



LANDLORDS AND TENANTS GUIDE

MANUFACTURED HOME COMMUNITIES

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Landlords and Tenants Guide for Manufactured Home Communities

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Introduction

Effective Apr. 1, 2002, Texas legislators implemented Chapter 94 of the Texas Property Code governing the leasing, management, and maintenance of manufactured housing communities. Many provisions mirror those pertaining to the leasing, management, and maintenance of residential apartments and dwellings.

The law applies only where a landlord leases property (a lot) in a manufactured home community to a tenant for the placement of a manufactured home.

The law does *not* apply when:

- the landlord leases a manufactured home owned by the landlord to a tenant in the manufactured home community,
- the landlord leases property (spaces) in the community for the placement of personal property (other than a manufactured home) to be used for human habitation, or
- the tenant is an employee or agent of the landlord (Section 94.002).

Note. Subchapter E beginning on page 16 discusses some specific requirements for evicting a tenant from a manufactured home community. These rules are in addition to the rules in Chapter 24 of the Texas Property Code.

Chapter 24 is reproduced in a question-answer format at the end of this publication.

Finally. The statutory rules for metering the water used by individuals who rent lots in manufactured home communities are discussed beginning on page 24.

Glossary

(These definitions are found in Section 94.001 of the Texas Property Code.)

Landlord. The owner or manager of a manufactured home community, including an employee or agent of the landlord.

Lease agreement. A written agreement between landlord and tenant that establishes the terms, conditions, and other provisions for placing a manufactured home on the premises of a manufactured home community.

Manufactured home. Manufactured home is not defined in Section 94.001 of the Property Code. Instead, it assigns the meaning of the term to the one(s) contained in Section 1201.003 of the Occupations Code. The Occupations Code states that the term *manufactured home* or *manufactured housing* means a HUD-code manufactured home or a *mobile home*.

The Occupations Code contains two definitions of *manufactured housing*. A **new** manufactured home means a manufactured home that is not a used manufactured home, regardless of its age. A **used** manufactured home means a manufactured home that has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include a:

- a manufactured home that was used as a sales model at a licensed retail location, or
- a manufactured home that:
 - o was sold as a new manufactured home, installed, but never occupied;
 - o had a statement of ownership and location; and
 - o was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

The Occupations Code defines a mobile home as a structure, including its plumbing, heating, air conditioning, and electrical systems, that:

- was constructed before June 15, 1976;
- was built on a permanent chassis;

- was designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;
- is transportable in one or more sections; and
- is either at least eight body feet wide or at least 40 body feet long in its traveling mode or, when erected on site, is at least 320 square feet.

Manufactured home community. A parcel of land on which four or more lots are for lease for installing and occupying manufactured homes.

Manufactured home community rules. The rules provided in a written document that establish the policies and regulations of the manufactured home community, including regulations relating to use, occupancy, and quiet enjoyment of and health, safety, and welfare of tenants of the community.

Manufactured home lot. The space allocated for placement of the tenant's manufactured home and the area adjacent to that space designated for the tenant's exclusive use.

Normal wear and tear. Deterioration that results from intended use of the premises, including breakage or malfunction resulting from age or deteriorated condition. The term does not include deterioration resulting from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the tenant, a member of the tenant's household or a guest or invitee of the tenant.

Premises. The tenant's manufactured home lot, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

Tenant. A person who is authorized by a lease agreement to occupy a lot to the exclusion of others in a manufactured home community and obligated under the lease agreement to pay rent, fees, and other charges.

Subchapter A — General Provisions

Can any of the Chapter 94 rules be waived?

No. Any attempt to waive a right or exempt a landlord or tenant from a duty or liability required by Chapter 94 is unenforceable (Section 94.003). A landlord who knowingly contracts with a tenant to waive the landlord's duty to repair under Subchapter D (discussed later) is liable to the tenant for actual damages, a civil penalty of one month's rent plus \$2,000, and reasonable attorney fees.

The tenant must overcome the presumption that the landlord acted without knowledge by pleading and proving it. However, a mutual agreement for the tenant to repair a condition at the landlord's expense (described in Section 94.157[i]) is permissible and not a violation (Section 94.159[b]).

When may the landlord physically enter the tenant's manufactured home?

Unless otherwise provided in Chapter 94, landlords may not enter a tenant's manufactured home unless the tenant is present and gives consent or has previously given written consent.

If written consent is given, the agreement must specify the date and time entry is permitted and limit entry to that date and time. The tenant may revoke the consent by written notification at any time without penalty (Section 94.004[a]).

The statute permits landlord entry for emergency reasons or after the tenant abandons the manufactured home (Section 94.004[c]).

What limits may the landlord place on the use of the common area facilities?

Common area facilities must be open and available to tenants. The landlord must post hours of operation or availability in a conspicuous place at the facility (Section 94.005).

What restrictions may the landlord place on tenant meetings?

A landlord may not interfere when the tenants' meetings relate to living in the manufactured home community (Section 94.006). Any limitations on tenant meetings in the common area facilities must be included in the manufactured home community rules.

Must a landlord accept a tenant's rent payment in cash?

Yes. The landlord must accept a tenant's timely rent payment in cash unless the lease agreement requires the tenant to pay by check, money order,

or other traceable or negotiable instrument (Section 94.007[a]).

What records must the landlord keep of the cash rental payment?

A landlord who receives a cash rental payment must provide the tenant with a written receipt and enter the payment date and amount in a record book (Section 94.007[b]).

What if the landlord will not accept a cash rental payment, fails to give the tenant a receipt or fails to keep a ledger?

The tenant, a governmental entity or a civic association acting on the tenant's behalf may file to end this violation of Section 94.007.

What types of rules may the landlord impose on the manufactured housing community? What impact do the rules have on the lease agreement?

The landlord may adopt and impose any rules on the community as long as they are not arbitrary or capricious. Once adopted, the community rules become part of the lease agreement (Sections 94.008[a] & [b]).

Can the landlord amend the rules? If so, when do the amendments become effective?

The landlord may add to or amend the manufactured home community rules at any time. Amendments are not effective until 30 days after each tenant has been provided a written copy of the additions or changes. If the amendment requires tenants to expend more than \$25 to comply with the change, tenants must be given at least 90 days after receiving written notice to comply (Section 94.008).

Where must notices be sent when the leased premises are not the tenant's primary residence?

If the tenant notifies the landlord in writing when the lease is signed or renewed that the **manufactured home lot is not the tenant's primary residence**, and if the tenant requests that notices be sent to the primary residence as indicated in the notice, the landlord must mail all notices required by the lease agreement to that address (Section 94.009[a]). The tenant must notify the landlord in writing of changes in primary residence address. Oral notices of change are insufficient (Section 94.009[b]).

How must notices be delivered?

Notices must be sent by regular U.S. mail and are considered given on the postmark date (Section 94.009[c]). Notices hand delivered to and received by a person 16 years old or older occupying the leased premises are sufficient in lieu of mailing the notices (Section 94.009[e]).

What if the lease agreement includes more than one tenant and each wants a separate notice?

If more than one tenant is on the lease agreement, the landlord is required to send notices to the primary residence of only one of the tenants (Section 94.009[d]).

Must the landlord disclose the ownership and management of the manufactured housing community?

Yes. The landlord must disclose the ownership and management of the manufactured housing community after receiving a request from a tenant, a government official or an employee acting in an official capacity. The following information must be disclosed.

- Ownership — name and street address (or post office address) of the record title holder for the tenant's manufactured housing lot, as recorded by the county clerk's office.
- Management — name and street address of the entity primarily responsible for management of the manufactured housing community if located off-site (Section 94.010[a]).

If the owner or property manager has filed an assumed name certificate with the county clerk, the landlord may disclose either the owner's or property manager's actual name or the assumed name on the certificate (Section 94.010[f]).

How and when must ownership-management information be disclosed to a tenant?

The landlord must either give the information to the tenant on or before the seventh day after the request is received in writing or by posting the information continuously:

- in a conspicuous place in the manufactured housing community,
- in the office of the on-site manager, or
- on the outside of the entry door to the office of the on-site manager.

The landlord may include the information in the lease agreement or in the written manufactured home community rules given to the tenant at the beginning of the lease (Section 94.010[b]).

How and when must ownership-management information be disclosed to a government official or employee?

The landlord must give this information in writing to the governmental official or employee on or before the seventh day after the date the landlord receives the request (Section 94.010[d]).

Does the landlord have an obligation to correct the information if the name or address of an owner or manager changes?

Yes. The landlord must make a correction within 15 days after the information becomes incorrect (Section 94.010[g]).

How must the corrected information be delivered?

A correction to the information may be made by any methods authorized and within the period prescribed by Section 94.010[e).

If the tenant files a lawsuit to enforce the legal obligation of the owner as landlord of the manufactured home community, who serves as the owner's agent for service of process?

Under these conditions, the owner's management company, on-site manager, or rent collector is the owner's authorized agent for the service of process unless the owner's name and business address have been furnished in writing to the tenant (Section 94.011).

Where is venue set for a lawsuit brought under Chapter 94 of the Property Code?

Venue is governed by Section 15.0115 of the Texas Civil Practices and Remedies Code, which says, except as provided by another statute prescribing mandatory venue, a suit between a landlord and a tenant arising under a lease is brought in the county in which all or a part of the real property is located (Section 94.012).

Subchapter B — The Lease Agreement

Subchapter B of the Texas Property Code addresses the statutory requirements placed on lease negotiations and lease provisions.

What documents must the landlord provide when the tenant completes an application to rent?

When the application to rent is received, the landlord must give the prospective tenant a copy of the following documents:

- the proposed lease agreement,
- the manufactured home community rules, and
- a separate disclosure statement in at least ten-point type and in prominent print that contains the following language:

“You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice. During the applicable period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal” (Section 94.051).

What is the minimum lease term that the landlord may offer?

The landlord must offer a lease agreement with an initial term of at least six months. At the tenant's request, a longer or shorter term may be negotiated. The landlord and tenant may mutually agree to subsequent renewal lease periods of any length (Section 94.052[a]).

How much advance notice must the landlord give the tenant that the lease will not be renewed?

Except as provided by Section 94.204, regardless of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the expiration of the lease when the landlord chooses not to renew. After receiving notice of the nonrenewal, the tenant must pay all rent and other amounts due under the lease agreement, including late charges, if any (Section 94.052[b]).

What items must the lease agreement include?

The lease agreement must contain the following information:

- the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;
- the lease term;
- the rental amount;
- the interval at which rent must be paid and the date on which periodic rental payments are due;
- any late charge or fee, or charge for any service or facility;
- the amount of any security deposit;
- a description of the landlord's maintenance responsibilities;
- the telephone number of the person who may be contacted for emergency maintenance;
- the name and address of the person designated to accept official notices for the landlord;
- the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;
- grounds for eviction as provided by Subchapter E — Lease Termination;
- a disclosure of the landlord's right to terminate the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;
- a disclosure of any incorporation by reference of an addendum relating to submetering of utility services;
- a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law;
- if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and
- any other terms or conditions of occupancy not expressly included in the manufactured home community rules (Section 94.053[a]).

What else does the statute require for the lease agreement to be valid?

The lease agreement must be:

- typed or printed in legible handwriting,

- signed by the landlord and the tenant, and
- initialed by the tenant next to any provision requiring any increases in rent, fees, or charges during the lease term (Sections 94.053[a] [d]).

After the lease has been signed, the landlord must provide the tenant a copy of the lease and the current copy of the manufactured home community rules (Section 94.053[b]).

Must the tenant disclose a lien on the manufactured home to the landlord before the lease agreement is signed?

Yes. The tenant must disclose the name and address of any person who holds a lien on the tenant's manufactured home before the lease is signed (Section 94.054).

Is the landlord required to give advance notice to the tenant to vacate the premises or renew the lease before it terminates?

Yes. As mentioned before, the landlord must give notice to the tenant to either vacate the premises or renew the lease no later than 60 days before:

- the current lease expires or
- the landlord intends to terminate the lease when the lease is on a month-to-month basis (Sections 94.052[b] and 94.055[a]).

What must be included in a notice of the offer to renew the lease?

The offer to renew the lease must contain:

- the proposed rental rate for the new lease,
- any changes in the lease terms, and
- a notice that, if the offer is not rejected within 30 days of the termination of the present lease, the lease will automatically be renewed under the newly proposed rent and lease terms (Section 94.055[b]).

How must the tenant respond to the advance notice?

If the tenant accepts the landlord's lease renewal offer, the tenant does not have to do anything. The new lease under the new or modified terms becomes effective the first day after the existing lease expires.

If the tenant does not want to stay or does not accept the new lease terms, the tenant must notify the landlord of intent to vacate the premises at the conclusion of the existing lease term. *This notice* must be sent no later than 30 days before the existing lease expires (Section 94.055[c]).

Can the landlord require the tenant to vacate the premises before the end of the 60-day period (that is, before the end of the existing lease)?

Yes. The landlord may request the tenant to vacate the premises before the end of the 60 days but only if the landlord compensates the tenant in advance for relocation expenses, including the cost of moving and the cost of installing the manufactured home at a new location (Section 94.055[d]).

May the landlord assess any penalties for a late payment?

Yes. The landlord may assess a penalty, fee, or charge for a late rent payment (Section 94.056).

May the tenant assign or sublease the premises without the landlord's consent?

No. The landlord may prohibit the tenant from assigning or subletting the leased premises if the prohibition is included in the lease agreement.

If the landlord consents to the sublease or assignment, the lease agreement must specify the conditions under which the sublease or assignment may occur (Section 94.057).

Subchapter C — Security Deposits

Subchapter C of the Texas Property Code defines and addresses security deposits for manufactured housing communities. Items regulated include when a deposit may be collected, when it must be refunded, and expenses that can be deducted from the deposit.

How is the term security deposit defined?

A *security deposit* is defined as money, other than a rental application deposit or an advance payment of rent, intended primarily to ensure that the tenant adheres to the terms of a lease (Section 94.101). The statute does not dictate the amount of the deposit, which is strictly negotiable. The landlord is required to keep accurate records relating to security deposits (Section 94.102[b]).

When may the landlord require a security deposit?

The landlord **may** require a security deposit at the time the **initial lease** agreement is signed (Section 94.102[a]). The subchapter seems to indicate that a security deposit cannot be required for an extension of the lease agreement.

When must the landlord refund the security deposit?

Except for reasons discussed later, the landlord is required to refund the tenant's security deposit within 30 days after the tenant vacates the lot. The tenant need not give advance notice of vacating the lot to be eligible for the refund **except when the lease agreement requires it by having that requirement underlined or placed in conspicuous bold print.**

If the landlord is in bankruptcy when the refund is required, the tenant's right to the deposit takes priority over any creditor's claim, including a trustee in bankruptcy (Section 94.103).

Can the landlord retain the security deposit or prepaid rent if the tenant never occupies the manufactured home lot?

No. The landlord may not withhold the security deposit or prepaid rent when:

- the tenant secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the lot on or before the commencement date of the lease or
- the landlord secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the lot on or before the commencement date of the lease.

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

- a sum agreed to in the lease as a lease cancellation fee or
- the actual expenses incurred by the landlord in securing the replacement tenant, including a reasonable amount for time spent in securing the replacement tenant (Section 94.104).

What charges may be deducted from the security deposit?

The landlord may deduct damages and charges for which the tenant is legally liable under the lease or as a result of its breach. However, no charges are allowed for normal wear and tear (Sections 94.105[a] & [b]).

Although Section 94.001[7] defines normal wear and tear (see Glossary), there has been no case law to amplify its meaning for manufactured homes. Consequently, the determination is on a case-by-case basis with no precedents.

The landlord must give the tenant a written, itemized list of all damages and charges deducted from the security deposit except when:

- the tenant owes rent at the time possession is surrendered and
- the amount of rent owed is not in dispute (Section 94.105[c]).

How and when should the lot's condition be verified?

Damages and charges deducted from the security deposit are one of the major areas of dispute between landlords and tenants. The problems center on (1) whether the lot's condition required cleanup or repair, (2) whether a defect was caused by the tenant or resulted from normal wear and tear, and (3) the cost of any repairs or cleanup. Unless precautions are taken by the landlord and tenant, proving the lot's condition at move-in and move-out may be difficult. Accumulation and preservation of objective evidence of the lot's condition at move-in and move-out are imperative.

The easiest way to document defects and flaws is for the landlord and tenant to conduct a walk-through inspection and list problems as they are discovered. After the inspection, the list should be dated and signed. Both the landlord and tenant may wish to reserve the right to document other problems discovered within a certain period of move-in or after move-out.

Another approach is to photograph or videotape the lot's condition at move-in and move-out. This may be supplemental to the inspection or in lieu of it if both parties cannot be present at either or both times.

Photographing or videotaping is preferable for several reasons. First, the severity of a problem can be documented better on film. Second, ownership or management may change after move-in. The new owners or managers may dispute the findings of an inspection conducted when they were not present. Third, in major manufactured housing communities, it is physically impossible for the landlord to be present for each move-in and move-out when many tenants arrive and leave at the same time. Finally, photographs or videotapes made both at the beginning and end of a lease term help differentiate damages from normal wear and tear.

Even with careful inspection and documenting photographs or videotapes, such problems as fires or flooding not caused by the tenant may arise.

The tenant should notify the landlord of the problems. If the landlord does nothing to fix the damages and deducts the costs from the tenant's security deposit, pictorial documentation of damages would be invaluable.

Tenants should be aware that some leases include provisions permitting clean-up costs regardless of the condition of the property. For instance, the tenant might leave the lot immaculate, but the lease still may allow the landlord to have the lot cleaned for predetermined costs.

Who returns the deposit when ownership changes?

When a change of ownership occurs, the new owner is liable for the return of the security deposit. However, the former owner's liability terminates when *the new owner* delivers to the tenant a signed statement acknowledging the new owner's receipt of the deposit and his or her responsibility for its return. The notice must specify the exact amount of the deposit.

This applies to any change of ownership by sale, assignment, death, appointment of receiver, bankruptcy, or otherwise except by a mortgage foreclosure (Section 94.106).

The statute gives this directive without imposing a penalty for a violation. It simply states that the landlord must keep accurate records of all security deposits. There is no legal requirement that deposits be held in a separate account or that they accrue interest.

Why is a forwarding address important?

The tenant is required to give the landlord a written statement of the tenant's forwarding address for purposes of refunding the security deposit. However,

the statute does not state **when** or **how** the notices must be given (Section 94.107).

Until the written forwarding address is received, the landlord *is not obligated* to return the tenant's security deposit or give the tenant a written description of damages and charges.

Failure to provide a forwarding address does not cause the tenant to forfeit the right of refund or the right to receive a description of damages and charges (Section 94.107). However, the statute does not address the method required to get the refund or description of the damages.

If the tenant has a permanent address, as students do while away at college, the forwarding (or home) address may be included on the lease when it is signed.

If the forwarding address is not included on the lease, the tenant may wish to do either or both of the following to document delivery of a forwarding address to the landlord:

- Personally deliver a written copy of the forwarding address and have the landlord or authorized agent sign a receipt (on a separate piece of paper). Keep the receipt for proof of delivery and date notice was given.
- Send the forwarding address to the landlord or authorized agent by certified mail, return receipt requested. Keep a copy of the notice and the return receipt for proof of delivery.

Either of these two delivery methods of a forwarding address, used at least 30 days before the lease terminates, can document several lease requirements.

If the lease mandates advance written notice as a condition for refund of the security deposit (addressed in the discussion of Section 94.103), the advance notice can fulfill such a requirement.

Most leases require the tenant to give the landlord a 30- or 90-day advance written notice of move-out, even if the lease is for a fixed term.

Tenants must respond to the landlord's advance notice to either terminate the lease or renew it on the terms disclosed in the notice. This response must be made at least 30 days before the lease terminates (Section 94.055[c]).

If the tenant is moving out and wants to ensure that the landlord cannot claim the "amateur landlord" defense while wrongfully withholding the security deposit, a copy of Section 94.109 of the Texas Property Code, discussed later, should be included with the notice.

May a tenant withhold rent in lieu of forfeiting the security deposit?

No. A tenant may not withhold any part of the last month's rent on grounds that the security deposit will cover the balance. Doing so constitutes bad faith, and the tenant is liable for three times the amount of rent wrongfully withheld plus the land-

lord's reasonable attorney fees to recover the unpaid rent (Section 94.108).

What are the consequences of the landlord wrongfully withholding the security deposit?

The landlord is prohibited from wrongfully withholding the security deposit or failing to provide a written description and itemization of the deductions (Section 94.109[a]). Wrongfully withholding either or both for more than 30 days after the tenant surrenders the premises constitutes bad faith (Section 94.109[d]).

A landlord who acts in bad faith by withholding all or a portion of a security deposit is liable to the tenant for:

- \$100,
- three times the portion of the deposit wrongfully withheld, and
- the tenant's reasonable attorney fees in a suit to recover the deposit.

The landlord, not the tenant, has the burden of proving that the retention of any portion of the deposit was reasonable and not in bad faith (Section 94.109[a]).

The statute does not define bad faith, but case law lends some clues. In *Reed v. Ford* (760 S.W. 2d 26), the court held that the term meant ". . . an honest disregard of tenant's rights; bad faith requires intent to deprive tenant of a refund known to be lawfully due."

Knowledge of the law may be an issue. In the case of *Ackerman v. Little* (679 S.W. 2d 70), the court held that the landlord was an "amateur lessor" with only one rental property. The landlord was found to be ignorant of the statute, and this factor was considered in determining bad faith.

An appellate decision in 1994, *Leskinen v. Burford* (892 S.W. 2d 135), exonerated a landlord from liability, citing the "amateur lessor" defense. The landlord had returned the deposit 35 days after surrender of the premises.

The appellate court distinguished this case from a former one, *Wilson v. O'Connor* (555 S.W. 2d 776), in which the landlord was held liable for never returning the deposit.

Again, as a precaution, the tenant may wish to include a copy of Section 94.109 of the Texas Property Code with the written notice of forwarding address delivered to the landlord.

What are the consequences for the landlord who in bad faith wrongfully fails to provide an itemized list of deductions?

The landlord who does not provide a written description and itemized list of damages and charges on or before the 30th day after the tenant moves out:

- forfeits the right to withhold any portion of the tenant's security deposit,
- forfeits the right to bring suit against the tenant for damages to the premises, and
- is liable for the tenant's reasonable attorney fees in a suit to recover the deposit (Section 94.109[b]).

The landlord is presumed to have acted in bad faith (Section 94.109[d]). However, the statute assumes the landlord has the tenant's forwarding address when this occurs.

What charges are referred to in the phrase "damages and charges for which the tenant is legally liable under the lease"?

Section 94.105 allows the landlord to deduct "damages and charges for which the tenant is legally liable under the lease" from the tenant's security deposit.

The tenant may unknowingly consent to many charges when signing the lease, including:

- cleaning up the lot,
- late rent payments,
- violating pet restrictions,
- unpaid utilities,
- unreimbursed service charges,
- utilities used in cleaning up the lot,
- admitting company representatives to remove resident's telephone or TV cable services,
- reletting costs, and
- returned check charges (not to exceed \$100).

If the security deposit is insufficient to cover the charges and damages, the landlord may recover the balance along with attorney fees, filing fees, and court costs in a judicial proceeding against the tenant.

The tenant should carefully read lease provisions pertaining to deductible charges before signing the lease.

Subchapter D — Maintenance and Repairs

Subchapter D of Chapter 94 of the Texas Property Code covers the landlord's obligation to make the manufactured home community habitable. The statute discusses what the landlord must repair, what the tenant must do to invoke the landlord's duty to repair and the tenant's options if the landlord fails to repair.

Landlords and tenants alike should understand Subchapter D to protect their interests. Landlords need to know what items must be repaired and the appropriate steps tenants must take to prompt the repair.

Tenants need to know what options they have to resolve maintenance and repair problems. Tenants who take problems into their own hands or improperly attempt to invoke Subchapter D remedies may be liable to the landlord.

Most tenants may know that they must give the landlord notice of needed repairs. However, few realize that two notices may be necessary. Tenants may not know when notices must be given, where they must be delivered or sent, what they must say, and how long they are required to wait before initiating repairs themselves.

Tenants should also know that the landlord has a duty to repair only conditions that materially affect the physical health and safety of an ordinary tenant. Conditions caused by the tenant, a member of the tenant's family, a tenant's guest, or a lawful occupant of the dwelling are not covered.

What warranties must the landlord give the tenant when the lease is signed?

By executing the lease agreement, the landlord warrants that the manufactured home lot is suitable for the installation of a manufactured home during the tenure of the lease agreement (Section 94.151).

What are the landlord's maintenance responsibilities?

The landlord of the manufactured home community must:

- comply with all codes, statutes, ordinances, and administrative rules applicable to the community;
- maintain all common areas, if any, of the community in a clean and useable condition;
- maintain all utility lines installed in the community by the landlord unless the utility lines are maintained by a public utility or political subdivision, including a municipality;
- maintain individual mailboxes for tenants in accordance with United States Postal Service

regulations unless mailboxes are permitted to be on the tenant's manufactured home lot;

- maintain roads in the community to the extent necessary to provide access to each tenant's lot;
- provide services for the common collection and removal of garbage and solid waste from within the community; and
- repair or remedy conditions on the premises that materially affect the physical health or safety of an ordinary tenant of the manufactured home community (Section 94.152).

The landlord has no duty to repair or remedy any conditions present in or on the tenant's manufactured home (Section 94.153[a]).

The landlord is not required to furnish utilities from a utility company if the utility lines are not reasonably available (Section 94.153[c] and Section 94.153 [d]).

What conditions must the landlord make a diligent effort to repair?

The landlord must make a diligent effort to repair any condition that materially affects the health or safety of an ordinary tenant when the tenant:

- reports and specifies the condition in a notice to the person who collects rent or to the place where the rent is normally paid and
- is current in rent payments when the notice is given (Section 94.156[b]).

The statute does not require the notice to be in writing, but for documentation purposes, all notices should be in writing and delivered in person or sent by certified mail, return receipt requested. If delivered in person, verification by a witness or a written acknowledgment of receipt should be obtained.

What conditions need not be repaired by the landlord?

The landlord's duty to repair does not apply to conditions in or on the tenant's manufactured home (Section 94.153[a]). The landlord has no duty to repair conditions caused by:

- normal wear and tear (see Glossary),
- the tenant,
- a lawful occupant of the manufactured home lot,
- a member of the tenant's family, or
- the tenant's guest or invitee (Section 94.153[c] and Section 94.153[d]).

How does a loss such as fire, smoke, hail, or an explosion affect the landlord's repair obligation?

The landlord is not required to repair an insured loss caused by fire, smoke, hail, explosion, or similar causes **until the landlord receives payment on the insurance claim** (Section 94.155[a]). Until the repairs are actually completed, however, either the landlord or tenant may terminate the lease by giving written notice when the loss:

- rendered the leased premises **totally** unusable for the purposes for which they were rented and
- was not caused by the negligence or fault of the tenant, a member of the tenant's family, a guest or invitee of the tenant (Section 94.155[b]).

If the lease is terminated, the tenant is entitled to a prorated refund of rent from the date the tenant moves out and to any security deposit refund required by law.

If the leased premises are rendered **partially** unusable for the purposes for which they were rented and if the loss was not caused by the negligence or fault of the tenant, a member of the tenant's family, a guest or invitee of the tenant, the tenant is entitled to a proportionate rent reduction based on a judgment of a county or district court. This judicial option rarely occurs, however. The landlord and tenant may agree to nonjudicial, proportionate rent reduction measures in the written lease (Section 94.155[c]).

At what point does the landlord become legally obligated to commence repairs after being notified by the tenant?

Section 94.156[b] lists several requirements for creating landlord liability for not commencing repairs based on how the tenant delivers the notice to the landlord.

The tenant may deliver notices of the needed repairs as noted below. The landlord becomes legally obligated when all of the following conditions have been met.

- (1) The notice to repair or remedy a condition is given to the person to whom or to the place where the tenant normally tenders rent payments. This may be done in person, in writing, or through the mail by certified mail, return receipt requested, or by registered mail.
- (2) The condition materially affects the physical health or safety of an ordinary tenant but was not caused by the tenant, a lawful occupant, a member of the tenant's family, or a tenant's guest or invitee.
- (3) The landlord has had a reasonable time to repair or remedy the condition after receiving the notice and has made no diligent effort to do so.

- (4) The tenant gives a second notice to repair or remedy the condition in one of the manners the first notice was or could have been delivered.
- (5) The landlord does not respond within a reasonable time to repair or remedy the condition after receiving the second notice and has made no diligent effort to do so.
- (6) The tenant was not delinquent in rent at the time either notice was given (Sections 94.156[a] & [b]).

At what time is the landlord deemed to have received the tenant's notice?

The landlord is considered to have received the notice when the landlord or the landlord's agent or employee has actually received the notice or when the U.S. Postal Service has attempted to deliver the notice. [94.156(c)]

What is considered a *reasonable time* for making repairs?

There is a rebuttable presumption that seven days is a reasonable time to make repairs. Factors rebutting the presumption include:

- the date the landlord or the landlord's agent or employee actually receives notice;
- the severity and nature of the condition; and
- reasonable availability of materials, labor, and utilities from the utility company (Section 94.156[d]).

When the tenant has properly notified the landlord, are there circumstances in which the landlord is not required to make the repairs?

Yes. The landlord has no obligation to repair or remedy a condition when:

- the condition was caused by the tenant (Section 94.152[b]) or
- the landlord is awaiting reimbursement for an insured loss (Section 94.154).

Note. Section 94.153(a) provides that the landlord has no duty to repair or remedy a condition caused by the tenant, a lawful occupant, a member of the tenant's family, or the tenant's guest or invitee.

What can the tenant do once the landlord becomes legally obligated to make repairs and fails to do so?

A tenant may, according to Section 94.156[e]:

- terminate the lease,
- repair or remedy the condition according to Section 94.157 (discussed below),
- deduct the cost of the repair(s) from rent without the necessity of judicial action according to Section 94.157 (discussed below), and

- pursue the judicial remedies in Section 94.159 (discussed below).

What happens if the tenant elects to terminate the lease?

If the tenant elects to terminate the lease, the tenant:

- is entitled to a prorated refund of rent from the date of termination or the date the tenant moves out, whichever is later, and
- may deduct the security deposit from rent owed.

The tenant may not pursue any other remedies specified in Section 94.157, such as repair and deduct, or obtain a judgment (Section 94.159[a][1] & [2]).

How does the repair-and-deduct option work?

The repair-and-deduct option calls for the tenant to arrange and pay for repairs, then deduct the amount from rent payments. Section 94.157 qualifies and limits this option as follows.

First, the maximum amount that may be deducted in any month for repairs is one month's rent or \$500, whichever is greater. Repairs and deductions may be made as often as necessary as long as the total repairs and deductions in any one month do not exceed this limitation. The tenant cannot contract for labor or materials in excess of this amount.

Second, if the tenant's rent is subsidized entirely or in part by a governmental agency, the deduction limitation means the fair market rent for the manufactured home lot and not the amount of monthly rent that the tenant actually pays. The government agency subsidizing the rent makes the determination. Otherwise, fair market rent is a reasonable amount under the circumstances.

Third, the repair person or supplier cannot place a lien on the property for the materials or services contracted by the tenant under this remedy. The landlord is not personally liable for the repairs.

Finally, the statute places the following restrictions on the option.

- In at least one of the preliminary notices given the landlord, the tenant must state the intent to repair and remedy the condition along with a reasonable description of the intended repair or remedy.
- Unless there is an agreement to the contrary, the tenant, the tenant's immediate family, the tenant's employer or employee of a company in which the tenant owns an interest cannot make the repairs.
- The repairs must be made by a company, contractor, or repair person listed in the Yellow Pages or business section of the telephone directory. Alternatively, they may appear in the classified

advertising section of a municipal or county newspaper or in the newspaper in an adjacent county at the time the tenant gives the landlord notice of having selected the repair-and-deduct option.

- No repairs may be made to the foundation or load-bearing structure of the manufactured home lot.
- All repairs must comply with building codes, including obtaining building permits when required. It is unclear whether the cost of such permits is included in repair costs.
- After the repairs are made, the tenant must furnish the landlord a copy of the repair bill and the receipt for payment with the balance of the next month's rent. The repair bill and the receipt may be the same document.

When can the tenant begin to make repairs?

The answer depends on the situation.

When the condition involves the backup or overflow of raw sewage inside the manufactured home that results from a condition in the utility lines installed in the manufactured home community by the landlord, the tenant may remedy the situation immediately after giving notice. There is no waiting period.

When the condition involves the breach of an expressed or implied lease agreement to furnish potable water to the tenant's manufactured home lot and the water service has ceased totally, the tenant must wait three days before making the repairs.

For all other conditions, the tenant may need the appropriate local housing, building, or health official or other official having jurisdiction to verify that a condition existing on the manufactured home lot is one that materially affects the health or safety of an ordinary tenant, the tenant must wait seven days before making repairs (Sections 94.157[d] & [f]).

Who is liable when the landlord repairs or remedies the condition after the tenant has contracted for the work but before the repairs begin?

If the landlord repairs or remedies the condition between the time the tenant contracts for the repairs and the actual work begins, the landlord is liable for the costs incurred by the tenant for the repairman's travel to the premises. The tenant may deduct the charges from the rent as if it were a repair cost (Section 94.157[l]).

May the landlord and tenant agree for the tenant to make repairs at the landlord's expense?

Yes. The landlord and tenant may mutually agree for the tenant to repair or remedy, at the landlord's

expense, any condition on the manufactured home lot regardless of whether it materially affects the health or safety of an ordinary tenant (Section 94.157[i]). This does not waive a right or exempt the landlord or tenant from a duty or liability required by Chapter 94.

May the landlord delay the tenant's option to repair and deduct with an Affidavit for Delay?

Yes, but only in two circumstances. If the landlord is unable to obtain necessary parts, the landlord's repair obligation may be delayed by 15 days with an Affidavit for Delay. A general shortage of labor or materials following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm may delay the landlord's repair obligation 30 days with an Affidavit for Delay. An Affidavit for Delay for any other reason is unlawful and of no effect.

The landlord may delay the tenant's option to repair and deduct by delivering to the tenant a signed and sworn affidavit (Section 94.158). The Affidavit for Delay, as it is called, must be delivered before the tenant contracts for the repairs. The affidavit must be from either the landlord or an authorized agent and be delivered by one of three methods:

- in person,
- by certified mail, return receipt requested, or
- left securely fixed on the outside of the manufactured home's main entrance if this method of delivery is authorized in the written lease (Section 94.159[e]).

The affidavit, signed by and sworn to under oath, must summarize the reasons for the delay. The affidavit must state that diligent efforts have been and are being made to effect repairs. The dates, names, addresses, and telephone numbers of the contractors, suppliers, and repair persons must be included (Sections 94.158[a] & [b]).

The landlord may file repeated affidavits as long as the total delay does not exceed six months (Section 94.158[c]).

Repairs may be delayed with no Affidavit of Delay when the landlord is waiting for insurance proceeds following a loss (Section 94.154).

There is a rebuttable presumption the landlord acted in good faith and with continued due diligence when the first affidavit is given. However, the tenant may present evidence to the contrary. If the landlord files subsequent affidavits, the landlord bears the burden of proving that he or she is acting in good faith. A landlord who files a false affidavit or does not act with due diligence is liable for one month's rent plus \$1,000 (Sections 94.158[f] and 94.159[a][3]).

What happens if a new landlord takes over before repairs are made?

The following rules apply when the former landlord was liable to the tenant under Section 94.156, and the new landlord, in good faith and without knowledge of the tenant's notice of intent to repair, acquires title to the tenant's manufactured home lot through foreclosure, a deed in lieu of foreclosure, or a general warranty deed in a bona fide purchase. In these situations, when the tenant has opted to terminate the lease, and proper notices have been given to the former landlord, a change of ownership does not necessitate new notices be given. The tenant may terminate the lease as if no change occurred in ownership. Likewise, the tenant's right to repair and deduct for sewage backup or overflow, or for cutting off the potable water is not affected; new notices are not required.

However, different rules apply when:

- the situation does not involve the backup or overflow of sewage, or the cutoff of potable water,
- the new landlord has notified the tenant of the new landlord's name and address or the name and address of the landlord's authorized agent, and
- the tenant has not contracted for the repairs.

In this case, the tenant must deliver written notice of the intent to repair or remedy the condition to the new landlord. The new landlord has a reasonable time to complete the repair before the tenant may repair or remedy the condition. Only one notice is required in this situation.

If the tenant has chosen to pursue judicial options rather than terminating the lease or choosing the repair and deduct option, any judicial remedy is limited to recovery against the former landlord until the tenant gives the new landlord the required notices. If the new landlord does not complete the repairs or remedy the condition after receiving notice, the new landlord is liable to the tenant for a civil penalty of one month's rent plus \$2,000, actual damages, and attorney fees.

The tenant's right to terminate a lease under this section is not affected by the fact a superior lienholder forecloses on subordinate lienholder or other interests (94.158[g]).

What judicial options are available to tenants?

Section 94.159 lists possible judicial remedies a tenant may pursue:

- a court order directing the landlord to take reasonable steps to repair or remedy the condition,
- a court order reducing the tenant's rent based on present rental value in light of the needed

repairs or condition (calculated from the time the first repair notice was given until the condition is repaired or remedied);

- a judgment for a civil penalty of one month's rent plus \$500;
- a judgment for the amount of the tenant's actual damages; and
- court costs and attorney fees, excluding attorney fees relating to recoveries for personal injury.

The tenant's petition may be filed in the justice, county, or district courts, depending on the amount of the tenant's claim. The courts have concurrent jurisdiction. However, the justice courts may not order the landlord to make repairs. They can render the other remedies (Section 94.159[c]).

The right of the justice court, the county court, or the district court to hear a certain case depends, in part, on the monetary amount of the claim or dispute.

If the landlord fails to effect repairs after the proper notices are given and the tenant seeks a judicial remedy, who has the burden of proof?

The tenant has the burden of proof with one exception. If the landlord does not provide a written explanation for the delay in performing the repairs or remedies on before the fifth day after receiving a written demand for an explanation, the landlord has the burden of proof for proving a diligent effort was made to repair after a reasonable time elapsed. (94.154)

Note. Only two notices are required for the landlord to effect repairs. Tenants should realize that by making a third demand for an explanation of why the landlord has not made the repairs reverses the burden of proof when a judicial option is chosen.

Who has the burden of proof in judicial proceedings related to repair?

Generally, the tenant must prove that the landlord failed to repair or remedy a condition (Section 94.153). However, the landlord must prove a diligent effort was made to repair within a reasonable time if the tenant can show that the landlord failed to make the repairs or give a written explanation for the delay within five days after receiving the written notification (Section 94.154).

Precisely what constitutes diligent effort and reasonable delay is unclear. Some guidelines are provided later in Section 94.156. If the landlord does not make repairs, the tenant has three options:

- (1) terminate the lease,
- (2) repair the condition and deduct the cost from a subsequent rent payment, or
- (3) seek judicial remedies.

Consequently, shifting the burden of proof is important only to tenants who pursue the third option.

Can tenants retaliate by withholding rent for failing to repair or remedy?

No. The tenant is prohibited from illegally withholding rents, arranging for repairs to be made or deducting repair costs from rent in violation of the procedures specified in Subchapter D. If the tenant breaches these rules, the landlord may recover actual damages.

The penalties are more severe if the tenant commits any one or all three in bad faith after the landlord has informed the tenant in writing that the acts are illegal and specifies the penalties. In that case, the landlord may recover a civil penalty of one month's rent plus \$500 and reasonable attorney fees. However, the landlord must prove these facts by clear and convincing evidence (Section 94.160).

The tenant cannot take matters in hand but must follow precisely the procedures prescribed in Subchapter D to effect repairs. If the steps are not followed exactly, the tenant, not the landlord, is liable.

Where must the tenant send or deliver notices?

The tenant should send or deliver a notice to repair or remedy or any other communication required or permitted by the Subchapter D to the landlord's managing agent, leasing agent, or resident manager (Section 94.161).

Note. It is unclear whether Section 94.161 (above) contradicts Section 94.156, which requires the tenant to give notice of a condition to the person to whom the rent is normally paid or at the place at which rent is normally paid. That person may not be the managing agent, leasing agent, or resident manager as specified in Section 94.161. If they are not the same person, the tenant should send two notices, one to comply with each section.

Are the remedies outlined in Subchapter D for the landlord's failure to repair exclusive? Or, are the remedies in lieu of other available legal remedies?

Subchapter D represents the tenant's sole legal means to prompt a residential landlord to make repairs and the sole legal means for a judicial recovery if the landlord fails to do so.

However, the subchapter does not affect any other rights of a landlord or tenant under contract, statutory law, or common law that is consistent with the purposes of the subchapter. Likewise, the subchapter does not affect any right the landlord or tenant may have to bring an action for personal injury or property damage under Texas law. The subchapter does not impose obligations on a landlord or tenant

other than those expressly stated in this subchapter (Section 94.162).

How may lease provisions affect the landlord's duty to repair and other obligations?

Tenants may unwittingly give up or gain certain rights when they sign the lease. Subchapter D mentions the following possible provisions.

- The landlord and tenant can agree that the tenant will make **all** repairs at the landlord's expense. This provision may be placed in the lease or made orally. The statute simply says the parties may mutually agree on this matter (Section 94.157[i]).
- The landlord and tenant may agree to a proportionate reduction in rent if a casualty loss renders the leased premises partially unusable (Section 94.155[c]).
- The landlord and tenant may agree that the tenant, the tenant's immediate family, the tenant's employer, or employee of a company in which the tenant owns an interest can make the repairs under the repair-and-deduct option (Section 94.157[g]).
- The landlord may prohibit the tenant from assigning the lease agreement or subleasing the leased premises if so stated in the lease agreement (94.057[a]).
- The landlord must give the tenant three days notice to vacate the premises before filing an eviction suit unless a longer or shorter period is provided in the written lease (24.005[a]).
- The owner of a manufactured home (which could be the tenant) cannot sell a home located on the leased premises without having the sale approved in writing by the landlord (Section 94.252[a]).
- Unless the owner of a manufactured home (which could be the tenant) has agreed in writing (which could be the lease agreement), the landlord cannot require the owner:
 - to pay a commission or fee from the sale of the home or
 - to contract with the landlord to act as an agent or broker for the sale of the home (Section 94.252[b]).

Subchapter E — Lease Termination (and Evictions)

Subchapter E of Chapter 94 of the Texas Property Code focuses on terminating a lease before the end of the lease term. Topics discussed include the duties of the landlord when the tenant prematurely abandons the lease, how the landlord may use a writ of possession to evict a tenant and remove the manufactured home and what notices must be sent to terminate a lease when a land use changes.

Note. The interaction of Subchapter E with Chapter 24 of the Texas Property Code that deals primarily with residential evictions is unclear. It appears that the rules for evicting (removing) a manufactured home from a manufactured home community must follow the general rules stated in Chapter 24 and the specific rules found in Subchapter E, page 16.

This premise is borne out in Subchapter G (discussed later) in Section 94.303. It states that the provisions contained in Chapter 94 are not exclusive and are in addition to any other remedy provided by other law.

Take the following example. Section 94.203 discusses the use of a writ of possession. However, a writ of possession according to Chapter 24 may be obtained only after the tenant receives and ignores an effective notice to vacate the premises from the landlord. But what language must the notice to vacate contain? How must the notice be delivered? How soon must the tenant vacate the premises or face a writ of possession being issued? Which court has jurisdiction?

All these questions are answered in Chapter 24. Subchapter E contains some specific requirements in specific situations regarding evictions for manufactured home communities. As a general rule, a tenant must receive a three-day notice to vacate. However, Sections 94.205 and 206 contain specific provisions for manufactured home communities.

Section 94.205 states that a landlord may terminate a lease and evict a tenant for violating a lease provision or community rules incorporated into the lease. However, no procedure for evicting the tenant is described. That is where Chapter 24 enters the picture.

Section 94.205 contains specific prerequisites for terminating a lease and evicting a tenant for non-payment of rent. It states the unpaid rent plus other amounts owed equals or exceeds one month's rent, the landlord has given the tenant written notice of the delinquency and the tenant does not make full payment within ten days. However, if the tenant does not leave, Section 94.205 does not describe how the tenant is actually legally evicted. Again, that is where Chapter 24 again enters the picture.

Finally, Section 94.203 provides that notice of eviction must be given to any lienholder on a manufactured home being evicted. This is another notice in addition to the ones required to the tenant in Chapter 24.

A reprint of Chapter 24 taken from the *Landlords and Tenants Guide* is reproduced at the end of this publication through Section 24.005. All the following sections, 24.0051 through 24.008 were added effective January 1, 2016. The new sections deal with appeals for "residential eviction suits." The term is not defined. It is unclear whether the sections apply to the eviction of manufactured homes from manufactured home communities. For this reason, they were not included. However, these rules can be found in Center publication 866, *Landlords and Tenants Guide*, beginning on page 61.

What legal recourse does the landlord have against a tenant who prematurely abandons the leased premises?

The maximum amount of damages a landlord may recover from a tenant who prematurely abandons the leased premises is one month's rent if the manufactured home lot is reoccupied within 21 days after the tenant surrenders it.

If the lot is not reoccupied within 21 days, the landlord may recover the remaining balance of the rent due plus any other amounts owed for the remainder of the lease (Section 94.201).

Does the landlord have a duty to mitigate damages (relet the property and lessen the tenant's liability) when the tenant prematurely vacates the leased space?

Yes. The landlord has a legal duty to attempt to relet the manufactured home lot and lessen the tenant's liability when the tenant prematurely vacates. Any provision in a lease agreement that purports to exempt the landlord from this duty or liability is unenforceable (Section 94.202).

How may a landlord use a writ of possession against a tenant?

By obtaining a writ of possession, which is the final step in the eviction process under Chapter 24 of the Texas Property Code, the landlord may:

- prevent a tenant from entering the manufactured home lot,
- evict a tenant, or

- require removal of a manufactured home from the manufactured home lot (Section 94.203[a]).

Must the landlord give written notice of eviction proceedings to the lienholder of the manufactured home?

Yes. The landlord must give written notice of eviction proceedings to the lienholder within three days after filing the application or petition for a judgment for possession but only if the tenant has disclosed the name of the lienholder prior to signing the lease as required by Section 94.203(b).

What legal restraints or limitations will the court impose on a landlord attempting to evict a tenant?

The court will not approve an eviction if it finds the eviction was retaliatory in nature. Likewise, a writ of possession will not be issued within 30 days of a judgment for possession, which is the second step in the eviction process, when the tenant has paid the full amount due under the lease for that period (Sections 94.203[c] & [d]).

What is a default judgment for possession?

A default judgment occurs when a tenant does not contest the eviction process and makes no appearance in his or her defense.

Who must receive notice of a default judgment for possession?

When a default judgment is entered, the court must:

- notify the tenant in writing within 48 hours by sending the notice by first class mail to the leased premises,
- send copies of the default judgment to the owner of the manufactured home if the tenant and the owner are not the same person or entity, and
- forward copies of the default judgment to the lienholders if the court has received written notice of their names and addresses (Section 94.203[e]).

Who must receive notice when the manufactured home is removed from the lot under a writ of possession? When must the notices be sent?

After a manufactured home is removed by executing a writ of possession, the landlord must send written notice of the home's new location to the tenant at the tenant's most recent mailing address according to the landlord's records. The notice must be sent within ten days after the removal.

The same notice must be sent within the same time frame to the owner of the manufactured home when:

- the tenant and the owner are different individuals or entities and

- the landlord has been given the owner's name and address (Section 94.203[f]).

When must notices be sent and posted to terminate leases because of a land use change? Where must the notices be sent and posted?

If the landlord decides not to renew a lease agreement in order to effect a change in the land use, the landlord must send notice of the change no later than 180 days before the effective date of the change to:

- the tenant,
- the owner of the manufactured home if the tenant and owner are different and the landlord has been given written notice of the owner's name and address, and
- the lienholder, if the landlord has been given written notice of the lienholder's name and address.

During this time frame, the same notice and information must be posted in a conspicuous place in the manufactured home community.

What information must be included in the notices sent and posted regarding a land use change?

The notices, both sent and posted, must:

- specify the effective date of the land use change and
- inform the tenant, owner, and lienholder to remove the manufactured home by that date (Section 94.204).

May the landlord terminate the lease when the tenant violates a lease provision?

Yes. The landlord may terminate the lease and evict the tenant for violating a lease provision, including a violation of the manufactured home community rules incorporated into the lease (Section 94.205). Section 94.008 states that any adopted manufactured home community rules that are not arbitrary or capricious are considered part of the lease agreement.

May the landlord terminate the lease and evict a tenant for nonpayment of rent?

Yes. The landlord may terminate the lease and evict the tenant, if need be, when the following three conditions are met.

- The amount of unpaid rent plus the other amounts owed according to the lease equal at least one month's rent.
- The landlord gives written notice to the tenant that the rent and other payments are delinquent.
- The tenant does not tender the full amount due within ten days after receiving the notice (Section 94.206).

Subchapter F — Landlord Retaliation

Subchapter F of Chapter 94 of the Texas Property Code prohibits a landlord from retaliating when a tenant pursues an option or remedy described in Chapter 94. The Chapter and outlines a tenant's options if the landlord retaliates.

Can landlords retaliate?

No. Landlords are prohibited from retaliating against a tenant who:

- (1) in good faith exercises or attempts to exercise a right or remedy granted to the tenant by the lease, a municipal ordinance or a federal or state statute,
- (2) gives a landlord a notice to repair or exercises an option granted under Chapter 94 or
- (3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility or a civic or nonprofit agency that a building or housing code has been violated, or that a utility problem exists.

At the time the complaint is lodged, the tenant must believe, in good faith, that the complaint is valid and that the violation occurred or the problem exists (Sections 94.251[a]).

What retaliatory actions are prohibited?

For six months after the date a tenant takes one of the three described actions, the landlord may not retaliate by:

- filing an eviction proceeding, except for the grounds described in Subchapter E — Lease Termination;
- depriving the tenant of the use of the premises, except for reasons authorized by law;
- decreasing services to the tenant;
- increasing the tenant's rent;
- terminating the tenant's lease agreement; or
- engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the lease agreement (Section 94.251[b]).

Do landlords have any defenses against a suit for retaliation?

According to Section 94.253[a], a landlord is not liable if he or she proves the actions were not taken for retaliation purposes. However, liability remains if the landlord violates a prior court order under Section 94.159 for:

- increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance or

- increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire manufactured home community.

When is a landlord free to evict a tenant or terminate a lease without being charged with retaliation?

An eviction or lease termination cannot be deemed retaliatory if the tenant:

- is delinquent in rent or other amounts due under the lease that, in the aggregate, equal one month's rent when the landlord gives notice to vacate or files an eviction action;
- a member of the tenant's family, a guest or invitee of the tenant intentionally damages property on the premises or threatens the personal safety of the landlord, the landlord's employees, or another tenant by word or conduct;
- materially breaches the lease by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts;
- does not vacate the premises (holds over) after giving notice of termination or intent to vacate;
- does not vacate the premises (holds over) after the landlord gives notice of termination at the end of the rental term, and the tenant does not take action under Section 94.251 until after the landlord gives notice of termination; or
- does not vacate the premises (holds over) and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, a guest or an invitee of the tenant might:
 - adversely affect the quiet enjoyment of the other tenants or neighbors,
 - materially affect the health or safety of the landlord, other tenants or neighbors, or
 - damage the landlord's property or the property of a tenant or neighbor (Section 94.253[b]).

If a tenant proves a landlord wrongfully retaliated, what may the court award the tenant?

The tenant may recover the following by proving the landlord unlawfully retaliated:

- a civil penalty of one month's rent plus \$500. When the tenant's rent is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section must reflect the fair market rent of the lot plus \$500 (Section 94.254);

- actual damages;
- court costs; and
- reasonable attorney fees in an action to recover property damages, moving costs, actual expenses, civil penalties, or to get a declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord (Section 94.254).

When is the tenant deemed to have acted in bad faith in alleging landlord retaliation?

A rebuttal presumption exists that the tenant acted in bad faith when:

- the tenant files a suit for retaliation for an alleged violation of building or housing code or a utility problem and
- a government building or housing inspector or utility company representative visits the community and determines in writing that no violation exists (Section 94.255).

If a tenant makes a bad faith claim against a landlord, what may the court award the landlord?

If a tenant files or prosecutes a suit in bad faith, the landlord may recover:

- possession of the leased premises and
- a civil penalty of one month’s rent plus \$500, court costs, and reasonable attorney fees.
- If the tenant’s rent is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section must reflect the fair market rent of the lot plus \$500 (Section 94.255).

What defenses do tenants have against suits filed by a landlord?

The tenant can defend an eviction suit by showing that it is retaliatory. Likewise, the tenant can defend a suit for nonpayment of rent by showing that he or she was in compliance with the repair-and-deduct procedures outlined in Subchapter D. Other judicial actions permitted under Chapter 94 may not be joined with or asserted as a defense or cross-claim in an eviction suit (Section 94.256).

May the owner of a manufactured home sell the home located in the manufactured home community without the landlord’s written consent?

No. Before the owner of a manufactured home located in a manufactured home community may sell the home, the landlord must approve the sale in writing and the purchaser must sign a lease agreement (Section 94.252[a]).

May the landlord require the owner to use him or her as agent for the sale of the manufactured home and collect a commission?

No. Unless the owner of the manufactured home agrees in writing, the landlord may not require the owner to:

- designate the landlord as agent or broker for the sale of the manufactured home or
- pay a commission or fee from the sale of the home to the landlord (Section 94.252[b]).

Subchapter G — Landlord and Tenant Remedies

Subchapter G of Chapter 94 of the Texas Property Code describes the remedies available to the tenant and possibly other persons if a landlord breaches any provision in Chapter 94.

What can a person recover if a landlord violates the provision in Chapter 94?

Any person, not just a tenant, may recover from a landlord who violates any Chapter 94 provision:

- actual damages,
- a civil penalty equal to two month's rent plus \$500, and
- reasonable attorney fees and costs (Section 94.301).

What recourse does the landlord have if a tenant or any other person files a suit in bad faith or for purposes of harassment against the landlord alleging a violation of Chapter 94?

The court shall award the landlord an amount equal to two month's rent plus \$500 and reasonable attorney fees and costs when it finds a tenant filed a lawsuit in bad faith and for purposes of harassment (Section 94.302).

How do specific remedies for specific violations in Chapter 94 interact with the general remedies just described?

The provisions of Chapter 94 are not exclusive and are in addition to any other remedy provided by other law. A specific remedy supercedes a general remedy provided by Chapter 94 and represents an additional remedy to any other remedies provided by law (Section 94.303).

Chapter 24 Texas Property Code — The Eviction Process

Note. This discussion gives details related to an eviction action. It was drafted primarily for residential and commercial property evictions. Some sections may not apply to manufactured home communities, such as Texas Property Code Section 24.0062, which deals with a warehouseman's lien for tenant's property left in a building.

Eviction is the legal means by which tenants may be removed from premises when they no longer have a right of possession. The four leading causes for eviction in manufactured home communities are breach of the lease agreement or manufactured home community rules, nonpayment of rent, not vacating the premises after the lease term has expired and continued possession of a home in a rented lot after foreclosure.

Statutes addressing evictions are found in Chapter 24 of the Texas Property Code, Sections 24.001 through 24.011. Sections 24.009 and 24.010 are blank. The chapter applies to eviction of tenants in manufactured home communities, in residential dwellings and apartments, and in commercial buildings.

The substantive rules for evicting a tenant are described in Chapter 24. However, a landlord considering an eviction action also should consult rules 738 through 755 of the Texas Rules of Civil Procedure. These rules parallel and amplify the sections in Chapter 24.

Although the word eviction is a legal term, it is not used in Chapter 24 or in the Rules of Civil Procedure. Instead, the terms forcible entry and detainer and forcible detainer appear. Either action effectively removes a person from wrongful possession of real property.

What is a *forcible entry and detainer*?

A forcible entry and detainer occurs when an unauthorized person enters the real property of another, without legal authority or by force, and refuses to surrender possession on demand (Section 24.001).

What constitutes a *forcible detainer*?

A forcible detainer occurs when a person refuses to surrender possession of real property on demand (Section 24.002). This is distinguishable from the forcible entry and detainer because under a forcible detainer the person's entry is not necessarily unlawful. Most eviction suits by landlords are forcible detainers, not forcible entry and detainers, because the tenant's initial entry onto the property usually is lawful.

Forcible detainer may occur when a tenant or subtenant has been notified to vacate the premises per section 24.005 but:

- does not vacate the premises willfully and without force after the right of possession terminates,
- is a tenant at will or a tenant at sufferance or occupies the premises when a lien superior to the tenant's lease is foreclosed, or
- acquires possession by forcible entry.

A landlord may continue a *forcible entry* action in the tenant's name without refileing the suit in the landlord's name (Section 24.003). This occurs if the tenant has such a suit pending when the tenant's lease term expires. It is immaterial that the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

Where is the jurisdiction for an eviction suit?

Jurisdiction for either a forcible entry and detainer or a forcible detainer suit (an eviction suit) is in the precinct where the real property is located. A justice court may issue a writ of possession under Section 24.0054(a), (a-2) and (a-3) discussed later. The justice court has no jurisdiction for a violation of Chapter 21A of the Texas Business and Commerce Code (Section 24.004).

How much notice must a landlord give a tenant who is asked to vacate the premises?

The demand that a tenant leave the premises is the first step in the eviction process. How much notice is required depends on which of the following categories the tenant falls into.

Tenant has defaulted on rent or does not vacate after lease expires

The landlord must give the tenant at least a three-day notice before filing a forcible detainer suit when the tenant has defaulted on rent payments or holds over after the lease term expires (Section 24.005[a]). The three-day notice does not apply if the written or oral lease specifies a different period.

If the tenant is on a month-to-month lease and the rent-paying period is monthly or less than a month, the landlord must comply with the termination requirements described in Section 91.001. This section requires that the length of notice to vacate corresponds with the length of the rent-paying period. If the rent is paid every two weeks, the notice to vacate must be at least two weeks plus one day before

an eviction suit can be filed. However, the notices required by Section 91.001 do not apply when:

- the parties have agreed in writing to a different period,
- the parties have agreed in writing that no notice to terminate is required, or
- one of the parties has breached the contract in a manner recognized by law.

When the occupant is a tenant at will or a tenant at sufferance (see Glossary), a three-day notice is required unless a different period has been contracted in the written or oral lease (Section 24.005[b]).

Tenant's building (in this instance, the manufactured home community) has been sold at a tax or trustee's foreclosure sale.

If the tenant's building has been sold at a tax foreclosure sale or at a trustee's foreclosure sale under a lien superior to the tenant's lease, the statute (Section 24.005[b]) requires the purchaser to give the residential tenant at least a 30-day written notice if the tenant has "timely paid" rent and is not otherwise in default under the lease after the sale.

"Timely paid" means the tenant either pays the monthly rent:

- before receiving notice of the scheduled foreclosure sale; or
- to the "foreclosing lienholder" or purchaser at the sale no later than five days after receiving a written request for rent from such person.

The statute apparently allows the foreclosing lienholder to demand rent from the tenant prior to the foreclosure sale. Otherwise, any monthly rent collected by the landlord **before** the sale belongs to the collecting landlord and not to the purchaser at the foreclosure sale (See *Treetop Apartments General Partnership v. Oyster*, 800 S.W. 2d 628 [Tex. App. 1990]).

A foreclosing lienholder may give written notice to a tenant indicating that a foreclosure notice has been given to the landlord or owner and specifying the scheduled date of the sale. When the tenant acquired possession by forcible entry, a three-day notice is required before filing a forcible detainer suit (Section 24.005[c]).

Tenant rented from someone who does not have ownership rights to the property

Although the possibility that a person would rent from someone lacking possessory rights to the property is remote, this section addresses such a situation.

If the occupant is the person who gained possession by forcible entry under Section 24.001, there is no required waiting period (Section 24.005[d]). The forcible detainer may be filed immediately or at the end of any deadline specified in the oral or written notice to vacate.

The notice differs when the lease or applicable law requires the landlord to allow a tenant to respond to

a notice of a proposed eviction (Section 24.005[e]). Here, notice to vacate cannot be given until the response period ends.

The only leases containing a preliminary notice to vacate are HUD subsidized leases. Generally, the response period is ten days. Landlords are required to give two separate notices ten days apart. The first is a proposed notice to vacate; the second is the actual notice to vacate.

How must a notice to vacate be delivered?

The notice to vacate may be given in person or by mail at the premises (Section 24.005[f]). If delivered in person, the notice must be given to the tenant or to any resident who is at least 16 years old. Personal delivery also includes affixing the notice to the inside of the main entry door to the premises (manufactured home). Notice also may be sent by regular mail, registered mail, or certified mail with return receipt requested.

What alternatives does the landlord have if there is no mailbox or entry is impossible, inconvenient or dangerous?

If the dwelling has no mailbox and has a keyless bolting device, alarm system, a dangerous animal that prevents entry, or the landlord 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 by affixing the notice inside the main entry door, the landlord may affix the notice to vacate outside the main entry door (Section 24.005[f]).

The notice must be securely affixed to the outside of the main entry door in a sealed envelope with the tenant's name and address printed on it. The envelope must contain the notice to vacate. The words "IMPORTANT DOCUMENT" or substantially similar language must be printed on the envelope in all capital letters. In addition, no later than 5 p.m. on day the envelope is affixed to the door, a copy of the notice must be deposited in the mail in the same county in which the premises is located.

When this method is used, the notice to vacate in this situation is considered delivered on the date the envelope is affixed to the outside of the door and deposited in the mail regardless of the date the notice is actually received (Sections 24.005(f), (f-1) and (f-2)).

Can the notice to vacate include a demand that all delinquent rent be paid to avoid eviction?

The notice to vacate may include a demand for delinquent rent in lieu of eviction if the landlord has given the tenant prior written notice or reminder that the rent is due and unpaid. The delinquent rent must be paid by the date and time stated in the notice to avoid eviction (Section 24.005[i]).

The notice period is calculated from the day on which the notice is delivered (Section 24.005[g]). A “notice to vacate” shall be considered a “demand for possession” for purposes of Section 24.002 discussed earlier (Section 24.005[h]).

Writ of Possession

When may the landlord receive a writ of possession?

The second step in the eviction process involves judicial action if the tenant fails to vacate the premises within the allotted time after the notice to vacate is given. The judicial process involves getting a judgment for possession and then, if the tenant does not leave, getting a writ of possession six days later.

Before a judgment for possession can be rendered, an officer of the court must serve the tenant with notice of the pending lawsuit. This is known as the *service of citation*. If the officer tries twice unsuccessfully to serve the tenant both at the dwelling and at work, Rule 742a of the Texas Rules of Civil Procedure allows service by posting the notice to the front door or main entry to the premises and mailing a copy to the tenant’s address.

If the landlord is evicting a tenant for unpaid rent, Rule 738 of the Texas Rules of Civil Procedure permits the landlord to bring an action for the unpaid rent in the same suit for possession when the amount is within the jurisdictional limits of the court. The landlord can then get two judgments—one for possession, the other for unpaid rent. Normally, the justice court will provide the landlord with an available form for filing the petition.

Section 24.0051, added in 1999, affects lawsuits filed on sworn statements (or accounts) where the landlord has kept a systematic record of the amount due and has filed an affidavit before the court that the records are true. Prior to 1999, the sworn statement was sufficient to get a default judgment for unpaid rent when the service of process occurred under Rule 742a of the Rules of Civil Procedure. However, it was insufficient to get a default judgment for possession under the same circumstances. The 1999 amendment changed the rule to permit a lawsuit based on a sworn statement and service of process under Rule 742a to support a default judgment for unpaid rent and possession (Section 24.0051[a]).

A *default judgment* occurs when the defendant fails to appear to defend the claim. A *service of process* is the personal delivery of notice to the defendant of a pending lawsuit. A *service of process under*

Rule 742a is an alternative way to deliver notice after the sheriff fails twice to deliver it personally.

Must the tenant vacate the premises before the landlord can recover unpaid rent?

No. The landlord may recover unpaid rent under Section 24.0051 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 (Section 24.0051[b]).

Are there any special rules for citations served under Rules 739 of the Texas Rules of Civil Procedure to recover possession?

Yes, there are two special rules. One is found in Section 24.0051(c) and the other in 24.0051(d).

According to 24.0051(c), the citation must include the following language in a suit to recover possession, whether or not for unpaid rent:

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

According to 24.0051(d), the citation must also include the following notice to the defendant on the first page of the citation in English and Spanish and in conspicuous bold print:

**“SUIT TO EVICT
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 SERVICE-MEMBERS 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.”**

Note. The remaining sections of Chapter 24, sections, 24.0051 through 24.008 discuss appealing “residential eviction suits.” The sections may or may not apply to the eviction of manufactured homes from manufactured home communities. These rules are reproduced in Center publication 866, *Landlords and Tenants Guide*, beginning on page 61.

Submetering Water Use in Manufactured Home Communities

Sections 13.501 through 13.506, Texas Water Code

On September 1, 2001, the Texas Legislature added Sections 13.501 through 13.506 to the Texas Water Code. The sections apply to submetering of water used in condominiums, apartment houses with five or more dwelling units, manufactured home rental communities and multiple-use facilities (defined below) on which construction began after January 1, 2003. The statutes vary the requirements for each type of structure. They are not uniform, so a careful reading is required. Submeters are not required on structures or communities constructed before that date.

The statute discusses the requirements placed on the managers and owners to install equipment for submetering water used in individual dwelling units in condominiums, apartment houses with five or more dwelling units, manufactured home rental communities, and multiple-use facilities.

Section 13.501 contains definitions essential to understanding the requirements.

Apartment house — one or more buildings containing *five or more* dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied and, having rental paid, if a dwelling unit is rented, at intervals of one month or longer.

Dwelling unit — one or more rooms in an apartment house, or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities or a manufactured home in a manufactured home rental community.

Customer — the individual, firm, or corporation in whose name a master meter has been connected by the utility service provider.

Multiple-use facility — commercial or industrial parks, office complexes, marinas, and other types of facilities specifically identified in commission rules with five or more units.

Manufactured home rental community — a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

Nonsubmetered master metered utility service — water utility service that is master metered for the apartment house but not submetered and wastewater utility service based on master-metered water utility service.

Owner — the legal title holder of an apartment house, manufactured home rental community or multiple-use facility and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house, manufactured home rental community, or multiple-use facility.

Tenant — a person who is entitled to occupy a dwelling unit or multiple-use facility unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement (Section 13.501).

Who is required to install measuring devices for the quantity of water consumed by an occupant? Do the rules apply to all structures?

Owners and managers of condominiums, apartment houses, manufactured home rental communities, or multiple-use facilities on which construction began after January 1, 2003, are required to install measuring devices for the quantity of water, if any, consumed by the occupants of each unit. This must be done by the installation of:

- (1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit or
- (2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit (Section 13.502[b]).

What about the same buildings constructed before January 1, 2003?

If construction began before January 1, 2003, the owners of the apartment house, the manufactured home rental community, the multi-use facility or the manager of a condominium may provide for the submetering. It is optional, not a requirement (Section 13.502[a]).

Are there any specific rules for subsidized apartment houses?

Yes. An owner of an apartment house on which construction begins after January 1, 2003, and who provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit (Section 13.502[c]).

Who must install individual meters?

The manager or owner may request a retail public utility to install individual meters owned by the utility. The retail public utility must comply with the request if the installation is feasible. If not, the manager or owner should install a plumbing system that is compatible with the installation of the submeters or the individual meters of the retail public utility (Section 13.502[d]).

May the retail public utility charge for the installation when it is feasible?

Yes. A retail public utility may charge reasonable costs to install individual meters (Section 13.503[d]).

Once submetering begins, can the manager or owner switch to allocated billing?

The manager or owner may not change from submetering to allocated billing unless:

- (1) the utility commission approves of the change in writing after a demonstration of good cause, including equipment failures or meter reading or billing problems that could not be corrected feasibly and
- (2) the property owner meets the rental agreement requirements established by the utility commission (Section 13.502[e]).

Must the utility commission encourage submetering of individual rental or dwelling units by master operators or building owners?

Yes. The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources (Section 13.503[a]).

What about apartment houses, manufactured home rental communities, or multiple-use facilities that are not individually metered for water for each rental or dwelling unit? What rules govern them?

For the owners, operators or managers of apartment houses, manufactured home rental communities, or multiple-use facilities that are not individually metered for water for each rental or dwelling unit, the utility commission shall adopt rules and standards for installing submetering equipment that fairly allocate the cost of each individual rental or dwelling unit's water consumption, including wastewater charges, based on water consumption. The rules, among other things, shall prohibit the apartment house owner, manufactured home rental

community owner, multiple-use facility owner, or condominium manager from imposing extra charges over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager (Section 13.503[a]).

What records must the rental unit or apartment house owner or manager maintain?

The rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours (Section 13.503[a]).

Can any fees be charged for late payments?

Yes. A late payment of a submetered water bill is permitted as long as the amount of the fee does not exceed five percent (5%) of the bill paid late (Section 13.503[a]).

What about the submetering equipment? What standards must it meet?

All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 of the Texas Water Code that authorize the regulatory authority to enter, examine and test any meter, instrument, or equipment used for the measurement of service of any utility (Section 13.503[a]).

May the owner or manager of a manufactured home rental community or apartment house owners impose a service charge for submetering?

With two exceptions for apartment house owners, the owner or manager of a manufactured home rental community or apartment house may impose a service charge of not more than nine percent (9%) of the "costs related to submetering" allocated to each submetered rental or dwelling unit (Section 13.503[a]).

How is the term "costs related to submetering" defined as used above regarding service charges?

The term "costs related to submetering" means water costs as well as any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager of a manufactured home rental community or apartment house (Section 13.503[d]).

What are the two exceptions for apartment-house owners?

The owner or manager of an apartment house may not impose a service charge on a resident who:

- (1) resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Subchapter DD, Chapter 2306, Government Code or
- (2) receives tenant-based voucher assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), (Section 13.50[b] and [c]).

Can the utility commission authorize building owners to use “high tech” submetering equipment?

Yes. The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions (Section 13.503[e]).

May the utility commission adopt other rules and standards that permit the nonmetering of manufactured home rental communities, apartment houses, condominiums, or other multiple-use facilities?

Yes. In addition to the rules discussed in Section 13.503, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple-use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs.

What do these rules require?

In addition to other appropriate tenant safeguards, the rules shall require that:

- (1) the rental agreement includes a clear written description of the method for calculating the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house or multiple-use facility,
- (2) the rental agreement contains a statement of the average manufactured home, apartment or multiple-use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year,
- (3) except as discussed earlier in Section 13.503, an owner or condominium manager may not

impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple-use facility,

- (4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple-use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants,
- (5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours, and
- (6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent (5%) of the bill paid late (Section 13.5031).

What if an owner, operator, or manager of an apartment house, manufactured home rental community, or other multiple-use facility raises the rental rates 90 days preceding the installation of the individual meters or submeters and the increase is attributable to the increased costs of utilities?

No. If the owner, operator, or manager raises the rental rates under these conditions, the owner, operator, or manager shall immediately reduce the rental rate by the amount of the increase and refund all of the increase that has previously been collected within the 90-day period (Section 3.504).

What rights do tenants have when an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple-use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple-use facility unit or nonsubmetered master metered utility costs?

The tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager (Section 13.505).

Are there any exceptions to the recoveries?

Yes. An owner of an apartment house, manufactured home rental community, or other multiple-use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake (Section 13.505).

After January 1, 2003, what two things must an owner of an apartment house, manufactured home rental community, or multiple-use facility or a manager of a condominium do before implementing a program to bill tenants for submetered or allocated water service?

They must:

- (1) meet the standards prescribed by Section 372.002, Health and Safety Code, for sink or lavatory faucets, faucet aerators, and shower-heads and
- (2) perform a water-leak audit of each dwelling unit or rental unit and each common area and repair any leaks (Section 13.506[a]).

Once the owner of an apartment house, manufactured home rental community, or multiple-use facility or a manager of a condominium begins billing, what else must they do?

Not later than the first anniversary date after an owner of an apartment house, manufactured home rental community, or multiple-use facility or a manager of a condominium begins to bill for submetered or allocated water service under Subsection (a), the owner or manager shall:

- (1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing and
- (2) install toilets that meet the standards prescribed by Section 372.002, Health and Safety Code (Section 13.506[b]).

Are there any exceptions to these four requirements?

Yes. The four requirements regarding the commencement of billing does not apply to the owner of a manufactured home rental community who does not own the manufactured homes located on the property of the manufactured home rental community (Section 13.506[c]).

What are the requirements contained in Section 372.002 of the Texas Health and Safety Code?

Effective Sept. 1, 2009, the provisions contained in Section 372.002 of the Texas Health and Safety Code are reproduced below.

§ 372.002. Water Saving Performance Standards

- (a) A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture for use in this state unless:
 - (1) the plumbing fixture meets the water saving performance standards provided by Subsection (b); and
 - (2) the plumbing fixture is listed by the commission under Subsection (c).
- (b) The water saving performance standards for a plumbing fixture are the following standards:
 - (1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch;
 - (2) for a shower head, maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch;
 - (3) for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:
 - (A) maximum flow may not exceed an average of one gallon of water per flush; and
 - (B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;"
 - (4) except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:
 - (A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and
 - (B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
 - (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" or
 - (ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals;"
 - (5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:
 - (A) maximum flow may not exceed an average of 1.6 gallons of water per flush; and

- (B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
- (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and
 - (ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device;"
- (6) except as provided by Subsection (h), for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014:
- (A) the toilet must be a dual flush water closet that meets the following standards:
- (i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and
 - (ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
 - (a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and
 - (b) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device;" or
- (B) the toilet must be a single flush water closet that meets the following standards:
- (i) the average flush volume may not exceed 1.28 gallons; and
 - (ii) the toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and
- (7) a drinking water fountain must be self-closing.
- (c) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by Subsection (b). To have a plumbing fixture included on the list, a manufacturer must supply to the commission, in the form prescribed by the commission:
- (1) the identification and the performance specifications of the plumbing fixture; and
 - (2) certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing fixture meets the water saving performance standards established by Subsection (b).
- (d), (e) Repealed by Acts 2009, 81st Leg., ch. 1316, § 6.
- (f) This section does not apply to:
- (1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;
 - (2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards provided by this section;
 - (3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;
 - (4) a fixture imported only for use at the importer's domicile;
 - (5) a nonwater-supplied urinal; or
 - (6) a plumbing fixture that has been certified by the United States Environmental Protection Agency under the WaterSense Program.
- (g) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty commercial applications.
- (h) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5) if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:
- (1) is mounted on the wall and discharges to the drainage system through the floor;
 - (2) is located in a correctional facility, as defined by Section 1.07, Penal Code;
 - (3) is used in a bariatric application;
 - (4) is used by children at a day-care facility; or
 - (5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

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