

	<p><b>Manufactured Home &amp; Commercial Evictions</b></p>

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## Resources

- TJCTC's Evictions Deskbook – Chapters 5 & 6
  
- Property Code Statutes:
  - Chapter 24
  - Chapters 93 - 94
  
- Rules 500 – 507 and 510, Texas Rules of Civil Procedure

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## Manufactured Home Evictions

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## What is a Manufactured Home?

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## Manufactured Home

- A “manufactured home” is a “mobile home” that is:
  - Built on a permanent frame and used as a dwelling once utilities are connected;
  - Transportable; and
  - At least 8 feet wide or 40 feet long (when travelling) or at least 320 square feet (on the site).

*Section 94.001(3), Property Code; Section 1201.003, Occupations Code*

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For Example:



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Manufactured Home Eviction Rules

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## Rules for Manufactured Home Evictions

- Special rules (Ch. 94 of the Property Code) may apply to eviction suits involving a manufactured home.
  - More on these rules coming up!
- *Note:* when Ch. 94 applies, Ch. 24 and TRCP 500-507,510 will also still apply in so far as they do not conflict with Ch. 94.

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## When the Manufactured Home Rules Apply

- The manufactured home eviction rules only 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 that lot.

*Section 94.002(a), Property Code*

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## Group Discussion #1

- Anyone know what counts as a “Manufactured Home Community?”
- Where might you find that info?

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## When the Manufactured Home Rules Do Not Apply

- These rules do **not** apply to:
  - A person who owns a manufactured home and leases the manufactured home to someone else;
  - A person who leases a lot in a “manufactured home community” and lives there in an RV or something other than a “manufactured home;” or
  - A landlord who leases property to their employee or agent.

*Section 94.002(b), Property Code*

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## So What About RVs Then?

- RVs are not considered “manufactured homes” and they are not subject to the manufactured home eviction rules.
  - If it is a tenancy, they are subject to the **residential tenancy** rules under Chapter 92.
  - If it is like a hotel stay rather than a tenancy, they will be subject to hotel rules for lodgers. *For more information, see Evictions Deskbook Chapter 3.*

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## Example I

Linda decides to rent some of the land on her ranch to people with mobile homes to live there. There are currently six tenants. Tim rents a spot and moves his mobile home there, but then doesn't pay his rent. Linda wants to evict Tim.

- Do the manufactured home rules apply?
  - A. Yes.
  - B. No.

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## Example 2

Lenny owns a house on an acre of land. He lets Tom move his mobile home onto the lot and Tom lives there for six months. But Lenny decides to build a pool where Tom's mobile home is located and tells Tom to leave. Tom says he's happy where he is.

- Do the manufactured home rules apply?
  - A. Yes.
  - B. No.

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## Example 3

Lucy buys a mobile home and moves it into Happy Hollow Trailer Park which has 20 sites for lease to mobile home owners. Lucy rents her mobile home to Tanya for \$400 a month but Tanya fails to pay her rent. Lucy wants to evict Tanya.

- Do the manufactured home rules apply?
  - A. Yes.
  - B. No.

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## Example 4

Louis owns Peace and Quiet Trailer Park which has more than four sites for lease to mobile home owners. Theresa rents a lot and drives her RV onto it and connects it to the utilities. Theresa stops paying her rent.

- Do the manufactured home rules apply?
  - A. Yes.
  - B. No.

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Manufactured Home Eviction Procedures

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## Procedures

As mentioned earlier:

- The general procedures and time limits for manufactured home evictions are the same as in any other eviction case...
  - Property Code Ch. 24 & Rule 510
- **Except** as specifically changed by Chapter 94
  - These changes and additional rules that apply are discussed in the following slides.
- *Reminder: Any local rules/ordinances that conflict with state laws are not valid.*

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## Grounds for Eviction: Breach of Lease

- If a tenant breaches the lease, then the landlord may terminate the lease and evict the tenant just like in a residential lease.
  - The lease can incorporate the manufactured home community rules so that if a tenant violates one of those rules, that would be a breach of the lease.

*Section 94.205, Property Code*

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## Group Discussion #2

A manufactured home tenant throws their trash on the ground, but the manufactured home community rules prohibit this. The lease does not specifically mention the community rules, but the landlord says everyone knows about the rules and they are posted in the office.

- Can the landlord bring an eviction suit against the tenant for breach of the lease?

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## Grounds for Eviction: Nonpayment of Rent

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

- The tenant fails to timely pay:
  - the rent, **or**
  - other amounts due under the lease (for example, late fees or utility bills) that when added together equal at least one month's rent;
- The landlord notifies the tenant in writing that the payment is delinquent (meaning it was not paid when due); **and**
- The tenant has not made the delinquent payment in full before the **10<sup>th</sup> day** after the date the tenant receives the notice from the landlord.

*Section 94.206, Property Code*

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### **Group Discussion #3**

Jimmy's rent is \$500, and he pays the landlord \$300. The landlord gives Jimmy a notice on the 5<sup>th</sup> that \$200 of the rent is delinquent. Jimmy still hasn't paid by the 15<sup>th</sup>.

- Can the landlord give Jimmy a notice to vacate at this point and proceed with an eviction?

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### **Group Discussion #4**

Andrea's monthly rent is \$600. She is current on her rent, but owes the landlord a \$50 trash fee, a \$75 pet fee, and a \$60 late fee. The landlord gives Andrea notice of the delinquent fees and she still hasn't paid 10 days later.

- Can the landlord give Andrea a notice to vacate at this point and proceed with an eviction?

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## Grounds for Eviction: Change in Land Use

A landlord may terminate a lease early to change the land use of the manufactured home community—for example, if it is sold to a developer—but they must give a **180 days' notice** to:

- the tenant;
- the owner (if the tenant is not the owner); and
- Anyone who holds a lien (a security interest) on the manufactured home

*Note: Notice to the owner and/or lienholder is only required if the landlord received a written notice of their names and addresses.*

*Section 94.204, Property Code*

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## Potential Defense: Improper Termination/Renewal Notice

- If a landlord chooses not to renew a lease when it expires, but does not give the tenant proper notice (details on what is “proper” coming up!), the tenant cannot be evicted until proper notice is given and all other eviction procedures are followed.
- If a landlord renews a lease and changes terms, but does not give the tenant the proper notice, the tenant cannot be evicted for violating one of the changed terms.
  - If a proper notice is eventually given, the tenant can only be evicted for violations that occur **after** the proper notice is given.

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## Termination Notice vs. Notice to Vacate

- **Note:** Remember, a notice of termination/non-renewal of a lease is different from a notice to vacate!
  - Be careful! – sometimes a termination notice might be referred to as a notice to vacate, but they are still two different parts of the process.
  - EX: Landlord doesn't want to renew lease, so gives tenant a “notice to vacate” at the end of the lease term (this is really a notice of lease termination/non-renewal). When the current lease term expires, tenant does not move out. Landlord must still now give the tenant a proper official notice to vacate before an eviction suit can be filed.

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## Termination/Renewal Notice Requirements

- A landlord must provide a tenant with an offer to renew the lease or a notice of non-renewal:
  - Not later than the **60<sup>th</sup> day** before the date the current lease term expires; or
  - If the lease is a month-to-month lease, not later than the **60<sup>th</sup> day** before the date the landlord intends to terminate the current lease.
- If the landlord is offering to renew, the notice must include the rent amount, any changes in lease terms, and a statement that the lease will be renewed under the modified terms if the tenant does not reject the offer at least 30 days before the current lease expires.

*Section 94.055, Property Code*

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## Termination/Renewal Notice Requirements (Continued)

- A landlord **can** give less than 60 days' notice of termination/non-renewal 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.
- The 60 day notice is **not** a requirement if the landlord is evicting the tenant for breaching the lease.

*Section 94.055, Property Code*

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## Notice of 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 mobile home if the tenant is not the owner; and
  - Any person who holds a lien on the mobile home
  - (But only if the court has been notified in writing of the name and address of the owner and lienholder).

*Section 94.203(e), Property Code*

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## Writ of Possession

- A court may not issue a writ of possession in favor of a landlord in a manufactured home eviction before the **30<sup>th</sup> day** after the judgment for possession is signed if the tenant has paid the amount of rent due under the lease for that 30-day period.
- This means the tenant has to pay **the rent for that one month** (not that they have to pay all the back rent owed which is now part of the court's judgment).
- If they don't do it, then the normal writ of possession time frame applies.

*Section 94.203(d), Property Code*

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## Group Discussion #5

Why do you think this 30-day provision exists?

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## Removal of Manufactured Home

- It's the tenant's responsibility to remove their mobile home from the lot.
  - The mobile home is personal property, just like someone leaving furniture behind in a regular eviction.
- But sometimes they just go off and leave it there.
- The Constable is not required to move it (but may, under the same rules that allow them to remove personal property.)

*Evictions Deskbook Chapter 5*

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## Group Discussion #6

- Anyone know what the constable's practice is in your county?
- What happens if neither the tenant nor the constable move it?

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## Notice of Removal of Manufactured Home

- If, after execution of the writ of possession, the landlord removes the manufactured home from the lot, the landlord must send a written notice to the tenant (at their most recent mailing address that the landlord has) with the location of the manufactured home no later than the **10<sup>th</sup> day** after it was removed.
- The notice must also be sent to the owner of the manufactured home if the landlord was given notice of the owner's name and address.

*Sections 94.203(d),(f), Property Code*

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## Commercial Evictions

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## What is a Commercial Eviction?

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## Commercial Eviction

- A commercial eviction is an eviction suit involving “commercial rental property.”
- “Commercial rental property” means any rental property that is not residential!

*Section 93.001, Property Code*

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## Commercial Rental Property Examples

- Lease of property to operate a retail business.
- Lease of office space.
- Lease of a warehouse.
- Storage units.

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## Is it Commercial or Residential?

- Sometimes you might need to look at the actual terms of the lease and the usage of the property and use your judgment to determine if it is commercial or residential.
  - Ex: Joe has a store and sleeps on the couch in his office some nights – **commercial or residential?**
  - Ex: Joe rents a property that has a store on the bottom and an apartment that he lives in on the top – **commercial or residential?**

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## What Are the Procedures for a Commercial Eviction?

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## Same Procedure as Residential

- The eviction procedures in a commercial eviction are generally the same as in a residential eviction
  - Property Code Ch. 24 and Rule 510.
- But there are some rules that are different from residential evictions (these are found in Property Code Ch. 93) and some issues that are just more common in commercial evictions.
  - These are discussed in the following slides.

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## Claim for Back Rent

- Just like in residential evictions, if the tenant is behind in their rent, the landlord may include a claim for the rent owed by the tenant (the “back rent”) in a suit for eviction.
- But only if the amount owed is an amount the justice court has jurisdiction to hear (\$20,000 or less).

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## Mere Passage of Time Rule

- Don't forget about the “mere passage of time” rule:
  - If a claim is less than the jurisdictional limit at the time of filing and then goes above it because more rent becomes due after filing, the court still has jurisdiction!

*Evictions Deskbook Chapter 6*

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## What if a Claim for Back Rent is More than the Jurisdictional Limit?

- If the claim for back rent is more than the jurisdictional limit at the time the suit is filed, you should dismiss the claim for back rent for lack of jurisdiction.
- But you still hear the part of the suit regarding possession of the premises (deciding whether or not to evict the tenant).

*Note: This is the same rule as in residential evictions, but it comes up more frequently in commercial evictions due to the higher rent.*

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### **Group Discussion #7**

So what can the landlord do to get the back rent they are owed if your court can't hear that claim?

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## No Repair & Deduct Defense

- A potential defense a residential tenant can claim for why they didn't pay rent is that they were exercising their repair & deduct remedies (for info on these remedies, see *Evictions Deskbook Chapter 10*).
- But a commercial tenant cannot use this defense because repair and deduct remedies are **not** available to a commercial tenant.
- Therefore, a commercial tenant will never be able to raise as a defense to nonpayment of rent that they are entitled to a rent deduction due to a repair they made to the premises.

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## Lease Termination: Prostitution or Sex Trafficking

- A landlord can terminate a lease early and evict the tenant if the tenant is allowing the premises to be used for the purposes of prostitution or sex trafficking.

*Section 93.013, Property Code*

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## Lease Termination: Massage Establishments

- A landlord can also terminate a lease early and evict the tenant if the premises are used for the purpose of operating, maintaining, or advertising a massage establishment (as defined by Occupations Code § 455.001), that:
  - is not exempt from licensing requirements under state or federal law and:
    - has never been issued a license by TDLR; or
    - the license was suspended, revoked, or refused renewal by TDLR after the establishment obtained a right of possession in the leased premises; or
  - was issued a citation, administrative penalty, civil penalty, or other civil/criminal sanction for violating a local ordinance relating to prostitution or trafficking, operating a sexually oriented business, or violating Section 455.202, Occupations Code (rules for massage establishments).

*Section 93.013, Property Code*

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## Lease Termination Procedures: Prostitution/Sex Trafficking and Massage Establishments

- It doesn't matter what the lease says; the landlord may still terminate the lease.
- Landlord may sue for unpaid rent for the duration of the lease even *after* the tenant is evicted.
  - For example, if the lease runs through Dec. 31 and the tenant is evicted on June 30, he still owes six months rent.
- The landlord is not required (regardless of what the lease says):
  - to give a notice of a proposed eviction or a notice of termination before giving a notice to vacate; or
  - to give the tenant more than **three days'** notice to vacate before filing the suit.

*Section 93.013, Property Code*

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## Abandonment and Removal of Property

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## When Are Commercial Premises Abandoned?

- A commercial tenant is presumed to have abandoned the premises if:
  - they remove enough property to indicate a probable intent to abandon the premises, and
  - the removal of the property is not part of their normal course of business.

*Section 93.002(d), Property Code*

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## **Group Discussion #8**

A CPA rents an office that he uses to prepare tax returns for his clients, but one day he stops coming to the office and when the landlord checks in, he discovers that the tenant's desk, chairs, and lamps are gone. The remaining furniture consists of empty file cabinets and a bookshelf.

- Is this enough to indicate a probable intent to abandon the office?
- Is the removal part of his normal course of business?

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## **What Happens to the Property Left at an Abandoned Premises?**

- If the premises are abandoned, the landlord may remove and store any property the tenant leaves there.
  - The landlord has to send a notice to the tenant by certified mail stating that he may dispose of the property 60 days later.
  - If the tenant does not claim the property within 60 days, the landlord may dispose of it.

*Sections 93.002 (d),(e), Property Code*

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## How This Comes Up

- Often a landlord will come to the court and ask the judge or clerk what to do in this situation.
  - Should they file an eviction case?
  - Can they just remove the property?
  - Can they sell it?

**You cannot give them legal advice, so how should you respond?**

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## How This Comes Up (Continued)

- This could also come up if a tenant files a small claims case against a landlord for taking their property.
- In this case, you would need to determine if the landlord followed the laws or if they should have to return the property (or its value if the property is already gone).

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Questions?