

# Squatters Rights in Texas

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# Agenda



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Tenants



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## Types of Tenants

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## Landlord-Tenant Relationship

- In order for someone to evict another person, you generally need one of two things:
  - The parties have a landlord-tenant relationship (either by agreement or deemed by circumstances); or
  - The defendant is a squatter who has not acquired ownership/possession rights through adverse possession. (More on this coming up!)
- A landlord/tenant relationship is required for certain other processes as well, such as writs of re-entry, writs of restoration, repair and remedy cases, security deposit cases, tenant liens, landlord liens/distress warrants, etc.

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## 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.

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## 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.

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## Tenant at Will (continued)

- Generally, no termination notice needed. Just demand for possession and then notice to vacate.
- Except for month to month (or week to week, quarter to quarter, etc.) – Termination notice needed first and then notice to vacate if they don't leave after that period.
  - If rental paying period is at least one month, must give at least one-month termination notice.
  - If rental paying period is less than one month, must give a termination notice at least the length of one rental period.
  - Lease can specify a different length.
  - No termination notice needed if there is a breach.

*Property Code § 91.001(e)*

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## 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.

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## Notice to Vacate for Tenants

- Generally, 3 days' written notice. However:
  - Lease could specify otherwise.
  - Bona fide residential tenant of owner who was foreclosed on and no breach: tenant can finish lease term unless purchaser will live in property as primary residence, in which case 90 days' written notice.
  - Commercial tenant of owner who was foreclosed on and no breach: 30 days' written notice.
  - CARES Act applies: 30 days' written notice.
- See TJCTC's NTV chart: <https://www.tjctc.org/tjctc-resources/charts-and-checklists.html>

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

- Manufactured Home Evictions – Ch. 5
  - (Remember – must meet definition of “mobile home community” and does not apply to RVs.)
- Commercial Evictions – Ch. 6
- Servicemembers Civil Relief Act – Ch. 7
- Contract for Deed – Ch. 8
- (General Eviction Procedures are in Ch. 4)

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### **Scenario #1**

A recent college grad moves back to their childhood home after graduation. They help around the house, but they don't pay rent.



Is there a landlord/tenant relationship? If so, what type?

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## Scenario #2

The owner of a house dies and their two adult children, Bronson and Rebecca, inherit it and both decide to move in. The children do not get along. Rebecca 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 Rebecca evict Bronson?
- Can Bronson get a writ of re-entry to get back into the house?

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## Scenario #3

A bona fide residential tenant's landlord is foreclosed on.

If the new owner wants to use the premises as their primary residence, is there a landlord/tenant relationship with the tenant? If so, what kind of tenant are they?

What if the new owner is planning to use the premises as an investment property? Is there a landlord/tenant relationship then? If so, what kind?

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## Scenario #4



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?

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## Occupants & Lodgers

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## 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.

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### Scenario #5

Thea is renting a house to Mark and Cindy. They have a written lease for a period of one year, but only Mark is listed on the lease. Thea is also renting the guest house in the backyard to John. They have an oral lease for a period of two years. John assumes Thea would be fine with him subletting and he needs some extra cash, so has rented the extra room in the guesthouse to Jasmine.

Who are tenants and who are occupants in relation to Thea?

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# 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.
- RV parks can often have both lodgers and tenants at the same time – just depends on the specific situation in each case.
- If a lodger refuses to leave, they can be removed without an eviction.

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## Scenario #6

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 a JP 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?

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# Squatters & Adverse Possession

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## Squatters

- Squatters do not have a landlord/tenant relationship, but an eviction can still be filed against them (forcible **entry** and detainer vs. just forcible detainer).
- 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 is not an FED if the person had the consent of:
  - the person in actual possession of the property;
  - a tenant at will or by sufferance; or
  - a person who acquired possession by forcible entry.

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## 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.

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### Scenario #7

Darby is subletting a house from Laura even though that isn't allowed under Laura's lease. The owner shows up and is upset someone other than Laura is living in the house. They tell her orally to get out. She refuses and they immediately file an eviction against her.

Is Darby a squatter?

What does the landlord need to do in order to evict Darby?

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## 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.

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## Adverse Possession – Elements

- A trespasser's possession must be:
  - **Hostile** – against the right of the true owner and without permission
  - **Actual** – exercising control over the property
  - **Exclusive** – in the possession of the trespasser alone
  - **Open & Notorious** – using the property as the real owner would, without hiding his or her occupancy, and
  - **Continuous** for the statutory period

*Civil Practices & Remedies Code §16.021(1)*

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## **Adverse Possession – Intent is Irrelevant**

- No requirement that entry and continued possession of the property be done with knowing or intentional hostility.
- Any entry and possession, so long as it meets the elements, is sufficient to support a claim of adverse possession.

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## **Adverse Possession – Peaceable Possession**

- Possession of real property that is continuous, without a lawsuit to recover the property ever being filed by the landowner
- Possession must be adverse and peaceable at the same time to get ownership of another's property

*Civil Practices & Remedies Code §16.021(3)*

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## **Adverse Possession – Statutory Periods**

- There are different time periods for the length of time that a person has to remain on property to adversely possess it.
- For example, the owner of property has 10 years to reclaim property (through legal process) from a trespasser who has cultivated, used, or enjoyed the property and met all the elements of peaceable and adverse possession.
- These periods can be found in Civil Practice and Remedies Code Ch. 16.

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## **Adverse Possession – Government Land**

- Land held by state, municipal, or federal government entities are generally immune from adverse possession actions.
- A squatter living in a tent in a public park will never gain ownership of that land.
  - They're always going to be a trespasser!

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## Scenario #8

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?

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## Non-Eviction Options

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## Evictions vs. Other Options

- Depending on the circumstances, other options might be available to landowners (coming up in legislative updates)!
- Sometimes an eviction and another option could both be possible at the same time.
- Up to the landowner/plaintiff to decide what they want to pursue.
- Don't give legal advice!

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## Agreement

- Parties can mutually agree to terminate a lease or agree to different terms at any time.
- No court involvement.

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## Abandonment

- Landlord may enter and remove property left behind if a tenant abandons a premises – no court involvement needed.
- 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.

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## Other Court Orders

- There can be court orders other than an eviction that require someone to leave/be removed from a premises.
- Examples:
  - Divorce temporary orders/enforcement
  - Injunction
  - Protective Order
  - Magistrate’s Emergency Protective Order

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# Criminal Trespass Offense

Penal Code Sec. 30.05:

A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, a general residential operation operating as a residential treatment center, or an aircraft or other vehicle, without effective consent and the person:

- had notice that the entry was forbidden; or
- received notice to depart but failed to do so.

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## 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 the 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.

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# 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. (Tenants are neither).

| <b>Criminal Trespass</b>                                                                                                                                                           | <b>Squatter/Forcible Entry &amp; Detainer</b>                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Penal Code Sec. 30.05                                                                                                                                                              | Property Code Sec. 24.001                                                                                              |
| <b>Criminal Offense</b>                                                                                                                                                            | <b>Grounds for Eviction Suit</b>                                                                                       |
| 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. |

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## “It’s a Civil Matter”

- How often do you find people coming to your office saying this is what law enforcement told them? What is usually the reason?
- What are possible consequences of saying something is a “civil matter” when criminal trespass is actually an option?
- What are possible consequences of criminally trespassing someone when they’re actually a tenant?

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## TCOLE Technical Assistance Bulletin

- “Criminal Offenses Related to Squatting”
  - 4/11/24
  - See Handout
  - <https://www.tcole.texas.gov/content/technical-assistance-bulletins>
- Basically, it says for law enforcement to not just always default to “it’s a civil matter.”
- Licensees should investigate and enforce the relevant criminal laws (including Criminal Trespass, Burglary, and Criminal Mischief) when there’s probable cause to do so.

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## Treat As Civil or Criminal?

1. Boyfriend moved in and now the girlfriend wants him out and he won’t leave.
2. Person goes to their hunting cabin and finds that someone has broken in and is staying there (clear signs of forced entry).
3. Siblings inherited a house and one wants to kick the other out for causing a bunch of damage.
4. Owner says the other person never had permission to be there, that person says owner agreed they could stay there, but they don’t have a written lease.
5. Domestic violence situation where assault is evident & the victim wants to criminally trespass her husband.

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## **Scenario #9**

A landowner wants to criminally trespass a group of people that have moved onto their land. When the officer goes out to the land, the group shows them what appears to be a deed. The landowner says that they have forged it and they're "a bunch of those sovereign citizen weirdos."

- Is this civil or criminal?
- How should this be handled?

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## **Legislative Updates**

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## SB 1333 – “*Squatter Bill*”

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### *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 *\*\*Not filed in Justice Court\*\****

- 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?**

- Yes. This new removal process does not limit owners' other legal rights or law enforcement's authority to arrest for other crimes (criminal trespass, eviction, etc.).

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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**

- Where can the action be filed?
- What period of time of fair market rent is used to calculate exemplary damages?
- How is a judgment for possession enforced?

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