this ground may apply for an additional stay, and if it is denied, the court **must** appoint an attorney to represent the servicemember. *50 U.S.C. § 3932(d).* ***See page 78*** for information on appointing an attorney under this provision. If a stay is denied, the servicemember may not obtain a stay under the procedures for a defendant who has not appeared in the case as described above. *50 U.S.C. § 3932(e).*

6. Stay of Eviction Case for Certain Premises and Adjustment of Lease Obligations

A justice court may also stay an eviction case concerning residential premises that are occupied by a servicemember or the dependents of a servicemember and for which the monthly rent does not exceed $3,991.90 (as of January 1, 2020). *50 U.S.C. § 3951(a).* The amount of monthly rent escalates each year. *50 U.S.C. § 3951(a)(2).*

If a suit is filed for eviction of a servicemember or his dependents from such premises, the court may on its own motion, and **must** if a request is made by or on behalf of a servicemember ***whose ability to pay the agreed rent is materially affected by military service***:

- Stay the proceedings for 90 days unless in the opinion of the court, justice and equity require a longer or shorter time; **or**
- Adjust the obligations under the lease to preserve the interests of all parties.

50 U.S.C. § 3951(b).

If a stay is granted the court may grant to the landlord "such relief as equity may require." *50 U.S.C. § 3951(b).*

This is a separate stay provision (in addition to the ones discussed above) and to be eligible for a stay under this section the servicemember **does not** have to present a letter

from his commanding officer, but instead **must** show that his ability to pay his rent is materially affected by his military service.

If the court grants relief to the servicemember under this section, the court **may** also specify an amount of rent to be paid to the landlord while the case is pending, and the Secretary of the relevant service branch **must** make an allotment of the servicemember's pay to satisfy the terms of the court's order, subject to the Secretary's regulations concerning the maximum amount of a servicemember's pay that may be allotted under the SCRA. *50 U.S.C. § 3951(d).*

7. Lease Termination

For more information on how these provisions were adopted into Ch. 92 of the Property Code concerning Residential Tenancies, ***see page 168*****.**

When a Servicemember May Terminate

A servicemember may terminate a lease of premises occupied or intended to be occupied by a servicemember or his dependents for a residential, professional, business, agricultural, or similar purpose if:

- The lease is executed by or on behalf of a person who thereafter enters military service; **or**
- The servicemember, while in military service, executes the lease and thereafter receives orders to permanently relocate or deploy for not less than 90 days.

50 U.S.C. § 3955(a), (b).

Method of Termination

To terminate the lease the servicemember must deliver a written notice of termination and a copy of his orders to the landlord by personal delivery, business carrier or by mail with a return receipt requested. Oral termination is not sufficient. *50 U.S.C. § 3955(c).*

When Termination is Effective

If the lease provides for monthly payment of rent, the termination is effective 30 days after the first date on which the next rental payment is due after the date on which the notice is delivered. *50 U.S.C. § 3955(d)(1).* For example, if rent is due on the first day of the month, and notice of termination is given on August 5th, the next rental payment is due on

September 1st, so the lease termination is effective 30 days after September 1st, which is October 1st.

For any other lease, such as one requiring a quarterly or yearly rental payment, termination is effective the last day of the month following the month in which notice is delivered. *50 U.S.C. § 3955(d)(1).* For example, if the lease requires quarterly rental payments and notice of termination is given on Aug. 5th, the lease termination is effective on September 30th.

How Rent is Handled

A servicemember who terminates a lease under the SCRA is required to pay for rent only for those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion within 30 days of the effective date of termination. *50 U.S.C. § 3955(e), (f).*

Upon application by the lessor to a court before the termination date provided in the written notice, the relief granted to a servicemember relating to termination of the lease under the SCRA "may be modified as justice and equity require." *50 U.S.C. § 3955(g).*

Chapter 8: Contract for Deed

A. What is a Contract for Deed?

A **contract for deed** or "executory contract" is a contractual relationship where instead of paying rent, a buyer makes monthly payments toward the purchase price of real property. When the purchase price is paid in full, the purchaser receives the deed. ***Kazmir v. Benavides***; ***Malatesta v. Dove Meadows Homeowners Assoc.*** Such a contract must be in writing; it cannot be an oral agreement. *Property Code §§ 5.021, 5.072(a); Property Code § 5.022 (containing a suggested form)*.

Even though a buyer may appear to be paying rent in these cases, what the buyer is really paying is a monthly mortgage payment and there is no landlord/tenant relationship unless it is created by the contract or by a separate lease. If the parties do not have a landlord-tenant relationship, the remedy of eviction is not available, nor is any other eviction-related process such as a writ of possession.

On the other hand, if:

- a residential lease was executed concurrently with the contract for deed, **or**
- if a landlord/tenant relationship was created as a result of terms of the contract for deed,

the landlord may seek eviction for a breach of the lease terms (but only in accordance with the provisions of Subchapter D, Chapter 5 of the Property Code). *Property Code §5.064.*

In a contract for deed case, the superior title remains with the seller until the purchaser fulfills his part of the contract. If the purchaser defaults under the contract, the seller is entitled to possession of the property. But "the rescission of a contract for deed with the forfeiture of the purchaser's payments and interest in the property is a harsh remedy not favored by the courts." Therefore, "the seller's right to retake possession of the property under the contract's forfeiture provision may be defeated by the purchaser 'pleading and proving such facts as would make it inequitable to enforce it'." ***Reeder v. Curry***, *citing* ***Stevenson v. Lohman***.

A contract for deed may specify the county in which the contract will be enforced. *Civil*

Practice and Remedies Code § 15.092(a). If the contract does not specify where the contract will be enforced, it may be heard in the county and precinct "in which the contract was to be performed." *Civil Practice and Remedies Code § 15.092(a).*

B. What to Look for

If an eviction suit is filed over a written "rent to own" or "lease purchase" agreement, the case probably involves a contract for deed. The court should examine the pleadings and contract to determine the following:

- Is title to real property at issue in the case?
    - **If yes**, then the court does not have jurisdiction and must dismiss or stay the case.
    - **If no**, then the court may proceed.

- Is there a landlord/tenant relationship either by virtue of a separate lease entered into concurrently with the contract for deed or due to terms of the contract for deed?
    - **If no**, then the seller/landlord does not have grounds for an eviction since there is no landlord/tenant relationship.
    - **If yes**, then the seller/landlord may proceed with an eviction but only after following the procedures set forth in Subchapter D, Chapter 5 of the Property Code.

See the sections below for more information on how the court answers those two questions.

1. Is Title to Real Property at Issue?

If an eviction suit is filed in which either party alleges that the parties entered into a "rent to own" or "lease purchase" agreement, a justice court should accept the filing but review the pleadings to determine whether title to real property is at issue.

"If it becomes apparent that a genuine fact issue regarding title exists in a forcible detainer suit, the court does not have jurisdiction over the matter.... The threshold question is whether the... court... was required to determine an issue of title to resolve the right to

immediate possession. If the right to immediate possession depends upon title to the property under the terms of the contract for deed, the... court... lacks subject matter jurisdiction to issue the writ of possession...." ***Aguilar v. Weber***; ***Rice v. Pinney***; ***Mitchell v. Armstrong Capital Corp***; ***Haith v. Drake***; ***Rodriguez v. Sullivan***; ***American Spiritualist Ass'n v. Ravkind***.


KEY POINT

If it becomes apparent that a genuine issue exists regarding title, then the justice court does not have jurisdiction to hear the case and should either abate the case pending a determination of the title issue or dismiss the case for lack of jurisdiction. *Government Code § 27.031.* On the other hand, if title to the property is not at issue, or the right to immediate possession does not necessarily require the resolution of a title dispute, then the court may proceed to hear the case.

2. Is There a Landlord/Tenant Relationship?

Whether or not there is a landlord/tenant relationship will depend on the terms of the agreement entered into by the parties. If the contract for deed does not create a landlord/tenant relationship, and if the parties did not create a separate residential lease at the time they signed the contract for deed, then the seller does not have the remedy of eviction. In that situation the seller's remedies on default of the contract for deed by the buyer include rescission or forfeiture and acceleration after notice is given under Property Code § 5.064. The buyer must be given an opportunity to cure the default under Section 5.065. ***Sharp v. Smith***; ***American Nat. Property and Cas. Co. v. Patty***.

If a residential lease is included in or signed concurrently with a contract for deed where the delivery of the deed will not occur within 180 days of the date the contract is signed, then the landlord/seller may proceed with an eviction but only after complying with certain procedures set forth in Subchapter D. *Property Code § 5.062(c).*

These procedures include:

- A notice of default in 14-point boldface print specifying the nature of the default (and amount of money due if it is failure to make a payment) and the remedy the seller intends to enforce;
- A right by the tenant/purchaser to cure the default **within 30 days** after the date notice is given;

- If the contract for deed is for more than three years, an annual accounting statement that the landlord/seller must provide the tenant/purchaser at the beginning of each year and liquidated damages of either $100 or $250 plus reasonable attorney's fees for failure to do so; **and**
- If the contract for deed is for more than three years, the right to deduct the amount owed to the tenant/purchaser by the landlord/seller for any violations of Subchapter D from payments due under the contract for deed "without taking judicial action."

Property Code §§ 5.063, 5.065, 5.077, 5.084.

Subchapter D contains many protections that are expressly excluded from a contract for deed under Section 5.062(e) and protections that are excluded if the contract for deed is less than three years under Section 5.062(f). It is therefore important in a contract for deed case to review the precise application of Subchapter D to the contract for deed at issue.

COMMON PITFALL

If the negotiations that preceded the execution of the contract for deed were in a language other than English then the notice of default, annual accounting statements and all transaction documents and disclosure notices **must be in that language**. *Property Code § 5.068.*

Subchapter D also prohibits a seller from including as a term of a contract for deed a provision that:

- imposes an additional late-payment fee exceeding the lesser of:
  - eight percent of the monthly payment under the contract; **or**
  - the actual administrative cost of processing the late payment;
- prohibits the purchaser from pledging his interest in the property as security to obtain a loan to place improvements on the property;
- imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;
- forfeits an option fee or other option payment paid under the contract for a late payment; **or**
- increases the purchase price, imposes a fee or charge of any type, or otherwise

penalizes a purchaser for requesting repairs or exercising any other right of a residential tenant under Chapter 92 of the Property Code.

Property Code § 5.073.

A provision of a contract for deed that attempts to waive a right of a tenant/purchaser or exempt a landlord/seller from a liability or duty under Subchapter D is void. *Property Code § 5.073.*

Chapter 9: Writs of Retrieval, Re-Entry, and Restoration

A. Writ of Retrieval

A writ of retrieval is an order from a justice court authorizing a person to enter their **residence** or **former residence**, accompanied by a peace officer, to retrieve specific items of personal property when the current occupant is denying the person entry. *Property Code § 24A.002(a).*

1. Application for a Writ of Retrieval

Generally, the application may be filed in any justice court. However, if the applicant and the current occupant are currently involved in a divorce or annulment suit, or the items being sought by the applicant are subject to a decree of divorce or annulment between the applicant and current occupant, the application must be filed in the court in which the suit is pending, or which has jurisdiction over the decree. *Property Code § 24A.002(a-1).*

An application for a writ of retrieval must:

- Certify that the applicant is unable to enter the residence because the current occupant of the residence has either denied the applicant access to the residence or poses a clear and present danger of family violence to the applicant or the applicant's dependent;

- Certify that the applicant is not the subject of a protective order under the Family Code, an Emergency Protective Order, or another court order prohibiting entry to the residence, or otherwise prohibited by law from entering the residence;

- Certify whether, to the best of the applicant's knowledge, the parties are subject to a pending divorce or annulment suit or the applicant's right to possession is subject to a decree of divorce or annulment between the applicant and current occupant;

- Allege that the applicant or the applicant's dependent requires personal items located in the residence that are only of the type listed below;

- Describe the items to be retrieved with specificity; **and**

- Allege that the applicant or the applicant's dependent will suffer personal harm if the items are not retrieved promptly.

The applicant must also include a lease or **other documentary evidence** (such as a utility bill or a sworn statement) that shows the applicant is currently or was formerly authorized to occupy the residence. *Property Code § 24A.002(b).*

a. Fees

An applicant requesting a writ of retrieval must pay the standard filing fee in a civil case. Many counties have also set a fee (ranging from $85 to $200) for execution of a writ of retrieval under Local Government Code § 118.131. An applicant who cannot afford the fees may file a Statement of Inability to Afford Payment of Court Costs.

b. What Items May be Retrieved?

A writ of retrieval may only be used to retrieve certain specific items of personal property listed in the Property Code. The items must fall into one of the following categories:

- Medical records.
- Medicine and medical supplies.
- Clothing.
- Child-care items.
- Legal or financial documents.
- Checks or bank or credit cards in the name of the applicant.
- Employment records.
- Personal identification documents.
- Copies of electronic records containing legal or financial documents.
- Assistance animals or service animals, as defined by Human Resources Code Section 121.002, used by the applicant or applicant's dependent.
- Wireless communications devices, as defined by Transportation Code Section 545.425(a), of the applicant or applicant's dependent. **or**
- Tools, equipment, books, and apparatus used by the applicant in the applicant's trade or profession.

COMMON PITFALL

Property Code § 24A.002(b)(3).

If the property that the applicant wishes to retrieve does not fall within one of these categories, the person may be able to obtain it by filing a small claims case for the recovery of personal property, but not by filing an application for a writ of retrieval. *Rule 505.2.*

c. Bond Required from Applicant

Before a judge may issue a writ of retrieval, the applicant must execute a bond:

- in an amount required by the judge;
- payable to the occupant of the residence;
- with two or more "good and sufficient non-corporate sureties" or one corporate surety authorized to issue bonds in Texas; **and**
- conditioned on the applicant paying all damages and costs ordered against the applicant for wrongful property retrieval.

Property Code § 24A.002(c).

The applicant must deliver the bond to the judge issuing the writ for the judge's approval and the bond must be filed with the court. *Property Code § 24A.002(d).*

Can the Judge Waive the Bond Requirement?

The judge may **only** waive the bond requirement when issuing a temporary ex parte writ of retrieval. *Property Code § 24A.0021(b).* Issuance of a temporary ex parte writ of retrieval is discussed below.

BEST PRACTICE

However, often the monetary value of the items that the applicant needs to retrieve is low, and/or the applicant doesn't have access to much money. One option in that scenario includes setting a very low bond (as low as $1, if warranted). Additionally, the applicant can make a cash deposit instead of a surety bond if needed.

When Should the Bond be Returned to the Applicant?

Chapter 24A of the Property Code is silent on when the bond should be returned to the applicant. TJCTC's recommendation is to return it after the ten-day window for the occupant to file a complaint after execution of the writ has expired. ***See page 93.***

2. Issuance of the Writ of Retrieval

Ordinarily, a writ of retrieval may be issued only after notice and an opportunity for a hearing is provided to the occupant. However, in some circumstances a judge may issue an ex parte writ of retrieval without providing notice and a hearing to the occupant. Each situation is discussed below.

a. Temporary Ex Parte Writ of Retrieval

A judge may issue a writ of retrieval **without** providing notice and a hearing to the occupant **only if** the judge finds at a hearing on the application that:

- The conditions listed in subsection b. below are met;
- The current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent; **and**
- The personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted.

Property Code § 24A.0021(a).

A temporary ex parte writ of retrieval must state the period during which it is valid, which may not be more than five days. *Property Code § 24A.0021(d).* As noted above, the judge may waive the bond requirement when issuing a temporary ex parte writ of retrieval. *Property Code § 24A.0021(b).*

Before issuing a temporary ex parte writ of retrieval, the judge may recess the hearing on the application and notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The judge must reconvene the hearing before 5:00 p.m. that day regardless of whether or not the current occupant attends the hearing or brings the personal property to the court. *Property Code § 24A.0021(c).*

b. Following Notice to the Occupant and an Opportunity for a Hearing

If the requirements are not met for a temporary ex parte writ as described above, a hearing must be held before issuance of a writ of retrieval, including sufficient notice to

the current occupant. Following the hearing, a judge may issue a writ of retrieval if the judge finds that:

- The applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the personal property of the applicant or the applicant's dependent;
- The applicant is not the subject of a protective order under the Family Code, an Emergency Protective Order, or another court order prohibiting entry to the residence;
- There is sufficient evidence of urgency and potential risk of harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly;
- The applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; **and**
- The current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

Property Code § 24A.002(e).

The statute does not say how much notice to the occupant is "sufficient;" this is up to the judge taking into account the applicant's urgent need for the items to be retrieved. The judge may allow the occupant to be heard electronically, by telephone, or via video conference in order to expedite the process.

The statute also does not say how notice should be delivered, but it should be done in a way that is most likely to make sure that the person does get notice, while also moving the case forward quickly.

3. Execution of the Writ of Retrieval

If a writ of retrieval is granted, a peace officer must accompany and assist the applicant in making the authorized entry and retrieving the personal property listed in the application. *Property Code § 24A.003(a).*

If the current occupant is present at the time of the entry, the peace officer must provide the occupant with a copy of the writ authorizing the entry and retrieval. *Property Code § 24A.003(b).*

A landlord who permits or facilitates entry into a residence under a writ of retrieval is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry. *Property Code § 24A.004.*

Inventory Taken by Officer and Given to Occupant and Court

Before removing the property from the residence, the applicant must give the property to the peace officer who must create an inventory listing the items taken from the residence. The officer must give a copy of the inventory to the applicant and the occupant, if there, or leave a copy for the occupant in a conspicuous place in the residence if the occupant is not there. The officer must file the original inventory with the court. *Property Code § 24A.003(c).*

Interference with Execution of the Writ

A person commits an offense (a Class B misdemeanor) if the person interferes with a person or a peace officer entering a residence and retrieving personal property under the authority of a writ of retrieval. It is a defense to prosecution if the person did not receive a copy of the writ or other notice that the entry and retrieval was authorized. *Property Code § 24A.005.*

4. Hearing Requested by Occupant After Execution of Writ of Retrieval

The occupant may file a complaint, not later than the 10th day after the date of the authorized entry, in the court that issued the writ alleging that the applicant took property belonging to the occupant or the occupant's dependent. The court must promptly hold a hearing on the complaint and rule on the disposition of the disputed property. *Property Code § 24A.006.*

If the occupant doesn't file a complaint within the ten-day window, they could still file a small claims case alleging that the applicant took property belonging to the occupant or occupant's dependent. The case would then proceed with the normal small claims case timeframes and procedures.

5. Writ of Retrieval Flowchart

Click Here to Open the Writ of Retrieval Flowchart

6. Forms

Forms relating to writs of retrieval may be found on the TJCTC forms and SRL webpages.

B. Writ of Re-Entry

A writ of re-entry is an ex parte order requiring a landlord to let a tenant back into the premises after the landlord has locked the tenant out in violation of Section 92.0081 of the Property Code (for a residential tenant) or Section 93.002 of the Property Code (for a commercial tenant).

If the tenant has a manufactured home tenancy under Chapter 94 of the Property Code, the same rights and procedures will apply as for a residential tenant. This is because the provisions in Chapter 92 apply to "relationships between landlords and tenants of residential rental property," and a lot in a manufactured home community could be considered "residential rental property." *Property Code § 92.002.*

A landlord may exercise lockout rights and pursue an eviction case at the same time. The rights of a landlord or a tenant in an eviction suit are not affected by the writ of re-entry procedures.
Property Code §§ 93.003(m), 92.009(m), 92.0081(l).

1. Landlord's Lockout Rights for a Residential/Manufactured Home Tenant

A landlord has a right to lock out a residential tenant in certain situations, but this right is quite limited and subject to important statutory protections for the tenant. This contrasts with a landlord's right to lock out a commercial tenant, which is much more extensive and discussed in the section below.

A landlord may not intentionally prevent a residential tenant from entering the leased premises except by judicial process unless the exclusion results from:

- bona fide repairs, construction, or an emergency;
- removing the contents of premises abandoned by a tenant ***(see page 143)***; **or**
- changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent.

Property Code § 92.0081(b).

Removal of Fixtures

A landlord (of either a commercial or a residential tenant) also may not remove a door, window, or attic hatchway cover or a lock, latch, hinge, hinge pin, doorknob, or other mechanism connected to a door, window or attic hatchway cover from premises leased to a tenant or remove furniture, fixtures, or appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bona fide repair or replacement. *Property Code § 92.081(a), 93.002(b).*

a. Procedures for Lockout for Delinquent Rent

Although Section 92.0081(b) allows the landlord to change the locks in some situations where the tenant is delinquent in rent, there are extensive limitations and restrictions. Failure by the landlord to follow the proper procedure will allow the tenant several remedies, discussed beginning on ***page 97***.

A landlord **may not** change the door locks, or otherwise intentionally prevent a tenant from entering the leased premises based on **delinquent rent *unless***:

- the landlord's right to change the locks because of the tenant's failure to timely pay rent is placed in the lease;
- the tenant is delinquent in paying all or part of the rent; **and**
- the landlord has mailed (at least five days before locks changed) or hand-delivered or posted on the inside of the tenant's main entry door (at least three days before locks are changed) a written notice stating:
    - the earliest date the landlord proposes to change the door locks;

- the amount of rent the tenant must pay to prevent changing of the door locks;

- the name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be discussed or paid during the landlord's normal business hours; **and**

- in underlined or bold print, the tenant's right to receive a key to the new lock at any hour, **regardless of whether the tenant pays the delinquent rent**.

Property Code § 92.0081(d).

A landlord also **may not** change the locks if the tenant is delinquent in paying the rent:

- when the tenant or any other legal occupant is in the dwelling;
- more than once during a rental payment period; **or**
- on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or any on-site management office is not open, for the tenant to pay the delinquent rent.

Property Code § 92.0081(e)(k).

A landlord who changes the locks of a tenant may not prevent the tenant from entering a common area of residential rental property (like a gym, pool area, etc.). *Property Code § 92.0081(e-1).*

b. Residential Tenant Entitled to New Key Whether or Not They Pay the Rent

COMMON PITFALL

A landlord who changes the door locks of a tenant **must provide the tenant with a key to the changed lock** on the dwelling **whether or not the tenant pays the delinquent rent**. *Property Code § 92.0081(f).*

Notice and Procedures for Tenant to Get the New Key

If a landlord changes the door lock of a residential tenant who is delinquent in paying rent, the landlord must place a written notice on the tenant's front door stating:

- an on-site location where the tenant may go 24 hours a day to obtain the new key

or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number;

- the fact that the landlord must provide the new key to the tenant at any hour, **regardless of whether or not the tenant pays any of the delinquent rent**; **and**
- the amount of rent and other charges for which the tenant is delinquent.

Property Code § 92.0081(c).

If a landlord comes to a tenant's dwelling in a timely manner in response to a tenant's call and the tenant is not present to receive the key to the changed lock, the landlord must leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours. *Property Code § 92.0081(g).*

c. Remedies (Other Than the Writ of Re-Entry) if Lockout Procedures are Not Followed

If a landlord violates this statute, the tenant may:

- either recover possession of the premises or terminate the lease; **and**
- recover from the landlord a civil penalty of one month's rent plus $1,000, actual damages, court costs and reasonable attorney's fees in an action to recover property damages, and/or actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.

Property Code § 92.0081(h).

In addition to these remedies, if the landlord does not provide the tenant with a key after changing the door locks – even if the tenant does not pay the delinquent rent – the tenant may recover an additional civil penalty of one month's rent. *Property Code § 92.0081(i).*

Separate Case Required for Monetary Remedies

The monetary remedies described above cannot be recovered in a writ of re-entry proceeding. Instead, the tenant would have to file a separate small claims suit to recover them.

Justice Court Cannot Enter an Order Terminating the Lease

Additionally, if the tenant seeks to terminate the lease, there is nothing for them to file

with the justice court. A justice court cannot enter an order that the lease is terminated. The issue may arise in an eviction or small claims suit filed by a landlord seeking unpaid rent, which the tenant claims is not owed because they legally terminated the lease. At that point, the judge would have to hear all evidence, develop the facts of the case, and make a determination whether the lease was legally terminated.

d. No Waiver of Rights/Remedies by Residential Tenants


COMMON PITFALL

These rights and remedies **may not be waived for a residential tenant** (unlike for a commercial tenant). Section 92.0081(j) provides: "A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this section is **void**." This means that a tenant cannot agree in a lease to waive any of the rights or remedies. Any agreement of this nature is not valid.

2. Landlord's Lockout Rights for a Commercial Tenant

A landlord may not intentionally prevent a commercial tenant from entering the leased premises except by judicial process unless the exclusion results from:

- bona fide repairs, construction, or an emergency;
- removing the contents of premises abandoned by a tenant ***(see page 142)***; **or**
- changing the door locks of a tenant who is delinquent in paying at least part of the rent.

Property Code § 93.002(c).

a. Procedures for Lockout of a Commercial Tenant for Delinquent Rent

The rights of a commercial tenant who has been locked out because he is delinquent in paying rent are far less extensive than the rights of a residential tenant.

If a landlord locks out a commercial tenant who is delinquent in paying rent, the landlord must place a written notice on the tenant's front door stating the name and the address or telephone number of the individual or company from which a new key may be obtained.


KEY POINT

But the new key is required to be provided only during the tenant's regular business hours and **only if the tenant pays the delinquent rent**. *Property Code § 93.002(f).* As discussed

above, this is not the case with a residential tenant who is entitled to a new key even if he remains delinquent in paying the rent. ***See page 96.***

b. Remedies for Commercial Tenants (Other Than the Writ of Re-Entry) if Lockout Procedures Not Followed

If a landlord violates this statute, the tenant may:

- either recover possession of the premises or terminate the lease; **and**
- recover from the landlord:
    - the tenant's actual damages,
    - one month's rent or $500, whichever is greater,
    - reasonable attorney's fees,
    - and court costs,
    - minus any delinquent rents or other sums for which the tenant is liable to the landlord.

Property Code § 93.002(g).

Separate Case Required for Monetary Remedies

The monetary remedies described above cannot be recovered in a writ of re-entry proceeding. Instead, the tenant would have to file a separate small claims suit to recover them.

Justice Court Cannot Enter an Order Terminating the Lease

Additionally, if the tenant seeks to terminate the lease, there is nothing for them to file with the justice court. A justice court cannot enter an order that the lease is terminated. The issue may arise in an eviction or small claims suit filed by a landlord seeking unpaid rent, which the tenant claims is not owed because they legally terminated the lease. At that point, the judge would have to hear all evidence, develop the facts of the case, and make a determination whether the lease was legally terminated.

c. Commercial Tenants May Waive Lockout Rights/Remedies

COMMON PITFALL

Unlike a residential tenant, a commercial tenant **may waive** their rights and remedies for a wrongful lockout by agreeing to something different in the lease. Section 93.002(h) provides: “A lease supersedes this section to the extent of any conflict.”

3. Writ of Re-Entry Procedures


KEY POINT

If a landlord has locked out a residential tenant in violation of Section 92.0081, or a commercial tenant (who has not waived their rights or remedies for unlawful lockouts) in violation of Section 93.002, **the tenant may recover possession of the premises through the issuance of an ex parte writ of re-entry**. *Property Code § 92.009; 93.003(a).*

The procedures for issuance of and a hearing on a writ of re-entry are exactly the same for a commercial tenant and a residential tenant. The procedures are also identical to those for issuance of a writ of restoration for a residential tenant.

a. Fees

The statute lays out what fees may be assessed:

- The fee for filing a sworn complaint for re-entry is the same as for filing a civil action in justice court.
- The fee for service of a writ of re-entry is the same as for service of a writ of possession.
- The fee for service of a show cause order is the same as for service of a civil citation.

Property Code § 92.009(l).

The judge may defer payment of the tenant's filing fees and service costs for the sworn complaint for re-entry and writ of re-entry (to be determined and taxed against the appropriate party later), but court costs may be **waived** only if the tenant files a Statement of Inability to Afford Payment of Court Costs. *Property Code § 92.009(l); 93.003(l).*

b. Application for Writ of Re-Entry

The tenant must file a **sworn complaint** for re-entry with the justice court in the precinct in which the rental premises are located, stating the facts of the alleged unlawful lockout. The tenant must also state orally under oath to the judge the facts of the alleged unlawful lockout. *Property Code § 92.009(b); 93.003(b).*

c. Issuance and Service of the Ex Parte Writ of Re-Entry

If the judge reasonably believes an unlawful lockout has occurred, the judge may issue ex parte a writ of re-entry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for re-entry. *Property Code § 92.009(c), 93.003(c).*

If the judge denies the ex parte writ, the decision is final. There is no method for appealing this decision.

Service of the Writ of Re-Entry

The writ of re-entry must be served on the landlord or the landlord's management company, on-premises manager or rent collector in the same manner as a writ of possession in an eviction suit. A sheriff or constable may use reasonable force in executing a writ of re-entry. *Property Code § 92.009(d); 93.003(c).*

d. Landlord's Right to a Hearing

The landlord is entitled to a hearing on the tenant's sworn complaint for re-entry. The writ of re-entry must notify the landlord of the right to a hearing.

The hearing must be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing. *Property Code § 92.009(e); 93.003(e).* If the landlord fails to request a hearing before the eighth day after service of the writ of re-entry on the landlord, a judgment for court costs may be rendered against the landlord. *Property Code § 92.009(f); 93.003(f).*

KEY POINT

A party may appeal from the court's judgment at the hearing on the sworn complaint for re-entry in the same manner as in an eviction suit. *Property Code § 92.009(g); 93.003(g).* Beginning January 1, 2022, to file an appeal, the party must either pay the standard civil filing fee or submit a Statement of Inability either with the application or with the appeal.

e. Writ of Possession Has Priority Over Writ of Re-Entry

COMMON PITFALL

If a writ of possession is issued, it "supersedes" the writ of re-entry. *Property Code §*

92.009(h), 92.003(h). This means that the tenant will not be allowed back into the premises, and the landlord now is entitled to possession of the premises as a result of the writ of possession.

4. Landlord's Failure to Comply with Writ of Re-Entry

If the landlord or the person on whom a writ of re-entry is served fails to immediately comply with the writ or later disobeys the writ, it is grounds for contempt of court under Government Code § 21.002. *Property Code § 92.009(i); 93.003(i).*

a. Affidavit and Contempt Hearing

If the writ is disobeyed, the tenant may file an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions that show how they disobeyed. On receipt of the affidavit, the judge must issue a show cause order directing the person to appear on a designated date and show cause why he should not be held in contempt of court. *Property Code § 92.009(i); 93.003(i).*

b. Punishment for Disobedience of Writ

If the Person Disobeyed at First, but Started Complying Before Hearing
If the judge finds that the person has directly or indirectly disobeyed the writ, but complied with the writ after receiving the show cause order, the judge may find the person in contempt and assess punishment under Government Code § 21.002(c) (fine of up to $100 and/or up to three days in jail). *Property Code § 92.009(i); 93.003(i).*

If the Person is Still Disobeying the Writ
If the judge finds that the person has directly or indirectly disobeyed the writ (and is still not complying), the judge may commit the person to jail without bail **until the person complies with the writ or otherwise purges himself of the contempt in a manner and form as the justice may direct**. *Property Code § 92.009(i); 93.003(i).* So basically, the person can stay in jail until they do as ordered.

c. Tenant May Pursue Other Remedies

The above contempt procedures do not affect a tenant's right to pursue a separate cause of action under Property Code § 92.0081 (residential) or 93.002 (commercial), which entitles the tenant to recover damages and civil penalties, reasonable attorney's fees and court costs. *Property Code § 92.009(j), 93.003(j).* This means that the tenant can pursue either the contempt hearing or a separate monetary suit, or may pursue both.

5. Bad Faith Filing of Sworn Complaint for Re-Entry

If a tenant files a sworn complaint for re-entry in bad faith resulting in a writ of re-entry being served on the landlord, the landlord may recover from the tenant in a separate cause of action:

- actual damages;
- one month's rent or $500, whichever is greater;
- reasonable attorney's fees and court costs;
- less any sums for which the landlord is liable to the tenant.

Property Code § 92.009(k); 93.003(k).

To recover for a bad faith filing the landlord has to bring a separate small claims case; they cannot recover these amounts in the writ of re-entry proceeding.

6. Writ of Re-Entry Flowchart

Click Here to Open the Writ of Re-Entry Flowchart

7. Forms

Forms relating to writs of retrieval may be found on the TJCTC forms and SRL webpages.

C. Writ of Restoration

A writ of restoration is an ex parte writ ordering a landlord who has interrupted (shut off) utility service to a **residential** tenant in violation of Section 92.008 of the Property Code to restore the utility service.

COMMON PITFALL

A writ of restoration is **not** available in commercial tenancies. However, a commercial tenant may file a civil suit to recover the monetary damages described below. *Property Code § 93.002(g).*

If the tenant has a manufactured home tenancy under Chapter 94 of the Property Code, the same rights and procedures will apply as for a residential tenant. This is because the provisions in Chapter 92 apply to "relationships between landlords and tenants of residential rental property," and a lot in a manufactured home community could be considered "residential rental property." *Property Code § 92.002.*

1. Restrictions on Interruption of Utility Service

Restrictions When the Tenant Pays for Utility Service Directly

A landlord (or his agent) may not interrupt (shut off) or cause the interruption of utility service **paid for directly to the utility company by a residential or commercial tenant** unless the interruption results from:

- bona fide repairs,
- construction, **or**
- an emergency.

Property Code § 92.008(a); 93.002(a).

Restrictions When Utility Service is Furnished to the Tenant by the Landlord

A landlord also may not interrupt or cause the interruption of water, wastewater, gas, or electric service **furnished to a residential tenant by the landlord** as an incident of the tenancy or by other agreement unless the interruption results from:

- bona fide repairs,
- construction, **or**
- an emergency.

Property Code § 92.008(b).

This means that if the tenant lives in an "all bills paid" type of premises, that even if the tenant fails to pay rent, the landlord may not disconnect the four utilities listed above. They could disconnect other utilities, such as cable or internet service.

Specific Procedure to Interrupt Electric Utilities
If a landlord submeters electricity **or** prorates or allocates master-metered electricity, the landlord can interrupt or cause the interruption of electric service if the tenant fails to pay an electric bill issued to them by the landlord and:

- the landlord's right to interrupt service is in a written lease signed by the tenant **and**
- the tenant's electric bill is not paid on or before the 12th day after it was issued.

Property Code § 92.008(h).

"Submetered and Allocated Master-metered Electricity"

Submetered electricity means that the landlord has a submeter that records the electricity used by each unit, so that each unit can be individually billed.

Prorating or allocating master-metered electricity means that each unit isn't submetered, and the landlord divides up the electricity cost used by the complex equally among all units.

However, the landlord **may not** disconnect the utilities for:

- delinquency in payment for services provided to a previous tenant,
- failure to pay non-electric bills, rent, or other fees,
- failure to pay electric bills that are six or more months delinquent, **or**
- failure to pay a disputed electric bill, unless the landlord performs an investigation and gives the disputing tenant a written report.

Property Code § 92.008(o).

The landlord **must** provide an advance written notice of the interruption, which must be either hand delivered or mailed to the tenant separate from any other documents that:

- prominently says "electricity termination notice" or similar in bold or underlined,
- the notice must include:
    - the date of interruption,
    - where the tenant can pay the bill,
    - how much to pay,
    - that the landlord can't apply the electric bill payment to rent or anything else,

- that the tenant cannot be evicted for failure to pay the electric bill for at least two business days following the disconnection, **and**
- a description of the tenant's rights to avoid disconnection if interruption will cause serious illness or a worsening of a serious illness.

Property Code § 92.008(h)(3).

If the landlord disconnects the utilities, they must also hand deliver or place on the front door a notice that includes all of the above. *Property Code § 92.008(h)(4).*

The landlord is prohibited from interrupting utilities unless a dangerous condition exists or disconnection is requested by the tenant:

- on a day where the landlord or a representative is not available to accept payments and re-establish service, or the day before an "unavailable" day,
- on a day where the previous day's high was 32 degrees Fahrenheit or less, and is predicted by the National Weather Service to remain below 32 for the next 24 hours, **or**
- on a day where the National Weather Service has issued a heat advisory for the county the premises is located in at any point on the current day or the previous two days.

Property Code § 92.008(i).

The landlord is also prohibited from interrupting utilities if the tenant provides notice that establishes that the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill. The tenant can establish this by having a physician, nurse, nurse practitioner, or other similar licensed health care practitioner attending to the person who is or may become ill provide a written statement to the landlord or a representative of the landlord stating that the person will become seriously ill or more seriously ill if the electric service is interrupted. The tenant must also enter into a deferred payment plan that complies with Sec. 92.008(l) of the Property Code. *Property Code § 92.008(j).*

a. Remedies Other than the Writ of Restoration:

If a landlord (or his agent) violates this statute, the tenant may, instead of or in addition to requesting a writ of restoration:

- Either recover possession of the premises or terminate the lease; **and**
- Recover from the landlord:
    - the tenant's actual damages;
    - one month's rent plus $500 (**commercial tenancy only**)
    - one month's rent plus $1,000 (**residential tenancy only**); **and**
    - reasonable attorney's fees and court costs;
    - minus any delinquent rent or other sums for which the tenant is liable to the landlord.

Property Code § 92.008(f); 93.002(g).

Separate Case Required for Monetary Remedies

The monetary remedies described above cannot be recovered in a writ of restoration proceeding. Instead, the tenant would have to file a separate small claims suit to recover them.

Justice Court Cannot Enter an Order Terminating the Lease

Additionally, if the tenant seeks to terminate the lease, there is nothing for them to file with the justice court. A justice court cannot enter an order that the lease is terminated. The issue may arise in an eviction or small claims suit filed by a landlord seeking unpaid rent, which the tenant claims is not owed because they legally terminated the lease. At that point, the judge would have to hear all evidence, develop the facts of the case, and make a determination whether the lease was legally terminated.

b. No Waiver of Rights or Remedies

COMMON PITFALL

These rights and remedies **may not be waived by a residential tenant**. A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this section is **void**. *Property Code § 92.008(g).* This means that a tenant cannot agree in a lease to waive any of the rights or remedies. Any agreement of this nature is not valid.

2. Writ of Restoration Procedure

KEY POINT

If a landlord has shut off utility service in violation of Section 92.008, a **residential tenant** may obtain relief through the issuance of an ex parte writ of restoration. *Property Code § 92.0091(a).*

The procedures for issuance of a writ of restoration are identical to those for issuance of a writ of re-entry.

a. Fees

The statute lays out what fees may be assessed:

- The fee for filing a sworn complaint for restoration is the same as for filing a civil action in justice court.
- The fee for service of a writ of restoration is the same as for service of a writ of possession.
- The fee for service of a show cause order is the same as for service of a civil citation.

Property Code § 92.0091(k).

The judge may defer payment of the tenant's filing fees and service costs for the sworn complaint for re-entry and writ of re-entry (to be determined and taxed against the appropriate party later), but court costs may be **waived** only if the tenant files a Statement of Inability to Afford Payment of Court Costs. *Property Code § 92.0091(k).*

b. Application for Writ of Restoration

The tenant must file a **sworn complaint** with the justice court in the precinct in which the rental premises are located, specifying the facts of the alleged unlawful utility disconnection by the landlord (or landlord's agent). The tenant must also state orally under oath to the judge the facts of the alleged unlawful utility disconnection. *Property Code §92.0091(b).*

c. Issuance and Service of the Ex Parte Writ of Restoration

If the judge reasonably believes an unlawful utility disconnection has occurred, the judge may issue ex parte a writ of restoration of utility service that entitles the tenant to immediate and temporary restoration of the disconnected utility service pending a final hearing on the tenant's sworn complaint *Property Code § 92.0091(c).*

If the judge denies the ex parte writ, the decision is final. There is no method for appealing

this decision.

Service of the Writ of Restoration

The writ of restoration must be served on the landlord or the landlord's management company, on-premises manager or rent collector in the same manner as a writ of possession in a forcible detainer action. *Property Code § 92.0091(d).*

d. Landlord's Right to a Hearing

The landlord is entitled to a hearing on the tenant's sworn complaint for restoration of utility service. The writ of restoration must notify the landlord of the right to a hearing.

The hearing must be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing. *Property Code § 92.0091(e).* If the landlord fails to request a hearing on the tenant's sworn complaint for restoration of utility service before the eighth day after service of the writ of restoration on the landlord, a judgment for court costs may be rendered against the landlord. *Property Code § 92.0091(f).*


KEY POINT

A party may appeal from the court's judgment at the hearing on the sworn complaint for restoration of utility service in the same manner as in a forcible detainer suit. *Property Code. § 92.0091(g).* Beginning January 1, 2022, to file an appeal, the party must either pay the standard civil filing fee or submit a Statement of Inability either with the application or with the appeal.

e. *Writ of Possession Takes Priority Over Writ of Restoration*

If a writ of possession is issued, it "supersedes" the writ of restoration. *Property Code § 92.0091(h).* This means that the landlord does not have to turn any utilities back on, and now has possession of the premises as a result of the writ of possession.

3. Landlord's Failure to Comply with Writ of Restoration

If the landlord or the person on whom a writ of restoration is served fails to immediately comply with the writ or later disobeys the writ, it is grounds for contempt of court under Government Code § 21.002. *Property Code § 92.0091(i).*

a. Affidavit and Contempt Hearing

If the writ is disobeyed, the tenant may file an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions that show how they disobeyed. On receipt of the affidavit, the judge must issue a show cause order directing the person to appear on a designated date and show cause why he should not be held in contempt of court. *Property Code § 92.0091(i).*

b. Punishment for Disobedience of Writ

If the Person Disobeyed at First, but Started Complying Before Hearing
If the judge finds that the person has directly or indirectly disobeyed the writ, but complied with the writ after receiving the show cause order, the judge may find the person in contempt and assess punishment under Government Code § 21.002(c) (fine of up to $100 and/or up to three days in jail). *Property Code § 92.0091(i).*

If the Person is Still Disobeying the Writ
If the judge finds that the person has directly or indirectly disobeyed the writ (and is still not complying), the judge may commit the person to jail without bail **until the person complies with the writ or otherwise purges himself of the contempt in a manner and form as the justice may direct**. *Property Code § 92.0091(i).* So basically, the person can stay in jail until they do as ordered.

c. Tenant May Pursue Other Remedies

The above contempt procedures do not affect a tenant's right to pursue a separate cause of action to recover damages and civil penalties, reasonable attorney's fees and court costs. *Property Code § 92.008(f).* This means that the tenant can pursue either the contempt hearing or a separate monetary suit, or may pursue both.

4. Bad Faith Filing of Sworn Complaint for Writ of Restoration

If a tenant files a sworn complaint for restoration in bad faith resulting in a writ of restoration being served on the landlord, the landlord may recover from the tenant in a separate cause of action.

- actual damages;
- one month's rent or $500, whichever is greater;
- reasonable attorney's fees and court costs;
- less any sums for which the landlord is liable to the tenant.

Property Code § 92.0091(j).

To recover for a bad faith filing the landlord has to bring a separate small claims case; they cannot recover these amounts in the writ of restoration proceeding.

5. Writ of Restoration Flowchart

Click Here to Open the Writ of Restoration Flowchart

6. Forms

Forms relating to writs of retrieval may be found on the TJCTC forms and SRL webpages.

Chapter 10: Repair and Remedy Cases

Landlords have a duty under Subchapter B of Chapter 92 of the Property Code to repair or remedy certain conditions in residential rental property. If a landlord violates this duty, a tenant has certain non-judicial and judicial remedies, including repair and deduct remedies and filing a suit under Rule 509 of the Texas Rule of Civil Procedure to enforce the landlord's duty to repair and remedy a condition materially affecting the health or safety of an ordinary tenant. *Rule 509.1.*


COMMON PITFALL

Nearly identical duties and remedies exist for manufactured home communities under Subchapter D of Chapter 94 of the Property Code, with a couple of important differences, described on ***page 123*** and ***page 133***.

There are no equivalent duties or remedies for commercial tenancies. Since commercial tenants do not live in the premises, they can get an adequate remedy by suing the landlord for any damages caused by the landlord not meeting their obligations under the contract or lease.

A. Landlord's Duty to Repair or Remedy Conditions of the Premises


KEY POINT

A landlord must make a diligent effort to repair or remedy a condition that:

- materially affects the physical health or safety of an ordinary tenant; **or**
- arises from the landlord's failure to provide and maintain in good operating condition a device to supply hot water at a minimum temperature of 120 degrees

IF:

- the tenant specifies the condition in a notice to the person or place where rent is normally paid (must be in writing only if the lease is in writing and requires written notice; otherwise the tenant may give oral notice); **and**
- the tenant is not delinquent in the payment of rent at the time of the notice.

Property Code § 92.052(a),(d).

Unless the condition was caused by normal wear and tear, a landlord **does not** have a duty to repair or remedy a condition caused by:

- the tenant;

- a lawful occupant in the tenant's dwelling;
- a member of the tenant's family; **or**
- a guest or invitee of the tenant.

Property Code § 92.052(b).

A landlord also does not have a duty to furnish security guards or utilities from a utility company if the utility lines of the company are not reasonably available. *Property Code § 92.052(c).*

1. Modification or Waiver of Landlord's Duty to Repair or Remedy

A landlord and tenant may mutually agree for the tenant to repair or remedy, **at the landlord's expense, any condition** of the dwelling, regardless of whether it materially affects the health or safety of an ordinary tenant. *Property Code § 92.0561(g).*

A landlord and tenant may also agree for the tenant to repair, **at the tenant's expense**, any condition that materially affects the physical health or safety of an ordinary tenant but only **IF all of the following conditions are met**:

- At the beginning of the lease term **the landlord owns only one rental dwelling**;
- At the beginning of the lease term the dwelling is free from any condition which would materially affect the physical health or safety of an ordinary tenant;
- At the beginning of the lease term the landlord has no reason to believe that any condition materially affecting the physical health or safety of an ordinary tenant is likely to occur or recur during the tenant's lease term or during a renewal or extension;
- The lease is in writing;
- The agreement for repairs by the tenant is either underlined or printed in boldface in the lease or in a separate written addendum;
- The agreement is specific and clear; **and**
- The agreement is made knowingly, voluntarily and for consideration.

Property Code § 92.0561(g), 92.006(e).

A landlord and tenant may also agree that, except for conditions caused by the negligence of the landlord, the **tenant has a duty to pay for repairs of the following conditions**:

- Damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;
- Damage to doors, windows or screens; **and**
- Damage from windows or doors left open.

Property Code § 92.006(f).

Such an agreement must be in writing, underlined or printed in boldface, specific and clear, and made knowingly, voluntarily and for consideration. *Property Code § 92.006(f).* And it cannot affect the landlord's duty to repair or remedy, at the landlord's expense, wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment. *Property Code § 92.006(f).*

A landlord who knowingly violates Section 92.006 by **contracting orally or in writing with a tenant to waive the landlord's duty to repair** under Subchapter B of Chapter 92 **is liable** to the tenant for:

- actual damages;
- a civil penalty of one month's rent plus $2,000; **and**
- reasonable attorney's fees.

Property Code § 92.0563(b).

a. Termination of Lease if Premises are Totally or Partially Unusable

If the premises are totally unusable for residential purposes after a casualty loss (like hurricane, fire, etc.) and the loss is not caused by the tenant or the tenant's family member, guest or invitee, then either the landlord or the tenant may terminate the lease by giving written notice to the other at any time before the repairs are completed. *Property Code § 92.054(b).*

If the premises are partially unusable after a casualty loss (like smoke, hail, flood, etc.) and the loss is not caused by the tenant or the tenant's family member, guest or invitee, then the tenant is entitled to a proportionate reduction in rent (but only on a judgment of a county or district court). But a landlord and a tenant may agree otherwise in a written lease. *Property Code § 92.054(c).*

b. Closing of Rental Premises for Demolition or Non-Residential Use

A landlord has the option of closing rental premises at any time by giving written notice by certified mail, return receipt requested, to the tenant and the local health office and building inspector stating that he is terminating the tenancy and will no longer use the unit for residential purposes or will demolish it. *Property Code § 92.055(a).*

If a landlord chooses to do this, he **may not** allow re-occupancy or reconnection of utilities by separate meter within **six months** after the date the tenant moves out. *Property Code § 92.055(b)(2).*

If the landlord closes the rental unit **after** receiving a notice to repair, **and** the tenant moves out on or before the end of the rental term, the landlord must:

- pay the tenant's actual and reasonable moving expenses;
- refund a prorated portion of the tenant's rent from the date the tenant moves out; **and**
- if otherwise required, return the tenant's security deposit.

Property Code § 92.055(d).

A landlord who fails to pay the amounts due to the tenant or who allows re-occupancy or utility reconnection sooner than six months, is liable to the tenant for an amount equal to the total of one month's rent plus $100 and attorney's fees. *Property Code § 92.055(e).*

B. Landlord's Liability for Failure to Repair or Remedy Conditions

KEY POINT

A landlord is **liable** to a tenant for not repairing or remedying conditions of the premises (for which the landlord has a **duty** to repair) **if:**

- The condition was not an insured casualty loss;

- Except for normal wear and tear; the condition was not caused by the tenant (or a lawful occupant or tenant's family member, guest, or invitee);

- The tenant has given the landlord notice to repair or remedy the condition by giving the notice to the person or place where rent is normally paid;

- The condition **materially affects the physical safety or health of an ordinary** tenant;

- The tenant either sent the notice by certified mail, return receipt requested, or registered mail, or gave the landlord a second written notice after he had a reasonable time to repair and remedy the condition following the first notice;

- The landlord has had a **reasonable time to repair or remedy the condition after receiving the tenant's notice**;

- The landlord **has not made a diligent effort** to repair or remedy the condition after receiving the tenant's notice; **and**

- The tenant was **not delinquent in the payment of rent** at the time any required notice was given.

Property Code § 92.056.

Reasonable Time for Repair

What is a **reasonable** time for a landlord to repair or remedy a condition? The Property Code states that there is a rebuttable presumption that **seven days** is a reasonable time. *Property Code § 92.056(d).* This means that the default is seven days unless evidence is provided as to why it should be a different amount of time. Factors that must be considered are:

- the date on which the landlord received the tenant's notice,
- the severity and nature of the condition, **and**
- the reasonable availability of materials and labor and of utilities from a utility company.

Property Code § 92.056(d).

A landlord is deemed to have received the notice when the landlord or the landlord's agent or employee has actually received the notice or when the U.S. Postal Service has **attempted** to deliver the notice to the landlord. *Property Code § 92.056(c).*

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"Reasonable Time" Period Doesn't Begin Until Insurance Proceeds Received by Landlord
If a condition results from an insured casualty loss, such as fire, smoke, hail, flood, or explosion, the period for repair does not begin until the landlord receives the insurance proceeds. *Property Code § 92.054(a).*

Remedies
If a landlord is liable to the tenant for failing to repair or remedy conditions of the premises as provided in Section 92.056, then the tenant has certain specified remedies some of which are non-judicial and some of which are judicial. These remedies are discussed below.

1. Liability and Remedies in Manufactured Home Tenancies

In a nutshell, a landlord may be liable to a tenant if the tenant gives proper notice to the landlord to repair or remedy a condition that materially affects the health or safety of an ordinary tenant, the landlord has had a reasonable time to repair or remedy the condition but has not made a diligent effort to do so, and the tenant was not delinquent in the payment of rent at the time any required notice was given. *Property Code § 94.156(b).*

If the landlord is liable to the tenant for failing to repair or remedy a condition, then the tenant may:

- Terminate the lease;

- Have the condition repaired or remedied and deduct the cost from a subsequent rent payment in accordance with the requirements of Section 94.157; **and**

- Obtain judicial remedies under Section 94.159, including:
    - An order directing the landlord to repair or remedy the condition (only a district or county court may order this in a manufactured home tenancy),

    - An order reducing the tenant's rent until the condition is repaired or remedied,

    - A judgment against the landlord for a civil penalty of one month's rent plus $500,

- A judgment against the landlord for the tenant's actual damages, **and**

- Court costs and attorney's fees.

Property Code §§ 94.156(e) and 94.159.

The requirements for a tenant to establish the right to exercise any of these remedies are discussed in detail in the next section.

C. Tenant's Remedies When Landlord is Liable

A tenant to whom a landlord is **liable** for failure to repair or remedy a condition that materially affects the physical health or safety of an ordinary tenant under Property Code § 92.056(b) has the following remedies:

- Terminate the lease;
- Have the condition repaired or remedied and deduct the cost of the repair from a subsequent rent payment according to Section 92.0561 ***(called "repair and deduct", see page 119)***; **and**
- Obtain judicial remedies according to Section 92.0563 and Rule 509 of the Texas Rules of Civil Procedure by filing a **Repair and Remedy case** ***(see page 123)***.

Property Code § 92.056(e).

A lease **must** contain language in underlined or bold print that informs the tenant of these remedies. *Property Code § 92.056(g).*

1. Lease Termination

A tenant who elects to terminate the lease:

- Is entitled to a prorated refund of rent from the date of termination or the date the tenant moves out, whichever is later.
- May deduct the tenant's security deposit from the tenant's rent without the necessity of a lawsuit or may obtain a refund of the security deposit.
- May ***not*** pursue the remedies under Section 92.0563(a)(1) and (2) (an order directing the landlord to make repairs or remedy a condition or an order reducing rent due to the condition).

Property Code § 92.056(f)(1)-(3).

Justice Court Cannot Enter an Order Terminating the Lease

Additionally, if the tenant seeks to terminate the lease, there is nothing for them to file with the justice court. A justice court cannot enter an order that the lease is terminated. The issue may arise in an eviction or small claims suit filed by a landlord seeking unpaid rent, which the tenant claims is not owed because they legally terminated the lease. At that point, the judge would have to hear all evidence, develop the facts of the case, and make a determination whether the lease was legally terminated.

2. Tenant's Repair and Deduct Remedies

a. General Procedures

If the landlord is liable to the tenant under Section 92.056(b) for failing to repair or remedy a condition, the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment if he follows certain procedures.

How Much Can be Deducted and How Often?

The tenant's deduction may not exceed the amount of one month's rent under the lease or $500, whichever is greater. *Property Code § 92.0561(a), (b).*

Repairs and deductions may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent or $500, whichever is greater. *Property Code § 92.0561(c).*

Government Subsidized Rent in Repair and Deduct

If the tenant's rent is subsidized by a government agency, the deduction limitation of one month's rent is based on the fair market rent for the dwelling and not the rent that the tenant pays. The fair market rent is to be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it is to be a reasonable amount of rent under the circumstances. *Property Code § 92.0561(b).*

b. Conditions Eligible for Repair and Deduct

The tenant may have repairs made under Section 92.0561 only if **all** of the following conditions have been met:

- The landlord has a duty to repair which has not been waived by the tenant in a written lease; ***(see page 113)***

- The tenant has given notice to the landlord as provided in Section 92.0561(b)(1), and if required, a second notice as provided in Section 92.0561(b)(3), stating the tenant intends to repair or remedy the condition and containing a reasonable description of the repair or remedy to be done; **and**

- One of the following events has occurred:
    - The landlord has failed to remedy the backup or overflow of raw sewage or flooding from broken pipes or natural drainage inside the tenant's dwelling;

    - The landlord has agreed in the lease to provide potable water to the dwelling and water service has totally ceased;

    - The landlord has agreed in the lease to furnish heating or cooling equipment which is producing inadequate heat or cooled air and the landlord has been notified in writing by the local housing, building or health official (or other official having jurisdiction) that the lack of heat or cooling materially affects the health or safety of an ordinary tenant; **or**

    - The landlord has been notified in writing by the appropriate local housing, building or health official (or other official having jurisdiction) that the condition materially affects the health or safety of an ordinary tenant.

Property Code § 92.0561(d).


KEY POINT

Note that if the condition doesn't relate to raw sewage, flooding, or potable water, the tenant **must** have a notification in writing to the landlord from local officials that the condition materially affects the health or safety of an ordinary tenant. This is a significantly narrow remedy, which many tenants apply incorrectly.

c. Timeline for Making Repairs

If the above conditions are met, then the tenant may have repairs made:

- **Immediately following** the tenant's notice of intent to repair if the condition involves **sewage or flooding** as referred to in Section 92.0561(d)(3)(A);
- **Three days after** the tenant's notice of intent to repair if the condition involves ***cessation of potable water*** as referred to in Section 92.0561(d)(3)(B) or ***inadequate heating or cooling*** as referred to in Section 92.0561(d)(3)(C);
- **Seven days after** the tenant's notice of intent to repair if the condition involves something else and affects the physical health or safety of an ordinary tenant as referred to in Section 92.0561(d)(3)(D).

Property Code § 92.0561(e).

d. Limits on Who May Make the Repairs and What Repairs May be Made

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Repairs **must** be made by a company, contractor or repairman listed in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the local city or county or an adjacent county at the time of the tenant's notice of intent to repair. *Property Code § 92.0561(f).*

Unless the landlord and tenant agree otherwise in accordance with Section 92.0561(g), repairs **may not** be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest. *Property Code § 92.0561(f).*

If a building contains two or more dwelling units, repairs **may not** be made to the **foundation** or **load-bearing** structural elements. *Property Code § 92.0561(f).*

e. Landlord's Affidavit of Delay to Prevent Repair and Deduct Remedy

Requirements of Affidavit

KEY POINT

A tenant **must delay contracting for repairs** on their own under Section 92.0561 if, **before** the tenant contracts for the repairs, the landlord delivers to the tenant an affidavit:

- Signed and sworn to under oath by the landlord or his authorized agent;
- Summarizing the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done;
- Stating facts that show that the landlord has made and is making diligent efforts to repair the conditions; **and**

- Contain dates, names, addresses and telephone numbers of contractors, suppliers, and repairmen contacted by the owner.

Property Code § 92.0562(a), (b).

Length of Delay and Grounds for Affidavit

Such an affidavit may delay repairs by the tenant for:

- 15 days if the landlord's failure to repair is caused by a delay in obtaining necessary parts for which the landlord is not at fault;
- 30 days if the landlord's failure to repair is caused by a general shortage of labor or materials following a natural disaster such as a hurricane, tornado, flood, extended freeze or widespread windstorm.

Property Code § 92.0562(c).

Affidavits on any other grounds are unlawful and, if used, have no effect. *Property Code § 92.056(d).*

A landlord may file subsequent affidavits provided that the total delay of the repair or remedy extends no longer than six months from the date the landlord delivers the first affidavit to the tenant. *Property Code § 92.056(d).*

Delivery of Affidavit

The affidavit must be delivered by personal delivery to the tenant, by certified mail, return receipt requested, to the tenant, or by leaving the affidavit inside the dwelling in a conspicuous place if notice in that manner is authorized in a written lease. *Property Code § 92.0562(e).*

Good Faith Requirement

An affidavit must be submitted in good faith and after delivery of the affidavit the landlord must continue diligent efforts to repair or remedy the condition. There is a rebuttable presumption (assumption that can be proven wrong) that the landlord acted in good faith and with continued diligence for the first affidavit; but for subsequent affidavits, the landlord has the duty of pleading and proving good faith and continued diligence.

Liability for Landlord Violating Obligations Regarding Affidavit of Delay

If the landlord violates his obligations with respect to an affidavit of delay, he is liable to the tenant for all judicial remedies under Section 92.0563 except that the civil penalty under Section 92.0563(a)(3) is one month's rent plus $1,000 rather than one month's rent plus $500. *Property Code § 92.0562(f).*

f. Landlord's Remedy for Tenant Violation of Repair and Deduct Remedy

If a tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in violation of Subchapter B of Chapter 92 of the Property Code, the landlord may recover actual damages from the tenant. *Property Code § 92.058.*

If the landlord notifies the tenant in writing of the illegality of the tenant's withholding of rent or proposed repair and the penalties under Subchapter B, and the tenant proceeds to withhold rent or causes repairs to be performed or makes rent deductions for repairs in bad faith violation of Subchapter B, then the landlord may recover a civil penalty from the tenant of one month's rent plus $500. *Property Code § 92.058.* The landlord's notice must be in writing and may be delivered in person, by mail or by delivery to the premises. *Property Code § 92.058.*

3. Repair and Remedy Suit Under Rule 509

a. Differences in Manufactured Home Tenancy Repair Cases

COMMON PITFALL

Rule 509 **only** applies to a repair and remedy case brought under Chapter 92 (residential tenancies), and not to a case brought under Chapter 94 (specific to manufactured home tenancies). *Rule 509.1.*

This means that a tenant in a manufactured home tenancy would need to file a regular small claims suit rather than a Rule 509 Repair and Remedy case. Remember that, as discussed on ***page 124***, Rule 509 Repair and Remedy cases are capped at $10,000, despite the jurisdiction of justice courts increasing to $20,000 effective September 1, 2020. However, a small claims suit seeking judicial remedies in a manufactured home tenancy **filed after September 1, 2020** may seek damages of up to $20,000 and **is not** limited to $10,000.

KEY POINT

In a manufactured home case a justice of the peace may **not order the landlord to take reasonable action to repair or remedy the condition**. *Property Code § 94.159(c).* Only a **county or district court** may make such an order in a manufactured home case. *Property Code § 94.159(c).*

b. Available Remedies in a Repair and Remedy Suit

A tenant's judicial remedies against a landlord who is liable under Section 92.056 include:

- An order directing the landlord to take reasonable action to repair or remedy the condition;
- An order reducing the tenant's rent from the date of the first repair notice until the condition is repaired or remedied in proportion to the reduced rental value resulting from the condition;
- A judgment against the landlord for a civil penalty of one month's rent plus $500;
- A judgment against the landlord for the amount of the tenant's actual damages; **and**
- Court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

Property Code § 92.0563(a).

Justice courts have jurisdiction in actions to enforce tenant's judicial remedies, including ordering a landlord to take reasonable action to repair or remedy a condition that materially affects the physical health or safety of an ordinary tenant under Subchapter B of Chapter 92. *Property Code § 92.0563(c).*

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A justice court **may not** award a judgment – including an order of repair – that exceeds $10,000, excluding interests and court costs. *Property Code § 92.0563(e).* Note that the justice court's jurisdiction increased to $20,000 effective September 1, 2020. However, Sec. 92.0563(e) of the Property Code **was not** amended to include the increase, so repair and remedy cases **will still be limited to $10,000**.

c. Proper Venue for Repair and Remedy Cases

Neither Rule 509 nor Property Code § 92.0563 require a repair and remedy case to be filed in the precinct in which the premises are located. This means that the general venue provisions of Chapter 92 of the Property Code would apply. A repair and remedy case may therefore be filed in any precinct in the county in which the property is located. *Property Code § 92.007.*

d. Contents of the Petition

A repair and remedy suit begins by the filing of a written petition with the court. The petition must include the following:

- The street address of the residential rental property;

- A statement indicating whether the tenant has received in writing the name and business address of the landlord and landlord's management company;

- To the extent known, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager and rent collector serving the residential rental property;

- Information concerning any notices the tenant gave to the landlord requesting that the condition be repaired or remedied, including the date of the notice, the name of the person to whom or place where it was given, whether the lease is in writing and requires written notice, whether the notice was in writing or oral, whether it was given by certified mail, return receipt requested, or registered mail, and whether the rent was current or had been timely tendered at the time notice was given;

- A description of the property condition materially affecting the health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

- A statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

- If the petition includes a request to reduce the rent, the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period and when the rent is due, and the amount of the requested rent reduction and when it should begin;

- A statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; **and**
- The tenant's name, address and telephone number.

Rule 509.2(a).

The tenant must provide the court with copies of the petition and any attachments for service on the landlord. *Rule 509.2(b).*

A petition substantially in the form issued by the Supreme Court is sufficient. A suit may not be dismissed due to a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it. *Rule 509.2(c).*

e. Citation and Appearance Date


KEY POINT

After the petition is filed the judge must immediately issue a citation directed to the landlord and commanding him to appear before the judge not less than **ten days** nor more than **21 days** after the petition is filed. *Rule 509.3.*

The appearance date is the trial date. The landlord may, but is not required to, file an answer before the appearance date. *Rule 509.3.*

f. Service of the Citation

The citation may be served by a sheriff, constable or "other person authorized by Rule 501.2," (a private process server or other person authorized by the court), by delivering it

to the landlord at least **six days before** the appearance date. The citation "must be issued, served, and returned in like manner as ordinary citations from a justice court." *Rule 509.4(a).*

Alternative Service - *First Alternative Method*

If the petition does not include the landlord's name and business street address, or if the person serving the citation is unable to serve it successfully by delivering it to the landlord after making diligent efforts on at least two occasions, then the person serving the citation must serve it by delivering a copy of it, along with the petition and any attachments, to:

- The landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; **or**
- The landlord's authorized agent for service of process, which may be the landlord's management company, on-premises manager or rent collector serving the residential property.

Rule 509.4(b)(1).

Alternative Service - *Second Alternative Method*

If the person serving the citation is unable to serve it successfully by delivering it to the landlord's management company or authorized agent, after making diligent efforts on at least two occasions, then he must execute and file in the justice court a sworn statement:

- Stating that he made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and on the landlord's management company, on premises manager and rent collector; **and**
- Providing the times, dates and places of each attempted service.

Rule 509.4(b)(2).

The judge may then authorize the person to serve the citation by:

- Delivering a copy of the citation, petition and any attachments to someone over the age of 16 at any business street address listed in the petition, ***or*** if no one answers the door at a business street address:
    - Placing the citation, petition and attachments through a door mail chute or under the front door; **or**
    - Affixing them to the front door or main entry to the business street address;

- Within 24 hours of delivery to the premises, mailing a copy of the citation, petition and attachments to the landlord at the landlord's business street address by first class mail; **and**
- Noting on the return of citation the date of delivery to the premises and the date of mailing.

Rule 509.4(b)(2).

The delivery and mailing to the business street address must occur **at least six days** before the appearance date. At least **one day before the appearance date**, a return of service must be filed with the court that issued the citation. It is not necessary for the tenant to request any of the alternative service methods authorized by Rule 509.4. *Rule 509.4(b)(2).*

g. Representation of Parties

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Parties may represent themselves or be represented by an attorney. Unlike an eviction case, a party may not be represented by an authorized agent. *Rule 500.4.*

h. Trial

A repair and remedy case "must be docketed and tried as other cases." *Rule 509.5(a)*. And the rules expressly provide that the "judge may develop the facts of the case in order to ensure justice." *Rule 509.5(a).*

If the tenant appears at trial and the landlord has been served and fails to appear at trial, the justice may proceed to hear the evidence. And if the tenant establishes that he is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence. *Rule 509.5(b).* On the other hand, if the tenant fails to appear for trial, the judge may dismiss the suit. *Rule 509.5(b).*

A party may file a motion for a continuance of the trial of a repair and remedy case under Rule 503.3(b) and the judge "for good cause, may postpone the trial for a reasonable time."

Burden of Proof

The **tenant** generally has the burden of proof. This means that the tenant has to prove that the landlord **did not** make a diligent effort to repair or remedy a condition (that the landlord had a **duty** to repair) in a **reasonable** amount of time from receiving notice.

But the burden of proof moves to the **landlord,** and he has to prove that he **did** make a diligent effort to repair in a reasonable time (or that a reasonable time for repair has not elapsed) **if**:

- the landlord received a written demand from the tenant for an explanation for delay in performing a duty to repair or remedy a condition; **and**
- the landlord did not provide the written explanation for delay on or before the fifth day after receiving the demand.

Property Code § 92.053.

i. Judgment

A judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property **if the total judgment does not exceed $10,000** (excluding interest and court costs but including attorney's fees). *Property Code § 92.0563(e); Rule 509.6(a).*

KEY POINT

Note that the justice court's jurisdiction increased to $20,000 effective September 1st, 2020. However, Section 92.0563(e) of the Property Code **was not** amended to include the increase, so repair and remedy cases **will still be limited to $10,000**.

Attorney's Fees and Court Costs

A party who prevails in a repair and remedy suit may recover the party's court costs and reasonable attorney's fees as allowed by law. *Rule 509.6(a).*

Contents of Judgment

The judgment must be in writing, signed and dated, and must include the names of the parties and the street address of the residential rental property where the condition is to be repaired or remedied. *Rule 509.6(b)(1).*

The judgment may:

- order the landlord to take reasonable action to repair or remedy the condition;
- order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;
- award a civil penalty of one month's rent plus $500;
- award the tenant's actual damages; **and**
- award court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

Rule 509.6(b)(2).

KEY POINT

If the judge orders the landlord to repair or remedy a condition, the judgment must include **in reasonable detail:**

- the actions the landlord must take to repair or remedy the condition; **and**
- the date when the repair or remedy must be completed.

Rule 509.6(b)(3).

If the justice orders a reduction in the tenant's rent, the judgment must state:

- the amount of the rent the tenant must pay, if any;
- the frequency with which the tenant must pay the rent;
- the condition justifying the reduction of rent;
- the effective date of the order reducing rent;
- that the order reducing rent will terminate on the date the condition is repaired or remedied; **and**
- that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition

justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

Rule 509.6(b)(4).

Service of Judgment on Landlord

The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at:

- An address listed in the citation;
- The address listed on any answer; **or**
- Such other address as the landlord provides to the court in writing.

Unless the judge serves the landlord in open court or as provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must **promptly file a certificate of service** in the justice court. *Rule 509.6(c).*

Landlord's Failure to Comply with Order to Repair or Order Reducing Rent

If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, it is grounds for citing the landlord for contempt of court under Government Code § 21.002. *Rule 509.6(d).*

j. No Counterclaims

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Counterclaims and suits against third parties are not permitted in repair and remedy cases. A compulsory counterclaim may be brought in a separate suit and any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded. *Rule 509.7.*

k. Appeal

Either party may appeal the decision of the justice court by filing a written notice of appeal with the justice court **within 21 days** after the date the judge signs the judgment. *Rule 509.8(a).* If the judgment is amended in any respect, any party has the right to appeal **within 21 days** after the date the judge signs the new judgment in the same manner as an appeal of an original judgment. *Rule 509.8(a).*

Filing Fee

Beginning January 1, 2022, to file an appeal, the party must either pay the standard civil filing fee or submit a Statement of Inability either with the application or with the appeal.

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No Appeal Bond

An appeal bond is **not** required in a repair and remedy case**.** *Rule 509.8(b).* Instead, the appeal is considered perfected with the filing of a notice of appeal. *Rule 509.8(b); Property Code § 92.0563(f).*

Judgment May Not Be Enforced

The timely filing of a notice of appeal stays (stops) the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions. *Rule 509.8(c).*

Filing Fee in County Court Must Be Paid to Maintain Perfected Appeal

The appellant must pay the costs on appeal to a county court in accordance with Rule 143a. *Rule 509.8(d).* This means that if they do not pay the county court filing fee, their appeal will be deemed not perfected and the justice court judgment will be valid again. ***See page 63 for more information.***

Trial de Novo

The appeal is by **trial de novo**. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. An appeal of a judgment of a justice court takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. *Rule 509.8(e); Property Code § 92.0563(f).*

I. Effect of Judgment for Possession in Eviction Case on Repair and Remedy Order

If the landlord is awarded a final judgment for possession of the residential rental property, any order to repair or remedy a condition is vacated and unenforceable. *Rule 509.9.*

KEY POINT

Writ of Possession is Not Required to Stay Repair Order

Note that a judgment for possession is **not** the same thing as a writ of possession, which may only be requested after a judgment has been entered.

Judgment for Possession Does Not Affect Orders Other than Repair and Remedy Orders

Also note that all other orders in the judgment, such as orders reducing previous rent due, or awarding monetary amounts to the tenant, are not affected by a judgment for possession.

m. Repair and Remedy Case Flowchart

Click Here to Open the Repair and Remedy Case Flowchart

n. Forms

Forms relating to writs of retrieval may be found on the TJCTC forms and SRL webpages.

D. Comparison Chart of Repair Rights and Remedies in Manufactured Home Tenancies vs. Other Residential Tenancies

Several important differences exist depending on if the leased premises is subject to Chapter 92 or Chapter 94. A chart summarizing these differences may be accessed below.

Click Here to Open the Comparison Chart

Chapter 11: Security Deposits

A. Residential and Manufactured Home Leases

Subchapter C ("Security Deposits") of Chapter 92 of the Property Code, applies to all residential leases. *Property Code § 92.101.*

Subchapter C ("Security Deposit") of Chapter 94 of the Property Code, applies specifically to all manufactured home leases. These two subchapters are nearly identical to each other.

Security Deposit Suit

A security deposit suit must be filed as a separate cause of action from an eviction suit filed by a landlord since a tenant may not file a counterclaim in an eviction suit. ***Hanks v. Lake Towne Apartments***

KEY POINT

A residential or manufactured home lot tenant who is improperly denied a refund of his security deposit may bring a suit in justice court (provided the amount in controversy falls within the justice court's jurisdiction) to recover the security deposit and civil penalties and attorney's fees.

Definition

A "security deposit" is any advance of money (other than a rental application deposit or an advance payment of rent) that is intended primarily to secure performance under a lease of a dwelling or lot that has been entered into by a landlord and a tenant. *Property Code §§ 92.102; 94.101*

This means that a security deposit serves as potential compensation for a landlord in the case that a tenant fails to pay rent or is liable for other damages under the lease or for breaching the lease.

1. Refund of Security Deposit or Accounting of Deductions Required

A landlord must keep accurate records of all security deposits. *Property Code § 92.106; 94.102(b).*

The landlord must refund a security deposit to the tenant on or before the **30th day** after

the date the tenant moves out (but only if the tenant gives the landlord a written statement of the tenant's forwarding address). *Property Code §§ 92.103(a), 92.107(a), 94.103(a), 94.107.*

A requirement in a lease that a tenant give advance notice that they are moving out (typically 30 or 60 days) as a condition for refunding the security deposit, is effective only if the requirement is underlined or printed in conspicuous bold print in the lease. *Property Code § 92.103(b); 94.103(b);* ***Minor v. Adams****. (The statute indicates that the notice must be both conspicuous and in bold print (or underlined) and where it was neither underlined nor in bold print it was not effective).*

a. Authorized Deductions and Retention Requirements

Before returning the security deposit, the landlord may deduct damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease. *Property Code §§ 92.104, 94.105.*

COMMON PITFALL

The landlord **may not** retain any portion of the deposit to cover normal wear and tear.

If the landlord retains all or part of the security deposit, he must give the balance (if any) to the tenant and a written description and itemized list of all deductions; unless the tenant owes rent when he moves out and there is no dispute concerning the amount of rent owed. *Property Code §§ 92.104(c), 94.105(c).*

b. Retention/Deduction if Tenant Fails to Move-In

A landlord **may not** retain the security deposit or rent prepayment if a tenant fails to move in as provided in a lease if:

- Either the tenant or the landlord gets a replacement tenant satisfactory to the landlord; **and**
- The replacement tenant occupies the dwelling on or before the date that the lease was supposed to start.

However, if a tenant fails to move into a dwelling/lot as planned according to a lease, and the landlord secures a replacement tenant (either before or after the planned move-in

date), the landlord may retain and deduct from a security deposit or rent prepayment either:

- A sum agreed to in the lease as a lease cancellation fee; **or**
- The actual expenses incurred by the landlord in getting the replacement tenant, including a reasonable amount for the landlord's time in securing the replacement.

Property Code §§ 92.1031, 94.104.

c. Tenant May Not Apply Security Deposit to Rent Payments Due

A tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

A tenant who does this is presumed to have acted in bad faith. A tenant who in bad faith violates this statute is liable to the landlord for three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent. *Property Code §§ 92.109, 94.109.*

d. Landlord Liability for Security Deposit Violations

A landlord who in bad faith retains a security deposit in violation of the statute is liable for:

- $100;
- three times the portion of the deposit wrongfully withheld; **and**
- the tenant's reasonable attorney's fees in a suit to recover the deposit.

A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of the statute:

- forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; **and**
- is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

In an action brought by a tenant, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

Presumption of Bad Faith

A landlord is presumed to have acted in bad faith (but could provide evidence that it was

not bad faith) if:

- The landlord does not (on or before the **30th day** after the tenant moved out) **either**:
    - Return the security deposit in full; **or**
    - Provide a written description and itemization of deductions

e. Landlord Remedy for Damages If Security Deposit Was Not Required by Lease


KEY POINT

Note that this remedy does not appear in Chapter 94 for manufactured home leases.

If a security deposit was not required by a residential lease and the tenant is liable for damages and charges on surrender of the premises, the landlord must notify the tenant in writing of the landlord's claim for damages before the landlord reports the claim to a consumer reporting agency or third-party debt collector.

If a landlord does not provide the notice to the tenant, the landlord forfeits the right to collect damages from the tenant. But a landlord is not required to provide the notice to the tenant if the tenant did not give the landlord the tenant's forwarding address. *Property Code § 92.110.*

f. Fee in Lieu of Security Deposit

For leases entered or renewed on or after September 1, 2021, a landlord may offer a tenant the option to pay a fee instead of paying a security deposit. This fee is a nonrefundable amount paid at the same time rent is paid. The fee may only be used to purchase insurance to protect the landlord against unpaid rent for which the tenant is liable and against damage to the premises caused by the tenant (other than normal wear and tear). However, the tenant **must** be given the opportunity to pay a security deposit instead, and must be given information about their right to do so in writing, including a description of the amount charged as a fee and as a security deposit. If a tenant chooses to pay a fee, they may also change their mind at any time and pay a security deposit instead of continuing to pay the fee. *Property Code § 92.111.*

Many of the requirements for landlords and tenants under this section are unlikely to arise in justice court. One to keep in mind is that if the landlord recovers from an insurance

policy paid by a fee in lieu of security deposit on a claim for damages or unpaid rent, the landlord is unable to recover that money from the tenant in a lawsuit. So, if the evidence showed the landlord had already been paid by the insurer in that situation, the tenant would have a defense to the claim by the landlord. However, the insurer **could** file a suit to recover those amounts from the tenant that the insurer paid to the landlord, as long as the landlord was allowed by the statute to make the insurance claim. *Property Code § 92.111(l).*


COMMON PITFALL

Another potential area for justice courts to be aware of is if the landlord files an eviction suit based on failure to pay the fee, and the landlord had not complied with the statutory requirements and notices, the court could find that the tenant was not in violation. Refer to Section 92.111 of the Property Code for the requirements and notices that must be followed. However, note that, even if the landlord had fully complied with the requirements, the fee **could not** be awarded as damages in an eviction cases since it is not back rent.

B. Security Deposits in Commercial Leases

1. Difference from Residential Tenancies


KEY POINT

The landlord's and tenant's rights and obligations concerning a security deposit for a commercial lease are similar to those for a residential lease except that the landlord has 60 days, rather than 30 days, to return the tenant's security deposit after the date the tenant surrenders the premises. *Property Code § 93.005.*

But the landlord is not obligated to return a security deposit, or give a tenant a written description of damages and charges, until the tenant gives the landlord a written statement of the tenant's forwarding address. *Property Code §§ 93.005, 93.009.*

2. Authorized Deductions and Retention Requirements

As with a residential lease, the landlord may deduct damages and charges for which the tenant is legally liable under the lease or damages and charges that result from a breach of the lease,

A landlord may not retain any portion of a security deposit to cover normal wear and tear. "Normal wear and tear" means deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but it does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant or by a guest or invitee of the tenant. *Property Code § 93.006.*

If the landlord retains all or part of a security deposit, he must give the tenant the balance (if any) and a written description and itemized list of all deductions. Again, a landlord is not required to give the tenant a description and itemized list of deductions if the tenant owes rent when the tenant moves out and no dispute exists concerning the amount of rent owed. *Property Code § 93.008(c).*

3. Tenant's and Landlord's Liability

A commercial tenant's liability for wrongfully withholding the last month's rent, and a commercial landlord's liability for wrongfully refusing to either return a tenant's security deposit or provide a written description and itemized list within 60 days after the date the tenant moves out are **the same as for residential leases**. *Property Code §§ 93.010, 93.011;* ***EDG Property Management, Inc. v. Ratnani****.*

Chapter 12: Special Circumstances Concerning a Tenant's Personal Property

A. Notice of Rule or Policy Change Affecting Tenant's Personal Property

This law applies only to the relationship between landlords and tenants of residential rental property. *Rule 92.002.* But keep in mind that if the tenant has a manufactured home tenancy under Chapter 94 of the Property Code, the same rights and procedures will apply as for a residential tenant. This is because the provisions in Chapter 92 apply to "relationships between landlords and tenants of residential rental property," and a lot in a manufactured home community could be considered "residential rental property." *Property Code § 92.002.*

A landlord must give prior written notice to a tenant regarding a rule or policy change that is not included in the lease agreement and that will affect any personal property owned by the tenant that is located outside the tenant's dwelling. *Property Code § 92.013(a).*

In a multi-unit complex, a landlord must provide to the tenant a copy of any applicable vehicle towing or parking rules or policies and any changes to those rules or policies. *Property Code § 92.013(a).*

A landlord who fails to give a notice of a rule or policy change is liable to the tenant for any expense incurred by the tenant as a result of the landlord's failure to give the notice. *Property Code § 92.013(c).*

B. Personal Property and Security Deposit of Deceased Tenant

This law applies only to the relationship between landlords and tenants of residential rental property (including a tenant who has a manufactured home tenancy under Chapter 94 of the Property Code). *Rule 92.002.*

If the landlord makes a **written request**, a tenant must:

- provide the landlord with the name, address, and telephone number of a person to contact in the event of the tenant's death; **and**

- sign a statement authorizing the landlord in the event of the tenant's death to:
    - grant that person access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;
    - allow that person to remove any of the tenant's property found at the leased premises; **and**
    - refund the tenant's security deposit, less lawful deductions, to that person.

Property Code § 92.014(a).

A tenant may also provide this information to the landlord even if the landlord does not request it. *Property Code § 92.014(b).*

In the event of the death of a tenant who is the sole occupant of a rental dwelling:

- the landlord may remove and store all property found in the tenant's leased premises;

- the landlord must turn over possession of the property to the person who was designated by the tenant or to any other person lawfully entitled to the property if a request is made prior to the property being discarded;

- the landlord must refund the tenant's security deposit, less lawful deductions, including the cost of removing and storing the property, to the person who was designated by the tenant or to any other person lawfully entitled to the refund;

- the landlord may require any person who removes the property from the tenant's leased premises to sign an inventory of the property being removed; **and**

- the landlord may discard the property removed by the landlord from the tenant's leased premises if:
    - the landlord has mailed a written request by certified mail, return receipt requested, to the person designated by the tenant, requesting that the property be removed;

    - the person fails to remove the property by the 30th day after the postmark date of the notice; **and**

- the landlord, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

Property Code § 92.014(c).

A landlord and a tenant may agree in a written lease or other agreement to a different procedure for removing, storing, or disposing of the property of a deceased tenant. *Property Code § 92.014(d).*


COMMON PITFALL

If a tenant, after being provided with a copy of Subchapter A of Chapter 92 of the Property Code, knowingly violates his obligation to name a designated person or sign the authorization described above, then the landlord has no responsibility after the tenant's death for removal, storage, disappearance, damage, or disposition of property in the tenant's leased premises. *Property Code § 92.014(e).*

If a landlord, after being furnished with a copy of Subchapter A of Chapter 92 of the Property Code, knowingly violates the obligations described above, the landlord is liable to the estate of the deceased tenant for actual damages. *Property Code § 92.014(f).*

For the procedure where a representative of the estate of a deceased tenant may terminate the remainder of a lease and avoid future liability, see ***page 171***.

C. Tenant's Abandonment of Premises and Landlord's Removal of Property

1. Commercial Tenant

A commercial tenant is **presumed to have abandoned the premises** if:

- goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the premises, is being or has been removed from the premises; **and**
- the removal is not within the normal course of the tenant's business.

Property Code § 93.002(d).

Once a commercial tenant abandons the premises, a landlord may remove and store any property of the tenant that remains on the premises that have been abandoned. *Property Code § 93.002(e).*

In addition to the landlord's other rights, the landlord may dispose of the stored property if the tenant does not claim the property within 60 days after the date the property is stored. The landlord must deliver a notice to the tenant by certified mail at the tenant's last known address stating that the landlord may dispose of the tenant's property if the tenant does not claim the property within 60 days after the date the property is stored. *Property Code § 93.002(e).*

Removing Fixtures in a Commercial Property

In the absence of an abandonment by the commercial tenant, a landlord may not remove furniture, fixtures or appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bone fide repair or replacement, in which case the repair or replacement must be promptly done. *Property Code § 93.002(b).*

These procedures would apply in the case of a storage locker which falls within the definition of a commercial lease since "commercial rental property" is rental property that is "not covered by Chapter 92 [Residential Tenancies]." *Property Code § 93.001(b).*

2. Residential/Manufactured Home Tenant

A landlord may enter and remove the contents of premises that have been abandoned by a tenant in residential and manufactured home tenancies. *Property Code §§ 54.044(d), 92.0081(b)(2), 94.004(c)(2).*

COMMON PITFALL

There are no specific provisions, however, for when a tenant is presumed to have abandoned the premises as there are for commercial tenancies. If a court has to determine whether or not the premises were abandoned, the court will have to make a judgment call on a case-by-case basis.

There are also no provisions for what must be done with the property or when it may be disposed of. As such, the landlord does not have any specific rules to follow. A good rule of thumb would be to follow the procedure after the death of a tenant, described on ***page 171*** and in Section 92.014(c)(5) of the Property Code.

Chapter 13: Landlord's Liens and Distress Warrants

A. Commercial Building Landlord's Lien

A landlord who leases/rents all or part of a building for nonresidential use (in other words, a commercial landlord), has a preference lien on the property of the tenant/subtenant for:

- rent that is due; **or**
- rent that will become due during the 12-month period after the date that the rental agreement (or a renewal of the rental agreement) is made.

Property Code §§ 54.021, 54.025.

When Lien is Unenforceable

The lien is unenforceable for rent that is more than six months past due unless the landlord files a lien statement with the county clerk of the county in which the building is located. *Property Code § 54.022(a);* **Maberry v. First Nat. Bank of Littlefield.**

Duration of Lien

This lien exists "while the tenant **occupies the building and until one month** after the day that the tenant abandons the building." *Property Code § 54.024.* ***Webb v. Bergin.***

Distress Warrant

A distress warrant is a means of protecting 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.

The 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 the tenant's property in the court having jurisdiction over that matter. ***McKee v. Sims***; ***Keep 'Em Eating Co. v. Hulings***; ***Webb v. Bergin***; ***Maberry v. First Nat. Bank of Littlefield***.

COMMON PITFALL

The justice of the peace has jurisdiction to issue a distress warrant even if, after execution, the warrant will be returned to another court having jurisdiction over the lien foreclosure. *Property Code § 54.025.* The justice of the peace also has jurisdiction regardless of where the property subject to the lien is now located. ***Gollehon v. Porter.***

"The person to whom rent is payable under a building lease (or the person's agent, attorney, assign, or other legal representative) may apply to the justice in the **precinct** in which 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; **Brown v Johnson.***

Distress Warrant Procedure

The procedure for issuance and service of a distress warrant and the related proceedings are discussed beginning on ***page 150*** below.

B. Agricultural Landlord's Lien

A person who leases land or tenements (at will or for a term of years) has a preference lien for:

- rent that becomes due; **and**
- for the money and the value of property that the landlord furnishes (or causes to be furnished) to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop for marketing.

Property Code § 54.001; Business & Comm. Code § 9.102(a)(5).

Agricultural Tenant

If a landlord files a suit to evict an agricultural tenant, procedures under Chapter 24 of the Property Code apply, with deference to the terms of the written lease agreement. ***Calhoun v. Kirkpatrick***

This lien attaches to property on the leased premises that the landlord furnishes to the tenant to grow a crop **and to the crop grown** on the leased premises in the year that the rent accrues, or the property is furnished. *Property Code § 54.002(a).* However, if the landlord provides everything except labor, the lien attaches only to the crop grown in the year that the property is furnished. *Property Code § 54.002(b).*

A law exempting property from forced sale does not apply to an agricultural landlord's lien on agricultural products, animals, or tools. *Property Code § 54.002(d).*

When There Is *No* Lien

The lien does not attach to the goods of a merchant, trader, or mechanic if the tenant sells and delivers the goods in good faith in the regular course of business. *Property Code § 54.002(c).*

The lien also does not arise if:

- a tenant provides everything necessary to cultivate the leased premises and the landlord charges rent of more than one-third the value of the grain and one-fourth the value of cotton grown on the premises; **or**
- a landlord provides everything except the labor and directly or indirectly charges rent of more than one-half of the value of the grain and cotton grown on the premises.

*Property Code § 54.003; **Green v. Prince**.*

Duration of Lien

The landlord's agricultural lien exists while the property to which it is attached **remains on the leased premises and until one month after the day that the property is removed** from the premises. *Property Code § 54.004.*

If the agricultural products to which the lien is attached are placed in a public or bonded warehouse before the 31st day after the day they are removed from the leased premises, the lien exists while they remain in the warehouse. *Property Code § 54.004.*

Distress Warrant

As with a commercial landlord's lien, the person to whom rent or an advance is payable under an agricultural lease (or the person's agent, attorney, assign, or other legal representative) may apply to a justice court for a distress warrant if the tenant:

- owes any rent or an advance;
- is about to abandon the premises; **or**
- is about to remove the tenant's property from the premises."

Property Code § 54.006.

The application for the distress warrant must be filed with a justice of the peace:

- in the precinct in which the leasehold is located or in which the property subject to the landlord's lien is located; **or**

- who has jurisdiction of the cause of action.

Property Code § 54.006.

Distress Warrant Procedure

The procedure for issuance and service of a distress warrant and the related proceedings are discussed beginning on ***page 150*** below.

C. Residential Landlord's Lien

A landlord of **a single or multifamily residence** has a lien for unpaid rent that is due. The lien attaches to **nonexempt property** that is in the residence or that the tenant has stored in a storage room. *Property Code § 54.041.*

This lien is **not enforceable** unless it is underlined or printed in conspicuous bold print in the lease agreement.

A provision of a lease that attempts to waive or diminish a right, liability or exemption created by this statute is void. *Property Code § 54.043(a).*

***No* Distress Warrant**

Unlike a commercial or agricultural lien, a distress warrant is not an option. The lien is simply a summary procedure for the landlord to seize property and hold it until he can obtain a judgment and order for its sale. ***Bourcier v. Edmondson*.**

1. Property Exempt from Residential Landlord's Lien

A residential landlord's lien does not attach to:

- wearing apparel;
- tools, apparatus, and books of a trade or profession;
- schoolbooks;
- a family library;

- family portraits and pictures;
- one couch, two living room chairs, and a dining table and chairs;
- beds and bedding;
- kitchen furniture and utensils;
- food and foodstuffs;
- medicine and medical supplies;
- one automobile and one truck;
- agricultural implements;
- children's toys not commonly used by adults;
- goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; **and**
- goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

*Property Code § 54.042; **Causey v. Catlett**.*

2. Seizure and Sale of Nonexempt Property

The landlord or the landlord's agent may not seize exempt property.

Property Seizure

The landlord or the landlord's agent may seize nonexempt property only if it is authorized by a written lease and can be accomplished without a breach of the peace. *Property Code § 54.044(a).*

Immediately after seizing the property, the landlord or the landlord's agent must leave a written notice of entry and an itemized list of the items removed. The notice and list must be left in a conspicuous place within the dwelling. The notice must state the amount of delinquent rent and the name, address, and telephone number of the person the tenant may contact regarding the amount owed. The notice must also state that the property will be promptly returned on full payment of the delinquent rent. *Property Code § 54.044(b).*

Unless authorized in a written lease, the landlord is not entitled to collect a charge for packing, removing, or storing property seized under this statute. If the tenant has abandoned the premises, the landlord or the landlord's agent may remove its contents. *Property Code § 54.044(c), (d).*

Sale of Seized Property

Property seized under this statute may **not** be sold or otherwise disposed of unless the sale or disposition is authorized in a written lease. *Property Code § 54.045(a).* Before selling seized property, the landlord or the landlord's agent must give notice to the tenant:

- not later than the 30th day before the date of the sale;
- sent by both first-class mail and certified mail, return receipt requested, at the tenant's last known address; **and**
- containing:
    - the date, time, and place of the sale;
    - an itemized account of the amount owed by the tenant to the landlord; **and**
    - the name, address, and telephone number of the person the tenant may contact regarding the sale, the amount owed, and the right of the tenant to redeem the property.

Property Code § 54.045(b).

Disposition of the Proceeds from Sale of Seized Property

Proceeds from the sale must be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage, and sale costs. *Property Code § 54.045(c).*

Any remaining proceeds of the sale must be mailed to the tenant at the tenant's last known address not later than the 30th day after the date of the sale. The landlord must provide the tenant with an accounting of all proceeds of the sale not later than the 30th

day after the date on which the tenant makes a written request for the accounting. *Property Code § 54.045(d)*.

Tenant's Right to Redeem Seized Property

The tenant may redeem the property at any time before the property is sold by paying to the landlord or the landlord's agent all delinquent rents and, if authorized in the written lease, all reasonable packing, moving, storage, and sale costs. *Property Code § 54.045(e).*

3. Landlord Liability for Violation of Residential Lien Statute

If a landlord or the landlord's agent willfully violates this statute, the tenant is entitled to:

- actual damages;
- return of any property seized that has not been sold;
- return of the proceeds of any sale of seized property;
- one month's rent + $1,000, less any amount for which the tenant is liable; **and**
- reasonable attorney's fees.

Property Code § 54.046.

D. Procedure for Issuing a Distress Warrant

As discussed above, a distress warrant is a means by which a landlord who has a building or agricultural lien may protect his interest in the property subject to the lien until he is able to foreclose the lien and sell the property to satisfy the commercial or agricultural tenant's obligation to pay rent.

KEY POINT

A distress warrant may be issued only where there is a commercial or agricultural lease; a landlord does not have a right to a distress warrant in connection with a residential lease.

1. Application for Distress Warrant

Who May Apply for a Distress Warrant

The person to whom rent is payable under a building lease or agricultural lease (or the person's agent, attorney, assignee, or other legal representative) may apply to the justice of the peace for a distress warrant if the tenant has given the landlord one of the proper grounds discussed above. *Property Code § 54.025.*

Where May the Person Apply for a Distress Warrant

A justice of the peace of the precinct where the building or premises are located may issue a distress warrant regardless of where the property to be seized is located and regardless of if they have jurisdiction over the lien foreclosure suit.

Assignee

An assignee may apply for a distress warrant because a landlord has a right to assign a written obligation given for rent and that assignment carries with it the landlord's statutory lien. **McCollum v. Hammit.**

When May the Person Apply for a Distress Warrant

Either at the commencement of a suit or at any time during its progress, the plaintiff may file an application for the issuance of a distress warrant with the justice of the peace. *Rule 610.*

The nature of the suit referred to in Rule 610 is not specified (an eviction suit or a suit to foreclose a lien) and it is possible that an application for a distress warrant may be filed before a suit to foreclose a lien is filed, since the application must be filed with a justice court and the suit to foreclose the lien will have to be heard in a district or county court if the amount of the lien exceeds the justice court's jurisdiction. ***See page 155.***

The distress warrant need not be sought before the property has been removed from a rented building or the leased premises. A party has a right to have a distress warrant issued when any of the grounds listed in the statute occur, but a party is not required to exercise that right the very moment it is possible. It may be exercised at any time before the lien is lost. As noted above, the lien continues as long as the tenant occupies the leased premises and for one month thereafter. *Rule 610;* ***Webb v. Bergin.***

Support for Application for Distress Warrant

The application may be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts, and shall:

- include a statement that the amount sued for is rent, or advances described by statute, **or**
- produce a writing signed by the tenant to that effect, **and**
- further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant.

Rule 610.

If no rent or advances are due, the landlord cannot make the oath required by the rule for issuance of a distress warrant, and an officer would not be authorized to seize any of a tenant's property. ***Hunt v. Merchandise Mart, Inc.***

2. Issuing the Distress Warrant


KEY POINT

A distress warrant may not be issued before a final judgment of the lien foreclosure, **except on a written order of the justice of the peace after a hearing, which may be *ex parte***. *Rule 610.*

In an order granting an application for a distress warrant, the justice of the peace must:

- make specific findings of fact to support the statutory grounds found to exist;
- specify the maximum value of the property that may be seized, and the amount of the bond required of the plaintiff;
- command that the property be kept safe and preserved subject to further orders of the court having jurisdiction; **and**
- find in the order the amount of bond required to replevy which, unless the defendant exercises his options under Rule 614, shall be the amount of the plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated court costs.

The order may direct the issuance of several warrants at the same time, or in succession, to be sent to different counties. *Rule 610.*

3. Plaintiff's Bond

No distress warrant shall issue before final judgment **until the plaintiff files a bond** with the justice of the peace. This means that if a final judgment foreclosing a lien exists, the

bond is not necessary. But a bond is required if a justice of the peace issues a distress warrant after a hearing as described above.

The bond must be payable to the defendant in an amount approved by the justice with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay all damages and costs as may be ordered against him for wrongfully seeking the warrant.

After notice to the opposing party, either before or after the issuance of the warrant, the defendant or the plaintiff may file a motion to increase or reduce the amount of the bond, or question the sufficiency of the sureties, in a court having jurisdiction of the subject matter. *Rule 611.*

4. Requisites of the Warrant

A distress warrant is directed to the sheriff or any constable within the State of Texas. It commands the officer to attach and hold as much of the defendant's property in the approximate amount set by the justice of the peace, which is found in the officer's county unless that property is exempt by statute or replevied by the defendant. *Rule 612.*

A notice must be prominently displayed on the face of the warrant served on the defendant in 10-point type in a manner calculated to advise a reasonably attentive person of its contents, stating as follows:

REQUIRED LANGUAGE

To: _____, Defendant:
You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:
"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT."

Rule 613.

If the defendant has left the county without service, the officer shall state this fact in his return on the citation, and the court shall proceed to try the case ex parte, and may enter judgment. *Rule 619.*

5. Issuance of Citation

At the time the justice issues the warrant, a citation shall also be issued to the defendant:

- **If the justice of the peace has jurisdiction to finally try the case (the amount owed is within the jurisdictional limit of the court)**: Requiring the defendant to answer before such justice on the first day of the next succeeding term of court and stating the time and place.

- **If the justice of the peace does not have jurisdiction to try the case**: Requiring the defendant to answer before the court to which the warrant was made returnable at or before 10 a.m. of the Monday following the expiration of twenty days from the date of service (and stating the place). In this case, the citation shall be returned to the court with jurisdiction. ***See Section 6 below.***

Rule 619.

Service of the Citation

The citation shall be served in any manner allowed for service of citation, or as provided in Rule 21a, with a copy of the distress warrant, the application, accompanying affidavits, and orders of the justice of the peace as soon as practicable following the levy of the warrant. *Rule 613.*

KEY POINT

A judgment of foreclosure of the landlord's lien is not sustainable if the justice has failed to issue a citation to the defendant at the time of issuing the warrant**.** ***Martin Co. v. Cottrell.***

Plaintiff Must File Petition with Court Having Jurisdiction

When the warrant is made returnable to the district or county court, the plaintiff shall file his petition in the appropriate court having jurisdiction of the lien foreclosure suit (if he has not already done so) within ten days from the date of the issuance of the distress warrant. *Rule 620.* This means the plaintiff has to file a petition in the district or county court where the warrant will be returned since the justice court that issued the distress

warrant will not hear the underlying foreclosure case because it exceeds the court's jurisdictional limit.

6. Court to Which the Warrant is Returnable

Although only a justice of the peace has the authority to issue a distress warrant, the warrant is returnable to, and the suit to foreclose the lien on the property seized under the warrant is tried in, **the court having jurisdiction of the amount in controversy**. *Rule 610.* If the amount in controversy is not within the justice court's subject matter jurisdiction, then the suit will be filed in a district or county court.

The "amount in controversy" is not determined by the value of the property seized, because the foreclosure of the lien is upon only so much of the property as is necessary to satisfy the debt. Instead, the amount in controversy is **the amount or value of the rent or advances sued for**. *Rule 610, 613; **Western Flavor-Seal Co. v. Allison**; **Small v. Rush**.*

In short, if the amount of back 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 over the underlying suit to foreclose the lien – even though the justice court **does have jurisdiction to issue the distress warrant**.

If the justice court does **not** have jurisdiction of the amount in controversy, a distress warrant returnable to the justice court will be quashed and the property seized under it returned to the defendant. ***Spann v. Trumpf***.

Even if the court to which the warrant is returnable has jurisdiction of the plaintiff's claim, if the defendant files a counterclaim against the plaintiff for an amount in excess of the court's jurisdiction, the court has no jurisdiction of the counterclaim. ***Armstrong v. Clayton.***

7. Replevy Bond

A replevy bond is a process where a defendant can get part or all of his or her property back by putting up a bond (at any time before judgment if the property has not been

claimed or sold). If the property has been sold under an order of the court, the defendant may replevy the proceeds from the sale.

Method and Amount

The defendant replevies by giving a bond with sufficient surety or sureties as provided by statute.

The bond must be approved by a court having jurisdiction of the amount in controversy and be payable to the plaintiff in double the amount of the plaintiff's debt or, at the defendant's option, for not less than the value of the property sought to be replevied, plus one year's interest at the legal rate from the date of the bond.

Replevy Bond

The replevy bond is **not a security for the debt sued on**; it binds the parties for the property or its value. ***Toland v. Swearingen & Smith.***

Liability is not incurred until there has been a failure to deliver the goods or thing. Therefore, a judgment foreclosing the landlord's lien for the rent should not include the sureties on the bond. ***Weir v. Brooks.***

Conditions

The bond shall be conditioned that the defendant shall satisfy (to the extent of the amount of the bond) any judgment which may be rendered against him in such action. *Rule 614.*

Contest

On reasonable notice to the opposing party, which may be less than three days, either party has the right to prompt judicial review by a court having jurisdiction of the underlying suit of:

- the amount of bond required;
- denial of bond;
- sufficiency of the sureties; **and**
- the estimated value of the property.

Rule 614.

The court's determination may be made on the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence. But if the affidavits are controverted, the parties have to submit evidence.

The court hearing the contest shall then enter its order either approving or modifying the requirements of the order of the justice of the peace (if it was a different court), and that order replaces the prior order. *Rule 614.*

For example, if a commercial or agricultural landlord files for a distress warrant, and the justice of the peace grants it, the tenant may seek to replevy the property seized under the warrant. After the justice sets the amount of the replevy bond, either party may contest that amount. This is done in the court having jurisdiction of the underlying suit. If that court is not the justice court, then the contest of the amount of the replevy bond would be heard by the county or district court having jurisdiction of the case and the order of that court would replace the order of the justice court. *Rule 614.*

8. Substitution of Property

On reasonable notice to the opposing party (which may be less than three days), the defendant also has the right to ask the court if they can substitute property of equal value for the property seized. The court may then authorize substitution of one or more items of the defendant's property for all or part of the property seized. *Rule 614.*

The court must first make findings as to the value of the property to be substituted. If property is substituted, the property released from seizure shall be delivered back to the defendant if it is personal property, and all liens upon that property from the original order of seizure are terminated *Rule 614.*

9. Sale of Perishable Property

Whenever personal property which has been levied on under a distress warrant has not been claimed or replevied, the judge or justice of the peace to whose court the warrant is returnable may order the property to be sold if it appears:

- that the property is in danger of serious and immediate waste or decay; **or**
- that keeping the property until trial will involve such expense or deterioration in value that it will greatly decrease the amount likely to be received from its sale.

Rule 615.

In determining whether the property is perishable, and the necessity or advantage of ordering a sale, the judge or justice of the peace may act upon affidavits in writing or on oral testimony. He may then enter on the record a preliminary order with or without notice to the parties directing the sheriff or constable to sell the property at public auction for cash; and the sheriff or constable shall then sell it *Rule 616; **Rule v. Richards**.*

10. Dissolution or Modification of the Warrant

A defendant whose property has been seized or any intervening claimant who claims an interest in the property, may by sworn written motion, seek to vacate, dissolve, or modify the seizure on any ground.

Requirements of and Time to Hear Motion

The motion must admit or deny each finding of the order directing the issuance of the warrant except where the movant is unable to admit or deny the finding, in which case the movant must state the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff, and the issue shall be determined not later than 10 days after the motion is filed.

Stay of Further Proceedings

The filing of the motion stays any further proceedings under the warrant until a hearing is held, except for any orders concerning the care, preservation, or sale of any perishable property.

Hearing and Orders

The warrant must be dissolved unless at the hearing the plaintiff proves the specific facts alleged and the grounds relied on for its issuance. The court may modify the order of the justice of the peace granting the warrant and the warrant itself.

The movant has the burden to prove that the reasonable value of the property seized exceeds the amount necessary to secure the debt, interest for one year, and probable costs.

The court's determination may be made based on affidavits setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party shall be received and considered.

The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds if the same has been sold), as justice may require.

If the movant has given a replevy bond, an order to vacate or dissolve the warrant shall vacate the replevy bond and discharge the sureties thereon. If the court modifies the order or the warrant, it shall make such further orders with respect to the bond as may be consistent with its modification. *Rule 614(a).*

Chapter 14: Tenant's Lien Upon Landlord's Breach of Lease

If a tenant is not in default under a lease, and their landlord fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for the resulting damages. *Property Code § 91.004(a).*

KEY POINT

To secure payment of these damages, the tenant has a lien on the landlord's nonexempt property in the tenant's possession and on the rent due to the landlord under the lease. *Property Code § 91.004(b).*

This lien exists in all types of tenancies—residential, manufacture home, and commercial. (There is no language limiting this provision to a particular type of tenancy; it is found in Chapter 91 of the Property Code, which contains provisions generally applicable to landlords and tenants).

Chapter 15: Additional Rights and Obligations in Residential Tenancies

Chapter 92 of the Property Code contains various rights and obligations that apply to tenants and landlords under residential tenancies.

Please keep in mind that if the tenant has a manufactured home tenancy under Chapter 94 of the Property Code, the same rights and procedures will apply as for a residential tenant. This is because the provisions in Chapter 92 apply to "relationships between landlords and tenants of residential rental property," and a lot in a manufactured home community could be considered "residential rental property." *Property Code § 92.002.* For information regarding additional rights and obligations that apply only to manufactured home tenancies, see ***page 67.***

Claims May be Filed in Justice Court but May Not Be Heard in an Eviction Suit
Suits to enforce these rights and obligations must be brought in a separate suit, rather than in an eviction suit since the only issue in an eviction suit is the right of possession and back rent. But suits to enforce rights and obligations under Chapter 92 may still be brought in justice court as long as they are within the jurisdictional limit of the justice court and do not fall within an exception to justice court jurisdiction (such as a suit for an injunction or a suit to determine title to land).

Proper Venue for Chapter 92 Claims
Venue for such an action is in the county in which all or a part of the real property is located unless mandatory venue is prescribed under another statute that applies to that case. *Property Code § 92.007; Civil Practice & Remedies Code § 15.0115.*

Some of these rights and obligations are discussed below. We note that this discussion is not exhaustive, and that Chapter 92 of the Property Code should be carefully reviewed and considered for any claims raised under it in a suit filed in justice court.

A. Waiver or Expansion of Duties or Remedies Under Chapter 92 of the Property Code

1. Security Deposits, Security Devices, Ownership and Management Disclosures, and Utility Cutoffs

A landlord's duty or a tenant's remedy concerning security deposits, security devices, the landlord's disclosure of ownership and management, or utility cutoffs, as provided by Subchapters C, D, E or G respectively of Chapter 92 of the Property Code, **may not be waived**. *Property Code § 92.006(a).*

A landlord's duties and the tenant's remedies concerning security devices, or the landlord's disclosure of ownership and management, as provided by Subchapter D or E, respectively, **may be enlarged** only by specific written agreement. *Property Code § 92.006(b).*

2. Smoke Detectors

A landlord's **duty to install** a smoke detector under Subchapter F **may not be waived,** nor may a tenant waive a remedy for the landlord's non-installation or waive the tenant's limited right of installation and removal. *Property Code § 92.006(a).*

The landlord's **duty of inspection and repair** of smoke detectors under Subchapter F **may be waived** only by written agreement. *Property Code § 92.006(a).*

A landlord's duties and the tenant's remedies concerning smoke detectors, as provided by Subchapter F, **may be enlarged** only by specific written agreement. *Property Code § 92.006(b).*

3. Conditions Materially Affecting the Health or Safety of an Ordinary Tenant

A landlord's duties and the tenant's remedies under Subchapter B, which covers conditions materially affecting the physical health or safety of an ordinary tenant, **may not be waived** except as discussed on ***page 113.***

4. Right to Vacate the Premises and Avoid Liability Regarding Family Violence or Military Service

A tenant's right to vacate a dwelling and avoid liability under Section 92.016 or 92.017 **may not be waived** by a tenant or a landlord, except as provided by those sections. *Property Code § 92.006(g).* For more information on these rights, ***see pages 164-172***.

5. Tenant's Right to a Jury Trial

A tenant's right to a jury trial in an action brought under Chapter 92 of the Property Code **may not be waived** in a lease or other written agreement. *Property Code § 92.006(h).* Keep in mind that an eviction suit is brought under Chapter 24 of the Property Code, not under Chapter 92. Therefore, this non-waiver provision arguably does not apply to eviction suits but only to suits brought under Chapter 92, which would include repair and remedy cases, return of a security deposit, and other miscellaneous actions.

What if a Party to a Lease that Waives the Right to a Jury Requests a Jury Trial?
If the parties have a lease waiving a jury trial, and a party requests a jury trial, the court should grant the request. A lease cannot override the Texas Constitution, the Rules of Civil Procedure, or other applicable statutes.

B. Tenant's Right to Summon Police or Emergency Assistance


KEY POINT

A landlord may not:

- prohibit or limit a residential tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance; **or**
- impose monetary or other penalties on a tenant who summons police or emergency assistance if the assistance was requested or dispatched based on the tenant's reasonable belief that an individual was in need of intervention or emergency assistance.

Property Code § 92.015(a).

In addition to other remedies provided by law, if a landlord violates Section 92.015, a tenant is entitled to recover from or against the landlord:

- a civil penalty in an amount equal to one month's rent;
- actual damages suffered by the tenant as a result of the landlord's violation;
- court costs;
- injunctive relief (this must be sought in a district or county court); **and**
- reasonable attorney's fees incurred by the tenant in seeking enforcement.

Property Code § 92.015 (c).

A provision in a lease is **void** if it attempts:

- to waive a tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance; **or**
- to exempt a party from a liability or a duty under Section 92.015.

Property Code § 92.015(b).

C. Tenant's Right to Terminate Lease and Avoid Liability Following Certain Events

1. Family Violence


KEY POINT

A tenant may terminate the tenant's rights and obligations under a lease and vacate the dwelling before the end of the lease term (and avoid liability for future rent and any other sums due under the lease) once the following occurs:

- A judge signs one of the following orders protecting the tenant or an occupant from family violence **and** the tenant provides the landlord with a copy of:
  - a temporary injunction issued under Family Code, Subchapter F, Chapter 6;
  - a temporary ex parte order issued under Family Code Chapter 83;
  - a protective order issued under Family Code, Chapter 85; **or**

Definitions

"Family violence" has the meaning assigned by Family Code § 71.004.

"Occupant" means a person who has the landlord's consent to occupy a dwelling but has no obligation to pay the rent for the dwelling. Property Code § 92.016.

- an order of emergency protection (EPO) issued under Code of Criminal Procedure, Art. 17.292.

or

- The tenant provides the landlord with documentation of the domestic violence against the tenant or an occupant from:
    - a licensed health care provider who examined the victim;
    - a licensed mental health care provider who examined or evaluated the victim; **or**
    - an advocate, as defined by Family Code Section 93.001, who assisted the victim.

and

- The tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates (but if the family violence is committed by a cotenant or occupant of the dwelling, a tenant is not required to provide the 30 day notice);
- The 30th day after the date the tenant provided the notice of termination expires (unless the family violence was committed by a cotenant or occupant of the dwelling); **and**
- The tenant vacates the dwelling.

Property Code § 92.016(b),(c),(c-1).

COMMON PITFALL

Tenant Responsibility for Unpaid Rent Prior to Termination:
A tenant's right to terminate the lease does not affect the tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant. *Property Code § 92.016(d).*

However, a tenant is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

> *"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."*

Property Code § 92.016(f).

Landlord Liability

A landlord who violates these provisions is liable to the tenant for:

- actual damages;
- a civil penalty equal in amount to the amount of one month's rent plus $500; **and**
- attorney's fees.

Property Code § 92.016(e).

No Waiver

A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under these provisions may not be waived by a tenant. *Property Code § 92.016(g).*

2. Certain Sex Offenses or Stalking

KEY POINT

A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling before the end of the lease term (and avoid liability for future rent and any other sums due under the lease) once all of the following events have occurred:

- The tenant is a victim (or the parent or guardian of a victim) of:
    - sexual assault, aggravated sexual assault, indecency with a child, sexual performance by a child, continuous sexual abuse of a young child or disabled individual, or an attempt to commit any of those offenses; **or**
    - stalking, that takes place within the preceding six-month period on the premises;

- the tenant provides a copy of the relevant documentation described below to the landlord;

- the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

- the 30th day after the date the tenant provided notice expires; **and**

- the tenant vacates the dwelling.

Property Code § 92.0161(b),(d).

Documentation for a Sex Offense

If the reason for the lease termination is a sexual offense, the tenant must provide to the landlord or the landlord's agent a copy of ***one*** of the following:

- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim;

- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim;

- documentation of the assault or abuse, or attempted assault or abuse, of the victim from an individual authorized under Government Code, Chapter 420, who provided services to the victim; **or**

- documentation of a protective order issued under Code of Criminal Procedure, Chapter 7A except for a temporary ex parte order.

Property Code § 92.0161(c).

Documentation for Stalking

If the reason for the lease termination is stalking, the tenant must provide to the landlord or the landlord's agent a copy of:

- documentation of a protective order issued under Code of Criminal Procedure, Chapter 7A or Article 6.09, except for a temporary ex parte order; **or**

- documentation of the stalking from a provider of services described in one of the first three bullet points in the Documentation for a Sex Offense section, **and:**
    - a law enforcement incident report or, if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; **and**
    - if the report or record identifies the victim by means of a pseudonym, as defined by Code of Criminal Procedure, Article 57A.01, a copy of a pseudonym form completed and returned under Article 57A.02.

Property Code § 92.0161(c-1).

COMMON PITFALL

Tenant Responsibility for Unpaid Rent Prior to Termination

A tenant's right to terminate the lease does not affect the tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant. *Property Code § 92.016(d).*

However, a tenant is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

> *"Tenants may have special statutory rights to terminate the lease early in certain situations involving certain sexual offenses or stalking."*

Property Code § 92.0161(e) and (g).

Landlord Liability

A landlord who violates these provisions is liable to the tenant for:

- actual damages;
- a civil penalty equal in amount to the amount of one month's rent plus $500; **and**
- attorney's fees.

Property Code § 92.0161(f).

No Waiver

A tenant may not waive the tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability on these grounds. *Property Code § 92.0161(h).*

3. Military Service (Servicemembers Civil Relief Act)

Section 92.017 implements provisions of the Servicemembers Civil Relief Act which protect servicemembers who are transferred or deployed. ***See page 81*** for additional information regarding the SCRA and how similar lease termination provisions apply in types of tenancies other than

Defining Terms

The terms "dependent," "military service," and "servicemember" have the meaning assigned by 50 U.S.C. § 3911 (the SCRA). *Property Code § 92.017(a).*

residential tenancies.

KEY POINT

A tenant who is a servicemember or a dependent of a servicemember may terminate a lease and vacate the dwelling before the end of the lease term (and avoid liability for future rent and all other sums due under the lease) if:

- the lease was executed by or on behalf of a person who, after executing the lease or during the term of the lease, enters military service; **or**
- a servicemember, while in military service, executes the lease and after executing the lease receives military orders:
    - for a permanent change of station; **or**
    - to deploy with a military unit for a period of 90 days or more.

Property Code § 92.017(b).

Documentation

A tenant who terminates a lease under these provisions must deliver to the landlord:

- a written notice of termination of the lease; **and**
- a copy of an appropriate government document providing evidence of the tenant's entrance into military service or a copy of the servicemember's military orders.

Property Code § 92.017(c).

When Termination is Effective

Termination of a lease is effective:

- **If the lease provides for monthly payment of rent**: On the 30th day after the first date on which the next rental payment is due after the date the notice of termination is delivered.
- **If the lease provides for anything other than monthly payment of rent**: On the last day of the month following the month in which the notice of termination is delivered.

Property Code § 92.017(d).

COMMON PITFALL

Tenant Responsibility for Unpaid Rent Prior to Termination

These provisions do not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant. *Property Code § 92.017(f).*

However, a tenant is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

> *"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."*

Property Code § 92.017(g).

Landlord Liability

A landlord who violates these provisions is liable to the tenant for:

- actual damages;
- a civil penalty in an amount equal to the amount of one month's rent plus $500; **and**
- attorney's fees.

Property Code § 92.017(h).

Waiver

A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under these provisions **may not** be waived by a tenant. *Property Code § 92.017(i).*

However, a tenant and a landlord **may agree** that the tenant waives the tenant's rights under these provisions if the tenant or any dependent living with the tenant moves into base housing or other housing within 30 miles of the dwelling.

A waiver under this section must be signed and in writing in a document separate from the lease and must comply with federal law. A waiver under this section does not apply if:

- the tenant or the tenant's dependent moves into housing owned or occupied by family or relatives of the tenant or the tenant's dependent; **or**
- the tenant and the tenant's dependent move, wholly or partly, because of a significant financial loss of income caused by the tenant's military service.
    - "Significant financial loss of income" means a reduction of 10 percent or more of the tenant's household income caused by the tenant's military

service. A landlord is entitled to verify the significant financial loss of income in order to determine whether a tenant is entitled to terminate a lease. *Property Code § 92.017(k).*

Property Code § 92.017(j).

4. Notifications Related to Dwellings Located in Floodplain

KEY POINT

This section applies only to leases entered or renewed on or after January 1, 2022.

A landlord must provide a tenant the notice required by Property Code, Section 92.0135(b) notifying the tenant whether the property is located in a 100-year floodplain. Additionally, the landlord must disclose any flood damage that has occurred in the previous five years.

If the landlord fails to provide the required information, and the tenant suffers substantial loss or damage to their personal property due to flooding, the tenant may deliver a written notice of termination no later than the 30th day after the loss or damage. "Substantial loss or damage" is defined as damage where the cost of repair or replacement is 50% or more of the item's market value.

If the tenant terminates the lease as provided, the termination is effective when the tenant surrenders possession. No later than 30 days after termination, all rent paid for any period after the termination date must be refunded. Any delinquent rent owed for periods before the termination date would still be owed by the tenant. *Property Code § 92.0135.*

5. Death of the Tenant

If a tenant dies before the expiration of the tenant's lease and was, at the time of death, the sole occupant of a rental dwelling, a representative of the tenant's estate may terminate the tenant's rights and obligations under the lease and vacate the leased premises and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the leased premises before the end of the lease term if:

- the representative provides to the landlord or the landlord's agent written notice of the termination of the lease under Property Code, Section 92.0162;

- the deceased tenant's property is removed from the leased premises in accordance with Section 92.014(c) or (d); **and**

- the representative signs an inventory of the removed property, if required by the landlord or the landlord's agent.

After receipt of the notice, the landlord shall provide a copy of the written lease agreement to the person who provided the notice on written request of that person.

When Termination is Effective
Termination of a lease under this section is effective on the **later** of:

- the 30th day after the date on which the notice under Section 92.0162(a) was provided; **or**
- the date on which all of the conditions in Section 92.0162(a) have been met.

Termination Does Not Affect Prior Obligations or Liability of the Tenant
This section does not affect the obligations or liability of the tenant or the tenant's estate under the lease **before** the lease is terminated under this section, including the liability of the tenant or the tenant's estate for delinquent, unpaid rent or damages to the leased premises not caused by normal wear and tear.

No Liability for Landlord Complying with Termination Under This Provision
A landlord or landlord's agent who lawfully permits a person described by Section. 92.0162(a) to enter or facilitates the person's entry into the leased premises under this section is not liable for an act or omission that arises in connection with permitting or facilitating the entry.

D. Fees for Late Payment of Rent

Remember that late fees **may not** be recovered in an eviction suit. However, the court may have to determine liability for late fees in a small claims case. The amount of late fees that may be assessed depends on when the lease was entered into or last renewed. If a lease was originally entered into before September 1, 2019, but has been renewed on or after September 1, the court should use the information for leases after September 1. See notes for *SB 1414, 2019 Texas Legislative Session.*

For Leases Entered Into or Renewed Before September 1, 2019

A landlord may not charge a tenant a late fee for failing to pay rent unless:

- notice of the fee is included in a written lease;
- the fee is a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent; **and**
- the rent has remained unpaid **one full day after** the date the rent was originally due.

For Leases Entered Into or Renewed on or After September 1, 2019

A landlord may not collect from a tenant a late fee for failing to pay any portion of the tenant's rent unless:

- notice of the fee is included in a written lease;
- the fee is no more than:
    - 12% of the rent for the rental period if the structure contains four units or less,
    - 10% of the rent for the rental period if the structure contains more than four units, **or**
    - Uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, costs, or overhead; **and**
- the rent has remained unpaid **two full days after** the date the rent was originally due.

Property Code § 92.019(a)(a-1).

A late fee under this section may include an initial fee and a daily fee for each day the rent continues to remain unpaid. If the lease was entered into or last renewed since September 1, 2019, the combined fees are considered a single late fee. *Property Code § 92.019(b).*

Landlord Liability

A landlord who violates this provision is liable to the tenant for:

- $100 plus three times the amount of the late fee charged in violation of this provision; **and**
- reasonable attorney's fees.

Property Code § 92.019(c).

Landlord's Rights

This provision does not affect the landlord's right to terminate the lease or take other action permitted by the lease or other law. *Property Code § 92.019(e).*

No Waiver

Payment of the fee, charge, or other sum of money by a tenant does not waive the right or remedies provided by this statute. *Property Code § 92.019(e).*

A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this statute is void. *Property Code § 92.019(d).*

Tenant's Right to a Statement of Late Fees

A tenant may request that the landlord provide to the tenant a written statement of whether the tenant owes a late fee to the landlord and, if so, the amount of the late fee. On request, the landlord shall provide the statement to the tenant by any established means regularly used for written communication between the landlord and the tenant. A landlord's failure to respond does not affect the tenant's liability for any late fee owed to the landlord. *Property Code § 92.0191.*

E. Emergency Phone Number

If On-Site Management Office Exists

A landlord who has an on-site management office for residential rental property must give a tenant a telephone number that is answered 24 hours a day for the purpose of reporting emergencies related to a condition of the leased premises that materially affects the physical health or safety of an ordinary tenant. The landlord must post the phone number prominently outside the management office. *Property Code § 92 020(a)(b).*

If *No* On-Site Management Office Exists

A landlord who does not have an on-site management office must still give a tenant a telephone number for the purpose of reporting emergencies related to a condition of the premises that materially affects the physical health or safety of an ordinary tenant, but the number is not required to be answered 24 hours a day. *Property Code § 92.020(d).*

F. Minimum Habitability Standards for Certain Multi-Family Rental Buildings

A "Multi-family rental building" means a building that has three or more single-family residential units. *Local Government Code § 214.219(b).* "Unit" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants. *Local Government Code § 214.219(b).*

Required Municipal Ordinance and Program

A municipality with a population of **1.7 million or more** must adopt an ordinance to establish minimum habitability standards for multi-family rental buildings. *Local Government Code § 214.219(c).* The municipality must also establish a program for the inspection of multi-family rental buildings to determine if the buildings meet the minimum required habitability standards. *Local Government Code § 214.219(e).*

Violation by Owner

The owner of a multi-family rental building commits a Class C misdemeanor if the owner violates this ordinance. Each day the violation continues constitutes a separate offense. *Local Government Code § 214.219(g).* A municipality may also impose a civil penalty for a violation of this statute. *Local Government Code § 214.219(h).*

Closure

A municipality may not order the closure of a multi-family rental building due to a violation of an ordinance adopted by the municipality relating to habitability unless the municipality makes a good faith effort to locate housing with comparable rental rates in the same school district for the residents displaced by the closure. *Local Government Code § 214.219(f).*

G. Tenant Firearm Rights

Tenants' rights to possess firearms in and around their rental unit were expanded during the 2019 Legislative Session. The two main areas of expansion were new defenses to firearm possession offenses and restrictions on landlords banning possession of firearms on rental premises.

Defense to Penal Code Offenses

Defenses to Criminal Trespass (Penal Code Section 30.05), Trespass by License Holder with a Concealed Handgun (Penal Code Section 30.06), and Trespass by License Holder with an Openly Carried Handgun (Penal Code Section 30.07) exist for carrying handguns onto the premises of others.

For these offenses, it is a defense if the reason entry on the premises was forbidden was that entry with a firearm or ammunition was forbidden and the person is:

- a tenant or guest of an owner or tenant of a condominium unit or regime covered by Chapter 81 or 82 of the Property Code **or**
- a tenant or guest of a tenant in rental property governed by Chapter 92 or 94 of the Property Code (residential rental property or manufactured home lot), **and**
- the actor is not otherwise prohibited from possessing a firearm or ammunition, **and**
- the firearm or ammo is stored in the unit, carried directly to or from the unit, carried directly to or from the actor's vehicle, or stored or carried in the actor's vehicle.

Penal Code §§ 30.05(f-1), (f-2), (f-3); § 30.06 (e-1), (e-2), (e-3); § 30.07 (e-1), (e-2), (e-3).

Possession of Firearm on Premises May Not be Barred by Lease or Condominium Instrument

Unless possession of a firearm or ammunition on condominium property or other residential property (including manufactured home lots) is prohibited by state or federal law, tenants or guests **may not** be prohibited from possessing, carrying, storing, or transporting a firearm or ammunition in the residential unit, a vehicle located in a provided parking area, or between those areas as necessary to enter and exit the vehicle, premises, or unit. *Property Code §§ 82.121; 92.026; 94.257.*

This restriction applies to all condominiums, and any residential or manufactured home lot where the lease was entered into or renewed **on or after** September 1, 2019. Be aware that this could come up as grounds for eviction in an eviction case. If there are no other grounds, and the lease was entered into on or after September 1, 2019, a judgment in favor of the defendant must be entered.

H. Parking Permits

A landlord who issues a parking permit to a tenant must issue the permit for a term that ends at the same time as the tenant's current lease term, and may not terminate or suspend the permit until the date the tenant's right of possession ends. *Property Code § 92.0132.* This could come up in a tow hearing when determining if the tow was legally valid or not. For more information, see Chapter 10 of the *Administrative Proceedings Deskbook.*

Effective Date
This restriction applies to any parking permit issued on or after January 1, 2020, regardless of the date the lease was entered into or renewed.

I. Right to a Copy of the Lease

Not later than the **third business day** after the date the lease is signed by each party to the lease, a **l**andlord **shall** provide at least one complete copy of the lease to at least one tenant who is a party to the lease. *Property Code § 92.024(a).*

If more than one tenant is a party to the lease, not later than the **third business day** after the date a landlord receives a written request for a copy of a lease from a tenant who has not received a copy of the lease, the landlord **shall** provide one complete copy of the lease to the requesting tenant. *Property Code § 92.024(b).*

A landlord may comply by providing to a tenant a complete copy of the lease in a paper format, in an electronic format if requested by the tenant, or by e-mail if the parties have communicated by e-mail regarding the lease. *Property Code § 92.024(e).*

What if the Landlord Doesn't Comply?
If the tenant submits to the court evidence that the landlord failed to comply with these requirements, the court must stay any case to enforce the lease, **other than for nonpayment of rent**, until the landlord provides to a tenant a complete copy of the lease as required. *Property Code § 92.024(d).*

Chapter 16: Appendix of Cases

Aguilar v. Weber, 72 S.W.3d 729, 732 (Tex. App.—Waco 2002, no pet.)
*AMC Mortg. Services, Inc. v. Shields, 2007 WL 1366048, at *1 (Tex. App.—Dallas May 9, 2007, no pet.)*
American Nat. Property and Cas. Co. v. Patty, 2001 WL 914990 (Tex. App.—Dallas 2001, pet. denied)
American Spiritualist Ass'n v. Ravkind, 313 S.W.2d 121, 124-25 (Tex. Civ. App.—Dallas 1958, writ ref'd n.r.e.)
Armstrong v. Clayton, 255 S.W. 1015 (Tex. Civ. App.—El Paso 1923, no writ)
B.F. Avery & Sons v. Kennerly, 12 S.W.2d 140 (Tex. Comm'n App.1929, judgm't adopted)
Bourcier v. Edmondson, 58 Tex. 675, 1883 WL 9089 (Tex. 1883)
Brown v Johnson, 118 Tex. 143, 12 S.W. 2d 543, 545 (Tex. Com. App. 1929, writ ref'd.)
Burden v. Burden, No. 06-13-00089-CV, 2014 WL 3535066 (Tex. App.—Texarkana July 17, 2014, no pet.)
Byrd v. Fielding, 238 S.W.2d 614 (Tex. Civ. App.—Amarillo 1951, no writ)
Calhoun v. Kirkpatrick, 155 S.W. 686, 687-88 (Tex. Civ. App.—San Antonio 1913, n.w.h.).
Carlson's Hill Country Beverage, L.C. v. Westinghouse Road Joint Venture, 957 S.W.2d 951, 954 (Tex. App.—Austin 1997, no pet.)
Causey v. Catlett, 605 S.W.2d 719, 720 (Tex. Civ. App.—Dallas 1980, n.w.h)
Cavazos v. Hancock, 686 S.W.2d 284, 287 (Tex. App.—Amarillo 1985, no writ)
Charalambous v. Jean Lafitte Corp., 652 S.W.2d 521, 526 (Tex. App.—El Paso 1983, writ ref'd n.r.e.)
Coinmach Corp. v. Aspenwood Apartment Complex, 417 S.W.3d 909 (Tex. 2013)
Continental Coffee Prods. v. Cazarez, 937 S.W.2d 444, 449 (Tex. 1996)
Cook v. Comm'r of Soc. Sec., 480 F.3d 432, 436 (6th Cir. 2007)
EDG Property Management, Inc. v. Ratnani, 279 S.W.3d 905 (Tex. App.—Dallas 2009, n.w.h.)
Fandey v. Lee, 880 S.W.2d 164, 169 (Tex. App.--El Paso 1994, writ denied)
Flynt v. Garcia, 587 S.W.2d 109, 110 (Tex. 1979)
French v. Moore, 169 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2004, n.w.h.)
Furrer v. Furrer, [2019 WL 5075864 (Tex. App.—Beaumont Oct. 10, 2019)]
Garcia v. Perrett, No. 01-13-00237-CV, 2014 WL 3928566 (Tex. App.—Houston [1st. Dist.] Aug. 12, 2014, no pet.)

*Glapion v. AH4R I TX, LLC, No. 14–13–00705–CV, 2014 WL 2158161, at *2 (Tex. App.–Houston [14th Dist.] May 22, 2014, no pet.)(mem. op.)*

Goggins v. Leo, 849 S.W.2d 373, 377 (Tex.App.—Houston [14th Dist.] 1993, no writ)

Gollehon v. Porter, 161 S.W.2d 134, 136 (Tex. Civ. App.—Amarillo 1942, writ ref'd w.o.m.)

*Gore v. Homecoming Financial Networks, Inc., 2008 WL 256830, at *2 (Tex. App.—Dallas Jan. 31, 2008, no pet.)*

Green v. Prince, 201 S.W. 200, 203 (Tex. Civ. App.—Austin 1918, n.w.h.)

Haginas v. Malbis Memorial Foundation, 163 Tex. 274, 354 S.W.2d 368, 371 (Tex. 1962)

Haith v. Drake, 596 S.W.2d 194, 196 (Tex. Civ. App.—Houston [1st Dist.] 1980, writ ref'd n.r.e.)

Hanks v. Lake Towne Apartments, 812 S.W.2d 625, 626 (Tex. App.—Dallas 1991, writ den.)

Holcombe v. Lorino, 124 Tex. 446, 79 S.W.2d 307,309 (Tex. 1935)

Hunt v. Merchandise Mart, Inc., 391 S.W.2d 141 (Tex. Civ. App.—Dallas 1965, writ ref. n.r.e.).

ICM Mortgage Corp. v. Jacob, 902 S.W.2d 527, 530 (Tex. App.--El Paso 1994, writ denied)

*In re A.J.'s Wrecker Service of Dallas, 2002 WL 497021 at *1 (Tex. App.—Dallas Apr. 3, 2002, no writ)*

In re Garza, 990 S.W.2d 372, 374 (Tex. App.—Corpus Christi 1999, no pet.)

*In re Nicholson, 2019 WL 2524291, at *3-4 (9th Cir. June 18, 2019).*

*Johnson v. Mohammed, No. 03-10-00763-CV, 2013 WL 1955862, *7 (Tex. App. – Austin May 10, 2013, pet. dism'd w.o.j.) (mem. op.)*

Kazmir v. Benavides, 288 S.W.3d 557, 564 (Tex. App.—Houston [14th Dist.] 2009, no pet.)

Keep 'Em Eating Co. v. Hulings, 165 S.W. 2d 211, 213 (Tex. Civ. App.—Austin 1942, n.w.h)

Kendziorski v. Saunders, 191 S.W.3d 395, 409-410 (Tex. App.—Austin 2006, no pet.)

King v. Bank of New York, 2008 WL 2764523 (Tex. App.—Corpus Christi 2008, n.p.h.)

Lindemood v. Comm'r of Internal Revenue, 566 F.2d 646, 647 (9th Cir. 1977)

Maberry v. First Nat. Bank of Littlefield, 351 S.W.2d 96, 99, 100 (Tex. Civ. App.—Amarillo 1961, n.w.h.)

*Malatesta v. Dove Meadows Homeowners Assoc., 2009 WL 5064579 (Tex. App.—Houston [1st Dist.] Dec. 22, 2009, no pet.) at *1*

Martin Co. v. Cottrell, 142 S.W. 48 (Tex. Civ. App.—Fort Worth 1911, no writ)

Martinez v. Ball, 721 S.W.2d 580, 581 (Tex. App.—Corpus Christi 1986, no pet.)

Martinez v. Kanga Park, Inc., 2019 WL 4615814 (Tex. App.—Houston [14th Dist.] Sept. 24, 2019, no pet.).

*Maxwell v. U.S. Bank Nat'l Ass'n, No. 14–12–00209–CV, 2013 WL 3580621, at *2–3 (Tex.App.–Houston [14th Dist.] July 11, 2013, pet. dism'd w.o.j.)(mem. op.)*
McCollum v. Hammit, 279 S.W. 881, 882 (Tex. Civ. App.—Eastland 1925, n.w.h.)
*McDonald v. Claremore Apartment Homes, 2010 WL 26332, at *1 (Tex. App.—San Antonio Jan. 6, 2010, rev. dism'd w.o.j.)*
McKee v. Sims, 45 S.W. 564, 565 (Tex. 1898)
Mendez v. Knowles, 556 F.3d 757, 765 (9th Cir. 2009)
Minor v. Adams, 694 S.W.2d 148, 150 (Tex. App.—Houston [14th Dist.] 1985, no writ)
Mitchell v. Armstrong Capital Corp., 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied)
Mullins v. Coussons, 745 S.W.2d 50 (Tex. App.—Houston [14th Dist.] 1987, no writ)
Peek v. Equipment Serv., 779 S.W.2d 802, 804 (Tex. 1989)
Pinnacle Premier Props., Inc. v. Breton, 447 S.W.3d 558, 564-65 (Tex. App.– Houston [14th Dist.] 2014, no pet. h.)(op. on reh'g)
Poole v. Goode, 442 S.W.2d 810, 812 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.)
Powell v. Mel Powers Inv. Builder, 590 S.W.2d 837 (Tex. Civ. App.—Houston [14th Dist.] 1979, n.w.h.)
Reeder v. Curry, 294 S.W.3d 851, 856 (Tex. App.—Dallas 2009, pet. denied)
Rice v. Pinney, 51 S.W.3d 705, 712-13 (Tex. App.—Dallas 2001, no pet.)
Rodriguez v. Sullivan, 484 S.W.2d 592, 593 (Tex. Civ. App.—El Paso 1972, no writ)
Rule v. Richards, 149 S.W. 1073, 1075 (Tex. Civ. App.—Amarillo 1912, no writ)
*Saihat Corp. v. Miller, No. 01-11-00119-CV, 2013 WL 4634814, *4-7 (Tex. App. — Houston [1st. Dist.] Aug. 27, 2013, no pet.)*
Sharp v. Smith, 2008 WL 257237 (Tex. App.—Tyler 2008, no pet.)
Small v. Rush, 132 S.W. 874, 876 (Tex. Civ. App. 1910, writ ref'd)
Spann v. Trumpf, 83 S.W. 2d 1043, 1045 (Tex. Civ. App.—Dallas 1935, no writ)
Stevenson v. Lohman, 218 S.W.2d 311, 313 (Tex. Civ. App.—Beaumont 1949, writ re'fd)
Stroman v. Martinez, No. 14-13-01143-CV, 2015 WL 2090497 (Tex. App. – Houston [14th Dist.] May 5, 2015, no pet.)
Toland v. Swearingen & Smith, 39 Tex. 447, 1873 WL 7581 (1873)
*Trimble v. Federal National Mortgage Association, 2016 WL 7368060 at *3 (Tex. App.—Houston [1st Dist.] Dec. 20, 2016, no writ)*
Twelve Oaks Tower I, LTD. v. Premier Allergy Inc., 938 S.W.2d 102 at 108 (Tex.App.—Houston[14th] 1996)

Villalon v. Bank One, 176 S.W.3d 66, 71 (Tex. App.—Houston [1st Dist.] 2004, pet. denied)
Virani v. Syal, 836 S.W.2d 749, 751-52 (Tex. App.--Houston [1st Dist.] 1992, writ denied)
*Wattley v. Turner, 1998 WL 348305 at *2 (Tex. App.—Dallas July 1, 1998, no pet.)*
Webb v. Bergin, 38 S.W. 2d 841, 842 (Tex. Civ. App.—Waco 1931, writ dism'd w.o.j.)
Weir v. Brooks, 17 Tex. 638, 1856 WL 5072 (1856)
Western Flavor-Seal Co. v. Allison, 389 S.W. 2d 521, 522 (Tex. Civ. App.—San Antonio 1965, no writ)
Wetsel v. Fort Worth Brake, Clutch & Equipment, Inc., 780 S.W.2d 952, 954 (Tex. App.—Fort Worth 1989, no writ)
Whitehurst v. Estes, 185 S.W.2d 154 (Tex. Civ. App.—Dallas 1944, writ ref'd)
Williams v. Schneiber, 148 S.W.3d 581 (Tex. App.—Fort Worth 2004, no pet.)
Yarbrough v. Household Finance Corp. III, 455 S.W.3d 277, 280-81 (Tex. App.—Houston [14th Dist.] 2015, no pet.)