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Texas Landlord-Tenant Law

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About your instructor.....

Lloyd Hampton is originally from New Orleans but has lived most of his life in Houston, Texas. Mr. Hampton received a Bachelor of Science in Business Technology degree from the University of Houston. He entered the real estate field in 1980 selling new homes and quickly won top sales awards. In 1986 he obtained a real estate sales license and again was awarded top honors for production. After becoming a broker he continued to represent individuals, sellers, buyers, landlords, tenants, relocation firms, financial institutions and government agencies with their real estate needs. He has been a member of the National, Texas, and Houston Associations of REALTORS® since 1986.

Another phase of his career began when Mr. Hampton entered the real estate education field in 1987. As Lead Instructor for The Real Estate School, Mr. Hampton taught a full spectrum of courses including principles, practices, property management, finance, mortgage origination, marketing, agency, investments, contracts, negotiation and exam preparation. With a merger with Kaplan Professional Schools he became the Product Development Leader for Mandatory Continuing Education and Exam Preparation courses along with responsibility for curriculum in Texas. Mr. Hampton's position also included Texas instructor development and training.

He is a Life Member of the Texas Real Estate Teachers Association (TRETA) as well as the Association's past Communications Director and Treasurer and has accumulated more than 75,000 podium hours. He has received both TRETA's Certified Real Estate Instructor (CREI) designation as well as the International Distance Education Certification Center's Certified Distance Education Instructor (CDEI) designation. Mr. Hampton teaches live classroom as well as online synchronous and asynchronous courses. He has taught Continuing Legal Education classes for attorneys as approved by the State Bar of Texas. He is a sought after consultant, expert witness, trainer and public speaker. His clients include realty firms, attorneys, real estate brokers, REALTOR® associations, and the general public.

Mr. Hampton is author of The Art of Negotiation. The text covers the legal, business, and ethical aspects of negotiating in today's business environment. It also covers techniques of negotiation as well as issues in diversity, conflict resolution, the Texas Deceptive Trade Practices Act, and mathematics involved in real estate negotiations.

Mr. Hampton has been Contributing Editor of two courses published by Dearborn Publishing, one on Property Management by Robert Kyle and the other on Real Estate Investments by Dave Sirota. He has also published numerous articles on real estate related topics.

In 2011 Mr. Hampton launched his own real estate education firm called Lloyd Hampton Real Estate Education specializing in quality real estate continuing education for the Texas Real Estate professional. Along with the Texas Real Estate Commission's Legal, Ethics, and Broker Responsibility courses he has published the following CE courses:

Critical Compliance, Real Estate and the Economy, Negotiating Real Estate Texas Style, Commercial Real Estate for the Residential Agent, Texas Landlords and Texas Tenants, TREC Contracts Workshop, Texas Title Insurance, The Texas Property Tax System, Examination of the TREC 1-4 Family Contract, The Rules and Regulations of TREC Forms, Negotiating the TREC 1-4 Family Contract, Risk Reduction for Real Estate Agents, and Real Estate and Texas Probate.

He is also the compliance broker responsible for risk reduction and training for a real estate firm in west Houston with 300+ agents. Mr. Hampton still resides in Houston with his wife of 38 years.

Introduction

More and more consumers are choosing to rent. Some because they can't afford to buy and others because financing is difficult to obtain. We have a new generation that is not convinced that buying is a smart move. For many real estate professionals leasing has been a small or nonexistent part of their business. This is changing. Many agents now want to offer leasing services to their customers and clients but have little or no idea of the issues involved. This course introduces the major components of landlord-tenant law in Texas and enables licensees to navigate the numerous statutes that control this very complicated relationship in Texas.

This course has been designed to provide you with current information on the statutory provisions addressing landlord and tenant relations in Texas. The complete statutes may be found at the Texas Legislature's website (www.capitol.state.tx.us). Once on the site click on "Statutes", then scroll down and click on "Property Code". You will then be able to click on just the chapters you need. The entire property code is lengthy, more than a thousand pages, but the six chapters on landlord-tenant law total approximately a hundred pages. The six chapters address the following topics:

- Chapter 24 – Forcible Entry and Detainer (Eviction)
- Chapter 54 – Landlord's Liens
- Chapter 91 – Provisions Generally Applicable to Landlords and Tenants
- Chapter 92 – Residential Tenancies
- Chapter 93 – Commercial Tenancies
- Chapter 94 – Manufactured Home Tenancies

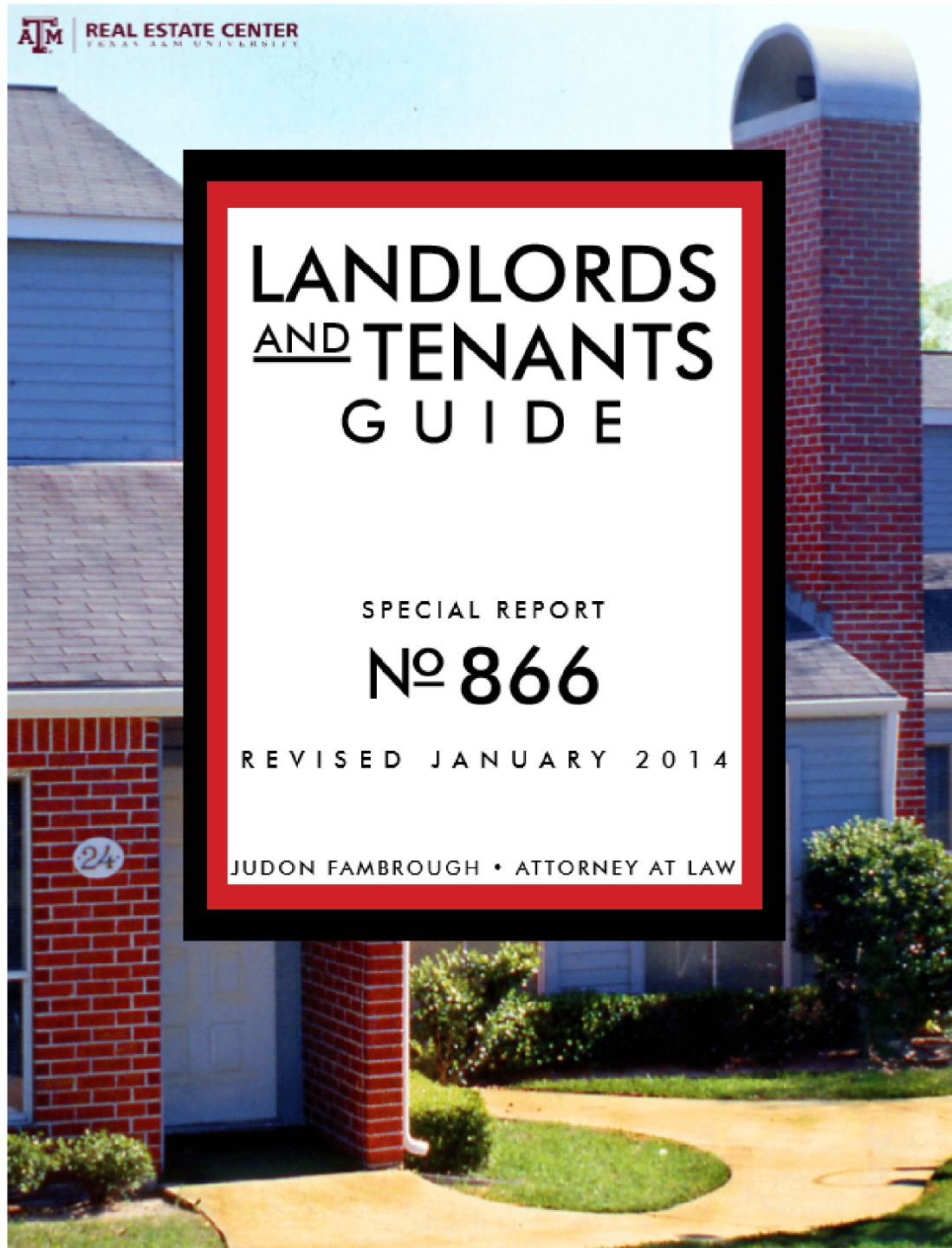
To condense this much law into three hours I was forced to take certain liberties. The provisions are abridged. Due to time and space constraints some details have been omitted. For full understanding please refer to the complete statutes and competent legal advice. This course is intended to give you a solid grounding in landlord-tenant law but is not designed to provide legal advice for specific situations.

Thank you for choosing Lloyd Hampton Real Estate Education for your continuing education. We hope you enjoy and profit from the presentation. With a dedication to quality real estate education we believe that knowledge is the vehicle and service is the goal. We wish you the best of luck in your real estate career.

Sincerely,

Lloyd Hampton, CREI, CDEI

For a great summary of landlord-tenant law in Texas written in an easy to understand question and answer format go to the Real Estate Center's website (www.recenter.tamu.edu) and download Judon Fambrough's Landlords and Tenants Guide. The publication is free and is a great resource to share with both landlords and tenants.



CHAPTER 54. LANDLORD'S LIENS**SUBCHAPTER B. BUILDING LANDLORD'S LIEN****Sec. 54.021. LIEN.**

A person who leases or rents all or part of a building for nonresidential use has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

Sec. 54.022. COMMERCIAL BUILDING.

(a) The lien is unenforceable for rent on a commercial building 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.

(b) The lien statement must be verified by the landlord or the landlord's agent or attorney and must contain:

- (1) an account, itemized by month, of the rent for which the lien is claimed;
- (2) the name and address of the tenant or subtenant, if any;
- (3) a description of the leased premises; and
- (4) the beginning and termination dates of the lease.

Sec. 54.023. EXEMPTIONS.

This chapter does not affect statute exempting property from forced sale.

Sec. 54.024. DURATION OF LIEN.

The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building.

Sec. 54.025. DISTRESS WARRANT.

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 of the peace in the precinct in which the building is located for a distress warrant if the tenant:

- (1) owes rent;
- (2) is about to abandon the building; or
- (3) is about to remove the tenant's property from the building.

SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN**Sec. 54.041. 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.

Sec. 54.042. EXEMPTIONS.

A lien under this subchapter does not attach to:

- (1) wearing apparel;
- (2) tools, apparatus, and books of a trade or profession;
- (3) schoolbooks;
- (4) a family library;
- (5) family portraits and pictures;
- (6) one couch, two living room chairs, a dining table and chairs;
- (7) beds and bedding;
- (8) kitchen furniture and utensils;
- (9) food and foodstuffs;
- (10) medicine and medical supplies;
- (11) one automobile and one truck;
- (12) agricultural implements;
- (13) children's toys not commonly used by adults;
- (14) 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
- (15) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

Sec. 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS.

(a) A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement.

Sec. 54.044. SEIZURE OF PROPERTY.

(a) 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.

(b) Immediately after seizing property under Subsection (a) of this section, the landlord or the landlord's agent shall leave written notice of entry and an itemized list of the items removed. The notice and list shall 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.

(c) Unless authorized in a written lease, the landlord is not entitled to collect a charge for packing, removing, or storing property seized under this section.

(d) If the tenant has abandoned the premises, the landlord or the landlord's agent may remove its contents.

Sec. 54.045. SALE OF PROPERTY.

(a) Property seized under may not be sold or otherwise disposed of unless the sale or disposition is authorized in a written lease.

(b) 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. The notice must be sent to the tenant by both first class mail and certified mail, return receipt requested, at the tenant's last known address.

The notice must contain:

- (1) the date, time, and place of the sale;
- (2) an itemized account of the amount owed by the tenant to the landlord; and
- (3) 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 under Subsection (e) of this section.

(c) A sale under this section is subject to a recorded chattel mortgage or financing statement. The property shall be sold to the highest cash bidder. Proceeds from the sale shall be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage, and sale costs.

(d) Any sale proceeds remaining after payment of the amounts authorized in Subsection (c) of this section shall 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 shall 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.

(e) 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.

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS AND TENANTS**Sec. 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES.**

(a) A monthly tenancy may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

Sec. 91.003. TERMINATION OF LEASE BECAUSE OF PUBLIC INDECENCY CONVICTION.

(a) A landlord may terminate a lease if:

- (1) the tenant or occupant of the leasehold uses the property for an activity for which the tenant or occupant or for which an agent or employee of the tenant or occupant is convicted under Chapter 43, Penal Code, and
- (2) the convicted person has exhausted or abandoned all avenues of direct appeal from the conviction.

Sec. 91.004. LANDLORD'S BREACH OF LEASE; LIEN.

(a) If the landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure.

(b) To secure payment of the 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.

Sec. 91.005. SUBLETTING PROHIBITED.

During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord.

Sec. 91.006. LANDLORD'S DUTY TO MITIGATE DAMAGES.

(a) A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease.

CHAPTER 92. RESIDENTIAL TENANCIES**Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.**

(a) 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 Subchapter C, D, E, or G, respectively, may not be waived. A landlord's duty to install a smoke alarm 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. The landlord's duty of inspection and repair of smoke alarms under Subchapter F may be waived only by written agreement.

Sec. 92.008. INTERRUPTION OF UTILITIES.

(a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) Except as provided by this section, a landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service furnished to a 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.

Sec. 92.0081. REMOVAL OF PROPERTY AND EXCLUSION OF RESIDENTIAL TENANT.

(a) A landlord 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.

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

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

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

- (1) 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;
 - (2) 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
 - (3) the amount of rent and other charges for which the tenant is delinquent.
- (d) A landlord may not intentionally prevent a tenant from entering the leased premises under Subsection (b)(3) unless:
- (1) the landlord's right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;
 - (2) the tenant is delinquent in paying all or part of the rent; and
 - (3) the landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed or hand-delivered to the tenant or posted on the inside of the main entry door of the tenant's dwelling not later than the third calendar day before the date on which the door locks are changed a written notice stating:
 - (A) the earliest date that the landlord proposes to change the door locks;
 - (B) the amount of rent the tenant must pay to prevent changing of the door locks;
 - (C) 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
 - (D) 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.
- (e) A landlord may not change the locks on the door of a tenant's dwelling on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the tenant to tender the delinquent rent.

Sec. 92.009. RESIDENTIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT.

- (a) If a landlord has locked a tenant out of leased premises in violation of Section [92.0081](#), the tenant may recover possession of the premises as provided by this section.
- (b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for

reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending a final hearing on the tenant's sworn complaint for reentry.

(d) The writ of reentry must be served on either 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. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for reentry before the eighth day after the date of service of the writ of reentry on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for reentry in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of reentry.

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct.

Sec. 92.010. OCCUPANCY LIMITS.

(a) Except as provided by Subsection (b), the maximum number of adults that a landlord may allow to occupy a dwelling is three times the number of bedrooms in the dwelling.

(b) A landlord may allow an occupancy rate of more than three adult tenants per bedroom:

(1) to the extent that the landlord is required by a state or federal fair housing law to allow a higher occupancy rate; or

(2) if an adult whose occupancy causes a violation of Subsection (a) is seeking temporary sanctuary from family violence, for a period that does not exceed one month.

Sec. 92.011. CASH RENTAL PAYMENTS.

(a) A landlord shall accept a tenant's timely cash rental payment unless a written lease requires the tenant to make rental payments by check, money order, or other traceable or negotiable instrument.

(b) A landlord who receives a cash rental payment shall:

(1) provide the tenant with a written receipt; and

(2) enter the payment date and amount in a record book maintained by the landlord.

Sec. 92.014. PERSONAL PROPERTY AND SECURITY DEPOSIT OF DECEASED TENANT.

(a) Upon written request of a landlord, the landlord's tenant shall:

(1) provide the landlord with the name, address, and telephone number of a person to contact in the event of tenant's death; and

(2) sign a statement authorizing the landlord in the event of the tenant's death to:

(A) grant the person designated under Subdivision (1) access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;

(B) allow the person designated under Subdivision (1) to remove any of the tenant's property found at the leased premises; and

(C) refund the tenant's security deposit, less lawful deductions, to the person designated.

(b) A tenant may, without request from the landlord, provide the landlord with the information in Subsection (a).

Sec. 92.015. TENANT'S RIGHT TO SUMMON POLICE OR EMERGENCY ASSISTANCE.

- (a) A landlord may not:
- (1) prohibit or limit a residential tenant's right to summon police or other emergency assistance in response to family violence; or
 - (2) impose monetary or other penalties on a tenant who summons police or emergency assistance in response to family violence.

Sec. 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING FAMILY VIOLENCE.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c) and provides the landlord or the landlord's agent a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

- (1) a temporary injunction under the Family Code;
- (2) a temporary ex parte order under the Family Code; or
- (3) a protective order issued under the Family Code.

Sec. 92.017. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN DECISIONS RELATED TO MILITARY SERVICE.

(b) A tenant who is a servicemember or a dependent of a servicemember may vacate the dwelling leased by the tenant and avoid liability for future rent and all other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if:

- (1) the lease was executed by a person who, after executing the lease or during the term of the lease, enters military service; or
- (2) a servicemember, while in military service, executes the lease and after executing the lease receives military orders:
 - (A) for a permanent change of station; or
 - (B) to deploy for 90 days or more.

(c) A tenant who terminates a lease under Subsection (b) shall deliver to the landlord or landlord's agent:

- (1) a written notice of termination of the lease; and
- (2) a copy of an appropriate government document providing evidence of the tenant's entrance into military service if Subsection (b)(1) applies or a copy of the servicemember's military orders if Subsection (b)(2) applies.

Sec. 92.019. LATE PAYMENT OF RENT; FEES.

(a) A landlord may not collect from a tenant a late fee for failing to pay any portion of the tenant's rent unless:

- (1) notice of the fee is included in a written lease;
- (2) the fee is reasonable; and
- (3) any portion of the tenant's rent has remained unpaid two full days after the date the rent was originally due.

(a-1) For purposes of this section, a late fee is considered reasonable if:

- (1) the late fee is not more than:
 - (A) 12% of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains not more than four dwelling units; or
 - (B) 10% of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains more than four dwelling units; or
- (2) the late fee is more than the applicable amount under Subdivision (1), but not more than uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment.

(b) A late fee under this section may include an initial fee and a daily fee for each day any portion of the tenant's rent continues to remain unpaid, and the combined fees are considered a single late fee for purposes of this section.

(c) A landlord who violates this section is liable to the tenant for an amount equal to the sum of \$100, three times the amount of the late fee collected in violation of this section, and the tenant's reasonable attorney's fees.

(d) 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.

Sec. 92.020. EMERGENCY PHONE NUMBER.

(a) A landlord that has an on-site management office for a residential rental property must provide to a tenant a telephone number that will be 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.

(b) The landlord must post the phone number prominently outside the management office.

(d) A landlord to whom Subsection (a) does not apply must provide to a tenant a telephone number for the purpose of reporting emergencies described by that subsection.

Sec. 92.023. TENANT'S REMEDIES REGARDING REVOCATION OF CERTIFICATE OF OCCUPANCY.

If a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable to a tenant who is not in default under the lease for:

- (1) the full amount of the tenant's security deposit;
- (2) the pro rata portion of any rental payment the tenant has paid in advance;
- (3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
- (4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

Sec. 92.024. LANDLORD'S DUTY TO PROVIDE COPY OF LEASE.

(a) Not later than the third business day after the date the lease is signed by each party to the lease, a landlord shall provide at least one complete copy of the lease to at least one tenant who is a party to the lease.

Sec. 92.025. LIABILITY FOR LEASING TO PERSON WITH CRIMINAL RECORD.

(a) A cause of action does not accrue against a landlord or a landlord's manager or agent solely for leasing a dwelling to a tenant convicted of, or arrested or placed on deferred adjudication for, an offense.

Causes of action for negligence are not precluded if the tenant was convicted of murder, burglary, sexual assault, indecency with a child, prostitution, human trafficking, elder or child abuse, sex offenses, and similar offenses and the landlord, manager, or agent knew or should have known of the conviction or adjudication.

Sec. 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY.

(a) A landlord shall make a diligent effort to repair or remedy a condition if:

- (1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is paid;
- (2) the tenant is not delinquent in the payment of rent at the time notice is given; and
- (3) the condition:
 - (A) materially affects the physical health or safety of an ordinary tenant; or
 - (B) arises from the landlord's failure to provide and maintain in good operating condition a device to

supply hot water of a minimum temperature of 120 degrees Fahrenheit.

(b) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal or extension to repair or remedy a condition caused by:

- (1) the tenant;
- (2) a lawful occupant in the tenant's dwelling;
- (3) a member of the tenant's family; or
- (4) a guest or invitee of the tenant.

(d) The tenant's notice must be in writing only if the tenant's lease is in writing and requires written notice.

Sec. 92.053. BURDEN OF PROOF.

(a) The tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition.

(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse.

Sec. 92.054. CASUALTY LOSS

(a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.

Sec. 92.055. CLOSING THE RENTAL PREMISES.

(a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, stating that:

- (1) the landlord is terminating the tenancy as soon as legally possible; and
- (2) after the tenant moves out the landlord will either immediately demolish the unit or no longer use the unit for residential purposes.

Sec. 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR.

(b) A landlord is liable to a tenant as provided by this subchapter if:

- (1) the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;
- (2) the condition materially affects the physical health or safety of an ordinary tenant;
- (3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under(1) or the tenant has given the notice under(1) by sending that notice by certified mail, return receipt requested, by registered mail, or by another form of mail that allows tracking of delivery from the United States Postal Service or a private delivery service;
- (4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under(1) and, if applicable, the tenant's subsequent notice under (3);
- (5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received tenant's notice under (1) and, if applicable, the tenant's notice under Subdivision (3); and
- (6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

(c) For purposes of Subsection (b)(4) or (5), a landlord is considered to have received the tenant's notice when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.

(d) For purposes of Subsection (b)(3) or (4), in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a reasonable time. To rebut that presumption, 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 must be considered.

(e) Except as provided in Subsection (f), a tenant to whom a landlord is liable under Subsection (b) of this section may:

- (1) terminate the lease;
- (2) have the condition repaired or remedied according to Section 92.0561;
- (3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and
- (4) obtain judicial remedies.

(f) A tenant who elects to terminate the lease under Subsection (e) is:

- (1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;
- (2) entitled to deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the security deposit according to law; and
- (3) not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under (1) and (2) of Subsection (a) of Section 92.0563.

(g) A lease must contain language in underlined or bold print that informs the tenant of the remedies available under this section and Section 92.0561.

Sec. 92.0561. TENANT'S REPAIR AND DEDUCT REMEDIES.

(a) If the landlord is liable to the tenant under Section 92.056(b), the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.

(b) The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or \$500, whichever is greater.

(c) Repairs and deductions under this section 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.

(d) Repairs under this section may be made only if all of the following requirements are met:

- (1) The landlord has a duty to repair or remedy the condition under Section 92.052.
 - (2) The tenant has given notice to the landlord as required by Section 92.056(b)(1), and, if required, a subsequent notice under Section 92.056(b)(3), and at least one of those notices states that the tenant intends to repair or remedy the condition. The notice shall also contain a reasonable description of the intended repair or remedy.
 - (3) Any one of the following events has occurred:
 - (A) The landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.
 - (B) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.
 - (C) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate 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.
- (e) If the requirements of Subsection (d) of this section are met, a tenant may:
- (1) have the condition repaired or remedied immediately following the tenant's notice of intent to repair if the condition involves sewage or flooding as referred to in (A) of Subdivision (3) of Subsection (d) of this section;
 - (2) have the condition repaired or remedied if the condition involves a cessation of potable water as referred to in Paragraph (A) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within three days following the tenant's delivery of notice of intent to repair;
 - (3) have the condition repaired or remedied if the condition involves inadequate heat or cooled air as referred to in Paragraph (C) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair the condition within three days after delivery of the tenant's notice of intent to repair; or
 - (4) have the condition repaired or remedied if the condition is not covered by Paragraph (A), (B), or (C) of

Subdivision (3) of Subsection (d) of this section and involves a condition affecting the physical health or safety of the ordinary tenant as referred to in Paragraph (D) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within seven days after delivery of the tenant's notice of intent to repair.

(f) Repairs made pursuant to the tenant's notice 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, county, or adjacent county at the time of the tenant's notice of intent to repair. Unless the landlord and tenant agree otherwise, 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.

(h) Repairs made pursuant to the tenant's notice must be made in compliance with applicable building codes, including a building permit when required.

(i) The tenant shall not have authority to contract for labor or materials in excess of what the tenant may deduct under this section. The landlord is not liable to repairmen, contractors, or material suppliers who furnish labor or materials to repair or remedy the condition. A repairman or supplier shall not have a lien for materials or services arising out of repairs contracted for by the tenant under this section.

(j) When deducting the cost of repairs from the rent payment, the tenant shall furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the same document.

Sec. 92.058. LANDLORD REMEDY FOR TENANT VIOLATION.

(a) If the tenant withholds rents, causes repairs to be performed, or makes rent deductions for repairs in violation of this subchapter, the landlord may recover actual damages from the tenant. If, after a landlord has notified a tenant in writing of (1) the illegality of the tenant's rent withholding or the tenant's proposed repair and (2) the penalties of this subchapter, the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in bad faith violation of this subchapter, the landlord may recover from the tenant a civil penalty of one month's rent plus \$500.

Sec. 92.062. LEASE TERM AFTER NATURAL DISASTER.

If a rental premises is, as a practical matter, totally unusable for residential purposes as a result of a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm, a landlord that allows a tenant to move to another rental unit owned by the landlord may not require the tenant to execute a lease for a term longer than the term remaining on the tenant's lease on the date the premises was rendered unusable as a result of the natural disaster.

Sec. 92.102. SECURITY DEPOSIT.

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 that has been entered into by a landlord and a tenant.

Sec. 92.103. OBLIGATION TO REFUND.

(a) Except as provided by Section 92.107, the landlord shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises.

(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Sec. 92.1031. CONDITIONS FOR RETENTION OF SECURITY DEPOSIT OR RENT PREPAYMENT.

(a) Except as provided in Subsection (b), a landlord who receives a security deposit or rent prepayment for a dwelling from a tenant who fails to occupy the dwelling according to a lease between the landlord and the tenant may not retain the security deposit or rent prepayment if:

(1) the tenant secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease; or

(2) the landlord secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease.

(b) If the landlord secures the replacement tenant, the landlord may retain and deduct from the security deposit or rent prepayment either:

(1) a sum agreed to in the lease as a lease cancellation fee; or

(2) actual expenses incurred by the landlord in securing the replacement, including a reasonable amount for the time of the landlord in securing the replacement tenant.

Sec. 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING.

(a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear.

(c) The landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if the tenant owes rent when he surrenders possession of the premises and there is no controversy concerning the amount of rent owed.

Sec. 92.1041. PRESUMPTION OF REFUND OR ACCOUNTING.

A landlord is presumed to have refunded a security deposit or made an accounting of security deposit deductions if, on or before the date required under this subchapter, the refund or accounting is placed in the United States mail and postmarked on or before the required date.

Sec. 92.105. CESSATION OF OWNER'S INTEREST.

(a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired.

(b) The new owner shall deliver to the tenant a signed statement acknowledging that the new owner has acquired the property and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

(b-1) The person who no longer owns an interest in the rental premises is liable for a security deposit received while the person was the owner until the new owner has received the deposit or has assumed the liability for the deposit, unless otherwise specified by the parties in a written contract.

Sec. 92.107. TENANT'S FORWARDING ADDRESS.

(a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord.

Sec. 92.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT.

(a) The tenant may not withhold any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees.

Sec. 92.109. LIABILITY OF LANDLORD.

(a) A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of \$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.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

- (1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and
- (2) is liable for the tenant's reasonable attorney's fees.

(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Sec. 92.153. SECURITY DEVICES REQUIRED WITHOUT NECESSITY OF TENANT REQUEST.

(a) Except as provided by Subsections (b), (e), (f), (g), and (h) and without necessity of request by the tenant, a dwelling must be equipped with:

- (1) a window latch on each exterior window of the dwelling;
- (2) a doorknob lock or keyed dead bolt on each exterior door;
- (3) a sliding door pin lock on each exterior sliding glass door of the dwelling;
- (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and
- (5) a keyless bolting device and a door viewer on each exterior door of the dwelling.

(b) If the dwelling has French doors, one door of each pair of French doors must meet the requirements of Subsection (a) and the other door must have:

- (1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door and a keyless bolting device capable of insertion into the floor or threshold, each with a bolt having a throw of one inch or more; or
- (2) a bolt installed inside the door and operated from the edge of the door, capable of insertion into the doorjamb above the door, and another bolt installed inside the door and operated from the edge of the door capable of insertion into the floor or threshold, each bolt having a throw of three-fourths inch or more.

(c) A security device required by Subsection (a) or (b) must be installed at the landlord's expense.

(d) Subsections (a) and (b) apply only when a tenant is in possession of a dwelling.

(e) A keyless bolting device is not required to be installed at the landlord's expense on an exterior door if:

- (1) the dwelling is part of a multiunit complex in which the majority of dwelling units are leased to tenants who are over 55 years of age or who have a physical or mental disability;
- (2) a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability; and
- (3) the landlord is expressly required or permitted to periodically check on the well-being or health of the tenant as a part of a written lease or other written agreement.

(f) A keyless bolting device is not required to be installed at the landlord's expense if a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability, the tenant requests, in writing, that the landlord deactivate or not install the keyless bolting device, and the tenant certifies in the request that the tenant or occupant is over 55 years of age or has a physical or mental disability. The request must be a separate document and may not be included as part of a lease agreement.

Sec. 92.156. REKEYING OR CHANGE OF SECURITY DEVICES.

(a) Except as otherwise provided by Subsection (e), a security device operated by a key, card, or combination shall be rekeyed by the landlord at the landlord's expense not later than the seventh day after each tenant turnover date.

(b) A landlord shall perform additional rekeying or change a security device at the tenant's expense if requested by the tenant. A tenant may make an unlimited number of requests under this subsection.

(c) The expense of rekeying security devices for purposes of the use or change of the landlord's master key must be paid by the landlord.

Sec. 92.158. LANDLORD'S DUTY TO REPAIR OR REPLACE SECURITY DEVICE.

During the lease term and any renewal period, a landlord shall repair or replace a security device on request or notification by the tenant that the security device is inoperable or in need of repair or replacement.

Sec. 92.159. WHEN TENANT'S REQUEST OR NOTICE MUST BE IN WRITING.

A tenant's request or notice under this subchapter may be given orally unless the tenant has a written lease that requires the request or notice to be in writing and that requirement is underlined or in boldfaced print.

Sec. 92.161. COMPLIANCE WITH TENANT REQUEST REQUIRED WITHIN REASONABLE TIME.

(a) Except as provided by Subsections (b) and (c), a landlord must comply with a tenant's request for rekeying, changing, installing, repairing, or replacing a security device within a reasonable time. A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date the request is received by the landlord.

(b) If within the time allowed a landlord requests advance payment of charges that the landlord is entitled to collect under that section, the landlord shall comply with a tenant's

request within a reasonable time. A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date a tenant's advance payment is received by the landlord, except as provided by Subsection (c).

(c) A reasonable time for purposes of Subsections (a) and (b) is presumed to be not later than 72 hours after the time of receipt of the tenant's request and any required advance payment if at the time of making the request the tenant informed the landlord that:

- (1) an unauthorized entry occurred or was attempted in the tenant's dwelling;
- (2) an unauthorized entry occurred or was attempted in another unit in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request; or
- (3) a crime of personal violence occurred in the multiunit complex in which the tenant's dwelling is located during the two months preceding the request.

Sec. 92.163. REMOVAL OR ALTERATION OF SECURITY DEVICE BY TENANT.

Except as provided by Section 92.164(a)(1) or 92.165(1) regarding the remedy of repair-and-deduct, a tenant may not remove, change, rekey, replace, or alter a security device or have it removed, changed, rekeyed, replaced, or altered without permission of the landlord.

Sec. 92.201. DISCLOSURE OF OWNERSHIP AND MANAGEMENT.

(a) A landlord shall disclose to a tenant, or to any government official or employee acting in an official capacity, according to this subchapter:

- (1) the name and either a street or post office box address of the holder of record title, according to the deed records in the county clerk's office, of the dwelling rented by the tenant or inquired about by the government official or employee acting in an official capacity; and
- (2) if an entity located off-site from the dwelling is primarily responsible for managing the dwelling, the name and street address of the management company.

(b) Disclosure to a tenant under Subsection (a) must be made by:

- (1) giving the information in writing to the tenant on or before the seventh day after the day the landlord receives the tenant's request for the information;
- (2) continuously posting the information in a conspicuous place in the dwelling or the office of the on-site manager or on the outside of the entry door to the office of the

on-site manager on or before the seventh day after the date the landlord receives the tenant's request for the information; or

(3) including the information in a copy of the tenant's lease or in written rules given to the tenant before the tenant requests the information.

Sec. 92.206. LANDLORD'S DEFENSE.

A landlord has a defense to liability under Section 92.202 or 92.203 if the tenant owes rent on the date the tenant gives a notice required by either of those sections. Rent delinquency is not a defense for a violation of Section 92.204.

Sec. 92.254. SMOKE ALARM.

(a) A smoke alarm must be:

(1) designed to detect both the visible and invisible products of combustion;

(2) designed with an alarm audible to a person in the bedrooms it serves; and

(3) tested and listed for use as a smoke alarm by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.

(a-1) If requested by a tenant as an accommodation for a person with a hearing-impairment disability a smoke alarm must, in addition to complying with Subsection (a), be capable of alerting a hearing-impaired person in the bedrooms it serves.

(b) Except as provided by Section 92.255(b), a smoke alarm may be powered by battery, alternating current, or other power source as required by local ordinance.

Sec. 92.255. INSTALLATION AND LOCATION.

(a) A landlord shall install at least one smoke alarm in each separate bedroom in a dwelling unit. In addition:

(1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke alarm must be located inside the room;

(2) if multiple bedrooms are served by the same corridor, at least one smoke alarm must be installed in the corridor in the immediate vicinity of the bedrooms; and

(3) if the dwelling unit has multiple levels, at least one smoke alarm must be located on each level.

(b) If a dwelling unit was occupied as a residence before September 1, 2011, a smoke alarm installed in accordance with Subsection (a) may be powered by battery and is not required to be interconnected with other smoke alarms.

Sec. 92.257. INSTALLATION PROCEDURE.

(b) A smoke alarm must be installed on a ceiling or wall. If on a ceiling, it must be no closer than six inches to a wall. If on a wall, it must be no closer than six inches and no farther than 12 inches from the ceiling.

(c) A smoke alarm may be located other than as required by Subsection (a) or (b) if a local ordinance or a local or state fire marshal approves.

Sec. 92.258. INSPECTION AND REPAIR.

(b) The landlord shall determine that the smoke alarm is in good working order at the beginning of the tenant's possession by testing the smoke alarm with smoke, by operating the testing button on the smoke alarm, or by following other recommended test procedures of the manufacturer for the particular model.

(c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke alarm, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke alarm be inspected or repaired. This duty does not exist with respect to damage or a malfunction caused by the tenant.

(f) The landlord is not obligated to provide batteries for a battery-operated smoke alarm after a tenant takes possession if the smoke alarm was in good working order at the time the tenant took possession.

Sec. 92.2611. TENANT'S DISABLING OF A SMOKE ALARM.

(a) A tenant is liable according to this subchapter if the tenant removes a battery from a smoke alarm without immediately replacing it with a working battery or knowingly disconnects or intentionally damages a smoke alarm, causing it to malfunction.

Sec. 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER.

(a) If a landlord has installed a 1A10BC residential fire extinguisher as defined by the National Fire Protection Association or other non-rechargeable fire extinguisher in accordance with a local ordinance or other law, the landlord or the landlord's agent shall inspect the fire extinguisher at the beginning of a tenant's possession; and within a reasonable time after receiving a written request by a tenant.

(b) At a minimum, an inspection under this section must include:

- (1) checking to ensure the fire extinguisher is present;
- (2) checking to ensure the fire extinguisher gauge or pressure indicator indicates the correct pressure as recommended by the manufacturer of the fire extinguisher.

Sec. 92.301. LANDLORD LIABILITY TO TENANT FOR UTILITY CUTOFF.

(a) A landlord who has expressly or impliedly agreed in the lease to furnish and pay for water, gas, or electric service to the tenant's dwelling is liable to the tenant if the utility company has cut off utility service to the tenant's dwelling or has given written notice to the tenant that such utility service is about to be cut off because of the landlord's nonpayment of the utility bill.

(b) If a landlord is liable to the tenant under Subsection (a) of this section, the tenant may:

- (1) pay the utility company money to reconnect or avert the cutoff of utilities according to this section;
- (2) terminate the lease if the termination notice is in writing and move-out is to be within 30 days from the date the tenant has notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner;
- (3) deduct from the tenant's rent, without necessity of judicial action, the amounts paid to the utility company to reconnect or avert a cutoff;
- (4) if the lease is terminated by the tenant, deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit pursuant to law;
- (5) if the lease is terminated by the tenant, recover a pro rata refund of any advance rentals paid from the date of termination or the date the tenant moves out, whichever is later;
- (6) recover actual damages, including but not limited to moving costs, utility connection fees, storage fees, and lost wages from work; and
- (7) recover court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

Sec. 92.331. RETALIATION BY LANDLORD.

(a) A landlord may not retaliate against a tenant by taking an action described by Subsection (b) because the tenant:

- (1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;
- (2) gives a landlord a notice to repair or exercise a remedy under this chapter;
- (3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency;

- (4) establishes, attempts to establish, or participates in a tenant organization.
- (b) A landlord may not, within six months after the date of the tenant's action under Subsection (a), retaliate against the tenant by:
 - (1) filing an eviction proceeding, except for the grounds stated by Section 92.332;
 - (2) depriving the tenant of the use of the premises, except for reasons authorized by law;
 - (3) decreasing services to the tenant;
 - (4) increasing the tenant's rent or terminating tenant's lease; or
 - (5) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

Sec. 92.333. TENANT REMEDIES.

If a landlord retaliates against a tenant under this subchapter, the tenant may recover from the landlord a civil penalty of one month's rent plus \$500, actual damages, court costs, reasonable attorney's fees moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord.

Sec. 92.351. RENTAL APPLICATION, DEFINITIONS.

For purposes of this subchapter:

- (1) **"Application deposit"** means a sum of money that is given to the landlord in connection with a rental application and that is refundable to the applicant if the applicant is rejected as a tenant.
- (1-a) **"Application fee"** means a nonrefundable sum of money that is given to the landlord to offset the costs of screening an applicant for acceptance as a tenant.

Sec. 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS.

(a) At the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied, including the applicant's:

- (1) criminal history;
 - (2) previous rental history;
 - (3) current income;
 - (4) credit history; or
 - (5) failure to provide accurate or complete information.
- (c) The acknowledgment must include a statement substantively equivalent to the following: "Signing this acknowledgment indicates that you have had the opportunity to review the

landlord's tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded."

Sec. 92.352. REJECTION OF APPLICANT.

(a) The applicant is deemed rejected if the landlord does not give notice of acceptance on or before the seventh day after:

(1) date the applicant submits a completed rental application to the landlord on an application form furnished by the landlord; or

(2) date the landlord accepts an application deposit if the landlord does not furnish an application form.

(b) A landlord's rejection of one co-applicant shall be deemed as a rejection of all co-applicants.

Sec. 92.354. LIABILITY OF LANDLORD.

A landlord who in bad faith fails to refund an application fee or deposit in violation of this subchapter is liable for an amount equal to the sum of \$100, three times the amount wrongfully retained, and the applicant's reasonable attorney's fees.

CHAPTER 93. COMMERCIAL TENANCIES**Sec. 93.002. INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND EXCLUSION OF COMMERCIAL TENANT.**

(a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord 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.

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

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

(d) A 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.

(e) A landlord may remove and store any property of a tenant that remains on premises that are abandoned. 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 shall deliver by certified mail to the tenant at the tenant's last known address a notice 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.

(f) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or agent 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 the new key may be obtained. 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.

Sec. 93.005. OBLIGATION TO REFUND SECURITY DEPOSIT.

(a) The landlord shall refund the security deposit to the tenant not later than the 60th day after the date the tenant surrenders the premises and provides notice to the landlord or the landlord's agent of the tenant's forwarding address under Section [93.009](#).

(b) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Sec. 93.006. RETENTION OF SECURITY DEPOSIT; ACCOUNTING.

(a) Before returning a security deposit, the landlord may deduct from the deposit 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.

(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear. In this subsection, "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 the term 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.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

- (1) the tenant owes rent when the tenant surrenders possession of the premises; and
- (2) no controversy exists concerning the amount of rent owed.

Sec. 93.007. CESSATION OF OWNER'S INTEREST.

(a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of the security deposit according to this chapter from the date title to the premises is acquired, regardless of whether an acknowledgement is given to the tenant under Subsection (b).

(b) The person who no longer owns an interest in the rental premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit. The amount of the security deposit is the greater of:

- (1) the amount provided in the tenant's lease; or
- (2) the amount provided in an estoppel certificate prepared by the owner at the time the lease was executed or prepared by the new owner at the time the commercial property is transferred.
- (c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Sec. 93.009. TENANT'S FORWARDING ADDRESS.

- (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.
- (b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges for failing to give a forwarding address to the landlord.

Sec. 93.010. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT.

- (a) The 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.
- (b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Sec. 93.011. LIABILITY OF LANDLORD.

- (a) A landlord who in bad faith retains a security deposit in violation of this chapter is liable for an amount equal to the sum of \$100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees incurred in a suit to recover the deposit after the period prescribed for returning the deposit expires.
- (b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this chapter:
 - (1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and
 - (2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.
- (c) In a suit brought by a tenant under this chapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails to return a security deposit or to provide a written description and itemized list of deductions on or before the 60th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Sec. 93.012. ASSESSMENT OF CHARGES.

(a) A landlord may not assess a charge, excluding a charge for rent or physical damage to the leased premises, to a tenant unless the amount of the charge or the method by which the charge is to be computed is stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease.

CHAPTER 24. FORCIBLE ENTRY AND DETAINER - EVICTION (Applies to residential and commercial properties)

Sec. 24.004. JURISDICTION; DISMISSAL.

(a) A justice court in the precinct in which the real property is located has jurisdiction in eviction suits.

Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT.

(a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

(b) If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and 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 of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease.

(f) Except as provided by Subsection (f-1), the notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.

(g) The notice period is calculated from the day on which the notice is delivered.

(i) If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include

in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT.

(a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

- (1) the tenant's identity;
- (2) the nature and amount of the tenant's employment income;
- (3) the income of the tenant's spouse, if applicable and available to the tenant;
- (4) the nature and amount of any governmental entitlement income of the tenant;
- (5) all other income of the tenant;
- (6) the amount of available cash and funds available in savings or checking accounts of the tenant;
- (7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;
- (8) the tenant's debts and monthly expenses; and
- (9) the number and age of the tenant's dependents and where those dependents reside.

(d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION.

(a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that

amount in the judgment. If a portion of the rent is payable by a government agency, the court shall 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 shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL.

(a) During an appeal of an eviction case for nonpayment of rent, the justice court on request shall immediately issue a writ of possession, without hearing, if:

- (1) a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit.

Sec. 24.006. ATTORNEY'S FEES AND COSTS OF SUIT.

(a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

(b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

Sec. 24.0061. WRIT OF POSSESSION.

(a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8-1/2 by 11 inches 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; and

(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1).

(d-1) A municipality may provide, without charge to the landlord or to the owner of personal property removed from a rental unit under Subsection (d), a portable, closed container into which the removed personal property shall be placed by the officer executing the writ or by the authorized person. 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.

(e) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section [7.003](#), Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

Sec. 24.0062. WAREHOUSEMAN'S LIEN.

(a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. The lien does not attach to any property until the property has been stored by the warehouseman.

(b) If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:

(1) the tenant's property is to be removed and stored by a public warehouseman under Section [24.0062](#) of the Property Code;

(2) the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;

(3) within 30 days from the date of storage, the tenant may redeem any of the property described by Section [24.0062](#)(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;

(4) after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and

(5) subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the

property to satisfy reasonable moving and storage charges after 30 days, subject to the requirements of Section [24.0062](#)(j) of the Property Code.

(c) The statement required by Subsection (b)(2) must be underlined or in boldfaced print.

(d) On demand by the tenant during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises, the warehouseman shall return to the tenant all property requested by the tenant, without charge.

(e) On demand by the tenant within 30 days after the date the property is stored by the warehouseman and on payment by the tenant of the moving and storage charges reasonably attributable to the items being redeemed, the warehouseman shall return to the tenant at the warehouse the following property:

- (1) wearing apparel;
- (2) tools, apparatus, and books of a trade or profession;
- (3) school books;
- (4) a family library;
- (5) family portraits and pictures;
- (6) one couch, two living room chairs, and a dining table and chairs;
- (7) beds and bedding;
- (8) kitchen furniture and utensils;
- (9) food and foodstuffs;
- (10) medicine and medical supplies;
- (11) one automobile and one truck;
- (12) agricultural implements;
- (13) children's toys not commonly used by adults;
- (14) goods that the warehouseman or the warehouseman's agent knows are owned by a person other than the tenant or an occupant of the residence;
- (15) goods that the warehouseman or the warehouseman's agent knows are subject to a recorded chattel mortgage or financing agreement;
- (16) cash.

(f) During the first 30 days after the date of storage, the warehouseman may not require payment of removal or storage charges for other items as a condition for redeeming the items described by Subsection (e).

(g) On demand by the tenant to the warehouseman after the 30-day period and before sale and on payment by the tenant of all unpaid moving and storage charges on all the property, the warehouseman shall return all the previously unredeemed property to the tenant at the warehouse.

(h) A warehouseman may not recover any moving or storage charges if the court determines under Subsection (i) that the warehouseman's moving or storage charges are not reasonable.

Sec. 24.007. APPEAL.

A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

Sec. 24.008. EFFECT ON OTHER ACTIONS.

An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits.

Sec. 24.011. NONLAWYER REPRESENTATION.

In eviction suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.