

Landlord/ Tenant

Bill List

SB 38 – New Eviction Laws

SB 1333 – Squatters

HB 47 – Right to Vacate Following Certain Sex Offenses/Stalking

HB 2037 – Repair & Deduct and Security Deposits

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SB 38 – New Eviction Laws

Property Code Ch. 24

Effective 1/1/26, applies to suits filed on/after this date.

Except: Rulemaking authority for the Supreme Court takes effect 9/1/25.

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Jurisdiction & Venue

- Clarification only! No new law here.
- Justice courts have jurisdiction over evictions but cannot adjudicate title to real property – only right to possession.
- Counterclaims and third-party claims are not allowed in eviction suits.
They can be brought separately.
- Eviction suits must be filed in the county and precinct where the premises are located.

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Computation of Time

- Mostly codifies the current Rules
- Time periods for filings and notices include weekends and holidays, but if the last day falls on a weekend or holiday, the deadline moves to the next business day.
- But note that it says “state or federal holiday” and would arguably extend the deadline whether the court is open or closed on any such holiday.

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Authority to Suspend or Modify Procedures

- **General Rule:** Only the legislature can change eviction procedures.
 - TRCP can't change anything listed in Ch. 24.
- **During a Disaster:** Texas Supreme Court can change procedures (**to all courts similarly affected by the disaster without regard to the subject matter of the action**), but only in a uniform way and with public notice in writing.
 - Can't apply special rules to a specific case type.

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Notice to Vacate (NTV) – *Nonpayment of Rent Cases*

- If tenant **was previously late** on the rent, **may give either** “notice to pay rent or vacate” (if they pay, they get to stay) or “notice to vacate” (they have to go whether or not they pay).
- If tenant **was not previously late** on the rent, **must give** “notice to pay rent or vacate.”
- The counting resets with each new lease agreement for purposes of determining if someone was previously late.
- If NTV without option to pay, must plead/prove that the tenant was previously late.

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The tenant has not been previously late with rent, but the landlord thinks it will continue to be a problem since they've lost their job and wants to do a notice to vacate instead of a notice to pay or vacate. Can the landlord choose to do this?

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The tenant is being evicted because they have pets that are not allowed under the lease. They have never been late in paying the rent. Is the landlord required to give the tenant a "Notice to Pay or Vacate"?

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NTV – Federal Laws

- **What the bill says:** If federal law requires a longer notice, the landlord can file suit after the state notice period but cannot serve a writ of possession until the federal period expires.
- This would **not** apply to:
 - Notices to cure/pay **or** vacate – must wait until cure period is over before filing suit.
 - Termination notices – must wait until after date of termination before giving NTV.
- This **will** be at issue when things like the CARES Act, PTFA, and federally subsidized housing rules provide for longer NTV periods (where there is no option to cure) than under TX law.
- **Problem:** The tenant hasn't committed a forcible detainer until they fail to deliver possession back to the landlord after a proper demand has been made. How can this happen until the notice period runs?

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3 Ways to Think About This

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Option 1

- Statute doesn't change the definition of forcible detainer, so there is no cause of action until they haven't moved out by the longer federal NTV deadline.
- If case is filed before federal NTV deadline, court will issue a judgment for defendant, because COA didn't accrue before filing (which is a long-held requirement under case law).
- *Concern with this approach:* This interpretation essentially renders meaningless the new language in the statute that allows for filing prior to the federal NTV deadline.

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Option 2

- Statute overrides the requirement to have a COA before filing but still need it before judgment.
- Court will give judgment to the plaintiff if they prove their case and the tenant didn't move out by the deadline, and that all occurred prior to judgment.
- *Concern with this approach:* The lack of a COA prior to filing goes against established law and the eviction filing (even without a judgment) can be damaging to a person's ability to rent despite the fact that they've done nothing wrong.

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Option 3

- Statute overrides all relevant caselaw and the need for a cause of action prior to judgment.
- Court can give a judgment to the plaintiff if they otherwise prove their case even if the federal NTV deadline has not yet passed (but must wait until after the federal deadline to give a writ of possession).
- *Concern with this approach:* There is no justification for the judgment at the time it is signed, and if the tenant does move out by the deadline, they will have a judgment against them and all the negative effects of that even though they complied with the law. Practically, there may also be issues with whose job it is to calculate/track this.

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NTV & Notice of Proposed Eviction Timeframes May Run Concurrently

- If the lease or applicable state or federal law or rule requires a landlord to give a tenant an opportunity to respond to a notice of proposed eviction before filing an eviction suit:
 - the notice period in a “notice to pay rent or vacate” or “notice to vacate” may, at the landlord’s discretion, run concurrently with the period provided for the tenant to respond to the notice of proposed eviction; and
 - the “notice to pay rent or vacate” or “notice to vacate” may include the required opportunity to respond to the notice of proposed eviction.
- But note that any notice of proposed eviction must be provided and the relevant time period elapsed before an eviction suit could be filed (regardless of which option you follow from the previous three slides regarding federal NTV periods).

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NTV & Notice of Proposed Eviction

Timeframes – Examples

- Examples:
 - The 10-day notice of delinquent rent in manufactured home eviction cases for non-payment of rent can run concurrently with the NTV. So, if the 10-day notice is required and there is a 3-day NTV, the NTV can be given at any point during the 10-day period, and they can run together. An eviction case can be filed if both periods have expired. The landlord does not need to give the 10-day notice, wait those 10 days, and then give the 3-day NTV and wait 3 more.
 - Subsidized housing also often has notices of proposed eviction, and those periods can also now run concurrently with whatever NTV period is required.
 - *Note:* If there was a federal law, more specific state law, or lease provision that specifically stated that the notice of proposed eviction period must expire before a notice to vacate is filed, we believe that would control (but that is usually not the wording).

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Delivery of NTV

- Notices must be delivered using at least one of the following methods:
 - mail, including first class mail, registered mail, certified mail, or a delivery service;
 - delivery to the inside of the premises, in a conspicuous place;
 - hand delivery to any tenant of the premises who is 16 years of age or older; or
 - if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.
- If the tenant actually receives notice, method of delivery requirement doesn't apply.
- The bill essentially got rid of the old notice to vacate delivery procedures and made them simpler/easier for landlords.

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How do you determine date of delivery of NTV if mailed?

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Petition

- Eviction suits must be initiated by a sworn petition, which must meet Texas Rules of Civil Procedure requirements. (*codifies current rules*)
- A court may **not** adopt local rules, forms, or standing orders for eviction suits that:
 - require content in or with the petition other than the content required by the TRCP; or
 - authorize the dismissal of an eviction suit on the basis that the petition is improper if the petition meets the requirements of the TRCP or can be amended to do so.

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Mediation/Pretrial Conferences

A court may **not** adopt local rules, forms, or standing orders for eviction suits that require any mediation, pretrial conference, or other proceeding before trial.

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What about asking the parties to talk prior to a trial/hearing?

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Electronic Appearances

- Courts may allow any party to appear virtually if they agree.
- But cannot require them to if they want to come in person.

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Summary Disposition – New Expedited Version

- Current summary disposition procedures (*for a judgment without trial*) almost never apply to eviction cases due to how long summary disposition motions must be on file before being considered and the timeframe in which an eviction must be heard.
- Now there is a new expedited summary disposition procedure only for evictions – but ***only for Forcible Entry & Detainer/Squatter cases***
 - If one of these is filed in a case where the defendant is **not** a squatter, it must be denied even if you believe the landlord will win at trial.

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Summary Disposition – Definition of Squatter

- Prop Code Sec. 24.001: A person commits a forcible entry and detainer (FED) if the person enters the real property of another **without legal authority or by force** and refuses to surrender possession on demand.
- It does **not** count as a FED if the person enters with the consent of:
 - A person in actual possession of the property;
 - A tenant at will or by sufferance; or
 - A person who acquired possession by forcible entry (a squatter).

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Summary Disposition – General Procedures

- Landlords may include a motion for summary disposition with their petition if there are no disputed facts.
- Tenants have four days after service to respond and request a trial if there is a genuine dispute.
- The sworn motion must set out all supporting facts and any documents relied on must be attached.
- The citation must include a required notice (language on next slide).

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Summary Disposition – Notice in the Citation

- The following notice must be in English & Spanish on the first page in **bold and conspicuous print**.

The petition includes a motion for summary disposition. If the motion shows there are no genuinely disputed facts that would prevent a judgment in favor of the landlord, the court may enter judgment in favor of the landlord without a trial unless:

- (1) not later than the fourth day after you are served with the landlord's sworn petition, you file a response setting out supporting facts and any applicable documents on which your response relies; and
- (2) the justice court determines that service on you was proper and, based on the landlord's sworn petition and your response, there are genuinely disputed facts that would prevent a judgment in favor of the landlord.

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Summary Disposition – Ruling on the Motion

- Should be **granted** if:
 - Motion and petition show no disputed facts,
 - There was proper service on the tenant, and
 - The tenant did not answer *or* the answer does not show a disputed fact.

Note: the court **may** consider a tenant's late answer if it was received prior to judgment and **"it shows a genuinely disputed fact that would prevent judgment in favor of the landlord."**

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Summary Disposition – Notice to the Defendant

- Notice of a summary disposition should be sent to the defendant just like a default judgment.

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Summary Disposition – Timing

- The bill says that if the court determines that there are genuinely disputed facts, the court shall set the trial date between 10 and 21 days from the filing of the petition, or may immediately set the case for trial upon the tenant's request for a trial/showing of disputed facts.
- But as of now, TRCP 510.4(a)(10) states that the trial date must be included in the citation, which will need to be served on the defendant prior to the court's determination of the summary disposition.
- Court could potentially rule on the summary disposition on the date/time of trial if desired.
- If done before, must make sure it is clear ASAP to all parties whether the motion was granted/denied and if there is still a trial setting or not.

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Service

- Sheriff/constable must make diligent effort to serve the citation and petition not later than the 5th business day after the petition is filed.
- If not served on/before 5th business day, landlords may use other law enforcement officers *who have received appropriate training in the service of process, eviction procedures, and the execution of writs as determined by the Texas Commission on Law Enforcement (TCOLE)*.
 - Return of service or testimony will need to show that the officer had the proper training.
- If plaintiff is calling the court about the status of service and you do not yet have a return on file, you should refer them to the sheriff/constable.

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What if the citation isn't issued/sent to the constable/sheriff right away?

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Practically, who else other than a constable or sheriff's office could serve eviction papers?

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Trial Deadlines

- Trials **must** still be set **between 10 and 21 days after filing** and continuances are still limited to 7 days **unless both parties agree (no change here)**.
- But now, trials may not be set before the **4th** day after service (used to be 6th day).

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Information in Judgment

- All judgments (not just nonpayment of rent ones) must now include:
 - The appeal bond amount.
 - The amount of rent to be paid each rental pay period during the pendency of any appeal.

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Appeals

- Appeals from justice courts (bond, cash deposit, or statement of inability to pay) must be filed within 5 days (*clarification for all appeal types/codification of current rules*).
- Tenants must affirm, under penalty of perjury, “the tenant's good faith belief that the tenant has a **meritorious defense** and that the appeal is **not for the purpose of delay**.”

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A tenant appeals and affirms that there is a meritorious defense and it is not just for delay, but the court isn't sure if that is true. What do you do?

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Rent During Appeals

- If appealing, tenants must pay one rental period's rent into the court registry within 5 days and continue to pay as due during the appeal – in whichever court the case is pending at the time of payment.
- No longer just for nonpayment of rent cases, and covers all appeal types, including cash deposits.
- Courts must disburse these funds to the landlord on request (will usually happen in county court).

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Rent During Appeals – Notice

- If a tenant appeals (*in any case type/with any method of appeal*), the court must give a notice of:
 - the amount of rent to be paid into the justice court *or county court registry as applicable, during the pendency of the appeal*,
 - how the payment can be paid,
 - the calendar date by which it must be paid,
 - the time the court closes (if before 5 pm), and
 - a statement that a writ of possession may result without a hearing if they do not pay into the registry.

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Rent During Appeals – Amount

- Amount in rental agreement.
- If no amount in a lease, the court must determine the “pay period” and the amount to be paid per period which must be the greater of:
 - \$250, or
 - Fair market value as determined by the court.
- Either party can file a motion to reconsider the amount of rent during the pendency of appeal.

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Rent During Appeals – Gov't Agency

- If a government agency pays part of the rent, the court determines what the tenant owes and either party may contest this. *(Only change is that this now applies to all eviction cases instead of just nonpayment of rent.)*
- **Removed:** If the tenant objects to the justice court's ruling on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court.
 - With this gone, it is very important to get the amount the tenant owes right – they are not required to pay the full amount of the rent, just the amount they are responsible for under the lease.
- When there is a motion for tenant to pay the full amount because the gov't agency isn't paying, the landlord no longer has to take reasonable action to solve the problem first. The other requirements still apply.

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Forwarding Appeal to County Court

- Justice court must forward the transcript and original papers to county court **not earlier than 4 pm on the 6th day after the appeal is filed or not later than 4 pm on the 10th day after the appeal is filed**, unless the court confirms that the tenant has timely paid rent into the registry, and then they may forward the case immediately.
- If the justice court issues a writ of possession, they immediately should forward the case to the county court.

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County Court – Timeframe

- County courts must hold a trial **within 21 days** after the date the transcript and original papers are delivered to the court.

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Writs of Possession

- *Clarification:* A court does not have discretion over whether or not to issue a writ of possession. If the requirements are met and no other law bars it, then it must be issued.
- Writ is issued by justice *or county court* as applicable.
 - Writ for failure to pay rent – clarified that applies if not paid at any point as due during appeal, not just if initial payment not made.

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Writs of Possession – Service

- Service of writ must occur within 5 business days from issuance of the writ, or landlords may use other trained officers.
- TJCTC interpretation is that “service” means service of the initial notice, but others have argued that it means complete execution of the writ.
 - In the end, this shouldn’t matter if they’re moving forward and coordinating with the plaintiff.
- If plaintiff is calling the court about the status of service/execution and you do not yet have a return on file, you should refer them to the sheriff/constable.

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SB 1333 – Squatters

Penal Code § 28.03(b), 32.56, 32.57

- New Criminal Offenses (not in JP jurisdiction)
 - Criminal Mischief (while trespassing)
 - False, Fraudulent, or Fictitious Document Conveying Real Property Interest
 - Fraudulent Sale, Rental, or Lease of Residential Real Property

Property Code Ch. 24B

- Immediate Removal & Action for Wrongful Removal

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Immediate Removal of Unauthorized Occupants

- Property owners (or their agents) can request immediate removal by sheriff/constable of a person unlawfully occupying a dwelling, if:
 - The property was not open to the public when entered,
 - The property is not the subject of pending litigation between the parties,
 - The owner/agent has directed the person to leave, and they have not done so, and
 - The occupant is not a current/former tenant (under written or oral lease), immediate family, owner, or co-owner.

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Immediate Removal – Procedure

- The owner/agent must file a complaint with the sheriff or constable in the county where the property is located.
- Complaint must be sworn (or have an unsworn declaration) and include everything listed in the statute.
- Valid ID must be attached to the complaint (and if they are an agent, they must also provide documentation of authority to act on owner's behalf).
- Law enforcement must verify ownership and entitlement of the complainant, and then without delay, serve notice to immediately vacate (by hand delivery or affixing the notice to the front door or entrance of the dwelling) and restore possession to the owner.

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Immediate Removal – Verifying Ownership & Identifying Occupants

- Complainant must be:
 - the record owner of the property that is the subject of the complaint or the owner's agent; and
 - otherwise entitled to the relief sought in the complaint.
- Occupants
 - The serving officer must attempt to verify the identity of each person occupying the dwelling and note each identity on the return of service.

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Immediate Removal – Keeping the Peace

- The property owner or owner's agent may request that the sheriff or constable remain on the property to keep the peace while the owner or owner's agent:
 - changes any locks; and
 - removes any personal property of an occupant from the dwelling and places the personal property at or near the property line of the owner's property.

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Immediate Removal – Arrest

Law enforcement may arrest unauthorized occupants for trespass, outstanding warrants, or other offenses for which there is PC.

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Immediate Removal – Return of Service

- The statute doesn't say what should happen with the return of service.
- TJCTC's advice is to provide it to the person that filed the complaint and also keep a copy in the file at the constable/sheriff's office.

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Immediate Removal – Fees and Liability

- Sheriffs/constables may charge a fee equivalent to executing a writ of possession, plus an hourly rate if asked to remain on-site during removal.
- Law enforcement is shielded from liability for loss/damage during removal.
- Owners/agents are generally not liable for property loss/damage from removal but may be sued for wrongful removal and a judgment could be entered for damages, court costs, and attorney's fees.

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If an owner does the immediate removal procedure, could law enforcement also pursue criminal trespass charges?

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Action for Wrongful Removal

- A person wrongfully removed or whose personal prop is wrongfully removed can bring a civil suit to:
 - Recover possession of the real property, and
 - Recover damages from the person who requested the removal.
- Court must set the case at the earliest practicable date to expedite the action.
- *Note:* No reason they couldn't also still ask for a Writ of Re-entry (as long as all requirements for that are met).

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Action for Wrongful Removal – Damages

- Damages available:
 - Actual damages,
 - Exemplary/punitive up to 3x the fair market rent,
 - Court costs, and
 - Reasonable Attorney's fees

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Issues Not Addressed in the Bill

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HB 47 – Right to Vacate Following Certain Sex Offenses/Stalking

Property Code § 92.0161(c)

- This statute allows for victims of certain assaults, abuse, or stalking to get out of their lease and move without liability.
- Removed the requirement that the assault or abuse occurred at the premises.
- Note, this does not remove the requirement that the stalking offense occurred at the premises.

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HB 2037 – Repair & Deduct

Property Code § 92.0561(f), 94.157(g); Applies only to a lease entered into/renewed on/after 9/1/25

- Small change to repair and deduct remedy in both residential and manufactured home tenancies.
- Company/contractor/repairman:
 - Must be “independent” instead of “found in yellow pages/classified section.”
 - Must be licensed as required if located in a municipality that requires licensure.

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HB 2037 – Security Deposits

Property Code § 92.112, 92.113, 94.110, 94.111; Applies only to a lease entered into or renewed on/after 9/1/25

- Identical language added to Security Deposits section in both residential and manufactured home tenancies.
- AGENTS FOR DELIVERY OF NOTICE. A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.
- NOTICE BY E-MAIL
 - (a) Notice and other communications required or permitted by this subchapter may be sent by e-mail if the tenant and the landlord or landlord's agent have previously communicated by e-mail.
 - (b) The landlord or landlord's agent may designate a specific e-mail address for a tenant to use for the purpose of Subsection (a).

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