Squatters & Landlord/Tenant Relationships

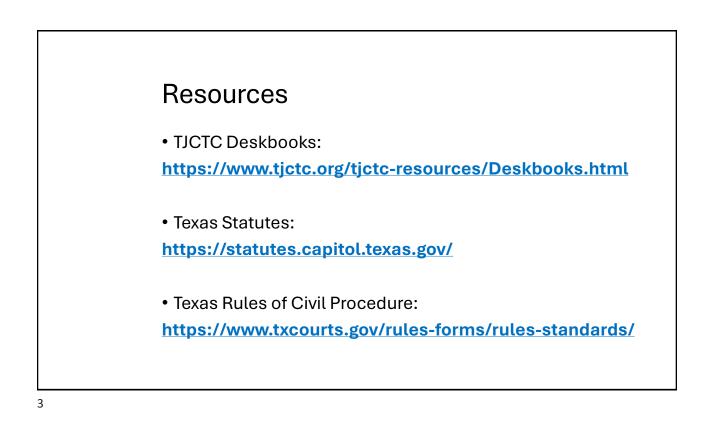
Rebecca Glisan Director of Curriculum and Staff Attorney Texas Justice Court Training Center

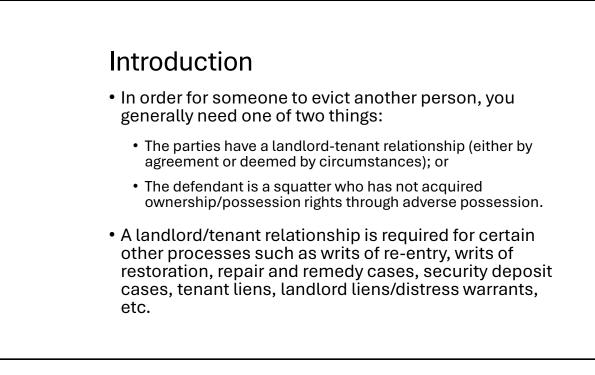
1

© Copyright 2024. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, TX, 78701.

Funded by a Grant from the Texas Court of Criminal Appeals





Agenda

- Types of Tenants
- Occupants and Lodgers
- Squatters and Adverse Possession
- Non-Eviction Options

5

Types of Tenants

Tenant for Fixed Term

- Lease agreement that sets out the duration and terms of the tenancy.
- Can be written or oral, but an oral lease cannot be for a term of more than one year.
- Terms cannot be changed during the rental term without mutual agreement.
- At the end of the term, the parties can renew or go their separate ways.
- There must be a breach of the lease to evict the tenant before the term ends.

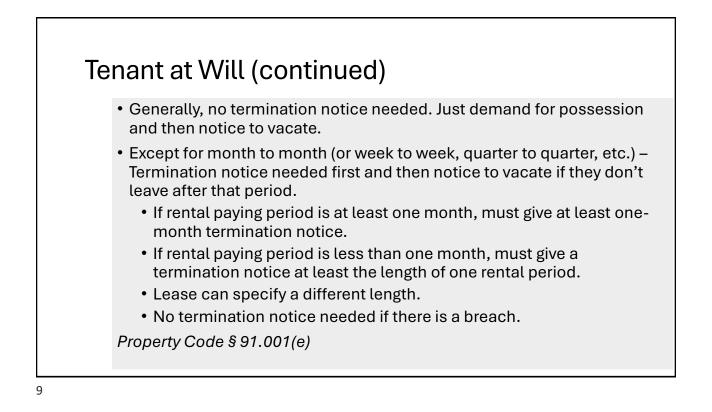
7

Tenant at Will

• The tenant has the owner/landlord's consent to occupy the premises, but there is no set time for how long the tenancy will last.

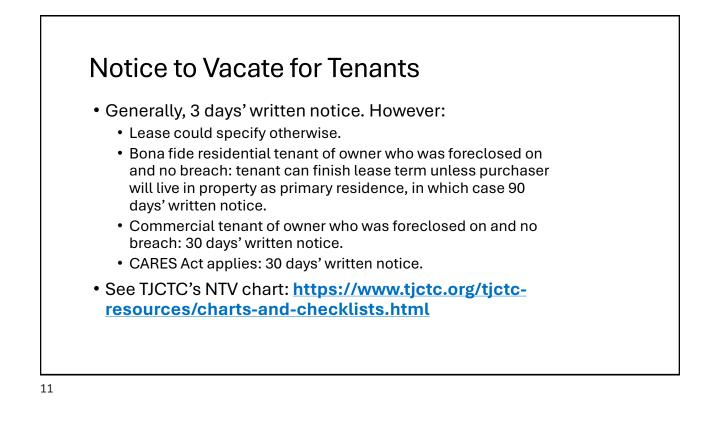
• Examples:

- Allowing a friend to move in without talking about any terms or how long the friend will stay.
- Month-to-month lease with no agreement as to how many months.



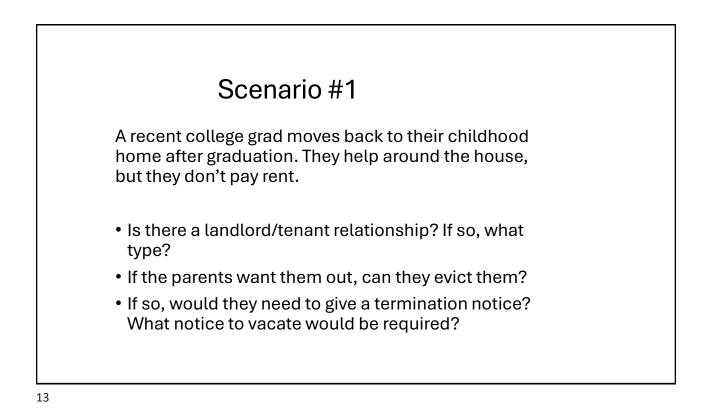
Tenant at Sufferance

- A person was once in lawful possession of property, but wrongfully remains as a holdover after their right of possession has expired.
- Can be evicted at any time with proper notice to vacate.
- Examples:
 - A tenant who does not move out at the end of a lease/after a termination notice.
 - Foreclosure and previous owner won't leave.
 - New owner purchases property and current tenant who has no written lease agreement won't leave.
 - Tenant of a squatter.



Additional Specific Rules for Certain Types of Tenants – See TJCTC Evictions Deskbook

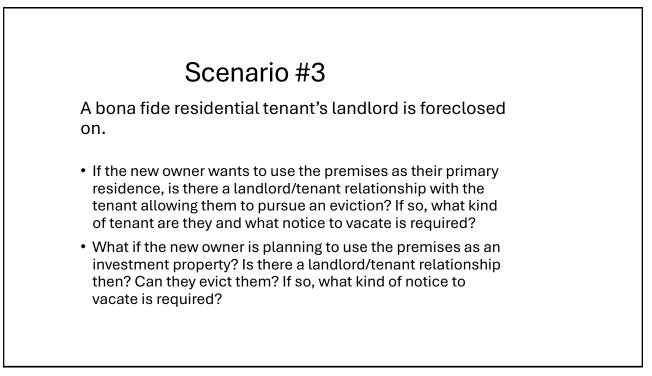
- Manufactured Home Evictions Ch. 5
- Commercial Evictions Ch. 6
- Servicemembers Civil Relief Act Ch. 7
- Contract for Deed Ch. 8
- (General Eviction Procedures are in Ch. 4)





The owner of a house dies and their two adult children, Bronson and Amber, inherit it and both decide to move in. The children do not get along. Amber decides she's had enough of Bronson's nonsense and files an eviction against him and changes the locks. Bronson files a request for a writ of re-entry with the court.

- Is there a landlord/tenant relationship here? If so, what type?
- Can Amber evict Bronson?
- Can Bronson get a writ of re-entry to get back into the house?



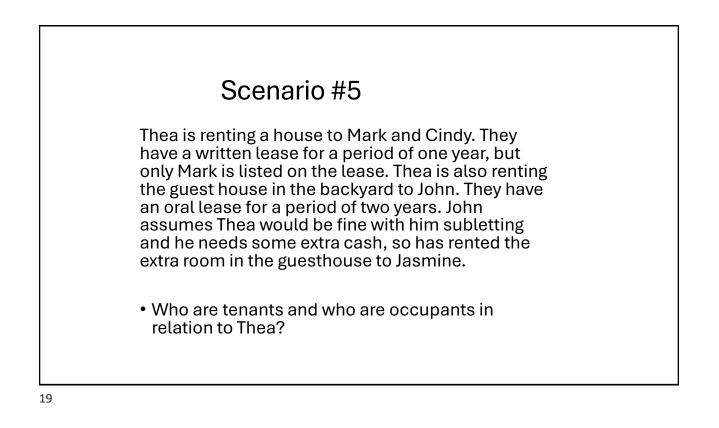
A tenant has a written lease with their landlord. There are 7 months left on the lease when the landlord sells the property to someone else.

- What happens with the lease?
- What provisions in a lease could impact this?
- What if the landlord had died? What would happen then?

Occupants & Lodgers

Occupants

- · Guest or sub-tenant of tenant.
- No landlord/tenant relationship with tenant's landlord.
- Cannot be evicted directly by landlord.
- Cannot appear on own behalf in an eviction case filed against the tenant (but could potentially be tenant's authorized agent).
- If tenant is evicted, all of their occupants are evicted with them (whether or not the petition says "and all occupants").
- No tenant can be evicted if they are not specifically named in the suit.



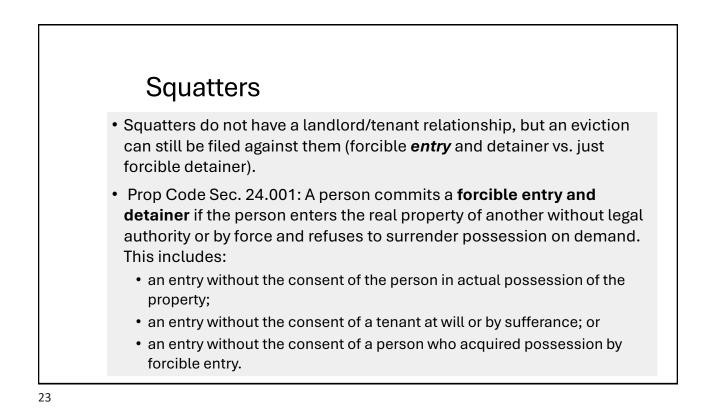
Lodgers

- Temporary stay not a tenant.
- Fact dependent
 - · Look at whole picture
 - Is this their home or are they a guest/customer?
- Example: Staying at a hotel during a work trip or vacation.
- If a lodger refuses to leave, they can be removed without an eviction.

Rebecca stays at an Airbnb on vacation for a week and refuses to leave when her reservation is over. The owner of the house calls law enforcement, who tell her that she needs to file an eviction case and there's nothing they can do. The owner files the eviction case with your court.

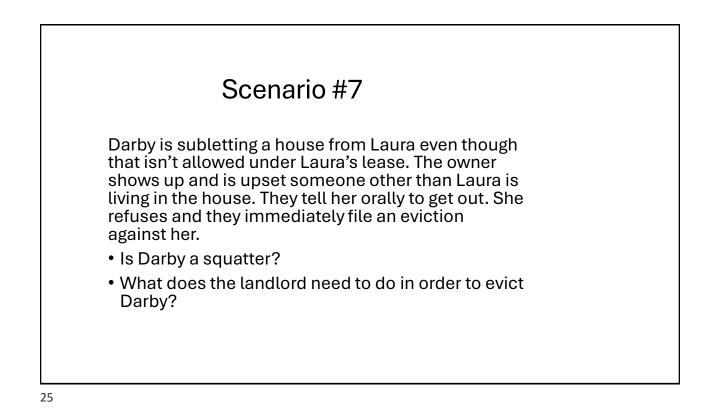
- Is Rebecca a tenant or a lodger?
- · Can the court hear the eviction case?
- If the house owner turns the electricity and water off, could Rebecca get a writ of restoration to have it turned back on?

Squatters & Adverse Possession



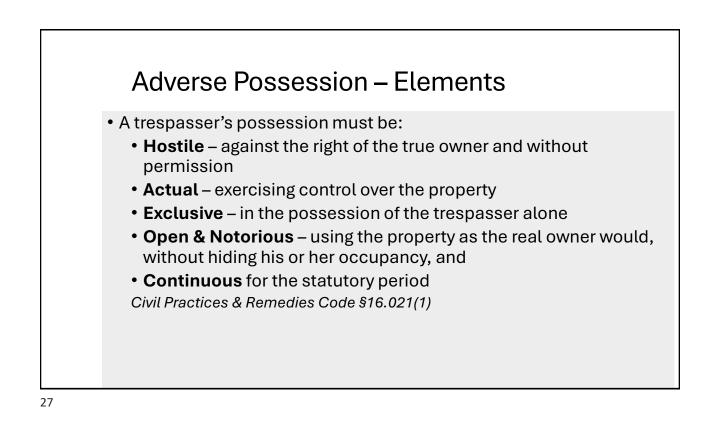
Notice to Vacate for Squatters

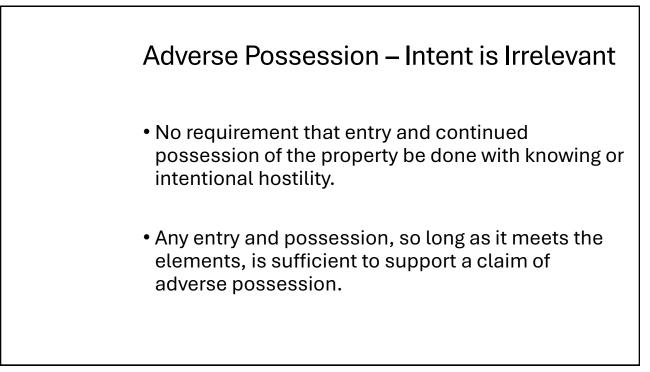
- Immediate and can be oral.
- Different from tenants because a person gets less protections when they never had a right to be there.

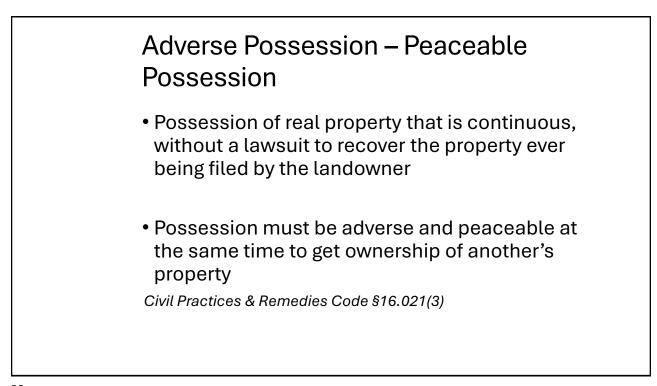


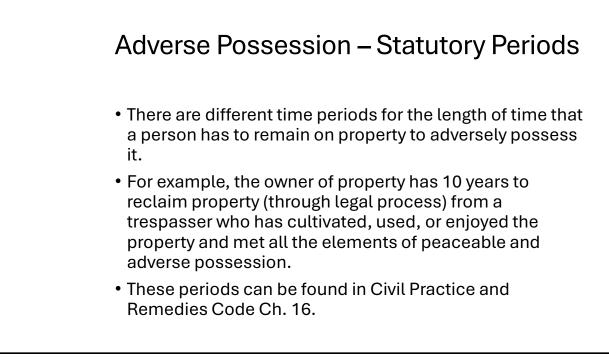
Adverse Possession

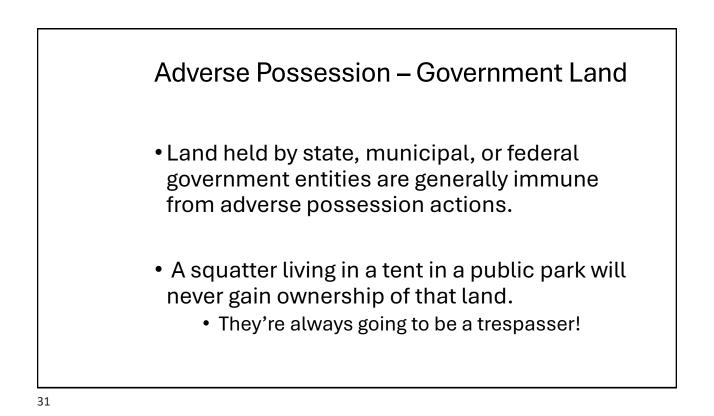
- When a squatter/trespasser gains ownership of real property that belongs to someone else through the use of that land.
- Can't evict or otherwise remove because they have ownership/possession rights now.







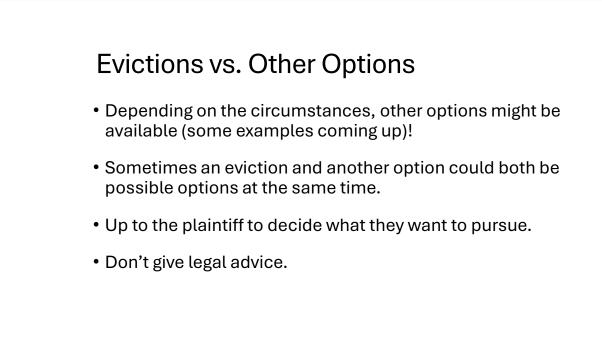




A squatter moves onto land and lives there openly while the owner is not there. The owner comes to the property a few times a year, and the squatter leaves during that time and comes back when the owner leaves again. This goes on for over 10 years before the owner finds out. When the owner went back the last time, the squatter had changed the locks on the gate and says they have adversely possessed the property.

• Are they correct that they have successfully adversely possessed the property?

Non-Eviction Options



Agreement

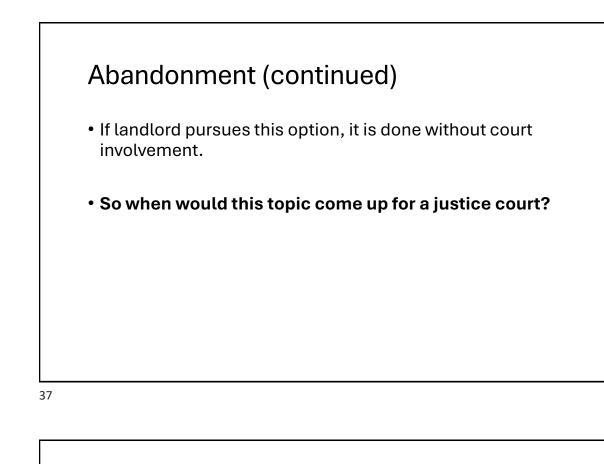
• Parties can mutually agree to terminate a lease or agree to different terms at any time.

• No court involvement.

35

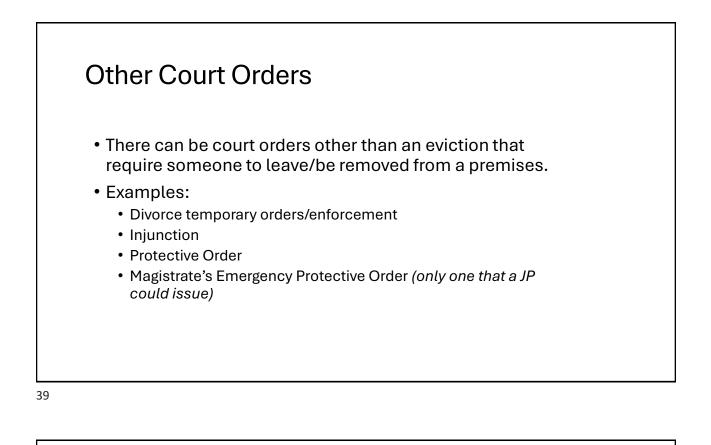
Abandonment

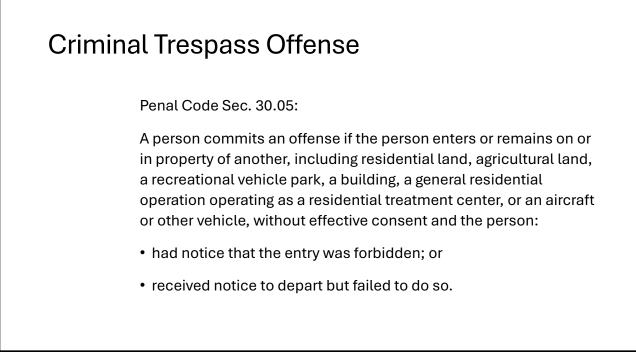
- Landlord may enter and remove property left behind if a tenant abandons a premises.
- Specific standards and rules for commercial tenancies.
- No specific standards or rules for residential tenancies.
 - "Abandonment" is a case by case question.
 - Good rule of thumb is for landlord to follow the procedures for disposition of property after the death of a tenant.
- For more info, see TJCTC Evictions Deskbook Ch. 12, Section C.



A residential tenant had been gone for three weeks and was a week late paying rent. According to the landlord, they had left behind a vehicle that wasn't currently able to run, some furniture that was not in very good condition, a few pieces of clothing, and some garbage lying around. Based on all of this, the landlord thought the premises had been abandoned. The tenant claimed that they were just away on a trip and were barely late on the rent.

• Was the landlord reasonable in thinking the premises had been abandoned?





Criminal Trespass Offense - Notice		
Oral or written communication by the owner/someone with apparent authority to act for the owner.		
Fencing/enclosure obviously designed to exclude intruders or to contain livestock.		
Entry forbidden signage posted on the property or at the entrance to he building, reasonably likely to come to the attention of intruders.		
Readily visible vertical purple paint marks on trees or posts on the property, meeting the requirements of Penal Code Sec. 30.05(b)(2)(D).		
The visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.		

41

Forcible Entry and Detainer vs. Criminal Trespass

- Up to individual and/or law enforcement to determine which to pursue.
- Not all Criminal Trespassers are Squatters, but all Squatters are Criminal Trespassers.

Criminal Trespass	Squatter/Forcible Entry & Detainer
Penal Code Sec. 30.05	Property Code Sec. 24.001
Criminal Offense	Grounds for Eviction Suit
Enters or remains on or in property of another without effective consent and the person had notice that the entry was forbidden; or received notice to depart but failed to do so.	Enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

"It's a Civil Matter"

• Sometimes law enforcement may be reluctant to proceed with arresting/charging someone with criminal trespass if they think there's a possibility that the person is actually a type of **tenant** (in which case criminal trespass is not an option).

Scenario #10 A judgment for eviction was granted, and two days later, the plaintiff wants the defendant criminally trespassed from the property. • Is this an option? • If so, do they need to wait until after the appeal deadline? Until after a writ of possession is executed?