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Introduction

It is often said that residential real estate and commercial real estate are two very different things. I believe this is true. A common question posed is "How do I get a commercial real estate license?". Of course, there is no such thing (at least not as yet) as a commercial real estate license. There is simply a real estate license that, once obtained, allows one to do residential, commercial, land, farm, ranch, industrial, leasing, property management, and a number of other real estate related endeavors. But the two are different. Residential is often 80% emotion and 20% logic. Commercial is the reverse, 80% logic and 20% emotion. In commercial it's all about the numbers. Emotion should not come into the decision-making process if it can be avoided. Commercial real estate is defined as any non-residential, income producing property.

There are four parts to the commercial real estate puzzle:

1. The operating statement
2. An investment model.
3. Property valuation.
4. Financial analysis.

We will examine these four items in detail. Obviously, there is a great deal of mathematics involved in commercial real estate. However, to delve in-depth into some of these calculations is beyond the scope of a three-hour course. Therefore, these calculations will be demonstrated to give you an idea of what is involved, but mastery of this math will take time and additional study.

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

The Operating Statement:
If real estate investment and property management could be boiled down to just one page, it would be the operating statement. There are nine major lines to an operating statement. In the example on the next page, they show as the blanks set to the right margin. Let's define each line:

1. **Scheduled Gross Income (Potential Gross Income)** – the rental income the property could take in if it were 100% occupied and all tenants were paying their full amount of rent.

2. **Vacancy Loss** – the amount of rent not collected because the space or unit is not leased.

3. **Credit Loss (Rent Loss)** – the rent lost because of tenants not paying some or all of the rent.

4. **Other Income** – income from sources other than rent such as vending or a laundry operation on the property.

5. **Effective Gross Income (Gross Operating Income)** – the total income actually collected from all sources.

6. **Total Operating Expenses** – the expenses to operate the property such as repairs and management fees. This figure does not include the principal and interest on the mortgage loan. These expenses are broken down into **fixed expenses** that stay the same, no matter the level of occupancy, **variable expenses** that change with the occupancy, and **reserves** set aside to replace items that wear out over time.

7. **Net Operating Income** – the income left after the operating expenses are paid. It is this number investors are buying and lenders are lending against.

8. **Debt Service** – the principal and interest payment on the mortgage loan.

9. **Before Tax Cash Flow** – the income left after all expenses and the mortgage payment have been taken care of but before income tax is paid.

ANNUAL OPERATING STATEMENT

SCHEDULED GROSS INCOME $__________________
- VACANCY LOSS $__________________
- CREDIT LOSS $__________________
+ OTHER INCOME $__________________

= EFFECTIVE GROSS INCOME $__________________

Operating Expenses:

Fixed $______________
$______________
$______________
$______________
$______________

Total Fixed: $______________

Variable: $______________
$______________
$______________
$______________
$______________

Total Variable: $______________

Reserves: $______________
$______________
$______________
$______________
$______________

Total Reserves: $______________

- TOTAL OPERATING EXPENSES $__________________

= ANNUAL NET OPERATING INCOME (NOI) $__________________

- DEBT SERVICE $__________________

= BEFORE TAX CASH FLOW $__________________

The Basic Investment Model

Let us continue by learning to calculate the maximum sales price your clients can pay and still achieve their investment goals. You have a great advantage if you enter negotiation knowing the most you (or your client) can pay for the property. By calculating the most your lender will lend and then figuring the most you can invest to give you the return you want, you arrive at the most you can pay for the property. A number of terms are needed for this important calculation. Some of the terms we are already familiar with, and others will be new concepts.

1. **Annual NOI** – the net operating income as an annual figure.

2. **Coverage Ratio** – how many times will the annual NOI pay the annual debt service? If a lender wants a coverage ratio of 2, then the NOI needs to be twice the debt service. If the annual debt service is $100,000, then we need an annual NOI of $200,000.

3. **Annual Debt Service** – the principal and interest payment on the mortgage loan for an entire year.

4. **Loan Factor** – a loan constant used to figure principal and interest payments. The factor depends on the interest rate and the loan term. We will use the chart on page 6.

5. **Maximum Loan** – the maximum loan a lender will be willing to lend based on the NOI and the required coverage ratio.

6. **Cash Flow (Before Tax)** – the cash or income left after both expenses and debt service have been paid.

7. **Rate of Return (Cash-on-Cash)** – the amount of cash returned each year based upon the amount of cash initially invested.

8. **Maximum Equity** – the maximum cash the investor can invest and still receive the desired rate of return.

9. **Maximum Offering Price** – the maximum loan plus the maximum equity is the maximum that the investor can pay. Of course, the wise investor will try to purchase under this maximum.

THE BASIC INVESTMENT MODEL

Annual NOI	÷	Coverage Ratio	=	Annual Debt Service	÷	Loan Factor	=	Maximum Loan
$____________	÷	____________	=	$____________	÷	____________	=	$____________

Annual NOI	-	Annual Debt Service	=	Cash Flow	÷	Rate of Return	=	Maximum Equity
$____________	-	____________	=	$____________	÷	____________	=	$____________

Maximum Loan	+	Maximum Equity	=	Maximum Offering Price
$__________________	+	$__________________	=	$__________________

THE BASIC INVESTMENT MODEL

Annual NOI	÷	Coverage Ratio	=	Annual Debt Service	÷	Loan Factor	=	Maximum Loan
$____________	÷	____________	=	$____________	÷	____________	=	$____________

Annual NOI	-	Annual Debt Service	=	Cash Flow	÷	Rate of Return	=	Maximum Equity
$____________	-	____________	=	$____________	÷	____________	=	$____________

Maximum Loan	+	Maximum Equity	=	Maximum Offering Price
$__________________	+	$__________________	=	$__________________

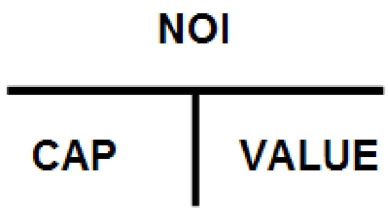
ANNUAL PRINCIPAL AND INTEREST FACTORS

Loan Amount x Factor = Annual Principal and Interest Payment

RATE	30 Years	25 Years	20 Years	15 Years	RATE	30 Years	25 Years	20 Years	15 Years
5.0	0.064419	0.070151	0.079195	0.094895	10.0	0.105309	0.109044	0.115803	0.128953
5.125	0.065338	0.071028	0.080026	0.095678	10.125	0.106419	0.110103	0.116798	0.129872
5.25	0.066264	0.071910	0.080861	0.096465	10.25	0.107532	0.111166	0.117797	0.130794
5.375	0.067197	0.072797	0.081702	0.097256	10.375	0.108649	0.112232	0.118800	0.131719
5.5	0.068135	0.073691	0.082546	0.098050	10.5	0.109769	0.113302	0.119806	0.132648
5.625	0.069079	0.074589	0.083396	0.098848	10.625	0.110892	0.114375	0.120815	0.133579
5.75	0.070029	0.075493	0.084250	0.099649	10.75	0.112018	0.115451	0.121827	0.134514
5.875	0.070985	0.076402	0.085109	0.100454	10.875	0.113147	0.116531	0.122843	0.135451
6.0	0.071946	0.077316	0.085972	0.101263	11.0	0.114279	0.117614	0.123863	0.136392
6.125	0.072913	0.078236	0.086839	0.102075	11.125	0.115414	0.118700	0.124885	0.137335
6.25	0.073886	0.079160	0.087711	0.102891	11.25	0.116551	0.119789	0.125911	0.138281
6.375	0.074864	0.080090	0.088588	0.103710	11.375	0.117692	0.120881	0.126940	0.139231
6.5	0.075848	0.081025	0.089469	0.104533	11.5	0.118835	0.121976	0.127972	0.140183
6.625	0.076837	0.081965	0.090354	0.105359	11.625	0.119981	0.123075	0.129007	0.141138
6.75	0.077832	0.082909	0.084764	0.106189	11.75	0.121129	0.124176	0.130045	0.142096
6.875	0.078831	0.083859	0.092138	0.107023	11.875	0.122280	0.125280	0.131086	0.143057
7.0	0.079836	0.084814	0.093036	0.107859	12.0	0.123434	0.126387	0.132130	0.144020
7.125	0.080846	0.085773	0.093938	0.108700	12.125	0.124589	0.127497	0.133178	0.144987
7.25	0.081861	0.086737	0.094845	0.109544	12.25	0.125748	0.128609	0.134228	0.145956
7.375	0.082881	0.087706	0.095756	0.110391	12.375	0.126908	0.129725	0.135281	0.146928
7.5	0.083906	0.088679	0.096671	0.111241	12.5	0.128071	0.130842	0.136337	0.147903
7.625	0.084935	0.089657	0.097590	0.112096	12.625	0.129236	0.131963	0.137396	0.148880
7.75	0.085969	0.090639	0.098514	0.112953	12.75	0.130403	0.133086	0.138457	0.149860
7.875	0.087008	0.091626	0.099441	0.113814	12.875	0.131573	0.134212	0.139522	0.150843
8.0	0.088052	0.092618	0.100373	0.114678	13.0	0.132744	0.135340	0.140589	0.151829
8.125	0.089100	0.093614	0.101308	0.115546	13.125	0.133917	0.136471	0.141659	0.152817
8.25	0.090152	0.094614	0.102248	0.116417	13.25	0.135093	0.137604	0.142732	0.153808
8.375	0.091209	0.095619	0.103191	0.117291	13.375	0.136270	0.138740	0.143807	0.154802
8.5	0.092270	0.096627	0.104139	0.118169	13.5	0.137449	0.139877	0.144885	0.155798
8.625	0.093335	0.097640	0.105090	0.119050	13.625	0.138631	0.141018	0.145966	0.156797
8.75	0.094404	0.098657	0.106045	0.119934	13.75	0.139814	0.142160	0.147049	0.157798
8.875	0.095477	0.099678	0.107004	0.120821	13.875	0.140998	0.143305	0.148134	0.158802
9.0	0.096555	0.100704	0.107967	0.121712	14.0	0.142185	0.144451	0.149222	0.159809
9.125	0.097636	0.101733	0.108934	0.122606	14.125	0.143373	0.145600	0.150313	0.160818
9.25	0.098721	0.102766	0.109904	0.123503	14.25	0.144562	0.146751	0.151406	0.161830
9.375	0.099810	0.103803	0.110878	0.124403	14.375	0.145754	0.147904	0.152502	0.162844
9.5	0.100903	0.104844	0.111856	0.125307	14.5	0.146947	0.149060	0.153600	0.163860
9.625	0.101999	0.105888	0.112837	0.126214	14.625	0.148141	0.150217	0.154700	0.164879
9.75	0.103099	0.106936	0.113822	0.127124	14.75	0.149337	0.151376	0.155803	0.165900
9.875	0.104202	0.107988	0.114811	0.128037	14.875	0.150534	0.152537	0.156908	0.166924

Valuation of an Income Producing Property:
An income producing property's value is tied to the income it produces. Imagine two office buildings that were designed by the same architect and built by the same builder in the same year. The buildings are identical except for location. One building produces 20% more rent than the other. Which is worth more? Which would you want to buy? It's not the brick, concrete, and glass the investor is buying; it's the income the property produces.

So how do you estimate the value of such a property? You use a classic T-bar. The T-bar works on the assumption that if you have three related numbers you can always find one of them by using the other two. The T-bar tells you what to do:



NOI is net operating income, the income left after all operating expenses are paid.
CAP is the capitalization rate. This is the rate of return, based on purchase price, that would attract capital. This number will vary and is ultimately a judgment call on the part of the investor looking at the deal.
VALUE is the estimated value based upon the NOI and the CAP rate.

If you cover the number on the T-bar that you seek, it tells you how to use the other two numbers to arrive at the desired result. Hence,

CAP	**X**	**VALUE**	**=**	**NOI**
NOI	**÷**	**VALUE**	**=**	**CAP**
NOI	**÷**	**CAP**	**=**	**VALUE**

The CAP rate could be determined by using information from comparable sales. Take the NOI of each comparable property and divide it by the value (sales price) to arrive at the cap rate. Another way is to review the research done by others. For example, the Building Owners and Managers Association (BOMA) (www.boma.org), the Institute of Real Estate Management (IREM) (www.irem.org), the Certified Commercial Investment Member Institute (CCIM) (www.ccim.com), and the Real Estate Center (www.recenter.tamu.edu) will do such studies. Otherwise, each investor must build his or her own cap rate.

Building a Capitalization Rate

There is a method used to build a cap rate from scratch that is generally logical but not completely scientific. The concept is that you begin with a rate of return that would keep your money safe and then add different additional rates to compensate you for the riskier nature of investing in real estate. The additional percentage rates added are a judgment call so each investor or analyst may come up with a different cap rate. An example would look like this:

Safe rate	1%
+ Non-liquidity	.2%
+ Management	.2%
+ Maintenance	.2%
+ Hazards	.2%
+ Law Changes	.2%
+ General Risk	1%
+ Recapture	1%
= Cap Rate	4%

Gross Rent Multiplier (GRM)

An alternative method of estimating the value of an income producing property is called a gross rent multiplier. The basic idea is that a property is worth x times the amount of rent the property generates. You can use the monthly or annual rent. In our example we will use the monthly multiplier. You need comparable sales information on other, similar rental properties to calculate a GRM. The math is simple. Sales price divided by rent equals the GRM. Let's use the sales data on four, small, single tenant buildings for our example. It would look like this:

Comp	Price		Rent		GRM
1.	\$3,700,000	÷	\$6,400	=	578
2.	\$4,000,000	÷	\$6,800	=	588
3.	\$4,250,000	÷	\$7,300	=	582
4.	\$5,000,000	÷	\$8,550	=	585

We think we can get $7,000 monthly rent on our purchase.
$7,000 X 578 = $4,046,000 on the low side.
$7,000 X 588 = $4,116,000 on the high side.

Bringing the First Three Pieces of the Puzzle Together

By taking the net operating income and dividing it by a capitalization rate you believe reasonable, you arrive at an estimate of the property's value. Let's look at an example using a ten-unit apartment building with each unit capable of generating $1,000 per month in rent. Assume that one unit is either vacant or the tenant is not paying the rent. Further assume that the operating expenses run one-half of the scheduled income.

Scheduled Gross Income	**(SGI)**	**$120,000**
- Vacancy and Rent Loss	**(VAC)**	**12,000**
= Effective Gross Income	**(EGI)**	**108,000**
- Operating Expenses	**(EXP)**	**60,000**
= Net Operating Income	**(NOI)**	**48,000**

Now that you have determined the NOI, the next step is to decide what capitalization rate to use. For the example here let's use a variety of cap rates to get a range of value. Let's use rates of 3%, 5%, 7%, 10%, and 12%. Remember, the formula is NOI divided by CAP equals VALUE.

$48,000	**÷**	**3%**	**=**	**$1,600,000**
$48,000	**÷**	**5%**	**=**	**$ 960,000**
$48,000	**÷**	**7%**	**=**	**$ 685,714**
$48,000	**÷**	**10%**	**=**	**$ 480,000**
$48,000	**÷**	**12%**	**=**	**$ 400,000**

Notice that the higher the CAP, the lower the indicated value. This calculation is due to the fact that the higher the rate of return desired, the lower the acquisition price must be to accomplish the desired goal. The question then becomes "which CAP is reasonable in the marketplace?" Let's assume that 10% is the prevailing cap rate in the marketplace for this type of property. Then the indicated value is $480,000. Now let's see what we can pay for it.

THE BASIC INVESTMENT MODEL

Annual NOI	÷	Coverage Ratio	=	Annual Debt Service	÷	Loan Factor	=	Maximum Loan
$____________	÷	____________	=	$____________	÷	____________	=	$____________
Operating statement		From lender		From calculator		8.5% for 15 yrs		From calculator

Annual NOI	-	Annual Debt Service	=	Cash Flow	÷	Rate of Return	=	Maximum Equity
$____________	-	____________	=	$____________	÷	____________	=	$____________
From above		From above		From calculator		From you		From calculator

Maximum Loan	+	Maximum Equity	=	Maximum Offering Price
$___________________	+	$___________________	=	$___________________

So the indicated value using a 10% cap rate was $480,000 and your investment model tells you that you can pay a maximum of $418,500. You and the seller are only $61,500 apart! An agreement cannot be far away…….

Financial Analysis

Although the operating statement, investment model, and property valuation are all types of investment analysis there are other factors involved that deserve our attention. There are four primary components to financial analysis beyond what we have already examined. They are:

- Breakeven analysis
- Capital gains
- Time value of money
- Discounted cash flows

Breakeven Analysis

This is an easy one! With the breakeven analysis we are trying to answer a simple question. At what percentage of occupancy does the property breakeven? In other words, at what level of occupancy does the property take in enough money to pay all the fixed and variable expenses? A good investor and a professional property manager will know this number. Until you hit this level you cannot be profitable. You can also think of it as a bottom line at which the property becomes viable as an investment.

Capital Gains

Capital gains are the gains from the sale of a capital asset such as real estate. It is not just the profit from such sale. Capital gains are often taxed at a different and lower rate than other types of income. The formula for calculating capital gains is *realized selling price minus the adjusted basis*. It sounds simple enough but discovering the realized selling price and the adjusted basis can be somewhat more involved.

Realized selling price is the contract sales price less the allowed costs of sale. Simply take the price the property actually sold for and then subtract a lot of common sale related expenses such as:

- ♦ Document preparation
- ♦ Attorney's fees
- ♦ Survey
- ♦ Appraisal
- ♦ Title insurance
- ♦ Closing fees
- ♦ Escrow fees
- ♦ Recording fees
- ♦ Property and pest inspections
- ♦ Points paid by seller to buyer's lender
- ♦ Real estate commissions
- ♦ Advertising

Adjusted basis is the basis plus or minus certain adjustments. Before you can have an adjusted basis you must have a basis, a beginning point, or in this case, a beginning value. The basis depends on the method of acquisition and there are normally one of three methods encountered.

1. If the property was purchased, the basis is the purchase price.
2. If the property was a gift, the basis is the same as the basis of the giftor.
3. If the property is inherited, the basis is the market value at the time of death.

Once we have our basis we then make adjustments (additions and subtractions).
Add the costs of purchase which are very similar to the costs of sale above.
Add the costs of improvements made to the property over the years.
Subtract depreciation on the improvements (not the land).
Subtract any casualty loss that was not reimbursed by insurance.
Subtract any part of the property that was sold.

Take the realized selling price, subtract the adjusted basis and you have the amount of capital gains upon which taxes must be paid! Look at it like this:

Contract Sales Price
- Allowed Costs of Sale
= Realized Selling Price

Capital Gains

= Adjusted Basis
- Any Part Sold
- Depreciation
+ Improvements
+ Allowed Costs of Purchase
Basis

Depreciation (Recapture)

Depreciation is a theoretical loss in the value of improvements taken as a tax deduction. You cannot depreciate land. Residential improvements are depreciated over 27.5 years and non-residential improvements are depreciated over 39 years. For example, if an office building has a value, excluding the land, of $50,000,000 then take $50,000,000 ÷ 39 = $1,282,051 tax deduction each year!

Time Value of Money

Let's suppose that I owe you $1,000. Would you rather that I pay you today or a year from now? The obvious answer is that you would rather have the money today so that you could invest it and earn more money. Therefore, money in hand today is worth more than the same amount received in the future. The reverse of that is that money received in the future is not worth as much as the same amount received today.

So how do we calculate how much an amount of money received one year in the future is worth today? There is a formula used that looks like this:

$$\frac{P}{P(1 + i)}$$

P is the principal amount.
i is the interest paid per period if the principal was in hand today.

So let's use that $1,000 I owe you and let's assume that you could invest it at a 7% rate of return. Our calculation would look like this:

$$\frac{\$1,000}{\$1,000\ (1 + .07)} = \frac{\$1,000}{\$1,000\ (1.07)} = \frac{\$1,000}{\$1,070} = .9346$$

$1,000 x .9346 = $934.60 which is the present worth of $1,000 paid a year from now if the money could be invested at a 7% rate of return! To check the math simply take $934.60 and add 7% back to it and it will come to $1,000!

The question you may be asking yourself at this point is "So what?". How does this knowledge help me in commercial real estate? Think about it. With income producing property the income is primarily from rents collected over a number of years. Then at some point the property is sold. By using the concept of time value of money we can take a number of properties and by converting the future cash flows into a present value we have a method of deciding which property would give us, or our clients, the greatest return. It's called discounting cash flows and we shall examine this next.

Discounting Cash Flows

Again, by using the concept of time value of money we can take a number of properties and by converting the future cash flows into a present value we have a method of deciding which property would give us, or our clients, the greatest return. But there are a couple of factors to keep in mind. First is that the cash flow (rents) will not always be steady, they fluctuate. Second, part of the cash flow is the funds received when the property is sold. Comparing five properties could look something like this:

Property	Rent yr1	Rent yr2	Rent yr3	Rent yr4	Rent yr5	Sale
1	$120,000	$140,000	$162,000	$180,000	$200,000	$4.5
2	$128,000	$135,000	$150,000	$165,000	$185,000	$4.0
3	$126,000	$142,000	$158,000	$175,000	$210,000	$5.1
4	$135,000	$160,000	$177,000	$186,000	$225,000	$3.9
5	$140,000	$150,000	$160,000	$170,000	$190,000	$5.0

Figuring the present value of the first year's rent is a simple matter of applying the basic time value of money formula we used above that assumes receiving the money in one lump sum exactly one year in the future. Our model here is more complicated because we are receiving the cash flow over a period of years. Consequently, our formula becomes more complicated. It looks like this:

$$\frac{\mathrm{P}}{\mathrm{P}\left(1+\frac{i}{c}\right)^{n}}$$

P is the principal amount.
i is the interest paid per period if the principal was in hand today.
c is the number of times compounded per year (daily, weekly, monthly, annually).
n is the total number of times compounded.

The good news is that there are tables wherein all the math has been done and the final factor is determined. There is also software that will do all this in an instant. One of the most well-known such software is called Argus and can be found at www.argussoftware.com.

COMMERCIAL TENANCIES

Sec. 54.021. Commercial Landlord's 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. 54.024. 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.

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.

(b) A provision of a lease that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

Sec. 93.002. INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND EXCLUSION OF 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.

(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.

(h) A lease supersedes this section (93.002) to the extent of any conflict.

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.

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.

Sec. 24.001. FORCIBLE ENTRY AND DETAINER. (EVICTION)
(a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

Sec. 24.002. FORCIBLE DETAINER.
(a) A person who refuses to surrender possession of real property on demand commits a forcible detainer.

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 <u>at least three days</u> written notice to vacate the premises <u>before the landlord files a forcible detainer suit</u>, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

(d) In all situations in which the entry by the occupant was a <u>forcible entry</u> under Section 24.001, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.

(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.

(f-1) As an alternative to the procedures of Subsection (f), a landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant if:

(1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or

(2) the landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the notice to the inside of the main entry door.

(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. 24.0051. PROCEDURES APPLICABLE IN SUIT TO EVICT AND RECOVER UNPAID RENT.

(b) A landlord may recover unpaid rent under this section regardless of whether the tenant vacated the premises after the date the landlord filed the sworn statement and before the date the court renders judgment.

(c) In a suit to recover possession of the premises, whether or not unpaid rent is claimed, the citation must include the following notice to the defendant:

FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.

(d) In a suit described by Subsection (c), the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant on the first page of the citation in English and Spanish and in conspicuous bold print:

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

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.

(c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

(d) The prevailing party is entitled to recover all costs of court.

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.

(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.

(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 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; and
(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 <u>residential</u> 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.
(a) 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.