

RESIDENTIAL EVICTIONS AND LOCKOUTS

R. DAVID FRITSCHÉ
Law Offices of R. David Fritsche
921 Proton Road
San Antonio, Texas 78258
(210) 227-2726

State Bar of Texas
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CHAPTER 17

RESIDENTIAL EVICTIONS AND LOCKOUTS

RESUME OF SPEAKER

R. DAVID FRITSCH

921 Proton Road
San Antonio, Texas 78258
(210) 227-2726
Facsimile (210) 227-5550

BIOGRAPHICAL INFORMATION:

R. David Fritsche graduated from the University of Texas with a B.A. in Government in 1980. Mr. Fritsche graduated from Oklahoma City University School of Law and was sworn in to the State Bar of Texas on November 9, 1986. He is licensed in the United States District Court for the Western, Southern, Eastern and Northern Districts of Texas, the State of New Mexico and the District of Columbia. Mr. Fritsche was first associated with a business and commercial litigation firm in El Paso, Texas, and has practiced since February 1988 in San Antonio, Texas, with a concentration in real estate, landlord/tenant and commercial litigation and creditors' rights representation. Mr. Fritsche has a significant real property landlord/tenant law practice and he lectures regularly on Texas landlord/tenant issues, the Landlord/Tenant provisions of the Texas Property Code, the Fair Housing Act, the Service Members Civil Relief Act and the Americans with Disabilities Act. Mr. Fritsche served four terms on the Board of Directors of the Texas Apartment Association. He was appointed by the Texas Supreme Court to the Rules Task Force that drafted the E-filing Rules for Justice Court and is currently serving on the Texas Supreme Court Task Force re-drafting the Texas Rules of Civil Procedure for Ancillary Proceedings.

The firm's trial experience includes successful representation of parties in jury trials under the Federal Fair Housing Act, the Texas Deceptive Trades Practices-Consumer Protection Act and the successful prosecution of constitutional claims on behalf of a secured lender through the Texas Supreme Court's denial of writ in *General Electric Capital Corporation vs. County of Burleson*, 831 S.W.2d 54 (Tex. App. - Houston [14th Dist.] writ den. 1992). Mr. Fritsche's prosecution of forcible detainer and forcible entry and detainer actions include both non-jury and jury trial appearances and successful appeals to County Courts at Law, the Courts of Appeal, *de la Garza v. Riverstone Apartments*, No. 04-06-00732-CV, 2007 LEXIS 8799 (Tex. App. - San Antonio November 7, 2007), *Tipton v. Ramirez*, No. 04-07-00231-CV, 2007 LEXIS 9228 (Tex. App. - San Antonio November 28, 2007) and the Texas Supreme Court, *Marshall v. Housing Authority of the City of San Antonio*, 198 S.W. 3rd 782 (Tex. 2006), as well as successful appellate counsel before the Texas Supreme Court in *Churchill Forge Inc. v. Brown*, 61 S.W. 3rd 368 (Tex. 2001) regarding the Texas Habitability Statute. The firm's practice also includes the defense of Fair Housing Act Claims before the Texas Workforce Commission and the U.S. Department of housing and Urban Development.

DISCLAIMER

This article is not intended to be relied upon as dispositive in the resolution of legal questions regarding Residential Evictions and Lockouts. The information presented herein is intended to identify issues regarding these matters and at the time of submission, certain references herein remain subject to revisions or modifications in the 81st Regular Session of the Texas Legislature.

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RESIDENTIAL EVICTIONS AND LOCKOUTS

I. GENERAL OVERVIEW.

A. Suit for Possession.

The forcible entry and detainer proceeding is a summary, speedy, and inexpensive remedy for the determination of who is entitled to possession of the premises (emphasis added). *McGlothlin v. Kliebert*, 672 S.W. 2nd 231, 232-233 (Tex. 1984); *Scott v. Hewitt*, 90 S.W. 2nd 816, 818 (Tex. 1936).

B. Remedy is Cumulative.

The forcible entry and detainer action is not exclusive, but cumulative, of any other remedy that a party may have in the courts of this state. *McGlothlin*, 672 S.W. 2nd at 233; *Scott*, 90 S.W. 2nd at 819. An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits. TEX. PROP. CODE § 24.008.

C. The Right to Possession.

For the purposes of considering suits for possession, the right to possession of real property occurs in the following scenarios:

1. **Fee Simple.** The owner holds title in fee simple;
2. **Foreclosure.** The owner holds title pursuant to a Trustee's Deed;
3. **Contracts for Deed.** After default by purchaser under a contract for deed; and,
4. **Landlord/Tenant Relationships.** Landlord/tenant relationships giving rise to a party's right to possession are defined by the particular tenancy:
 - a. **Specific Term.** Lease has a primary term with specific ending date and no reversion to a periodic tenancy. Example: Primary term is from January 1, 2009, to June 30, 2009; the tenancy and right to possession ends as a matter of law at midnight, June 30, 2009;
 - b. **Specific Term With Reversion.** Primary term ends but reverts to a periodic tenancy. Example: Primary term is from January 1, 2009, to June 30, 2009, and lease provision provides that the lease continues month to month thereafter until either party delivers written 30 day notice of termination prior to the end of the renewal period. The tenancy ends as a matter of law only after proper advance written notice is delivered by one of the parties;

- c. **Tenancy at Will.** A tenant at will is one who holds possession of premises by permission of an owner, but without a fixed term. *Fandey v. Lee*, 880 S.W. 2nd 164, 169 (Tex. App. – El Paso 1994, writ denied) (op. on reh'g). Example: An on-site employee is provided an apartment as part of their compensation package but the employee's right to possession of the apartment is expressly contingent on their continued employment;
- d. **Tenancy at Sufferance.** A tenant at sufferance is one who wrongfully continues in naked possession of property after his right to possession has ceased. *ICM Mortgage Corporation vs. Jacob*, 902 S.W. 2nd 527, 530 (Tex. App. – El Paso 1994, writ denied); *Goggin v. Leo*, 849 S.W. 2nd 373, 377 (Tex. App. – Houston [14th Dist.] 1993, no writ); but see also, *Bockelmann v. Marynick*, 788 S.W. 2nd 569, 571 (Tex. 1990) (holding that tenant who remains in possession of premises after lease termination occupies "wrongfully" and is tenant at sufferance). Example: Former owner remaining in possession after foreclosure; and,
- e. **Holdover.** A new tenancy commencing when tenant fails to vacate:
 - i. At the end of a specific term; or,
 - ii. After expiration of timely notice of termination delivered by either party prior to the end of the current lease term or renewal period.

Under the common law holdover rule, a landlord may elect to treat a tenant holding over as either a trespasser or as a tenant holding over under the terms of the original lease. *Bockelmann*, 788 S.W. 2nd at 571; *Howeth v. Anderson*, 25 Tex. 557, 572 (Tex. 1860). Most standardized leases will include express holdover provisions; e.g., "rent is payable daily pro rated over one month at 150% of the monthly rent."

D. Forcible Entry and Detainer vs. Forcible Detainer

Understanding the distinction between the causes of action for Forcible Entry and Detainer and Forcible Detainer is critical for the determination of the type and manner of the delivery of the Notice to Vacate that is required under TEX. PROP. CODE § 24.005 prior to filing suit. The two causes of action for possession are:

1. Forcible Entry and Detainer.

Party in possession never had a contractual or common law right of possession. Specifically, a person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand. TEX. PROP. CODE § 24.001(a). Forcible entry is statutorily defined as:

- (1) An entry without the consent of the person in actual possession of the property;
- (2) An entry without the consent of a tenant at will or sufferance; or
- (3) An entry without the consent of a person who acquired possession by forcible entry.

TEX. PROP. CODE § 24.001(b); and,

2. Forcible Detainer.

A forcible detainer occurs when the party in possession originally had a contractual or common law right of possession and loses the right to possession. By statute, a person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

- (1) Is a tenant or a subtenant willfully and without force holding over after the termination of the tenant's right of possession;
- (2) Is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or
- (3) Is a tenant of a person who acquired possession by forcible entry.

TEX. PROP. CODE § 24.002(a).

II. THE NOTICE TO VACATE.

A. Overview.

The Notice to Vacate is the statutory predicate to the filing of either an action for forcible detainer or an action for forcible entry and detainer. TEX. PROP. CODE § 24.005. It must be in writing (with one

exception), delivered to the premises and include a specific time deadline for delivery of possession.

B. Form.

With one exception, all notices to vacate must be in writing. Appendices I and II hereto are form Notices to Vacate for Non-Payment of Rent and for a Non-Rent Breach of Lease. Oral Notices to Vacate may only be delivered to an occupant who obtained possession by forcible entry under TEX. PROP. CODE § 24.001. TEX. PROP. CODE § 24.005(d).

C. Content.

Each Notice to Vacate must include a demand for possession of the premises¹. The content is critical as the bases articulated in the Notice to Vacate must correspond to the proof at trial. *Jessie v. Jerusalem Apartments*, 2006 Tex. App. LEXIS 9142 (Tex. App. – Tyler Oct. 25, 2006, no pet.); *Nealy v. Southlawn Palms Apartments*, 196 S.W. 3rd 386 (Tex. App. – Houston [1st Dist.] 2006, no pet.) (notice to vacate merely stated “[o]wner desires possession” and “undesirable tenant behavior”). In the context of federally subsidized housing, federal regulations and due process require the Notice to Vacate to adequately detail the grounds for termination. *Moon v. Spring Creek Apartments*, 11 S.W. 3rd 427, 433 - 435 (Tex. App. – Texarkana 2000, no pet.) (holding that at trial the court must determine whether the due process goals for notice have been sufficiently satisfied: (1) adequate notice is provided so as to enable the tenant to prepare a defense, (2) the tenant is allowed to be represented by counsel, (3) the tenant is given an opportunity to present evidence, cross-examine witnesses, and present a defense, and (4) the decision is rendered on the merits).

The content of the Notice to Vacate will be based on one of the following scenarios:

1. Breaches of Lease for Non-Payment of Rent.

The Notice to Vacate may be either conditional or unconditional.

- a. **Unconditional.** The most common Notice to Vacate includes an unequivocal demand for possession for the failure to timely pay all or a portion of the rent. See Notice to Vacate for Non-Payment of Rent, Appendix I.

¹ Note that the language in the statute for notices to vacate issued for non-payment of sums due under a lease regarding lots in manufactured home parks refers to the landlord's right to “terminate the lease agreement.” TEX. PROP. CODE § 94.206.

- b. **Conditional.** The Notice to Vacate may be a demand for possession subject to the payment of rent by a specified time. **Caveat:** If a landlord includes a demand for the payment of delinquent rent as an alternative to the tenant vacating the premises by the date and time stated in the notice, TEX. PROP. CODE § 24.005(i) requires the landlord to have delivered to the tenant a *prior* written notice or reminder that the rent is due and unpaid².

*Practice Pointer*³: In the situation where the landlord has regularly accepted late or partial payments of rent and prior to delivering a Notice to Vacate for Non-Payment of rent, consider providing written notice to the tenant prior to the next rental due date that “No further late or partial payments of rent will be accepted and that the payment of rent and all sums due under the lease must be timely made pursuant to the lease” to attempt to cure a waiver of the timely payment provisions of the lease or the assertion of the affirmative defenses of estoppels or waiver.

Practice Pointer: When representing the landlord, never deliver conditional Notices to Vacate, you always have the right to rescind a Notice to Vacate if the tenant pays the rent and fees due. When representing the tenant, determine whether the Notice to Vacate was conditional and if so, determine whether the landlord complied with the additional advance notice requirement.

2. Breaches of Lease for Other Than Non-Payment of Rent.

The Notice to Vacate should include an unequivocal demand for possession delivered for a non-rent violation of the lease; e.g., conduct violation, falsification of facts on application, arrest, unauthorized occupant, unauthorized pet or the like.

Practice Pointer: Some non-standardized leases may contain default provisions providing that that a tenant

default does not occur until after the expiration of a notice period and opportunity to cure. Be certain that a default has in fact occurred.

3. Tenancy at Will.

The Notice to Vacate should include an unequivocal demand for possession.

4. Tenancy at Sufferance.

The Notice to Vacate should include an unequivocal demand for possession.

5. Forcible Entry and Detainer.

The Notice to Vacate should include an unequivocal demand for possession; may be oral, see II.B above.

6. Post-Foreclosure.

The Notice to Vacate should include an unequivocal demand for possession.

7. Default Under Contract for Deed.

The Notice to Vacate should include an unequivocal demand for possession.

D. **Method of Delivery.**

TEX. PROP. CODE § 24.005(f) establishes the method required for delivery of the Notice to Vacate. The method chosen depends on whether the underlying agreement includes the right to recover attorneys’ fees and the desire of the plaintiff to recover attorneys’ fees at time of trial. The consideration for the plaintiff is the additional week of notice required to perfect the right to recover attorneys’ fees at the time of trial when there is no agreement or the agreement is silent as to the recovery of attorneys’ fees.

1. Agreement Allows for Recovery of Attorneys’ Fees, or, No Agreement for Attorneys’ Fees and Plaintiff Does Not Intend to Recover Attorneys’ Fees:

- a. **In Person.** Personal delivery to the tenant or any person residing at the premises who is 16 years of age or older;
- b. **Posting.** Personal delivery to the premises and affixing to the *inside* of the main entry door; if, however, the dwelling *has no mailbox* and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the Notice to Vacate on the inside of the main entry door, the landlord may securely affix the

² Compare TEX. PROP. CODE § 94.206 regarding Manufactured Home Park Tenancies which requires the landlord to include a ten day right for the tenant to cure a rent breach of a lot lease in a manufactured home park prior to the landlord “terminating the lease agreement (emphasis added).”

³ Most “Practice Pointers” herein are “Scars on the Back;” a term most recently attributable to Kevin M. Kerr, Kevin M. Kerr, P.C., Presentation of *Post Lease Checklist: What Do You Do After Your Lease Has Been Signed?*, State Bar of Texas 20th Annual Advanced Real Estate Drafting Course, Houston, March 5, 2009.

notice on the outside of the main entry door; or,

- c. **Mail.** Notice by mail may be by regular mail, by registered mail, or by certified mail to the premises in question.

TEX. PROP. CODE § 24.005(f).

2. If No Agreement For Attorneys' Fees and Plaintiff Seeks Recovery of Attorneys' Fee, Notice Must Be Delivered By Registered or Certified Mail.

Notice by registered or certified mail, return receipt requested, is mandatory to recover attorneys' fees at trial if:

- a. The agreement for possession (lease, deed of trust, contract for deed) does not provide for the recovery of attorneys' fees; or,
- b. The notice is delivered for forcible entry and detainer.

TEX. PROP. CODE § 24.006(a).

E. Notice Periods for Notices to Vacate.

1. Written Leases.

Two time periods are applicable for Notices to Vacate delivered for the breach of a written lease; the time period is determined by whether the lease includes a provision allowing for the recovery of attorneys' fees and whether attorneys' fees are to be requested at trial:

- a. **Written Lease Has Provision for Recovery of Attorneys' Fees.** Three day written notice unless lease or written agreement provides for longer or shorter time period. TEX. PROP. CODE § 24.005(a) and § 24.006(c). A longer or shorter notice period expressly agreed to in the lease is controlling. TEX. PROP. CODE § 24.006(c). For example, the TAA Lease provides for 24 hour notice. Appendix IV TAA Lease, ¶ 32. The TAR Lease provides for one day written notice. Appendix V. TAR Lease, ¶ 27.B(1). Certain HUD Form Leases for subsidized housing require a ten day opportunity for the tenant to discuss the default with the landlord. Relying on TEX. PROP. CODE § 24.005(e), the Texas Court of Appeals has held that the three day notice period required for a Notice to Vacate may not run concurrently with the ten day discussion period required in the HUD lease; the Notice to Vacate must be delivered subsequent to the expiration of the original discussion

period. *Kennedy v. Andover Place Apartments*, 203 S.W. 3rd 495, 498 (Tex. App. – Houston [14th Dist.] no pet.); or,

- b. **Written Lease Without Provision for Recovery of Attorneys' Fees.** If lease does not include language entitling the landlord to recover attorneys' fees and landlord intends to seek attorneys' fees at time of trial, Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

2. Oral Leases.

Two time periods are applicable for Notices to Vacate delivered for the breach of an oral lease; the time period is determined by whether attorneys' fees are to be requested at trial.

- a. **No Intention to Seek Attorneys' Fees.** Three day written notice. TEX. PROP. CODE § 24.005(a); or,
- b. **Landlord Intends to Seek Attorneys' Fees at Trial.** If landlord intends to seek attorneys' fees at time of trial, Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

3. Tenancies at Will.

Two time periods are applicable for Notices to Vacate delivered to terminate a tenancy at will; the time period is determined by whether attorneys' fees are to be requested at trial.

- a. **Lease or Agreement Has Provision for Recovery of Attorneys' Fees.** Three day written notice unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. TEX. PROP. CODE § 24.005(b).
- b. **Landlord Intends to Seek Attorneys' Fees at Trial.** If lease or agreement does not include language allowing for the recovery of attorneys' fees and landlord intends to seek the recovery of attorneys' fees at time of trial, Notice to Vacate must state that if the tenant does not vacate the premises

before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

4. Tenancies at Sufferance.

a. Former Owner in Possession after Foreclosure.

i. **No Intention to Seek Attorneys' Fees.**

Three day written notice unless the parties have contracted for a shorter or longer notice period in a written agreement. TEX. PROP. CODE § 24.005(b);

ii. **Owner Intends to Seek Attorneys' Fees at Trial.**

If purchaser at foreclosure sale intends to seek attorneys' fees at time of trial, Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

b. Tenant of Former Owner in Possession after Tax or Trustee's Foreclosure Sale.

i. **No Intention to Seek Attorneys' Fees.**

Thirty day written notice to residential tenant if the purchaser chooses not to continue the lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure. TEX. PROP. CODE § 24.005(b). The tenant is considered to timely pay the rent if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Id.

ii. **Owner Intends to Seek Attorneys' Fees at Time of Trial.**

Thirty day written notice to residential tenant if the purchaser chooses not to continue the lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure. TEX. PROP. CODE §

24.005(b). The tenant is considered to timely pay the rent if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. The Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

5. Holdover.

Prior to issuance of a Notice to Vacate pursuant to one of the following time periods, if tenant is holding over beyond the rental term or renewal period, the landlord must also comply with the tenancy termination requirements of TEX. PROP. CODE § 91.001⁴:

⁴ TEX. PROP. CODE § 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES.

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

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

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

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

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

- a. **No Intention to Seek Attorneys' Fees.** Three day written notice unless lease or written agreement provides for longer or shorter time period. TEX. PROP. CODE § 24.005(a).
- b. **Owner Intends to Seek Attorneys' Fees at Time of Trial.** If lease does not include language entitling the landlord to recover attorneys' fees and landlord intends to seek attorneys' fees at time of trial, the Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the landlord may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

6. Forcible Entry.

- a. **No Intention to Seek Attorneys' Fees.** Oral or written Notice to Vacate may demand that the party in possession vacate either immediately or by a specified deadline. TEX. PROP. CODE § 24.005(d).
- b. **Owner Intends to Seek Attorneys' Fees at Time of Trial.** If owner intends to seek attorneys' fees at time of trial, the Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the owner may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

7. Tenant of a Person Who Acquired Possession by Forcible Entry.

- a. **No Intention to Seek Attorneys' Fees.** Three day written notice. TEX. PROP. CODE § 24.005(c).

- (d) If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.
- (e) Subsections (a), (b), (c), and (d) do not apply if:

- (1) a landlord and tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or
- (2) there is a breach of contract recognized by law.

- b. **Plaintiff Intends to Seek Attorneys' Fees at Time of Trial.** If plaintiff intends to seek attorneys' fees at time of trial, the Notice to Vacate must state that if the tenant does not vacate the premises before the 11th day after receipt of the notice, the plaintiff may recover attorneys' fees. The demand must be sent by registered mail or certified mail, return receipt requested, at least 10 days before the date suit is filed. TEX. PROP. CODE § 24.006(a).

Practice Pointer: Make certain that the Notice to Vacate terminates solely the right to possession; avoid Notices to Vacate that terminate the lease.

III. TRIAL PROCEDURE.

A. In General.

A modifiable draft complaint for forcible detainer is included as Appendix III.

B. Jurisdiction.

The Justice Court⁵ in the precinct in which the real property is located has exclusive original jurisdiction for eviction suits. TEX. GOV'T CODE § 27.031(a)(2); TEX. PROP. CODE § 24.004. Concurrent jurisdiction is vested in the statutory Probate Courts for matters against or incident to an Estate. TEX. PROB. CODE § 5A(b). "An insufficient description [of the property] in the complaint in forcible entry and detainer is not such a defect as to deprive the court of jurisdiction. The complaint can be amended in the Justice of the Peace Court." *Family Investment Co. of Houston v. Paley*, 356 S.W. 353, 355-356 (Tex. Civ. App. – Houston [1st Dist.] 1962, writ dismissed).

With the exception of the limited concurrent jurisdiction of TEX. PROB. CODE § 5A(b), it is well settled in Texas that Justice Courts have exclusive jurisdiction over suits for possession, *McGlothlin*, 672 S.W. 2nd at 232-233, unless the determination of title is required to determine the issue of possession, *Rice v. Pinney*, 51 S.W. 3rd 705 (Tex. App. – Dallas 2001, no pet.), and the merits of title shall not be adjudicated. TEX. R. CIV. P. 746,

1. Allegation of Title Issue Does Not Divest the Justice Court of Jurisdiction in Suit For Possession:

- a. **Defaults Under Deeds of Trust.** Defaults leading to foreclosure under deeds of trust

⁵Note that forcible detainer and forcible detainer petitions are brought in Justice Court, one of the two Courts in which a Justice of the Peace sits – the other being Small Claims Court. TEX. GOV'T. CODE § 28.001, *et seq.*

having language to the effect that if the property is sold under deed of trust, prior owner becomes a tenant at sufferance or tenant at will. *Dormandy v. Dinero Land & Cattle Co., L.L.C.*, 61 S.W. 3rd 555 (Tex. App. – San Antonio 2001, pet. dismissed w.o.j.) (deed of trust provision stated: “If any of the property is sold under this deed of trust, [prior owner] shall immediately surrender possession to the purchaser. If [prior owner] fails to do so, [prior owner] shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer”).

- b. **Pending Wrongful Foreclosure Proceeding.** When wrongful foreclosure proceeding is pending in district court after non-judicial foreclosure sale after default under a deed of trust. *Rice*, 51 S.W. 3rd at 713 (holding that when deed of trust had tenant at sufferance reversion language, a justice or county court is not deprived of jurisdiction by the existence of a title dispute, but is deprived of jurisdiction only if “the right to immediate possession necessarily requires the resolution of a title dispute”).
- c. **Default Under Contracts for Deed With Proper Default Language.** For defaults under contracts for deed which include language to the effect that after default, purchaser becomes a tenant at sufferance or tenant at will. *Martinez v. Daccarett*, 865 S.W. 2nd 161, 163 (Tex. App. – Corpus Christi 1993, no pet.).

2. Allegation of Title Issue Divests the Justice Court of Jurisdiction in Suit For Possession:

- a. **Defaults Under Contracts for Deed Without Proper Default Language.** For defaults under contracts for deed which do not include language to the effect that “after default, purchaser becomes a tenant at will or tenant at sufferance.” *Ward v. Malone*, 115 S.W. 3rd 267 (Tex. App. – Corpus Christi 2003, pet. denied); *Aguilar v. Weber*, 72 S.W. 3rd 729 (Tex. App. – Waco 2002, no pet.).
- b. **Marital Life Estate Determination Necessary.** When necessary to determine the existence of a marital life estate in the real property at issue. *Fernandez v. Mendoza*, 2005 Tex. App. LEXIS 392 (Tex. App. – Dallas 2005, pet. denied).

Practice Pointer: If a temporary restraining order issues to enjoin a suit for possession and resolution of a title dispute is not necessary to determine the issue of possession, consider immediately moving the court for dissolution of the temporary restraining order under TEX. R. CIV. P. 680. Compare, *Breceda v. Whi*, 187 S.W. 3rd 148 (Tex. App. – El Paso 2005, no pet.) (injunction issued to prevent landlord from disturbing quiet enjoyment of the tenant but expressly carving out from the effect of the injunction the right of landlord to prosecute a forcible detainer action was proper).

C. Venue.

Mandatory venue is in the justice precinct in which all or part of the premises is located. TEX. CIV. PRAC. & REM. CODE § 15.084.

D. Sworn Complaint.

The complaint must be verified. TEX. R. CIV. P. 739. The complaint must describe the lands, tenements or premises, the possession of which is claimed, with sufficient clarity to identify same, and it shall also state the facts which entitled the complainant to possession and authorize the action under TEX. PROP. CODE §§ 24.001-24.004. TEX. R. CIV. P. 741. The complaint must list all home and work addresses of the defendant known to the plaintiff and should state that plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located to support a judgment based upon substituted service. TEX. R. CIV. P. 742a. Since TEX. R. CIV. P. 742a contemplates a defendant having more than one home address, it is reasonable to require a plaintiff relying on TEX. R. CIV. P. 742a to obtain service of citation to disclose that it knows that a defendant is currently living somewhere other than on the leased premises before obtaining a judgment based on constructive service by delivery to the leased premises. *Thomas v. Olympus/Nelson Property Management*, 148 S.W. 3rd 395, 400 (Tex. App. – Houston [14th Dist.] 2004, no pet.) (holding that service under TEX. R. CIV. P. 742a would not support a default judgment when the sworn complaint failed to list tenant’s Waco VA hospital address where he was receiving inpatient treatment for PTSD).

Appendix III contains a modifiable suit for possession for the following scenarios:

1. Rent Breach Forcible Detainer;
2. Non-Rent Breach Forcible Detainer;
3. Foreclosure Forcible Detainer – Prior Owner in Possession;
4. Foreclosure Forcible Detainer – Tenant of Prior Owner in Possession;
5. Forcible Entry and Detainer.

Additional bases for a suit for possession are found in the statute describing acts of the landlord which do not constitute retaliation:

An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

- (1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;
- (2) the tenant, or a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;
- (3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;
- (4) the tenant holds over after giving notice of termination or intent to vacate;
- (5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action [for retaliation] until after the landlord gives notice of termination; or
- (6) the tenant 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 or a guest or invitee of the tenant might:
 - (A) adversely affect the quiet enjoyment by other tenants or neighbors;
 - (B) materially affect the health or safety of the landlord, other tenants, or neighbors; or
 - (C) damage the property of the landlord, other tenants or neighbors.

TEX. PROP. CODE § 92.332.

E. May Join a Suit for Rent.

A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the Justice Court, TEX. R. CIV. P. 738, and must be brought in the county and precinct in which all or part of the property is located.

TEX. CIV. PRAC. & REM. CODE § 15.091. Late fees, NSF fees and other amounts due under the lease may not be included in the suit for possession.

Practice Pointer: Some leases include provisions that all payments received may be applied first to non-rent monetary obligations and then to rent. See TAA Lease, ¶ 34; TAR Lease, ¶ 8. When representing the landlord, determine if the landlord's accounting practices and the lease allow the "carry" of a rent obligation. When representing the tenant, review the provisions of the lease and petition to determine if the landlord is entitled to the amounts requested.

Practice Pointer: When representing the landlord, the prayer in your petition should always request all rent due as of the date of judgment.

Practice Pointer: A lease provision providing that the full month's rent is due and owing on the first of the month should not be prorated through the day of trial unless a written lease provides otherwise. When you are representing the landlord and a court attempts to pro rate the rent to the date of the hearing, you should vigorously argue that:

1. A judgment for possession will not become final for five days and is subject to appeal for trial *de novo*;
2. If a writ of possession must issue and be served for the plaintiff to obtain possession, it could take up to three additional weeks during which the tenant will maintain possession; and,
3. Your client has a contractual right to the full month of rent as of the rental due date under the lease.

Practice Pointer: If rent through the date of judgment would exceed the maximum jurisdictional limits of the Justice Court (currently \$10,000.00), best practice is to plead an express reservation of the right to seek rents due in a court of competent jurisdiction. See allegation in Appendix III.

F. Who May File?

1. Rent Breach.

The owner or any agent of owner or landlord. TEX. R. CIV. P. 747a; TEX. PROP. CODE § 24.011.

2. Holdover.

The owner or any agent of owner or landlord. TEX. R. CIV. P. 747a; TEX. PROP. CODE § 24.011.

3. Any Suit Resulting in a Default Judgment.

The owner or any agent of owner or landlord. TEX. PROP. CODE § 24.011.

4. Corporate Plaintiff.

Any agent of a corporation that is the owner or landlord. TEX. GOV'T CODE § 27.031(c).

Practice Pointer: Anyone can file a suit for possession; if the basis of the suit is a non-rent breach of lease or the Plaintiff is not a corporation, the court should require counsel to represent Plaintiff if the Defendant appears at trial. See III.J. Continuance, below. If this occurs, most Justices of the Peace will allow an oral request for a continuance.

G. **Bond for Possession.**

In exigent circumstances, the party filing the suit for possession may file a bond for possession. TEX. R. CIV. P. 740. The sole benefit to a plaintiff filing a bond for possession is the right to the issuance of a writ of possession on the date of trial but only if the defendant fails to appear and a judgment for possession is thereafter granted by default. TEX. PROP. CODE § 24.0061(b).

1. Time for Filing.

At any time prior to final judgment in a forcible detainer action. TEX. R. CIV. P. 740.

2. Contents of Bond.

An unconditional promise that the plaintiff will pay defendant all costs and damages as shall be adjudged against Plaintiff. TEX. R. CIV. P. 740.

3. Amount.

The Justice Court's determination of the probable amount of costs of suit and damages which may result to defendant in the event that the forcible detainer action was improperly instituted. TEX. R. CIV. P. 740.

4. Service of Bond for Possession.

In the same manner as citation and shall provide notice to defendant of the rules and procedures of TEX. R. CIV. P. 740.

5. Defendant's Response.

a. May File Counterbond.

- i. **Contents of Counterbond.** Un-conditional promise that the defendant will pay plaintiff in the event possession has been improperly withheld by defendant. TEX. R. CIV. P. 740(a).
- ii. **Amount.** The Justice Court's determination of the probable amount of costs of suit and damages which may result to plaintiff in the event possession has been improperly withheld. TEX. R. CIV. P. 740(a). On appeal, the plaintiff will not be allowed to

recover from the sureties on the counterbond any amount in excess of the face amount of the bond. *Locke v. Beal*, 257 S.W. 302 (Tex. Civ. App. – Galveston 1923, no writ).

b. Demand for Trial.

- i. **Defendant Entitled to Trial.** Defendant shall be granted a trial if defendant makes demand. TEX. R. CIV. P. 740(b);
- ii. **Time for Trial.** If demand for trial is made within six days from the date of service of the bond for possession on the defendant, a trial shall occur prior to the expiration of the sixth day after service of the bond. TEX. R. CIV. P. 740(b).

6. Immediate Possession Only After Defendant's Default.

The court may only grant immediate possession after a bond for possession is filed and timely served after the Defendant fails to appear for trial and a default judgment for possession issues. TEX. PROP. CODE § 24.0061(b).

Practice Pointer: A writ of possession served on a defendant pursuant to the issuance of a bond for possession does not appear to extinguish the right of the tenant to appeal.

H. **Citation.**

After filing of the sworn complaint, the Justice of the Peace is required to immediately issue citation directed to the defendant or defendants commanding the defendant to appear before the Justice of the Peace at a time and place named in the citation, such time being not more than ten days nor less than six days from the date of service of the citation. TEX. R. CIV. P. 739.

1. Personal Service.

The constable serves the defendant personally or "by leaving a copy thereof with some person over the age of sixteen years, at [defendant's] usual place of abode." TEX. R. CIV. P. 742.

2. Substituted Service.

TEX. R. CIV. P. 742a allows the issuance of a default judgment for possession and rent based upon substituted service when the constable attempts personal service at least two times at each home address of the defendant in the county listed in the complaint and then, after obtaining authorization from the Justice of the Peace, delivers citation to the inside of the premises at issue by placing through a mail chute or under the door and if neither of those

methods is successful, securely affixing the citation to the front door, plus, on the date of substituted service, mailing a copy of the citation with the complaint to the Defendant's address. TEX. R. CIV. P. 742a. TEX. PROP. CODE § 24.0051(a).

Since TEX. R. CIV. P. 742a contemplates a defendant having more than one home address, it is reasonable to require a plaintiff relying on TEX. R. CIV. P. 742a to disclose that it knows that a defendant is currently living somewhere other than on the leased premises before obtaining a judgment based on constructive service by delivery to the leased premises. *Thomas*, 148 S.W. 3rd 395, 400 (holding that service under TEX. R. CIV. P. 742a would not support a default judgment when the sworn complaint failed to list tenant's address Waco VA hospital address where he was receiving inpatient treatment for PTSD).

I. Defendant's Pleadings.

The Defendant should always file a written answer, including a general denial, as TEX. R. CIV. P. 574a provides, in part, that "[e]ither party may plead any new matter [if the case is appealed to county court for trial *de novo*] which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff [on appeal], nor shall any set-off or counterclaim be set up by the defendant [on appeal] which was not pleaded in the court below." Additionally, all rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided for by law or [the Texas Rules of Civil Procedure]. TEX. R. CIV. P. 523. "A party proceeding *pro se* must follow all procedural rules and is held to the same standards as a licensed attorney," *Weaver v. E-Z Mart Stores, Inc.*, 942 S.W. 2nd 167, 169 (Tex. App. – Texarkana 1997, no pet.), including a *pro se* party in a suit for possession. *Moore v. Sieber*, 2006 Tex. App. LEXIS 9829 (Tex. App. – Texarkana Nov. 14, 2006, no pet.).

Additional defensive pleadings include:

1. Pleas to the Jurisdiction.

Although a plea to the jurisdiction can be raised for the first time on appeal, *Waco I.S.D. v. Gibson*, 22 S.W. 3rd 849, 850 (Tex. 2000), the best practice is to raise the issue in the trial court. Two of the most common pleas to the jurisdiction in response to a suit for possession are:

- a. **Title Dispute.** An appropriate claim that the determination of title is necessary for resolution of the right to possession. See III.B.2 above.
- b. **Property Not in Precinct.** A claim that the premises in question are not in the justice

precinct in which the case is filed. TEX. GOV'T CODE § 27.031(a)(2); TEX. PROP. CODE § 24.004. See III.B above.

2. Motion to Transfer Venue.

A motion to transfer venue must be filed prior to or concurrently with any pleading or it is waived. TEX. R. CIV. P. 86(1). The primary basis to move for a change of venue is if all or part of the premises at issue is not in the justice court precinct in which the suit for possession was filed. TEX. CIV. PRAC. & REM. CODE § 15.084.

3. Motion to Abate.

A motion to abate is used to prevent the Plaintiff's case from going forward on the pleadings until the Plaintiff corrects the defect. *Martin v. Dosohs, 1, Ltd.*, 2 S.W. 3rd 350, 354 (Tex. App. – San Antonio 1999, pet. denied). It must be verified. *Sparks v. Bolton*, 335 S.W. 2nd 780, 785 (Tex. Civ. App. – Dallas 1960, no writ).

The two most common bases for abatement are:

- a. **No Assumed Name Certificate.** If the Plaintiff has no, or an incorrect, assumed name certificate on file, it cannot prosecute an action in the courts of Texas. TEX. BUS. & COM. CODE § 36.25; *Sixth RMA Partners v. Sibley*, 111 S.W. 3rd 46, 55 (Tex. 2003).
- b. **Servicemembers Civil Relief Act.** At any time after the filing of the suit for possession, the Court, the service-member or someone on behalf of the servicemember, for premises:

1. Occupied or intended to be occupied primarily as a residence; and,
2. For which the monthly rent does not exceed \$2,400.00;

may move the court for a stay of the proceedings on the grounds that the servicemember's ability to pay the rent is materially affected by military service. On such application, the Court must stay the proceedings for a period of 90 days, unless, in the opinion of the Court, justice and equity require a longer or shorter period of time, or, adjust the obligation under the lease to preserve the interests of all parties. 50 U.S.C.S. Appx. §531(b)(1)(a).

4. Death of Defendant.

A suggestion of death should be filed. Thereafter, the clerk is to issue a *scire facias* to the

representative of the estate to appear and defend. TEX. R. CIV. P. 152.

5. Bankruptcy of Defendant.

A suggestion of bankruptcy should be filed.

6. Jury Demand.

Request must be made on or before five days from the date defendant was served with citation and Defendant must pay a jury fee of \$5.00. TEX. R. CIV. P. 744.

7. Special Exceptions.

The Defendant, even if he or she is *pro se*, must specially except to defects in the Plaintiff's pleading or the defects are waived. TEX. R. CIV. P. 90; *Moore v. Sieber*, 2006 Tex. App. – LEXIS 9829 (Tex. App. – Texarkana 2006, no pet.).

8. Special Denials.

The Defendant should file verified denials if there is a misnomer, the plaintiff has not legal capacity to sue, the plaintiff not entitled to recover in the capacity in which plaintiff sue, there is a defect of parties, or any other ground under TEX. R. CIV. P. 93.

9. Affirmative Defenses.

The Defendant should affirmatively plead all affirmative and avoidance defenses it may have or the Court, on objection, should disallow the Defendant from introducing evidence on the defense. TEX. R. CIV. P. 94. The most common affirmative defenses to a suit for possession are:

- a. Payment, including an account stating distinctly the nature of the payments and the payments made. TEX. R. CIV. P. 95;
- b. Release;
- c. Estoppel;
- d. Waiver. Where Appellant housing authority entered into new lease two days after it perfected appeal by filing an appeal bond, housing authority waived right to sue for possession. *Joseph v. Beaumont Housing Authority*, 99 S.W. 3rd 765 (Tex. App. – Beaumont 2003, no pet.) ;
- e. Retaliation. TEX. PROP. CODE § 92.335;
- f. Failure of Condition Precedent; e.g., the failure to deliver the prior notification when Plaintiff utilizes a conditional Notice to Vacate with a right to cure by payment. TEX. PROP. CODE § 24.005(i); see II.C.1.c above;
- g. Fair Housing Act violation.

10. Recusal.

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification. TEX. R. CIV. P. 528.

J. Continuance.

A continuance of the trial of not more than six days may be granted to either party for good cause shown on affidavit. TEX. R. CIV. P. 745.

K. Trial.

1. Issues.

The only issues at trial are:

- a. **Possession.** The right to actual possession. TEX. R. CIV. P. 746;
- b. **Rent.** The amount of rent due the plaintiff provided that it is properly pleaded. TEX. R. CIV. P. 738;
- c. **Attorneys' Fees.** The attorneys' fees incurred by plaintiff. TEX. PROP. CODE § 24.006(b); and,
- d. **Court Costs.** Court costs awarded to the prevailing party. TEX. R. CIV. P. 748.

Practice Pointer: If the Defendant has timely demanded a jury and paid the jury fee, it is arguable that since TEX. R. CIV. P. 746 provides that the sole issue at trial is the right to actual possession, the issues of rent, attorneys' fees and court costs should be tried solely to the Court.

2. Proof.

The Plaintiff must prove facts corresponding to the bases stated in the Notice to Vacate delivered to the Defendant. *Nealy*, 196 S.W. 3rd at 395 (where notice to vacate listed "owner desires possession" and "un-desirable tenant behavior" as grounds, proof that Defendant loitered on the premises, that police responded to two assault incidents at Defendant's unit, that Defendant rode a four-wheeler in pedestrian area of the apartments and that there were two police reports that Defendant "moonied" other tenants and maintenance personnel did not fit into the grounds stated in the Notice to Vacate and Defendant properly objected); the failure to object to the introduction of facts outside the provisions of the notice to vacate results in trial by consent in a suit for possession. *Torres v. Corpus Christi Housing Authority*, 2006 Tex. App. LEXIS 6872 (Tex. App. – Corpus Christi Aug. 3, 2006, no pet.) (mem. op.).

L. Selected Issues at Trial.**1. No Innocent Tenant Defense in Publicly Subsidized Housing.**

A public housing agency may, in its discretion, evict tenant for drug-related activity whether or not tenant knew, or should have known, about the activity as there is no exception in 42 U.S.C. 1437d(l)(6) for innocent tenants. *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L.Ed. 258 (2002).

2. Lease/Purchase Contracts.

After a tenant exercises an option to purchase in a “Lease/Purchase Contract,” Property Code Chapter 92 no longer applies to the lease and the contract is then treated as an executory contract under TEX. PROP. CODE § 5.061, *et seq.* TEX. PROP. CODE § 5.0621(b).

3. Forty-nine Day Period Between Notice to Vacate After Foreclosure and Filing of a Suit for Possession Not Unreasonable.

After foreclosure sale, forty-nine day period between the Notice to Vacate and the filing of the suit for possession is not unreasonable where there is no testimony there was a lease between the parties and rent was paid. *Potter v. Mullen*, 2005 Tex. App. LEXIS 4304 (Tex. App. – Dallas 2005, pet. dismissed w.o.j.).

4. Interpreters.

By failing to object to proceeding without an interpreter, party waives right to challenge issue on appeal. *Martinez v. Cherry Avenue Mobile Home Park*, 134 S.W. 3rd 246 (Tex. App. – Amarillo 2003, no pet.).

5. Proof in Foreclosure Suits for Possession.

Certified copies of Trustee’s Deed, Deed of Trust establishing a landlord tenant relationship after foreclosure and written Notice to Vacate establish the right to possession as a matter of law. *Mortgage Electronic Registration Systems v. Knight*, 2006 LEXIS 1708 (Tex. App. – Beaumont 2005, no pet.).

M. Judgment.

If the judgment or verdict is in favor of the Plaintiff, the Justice Court shall give judgment for the Plaintiff for possession, costs and damages and award a writ of possession. If the judgment or verdict be in favor of the Defendant, the Justice of the Peace shall give judgment for the Defendant against the Plaintiff for costs and any damages. TEX. R. CIV. P. 748. A form judgment is included as Appendix VI.

1. Findings Required in Non-Payment of Rent Cases Involving Residential Property.

Each judgment in a nonpayment of rent case involving residential property must include a finding of:

- a. The amount of rent due by the tenant for each rental pay period during an appeal; and,
- b. Where a portion of rent is paid by a government agency:
 - i. The portion of rent paid by the tenant; and,
 - ii. The portion of the rent paid by the government agency.

TEX. PROP. CODE § 24.0053(a).

2. Contest of Finding.

A contest of the rental finding may be filed by either party.

- a. **Applicability.** Only judgments reflecting rent or a portion of rent paid by a government agency. TEX. PROP. CODE § 24.0053(c);
- b. **Who May Contest.** Either party. TEX. PROP. CODE § 24.0053(c);
- c. **What May Be Contested.** The Court’s finding regarding the amount of rent to be paid by the tenant (not the amount paid by the government agency). TEX. PROP. CODE § 24.0053(c);
- d. **Deadline for Filing Contest.** Within five days of filing the contest. TEX. PROP. CODE § 24.0053(c);
- e. **Deadline for Hearing Contest.** Within five days of the filing of the contest. TEX. PROP. CODE § 24.0053(c);
- f. **Notice.** The Court must notify the parties of the date of the hearing. TEX. PROP. CODE § 24.0053(c);
- g. **Determination of Contest.** The Court must determine the portion of rent that must be paid by the tenant during the appeal in accordance with the rental agreement and applicable laws and regulation. TEX. PROP. CODE § 24.0053(c);
- h. **Tenant May Object to Court’s Ruling.** If the tenant objects to the court’s ruling, the tenant must pay into the Court registry only the portion of the rent the tenant claims to be due until the issue is decided *de novo* at the hearing on the merits in county court or upon the landlord’s motion to reconsider in county court. TEX. PROP. CODE § 24.0053(d).

N. No Motion for New Trial.

No motions for new trial are allowed. TEX. R. CIV. P. 752. The erroneous filing of a motion for new trial does not extend the time period for appeal. *RCJ Liquidating Co. v. Village, Ltd.*, 670 S.W. 2nd 643 (Tex. 1984).

O. Perfecting Appeal.

An appeal of a judgment in a suit for possession may be perfected by either party by filing either an Appeal Bond, TEX. R. CIV. P. 749, or, a pauper's affidavit asserting the inability to pay the costs of appeal. TEX. R. CIV. P. 749a.

1. Deadline.

The appeal bond or a pauper's affidavit must be filed within 5 days of the day the judgment was signed. TEX. R. CIV. P. 749 and 749a. The failure to timely file an appeal bond is jurisdictional. *State v. Jones*, 220 S.W. 3rd 604, 607-608 (Tex. App. – Texarkana 2007, no pet.).

2. Appeal Bond.**a. Effect of Filing.**

Upon the timely filing of the Appeal Bond, appeal to County Court is perfected. TEX. R. CIV. P. 749c.

b. Form.

The form of the bond is established by TEX. R. CIV. P. 750:

“The State of Texas,
 “County of _____,
 “Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A.B., and against C.D., tried before _____, a Justice of the Peace of _____ County, a judgment was rendered in favor of A.B. on the ____ day of _____, A.D. ____, and against the said C.D., from which the C.D. has appealed to the county court; now therefore, the said C.D. and _____ his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him, provided the sureties shall not be liable in an amount greater than \$_____, said amount being the amount of the bond herein.
 “Given under our hands this ____ day of _____, A.D. ____.

Signature of Principal
 Signatures of Sureties.

TEX. R. CIV. P. 750.

c. Notice.

Within 5 days of the filing of the bond, the appellant must serve a copy of the bond pursuant to TEX. R. CIV. P. 21a. The failure to serve notice of the filing of the appeal bond is not jurisdictional. *Mitchell v. Armstrong Capital Corporation*, 877 S.W. 2nd 481, 481 (Tex. App. – Houston [1st Dist.] 1994, no writ).

d. Defective Appeal Bond.

A defective appeal bond confers jurisdiction over the appeal to the County Court subject to amendment of the bond. *Family Investments v. Paley*, 356 S.W. 2nd 353, 355 (Tex. Civ. App. – Houston [1st Dist.] 1962, writ dismissed).

3. Pauper's Affidavit.**a. Effect of Filing.**

In addition to perfecting the tenant's appeal, the filing of a pauper's affidavit perfects the right of the tenant to remain in possession of the leased premises during the pendency of the appeal. In nonpayment of rent cases in which a pauper's affidavit is filed, the tenant has the additional requirement to deposit into the court registry the amount of the tenant's monthly rent on a regular basis. See, III.O.4.a. Payment of Filing Fee in County Court, below.

b. Form.

The Justice court must make available a blank form of the pauper's affidavit for the use of an appealing tenant. TEX. PROP. CODE § 24.0052(b).

c. Contents.

The affidavit must contain the following:

- i. The tenant's identity;
- ii. The nature and amount of the tenant's employment income;
- iii. The income of the tenant's spouse, if applicable and available to the tenant;
- iv. The nature and amount of any governmental entitlement income of the tenant;
- v. All other income of the tenant;
- vi. The amount of available cash and funds available in savings or checking accounts of the tenant;
- vii. Real and personal property owned by the tenant;
- viii. The tenant's debts and monthly expenses; and,
- ix. The number and age of the tenant's dependents and where those dependents reside.

TEX. PROP. CODE § 24.0052(a).

d. Notice of Filing.

The court must promptly notify the landlord of the filing of a pauper's affidavit, TEX. PROP. CODE § 24.0052(c), by delivering to the landlord written notice thereof via first class mail within one working day of the filing of the affidavit. TEX. R. CIV. P. 749a.

e. Contest of Affidavit.

i. **Landlord May Contest.** The landlord may contest the affidavit within five days of the filing of the affidavit. TEX. PROP. CODE § 24.0052(d). If the landlord does not timely contest the affidavit, it is deemed approved. TEX. R. CIV. P. 749a.

ii. **Deadline to Contest.** The landlord's contest must be made within 5 days of the filing of the affidavit. TEX. PROP. CODE § 24.0052(d).

iii. **Hearing on Landlord's Contest.** The hearing on the landlord's contest of the pauper's affidavit must be held within 5 days of the date the landlord notified the court of the landlord's contest of the affidavit. TEX. PROP. CODE § 24.0052(d).

iv. **Issues at Hearing on Landlord's Contest.** At the hearing on landlord's contest, the tenant has the burden of proof to establish:

- (a) An inability to pay the costs of appeal; or,
- (b) An inability to file an appeal bond.

TEX. PROP. CODE § 24.0052(d).

v. **Determination of Contest.** If the Justice Court approves the affidavit, the tenant does not have to pay the filing fee of the county court or file an appeal bond to perfect the appeal. TEX. PROP. CODE § 24.0052(e). TEX. R. CIV. P. 749a.

vi. **Appeal of Justice Court's Disapproval of Pauper's Affidavit.** If the Justice Court disapproves the pauper's affidavit, the tenant may, within five days, appeal the disapproval to the county judge (the chief elected administrative officer of the county) for final decision. On request of the tenant for appeal of the disapproval, the Justice Court must certify to the county judge the pauper's affidavit, the contest thereof, and all documents and papers thereto. The county judge must set a hearing not later than five days and hear the contest *de novo*. If the pauper's affidavit is approved by the

County Judge, the County Judge must direct the Justice Court to transmit to the County Clerk the transcript, records and papers of the case. If the County Judge disapproves the pauper's affidavit, the tenant may still perfect the appeal by filing an Appeal Bond as required by TEX. R. CIV. P. 749 within five days. If no appeal bond is filed within five days, a writ of possession may issue. TEX. R. CIV. P. 749a.

Practice Pointer: When representing the landlord, never contest the pauper's affidavit as it will inordinately delay final judgment.

4. Appeal Perfected.

Once an appeal is perfected by the filing of an Appeal Bond or Pauper's Affidavit that has not been contested or that has been approved by the County Judge on appeal (See, III.O.e.vi. Appeal of Justice Court's Disapproval of Pauper's Affidavit, above), the Justice Court stays all further proceedings on the judgment and is to immediately make out a transcript of all the entries made on the docket of the proceedings had in the case and immediately file with the County Clerk the transcript, all original papers and any sums deposited into the registry of the court pursuant to TEX. R. CIV. P. 749b(1) and 749b(2). TEX. R. CIV. P. 751.

a. Payment of Filing Fee in County Court.

- i. **Appeal Bond.** If an Appeal Bond was filed to perfect the appeal, the appellant must pay the filing fee in County Court within 20 days of notification that the transcript is received, otherwise the appeal is deemed not perfected and the transcript and file documentation is returned to the Justice Court which may proceed as though no appeal had been perfected. TEX. R. CIV. P. 143a.

Practice Pointer: When representing the landlord, a Tenant/Appellee may file an Appeal Bond solely to extend their right to possession and fail to pay the filing fee in County Court to extend their right to possession for the twenty days that TEX. R. CIV. P. 143a allows; the landlord should consider immediately pay the filing fee and immediately set the trial *de novo* in county court.

- ii. **Pauper's Affidavit.** If the Pauper's Affidavit is not contested or otherwise approved after being contested by the landlord, no filing fee is due in the County Court. TEX. R. CIV. P. 749a.

IV. TENANT'S RIGHT TO MAINTAIN POSSESSION DURING APPEAL.

A. Appeal Based on Bond.

If the appeal was perfected on the basis of an Appeal Bond, the tenant is entitled to maintain possession of the property during the Appeal.

B. Appeal Based on Pauper's Affidavit.

1. Breach for Other Than Non-Payment of Rent.

If the appeal is based on the filing of a pauper's affidavit, the tenant may stay in possession of the property during the pendency of the appeal.

2. Non-Payment of Rent Breach.

If a tenant has appealed by filing a pauper's affidavit, the tenant is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure outlined in TEX. R. CIV. P. 749b:

- (1) Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry one rental period's rent under the terms of the rental agreement.
- (2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the county court registry within five days of the due date under the terms of the rental agreement.
- (3) If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of restitution.
- (4) Landlord/appellee may withdraw any or all rent in the county court registry upon (a) sworn motion and hearing, prior to final determination of the cause, showing just cause, (b) dismissal of the appeal, or (c) order of the court upon final hearing.
- (5) All hearings and motions under this rule shall be entitled in precedence in the county court.

Some Justice Courts and some attorneys mistakenly believe the timely payment of rent into the registry of the Court is a jurisdictional pre-requisite for the tenant's appeal of a non-payment of rent case. The sole effect of the timely payment of rent into the registry of the court is to perfect the tenant's right to maintain possession of the premises during the pendency of the appeal as a default judgment on the

case in chief is not authorized by a tenant/appellant's default under TEX. R. CIV. P. 749b. *Kennedy v. Highland Hills Apartments*, 905 S.W. 2nd 325, 327 (Tex. App. – Dallas 1995, no writ).

3. Procedure to Recover Possession for Tenant/Appellant's Failure to Comply With TEX. R. CIV. P. 749b (Non-Payment of Rent Cases Only).

When the Tenant/Appellant fails to comply with the requirements to pay rent into the registry of the Court in Non-Payment of Rent cases, the procedure for the Landlord/Appellee to recover possession is as follows:

- a. **Jurisdiction Solely Vested in County Court.** The only court having jurisdiction of the determination of the failure of the Tenant/Appellant to timely deposit payments of rent into the registry of either the Justice Court or the County Court is the County Court at Law. TEX. PROP. CODE § 24.0054(b). Some Justice Courts mistakenly "hold" the tenant's appeal in violation of the requirement to immediately deliver the transcript to County Court under TEX. R. CIV. P. 751 "waiting" on the tenant to pay one month's rent into the registry of the Justice Court; the enactment of TEX. PROP. CODE § 24.0054 in 2005 established the sole jurisdiction of the County Court.
- b. **Pleadings.** Two pleadings are required to be filed in the County Court:
 - i. **Notice of Default.** TEX. R. CIV. P. 749b(3).
 - ii. **Sworn Motion of Default.** TEX. PROP. CODE § 24.0054(a); TEX. R. CIV. P. 749b(3).
- c. **Notice.** The landlord/movant is to notify the tenant of the motion and the hearing date. TEX. PROP. CODE § 24.0054(a).
- d. **Parties May Represent Themselves.** In a motion or hearing under this provision, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. TEX. PROP. CODE § 24.0054(e).
- e. **Hearing.** The hearing is entitled to precedence in the County Court. TEX. R. CIV. P. 749b(5).
- f. **Immediate Issuance of Writ of Possession Under TEX. PROP. CODE § 24.0054(b).** Upon a showing of default to the County

Court, TEX. R. CIV. P. 749b(3), and a finding by the County Court that the Tenant/Appellee has not complied with the payment provisions of TEX. R. CIV. P. 749b(1) or (2), the Court must immediately issue a writ of possession, TEX. PROP. CODE § 24.0054(b), unless on or before the day of the hearing the Tenant/Appellant pays into the Court registry:

- (1) All rent not paid into the court registry pursuant to TEX. R. CIV. P. 749b(1) and (2); and,
- (2) The landlord's reasonable attorney's fees in filing the Sworn Motion.

TEX. PROP. CODE § 24.0054(b).

The tenant may utilize this stay provision on only one occasion. TEX. PROP. CODE § 24.0054(b).

- g. **Issuance and Service of Writ of Possession Issued Under TEX. PROP. CODE § 24.0054(c).** If the tenant has not paid into the court registry all rent and the attorney's fees in filing the sworn motion under TEX. PROP. CODE § 24.0054(b) prior to the TEX. R. CIV. P. 749b default, the writ of possession issues immediately. TEX. PROP. CODE § 24.0054(b). If the tenant complies with TEX. PROP. CODE § 24.0054(b) on one occasion then fails a second time to timely deposit sums into the registry of the court, the writ issues immediately but not may be executed before the sixth day after the date the writ is issued. TEX. PROP. CODE § 24.0054(d).

- h. **Governmental Assistance Payments Not Paid by Agency.** When a governmental entity fails to pay the tenant subsidy to the landlord or into the registry of either the justice or county court, the Landlord may file a motion to require the tenant to regularly pay the full amount of rent into the registry of the Court which motion, after notice and hearing, must be granted if the landlord proves by credible evidence that:

- (1) A portion of the rent is owed by a government agency;
- (2) The portion of the rent paid by the government agency is unpaid;
- (3) The landlord did not cause wholly or partly the agency to cease making payments;

- (4) The landlord did not cause wholly or partly the agency to pay the wrong amount; and
- (5) The landlord is not able to take reasonable action that will cause the agency to resume making the payments of its portion of the total rent due under the rental agreement.

TEX. PROP. CODE § 24.0054(f).

Practice Pointer: When representing the landlord on a TEX. R. CIV. P. 749b default, always request the immediate issuance of the Writ of Possession so that the ministerial act of the County Clerk's issuance occurs as soon as possible.

Practice Pointer. While a Writ of Possession that issued under TEX. PROP. CODE § 24.0054(b) could arguably be served on the date of the hearing, the safest practice for a Landlord is to always have the Writ of Possession issued but not served until the sixth day after issuance to avoid the conflicts under TEX. PROP. CODE § 24.0054 and § 24.0061(b) and TEX. R. CIV. P. 748.

- i. **Sums Deposited Into the Registry of the Court.** The landlord/appellee may withdraw any or all rent in the County Court registry upon:
- a. A sworn motion and hearing prior to final determination of the case showing just cause;
 - b. Dismissal of the appeal; or,
 - c. Order of the County Court upon final hearing.

TEX. R. CIV. P. 749b(4).

V. TRIAL DE NOVO.

A. Trial De Novo.

The appeal of a suit for possession is heard by the County Court *de novo*. TEX. R. CIV. P. 751.

B. Precedence Over Other Matters.

All aspects of the appeal of a suit for possession are entitled to precedence in the County Court. TEX. R. CIV. P. 751.

C. Notice by County Clerk.

1. Notification of Both Parties.

The County Clerk is to notify both parties of receipt of the transcript and the docket number in County Court. TEX. R. CIV. P. 751. If the Appellant perfected the appeal by filing an appeal bond, the

notification will usually include notice that the Appellant must pay the filing fee. See, III.O.4.a.i. Payment of Filing Fee in County Court, above. TEX. R. CIV. P. 143a.

2. Requirement to File Answer.

The notice to Defendant must also advise the Defendant of the requirement to file an answer. TEX. R. CIV. P. 751.

D. Counter-Claims.

The only counter-claim allowed in an appeal of a suit for possession is for the recovery of attorneys' fees incurred for defending the right to possession. TEX. R. CIV. P. 752; TEX. PROP. CODE § 92.335. The fee for the counter-claim must be paid, TEX. GOV'T CODE 51.317(b), or the introduction of proof on the counter-claim is subject to the objection of the Plaintiff.

E. Default Judgment.

If the Defendant failed to file a written answer in the Justice Court and fails to file a written answer within eight days after the transcript is filed in County Court, a judgment by default may be issued by the County Court. TEX. R. CIV. P. 753.

F. Non-Jury Trials.

The trial of a non-jury appeal may be set on eight days' notice. *Cattin v. Highpoint Village Apartments*, 26 S.W. 3rd 737 (Tex. App. – Fort Worth 2000, pet. dismissed w.o.j.) (holding that “the plain language of [TEX. R. CIV. P.] 753 governs the time for trial in forcible detainer appeals. Applying [TEX. R. CIV. P.] 245 as Appellants suggest would ignore the specific rules governing forcible detainer actions and the plain language of [TEX. R. CIV. P.] 753 and undermine the purpose behind [the forcible detainer rules].”).

G. Jury Demand.

A jury demand delivered in an eviction appeal on less than the thirty day notice required in TEX. R. CIV. P. 216.a may be reasonable; the five day requirement in TEX. R. CIV. P. 744 applies only in Justice Court. *Collins v. Cleme Manor Apartments*, 37 S.W. 3rd 527 (Tex. App. – Texarkana 2001, no pet.).

H. Trial and Damages.

At the trial on the merits in County Court, a prevailing landlord is entitled to recover rentals, attorneys' fees (provided that the landlord complied with TEX. PROP. CODE § 24.006) and court costs through trial but may not recover damages for other causes of action. TEX. R. CIV. P. 752; *Krull v. Somoza*, 879 S.W. 2nd 320, 322 (Tex. App. – Houston [14th Dist.] 1994, writ denied). A prevailing tenant, provided that an appropriate counterclaim is filed and

the fee is paid, may recover attorneys' fees from the landlord for defending the right to possession. TEX. R. CIV. P. 752. Only the prevailing party in the case may recover damages, TEX. R. CIV. P. 752, and court costs. TEX. PROP. CODE § 24.006(d); TEX. R. CIV. P. 752.

VI. APPEAL TO THE COURT OF APPEALS.

A. Residential Possession Only.

The final judgment of a County Court may not be appealed on the issue of possession unless the premises are being used for residential purposes only. TEX. PROP. CODE § 24.007; TEX. R. CIV. P. 755; *Rash v. Willacy County Navigation District*, 2003 LEXIS 4149 (Tex. App. – Corpus Christi 2003, no pet.) (Court of Appeals held it had no jurisdiction under TEX. PROP. CODE § 24.007 over the appeal by a tenant who leased four lots, two for a residence and two for a restaurant and bait shop, where the tenant advised the court on appeal that he had vacated the residential lots).

B. Supersedeas Bond Requirement.

1. Amount.

The County Court must set a supersedeas bond in an amount that provides protection for the Appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the Court may deem appropriate. TEX. PROP. CODE § 24.007.

2. Deadline for Filing Supersedeas Bond.

The supersedeas bond must be filed within ten days of the date the judgment was signed. TEX. PROP. CODE § 24.007. If the supersedeas bond is not timely filed, a writ of possession may issue and be served. *Kemper v. Stonegate Manor Apartments, Ltd.*, 29 S.W.3rd 362 (Tex. App. – Beaumont 2000, pet. dismissed w.o.j.).

C. Mootness.

If the tenant perfects an appeal but vacates her unit during pendency of appeal, the issue of the tenant's right to possession becomes moot at lease expiration. *Marshall v. Housing Authority of the City of San Antonio*, 198 S.W. 3rd 782 (Tex. 2006).

VII. WRIT OF POSSESSION.

A. Bases for Issuance.

1. Possession Bond.

Immediate issuance by Justice Court upon default judgment when Plaintiff filed and timely served a Possession Bond under TEX. R. CIV. P. 740; TEX. PROP. CODE § 24.0061(b).

2. Final Judgment From Justice Court.

Issuance by Justice Court on or after the sixth calendar day after the date the judgment for possession was signed. TEX. R. CIV. P. 748; TEX. PROP. CODE § 24.0061(b).

3. Failure to Pay Filing Fee on Appeal Perfected by Bond.

When the Tenant/Appellant files an Appeal bond pursuant to TEX. R. CIV. P. 749 and fails to pay the filing fee in County Court within 20 days, the County Clerk must return the transcript to the Justice Court under TEX. R. CIV. P. 143a, the Justice Court may issue the Writ of Possession upon return of the transcript.

4. Failure to Deposit Rents Into the Registry of the Court on Pauper's Affidavit Appeal.

In appeals of non-payment of rent cases where the Tenant/Appellant has filed a Pauper's Affidavit under TEX. R. CIV. P. 749a, the County Clerk issues immediately after Plaintiff/Appellee establishes default under TEX. R. CIV. P. 749b but should probably not be served for five days. *See commentary* in IV.B.3.g. Service of Writ of Possession Issued Under TEX. PROP. CODE § 24.0054, above.

5. Final Judgment From County Court/No Supersedeas Bond Timely Filed.

Provided no supersedeas bond is filed by the Tenant/Appellant within ten days after the judgment is signed, TEX. PROP. CODE § 24.007, the County Clerk issues on or after the eleventh day. TEX. R. CIV. P. 755. Where tenant timely appeals but fails to file a supersedeas bond within ten days after the judgment is signed, writ of possession may issue and be served. *Kemper*, 29 S.W. 3rd 362 (holding issue of possession is moot).

6. Final Decision From Court of Appeals.

The County Clerk may issue after the expiration of all appeal deadlines and decision in favor of Plaintiff. TEX. R. CIV. P. 755.

B. Payment of Fee.

The prevailing Plaintiff must pay the fee for the issuance of the writ of possession by the County Clerk, TEX. LOC. GOV'T CODE § 118.0545(d), or by the Justice Court, TEX. LOC. GOV'T CODE § 118.121(2)(C), and the fee for service by the constable or the sheriff set by the Commissioners Court under TEX. LOC. GOV'T CODE § 118.131(a).

C. Execution of Writ of Possession.

1. Advance Warning.

The officer executing the writ must post a written warning of at least 8-1/2 by 11 inches on the exterior

of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted. TEX. PROP. CODE § 24.0061(d)(1).

2. Service.

The officer executing the Writ of Possession may use reasonable force to execute the writ, TEX. PROP. CODE § 24.0061(h), and shall:

- a. Deliver possession of the premises to the landlord. TEX. PROP. CODE § 24.0061(d)(2)(A);
- b. Instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and if the persons fail to comply, physically remove them. TEX. PROP. CODE § 24.0061(d)(2)(B);
- c. Instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord. TEX. PROP. CODE § 24.0061(d)(2)(C); and,
- d. Place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street. TEX. PROP. CODE § 24.0061(d)(2)(D).

3. When Execution May Not Occur.

The Writ of Possession may not be executed when it is raining, sleeting or snowing. TEX. PROP. CODE § 24.0061(d)(2)(D); *Campos v. Investment Management Properties*, 917 S.W. 2nd 351, 355 (Tex. App. – San Antonio 1996, writ den.)

4. Landlord Has No Duty to Store.

The officer executing the Writ of Possession may not require the landlord to store the personal property. TEX. PROP. CODE § 24.0061(f). Some standardized leases include an agreement between the landlord and tenant that the landlord may take certain steps to dispose of the personal property after execution of the Writ of Possession. See TAA Lease, ¶¶ 13 and 42. *Practice Pointer:* When obtaining a Writ of Possession issued by the County Clerk after appeal, the best practice is to deliver the writ to the Constable of the Justice Precinct in which the premises are located for execution as the Constable is usually more experienced in execution than the Sheriff.

VIII. IMPLICATIONS OF TENANT BANKRUPTCY.

A. Automatic Stay.

The automatic stay under 11 U.S.C. § 362 that goes into effect at the moment a tenant files a petition for relief affects the prosecution of a suit for possession; however, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 specifically limited the effect of the stay in suits for possession in certain circumstances.

B. Inapplicability of Stay.

The filing of a petition for relief under the Bankruptcy Code does not operate as a stay in the following scenarios:

1. Final Judgment.

When a judgment for possession for residential property has become final prior to the tenant filing the petition for relief. 11 U.S.C. § 362(b)(22).

2. Suit Based on Endangerment of Property.

When the suit for possession is based on the tenant's endangerment of residential property and subject to the Tenant/Debtor's right to object described below, 15 days after the landlord files with the Bankruptcy Court, and serves on the Tenant/Debtor, a certification that:

- a. Such a suit for possession has been filed; or,
- b. The Tenant/Debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property.

11 U.S.C. § 362(b)(23). The Tenant/Debtor must file an objection to the certification under 11 U.S.C. § 362(m) within the 15 days after the filing and service of the certification. If no objection is timely filed, or, if an objection is timely filed and rejected by the Bankruptcy Court, then the stay is of no further effect 15 days after the filing and service of the certification by the landlord.

3. Suit Based on Illegal Use of Controlled Substances.

When the suit for possession is based on the illegal use of controlled substances on the premises and subject to the Tenant/Debtor's right to object described below, 15 days after the landlord files with the Bankruptcy Court, and serves on the Tenant/Debtor, a certification that:

- a. Such a suit for possession has been filed; or,
- b. During the 30-day period preceding the date of the filing of the certification, the illegal use of controlled substances has occurred on the premises.

11 U.S.C. § 362(b)(23). The Tenant/Debtor must file an objection to the certification under 11 U.S.C. § 362(m) within the 15 days after the filing and service of the certification. If no objection is timely filed, or, if an objection is timely filed and rejected by the Bankruptcy Court, then the stay is of no further effect 15 days after the filing and service of the certification by the landlord.

IX. LOCKOUTS.

A. Overview.

A "lockout," or the "exclusion of a tenant," is a creature of statute and is governed by TEX. PROP. CODE § 92.0081. It is primarily used by a landlord as tool for collection of rent; however, the effectiveness of the remedy is limited as the landlord must provide a key, 24 hours a day, without a requirement of any amount of rent being tendered.

B. Bases of a Lockout.

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

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

TEX. PROP. CODE § 92.0081(b).

C. Procedure.

1. Lockout Must Be of a "Tenant."

The lockout statute addresses the lockout of a tenant. "Tenant" is defined as a person who is authorized by a lease to occupy a dwelling to the exclusion of others. TEX. PROP. CODE § 92.001(6).

2. Right to Change Locks Must Be In Lease.

The landlord's right to change locks must be included in a written lease. TEX. PROP. CODE § 92.0081(d)(1). A lease may not waive or exempt a landlord from liability or the duties of the landlord under the lockout statute. TEX. PROP. CODE § 92.0081(j).

3. Advance Notice of Intent to Change Locks.

The landlord must deliver an advance written notice of the intent to change the locks.

- i. **Mail.** If by mail, delivery must be at least five days before the day the locks are changed. TEX. PROP. CODE § 92.0081(d)(3).
- ii. **Hand Delivery.** If by hand, delivery must be at least three days before the day on which locks are changed. TEX. PROP. CODE § 92.0081(d)(3).
- iii. **Content.** The notice must state:
 - a. The earliest date that landlord proposes to change the door locks;
 - b. The amount of rent the tenant must pay to prevent changing of the door locks; the name and street;
 - c. The name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be discussed or paid during the landlord's normal business hours; and,
 - d. In underlined and bold print, the tenant's right to receive a key to the new lock at any hour, regardless of whether the tenant pays the delinquent rent.

TEX. PROP. CODE § 92.0081(d)(3).

4. Prohibition of Lockouts on Certain Days.

A lockout may not be performed on a day, or a day immediately before a day, the landlord or designated individual is not available or the management office is not open. TEX. PROP. CODE § 92.0081(e).

5. Scope of Lockout to Unit Only.

A landlord who performs a lockout on an individual rental unit may not change the locks or otherwise prevent a tenant from entering a common area of residential real property. TEX. PROP. CODE § 92.0081(e-1).

6. Limitations on Lockouts.

Lockouts may not be performed on a dwelling unit:

- (1) When the tenant or any other legal occupant is in the dwelling; or,
- (2) More than once during a rental payment period.

TEX. PROP. CODE § 92.0081(k).

7. Changing the Locks/Written Notice of Change of Locks.

If the tenant is delinquent in paying part of the rent, the landlord may change the door locks and must place a writing notice on the tenant's front door stating:

- (1) An on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number;
- (2) The fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and,
- (3) The amount of rent and other charges for which the tenant is delinquent.

TEX. PROP. CODE § 92.0081(c).

8. Return of Key.

The landlord must provide a key within two hours after request of the tenant, 24 hours a day, without regard to whether the tenant pays the delinquent rent. TEX. PROP. CODE § 92.0081(f). If the landlord responds to a tenant's telephone call and the tenant is not present when the landlord arrives with the key, the landlord must leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours. TEX. PROP. CODE § 92.0081(g).

9. Tenant's Remedies.

If the landlord violates any aspect of TEX. PROP. CODE § 92.0081, the tenant may recovery statutory damages:

- a. **Possession or Termination and Damages.** The tenant may:
 - i. Either recover possession of the premises (see Writ of Re-Entry following) and terminate the lease. TEX. PROP. CODE § 92.0081(h)(1); and,
 - ii. Recover from the landlord a civil penalty of one month's rent plus \$1,000, actual damages, court costs, and reasonable attorney's fees in an action to recovery property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the

landlord. TEX. PROP. CODE § 92.0081(h)(2).

- b. Additional Civil Penalty.** If the landlord fails to timely return a key without regard to whether the tenant pays the delinquent rent, the tenant may recover, in addition to the remedies above, an additional civil penalty of one month's rent. TEX. PROP. CODE § 92.0081(i).

X. WRITS OF RE-ENTRY AFTER WRONGFUL LOCKOUT.

A. Overview.

The writ of re-entry is a creature of statute and issues with the Justice of the Peace “reasonably believes that an unlawful lockout has likely occurred.”

B. Application.

The remedy of the Writ of Re-Entry is restricted to a “tenant” who has been wrongfully locked out under TEX. PROP. CODE § 92.0081. TEX. PROP. CODE § 92.009(a)⁶. “Tenant” is defined as a person who is authorized by a lease to occupy a dwelling to the exclusion of others. TEX. PROP. CODE § 92.001(6).

C. Procedure.

1. Sworn Application.

The tenant must file a verified application specifying facts of the unlawful lockout. TEX. PROP. CODE § 92.009(b).

2. Venue.

Proper venue for an Application for a Writ of Re-Entry is the Justice Court precinct in which the leased premises are located. TEX. PROP. CODE § 92.009(b).

3. Filing Fee.

The filing fee for the tenant:

- a. Is the same as the fee for filing a civil action in Justice Court;
- b. May be deferred by the Justice of the Peace along with the service fees;
- c. May be waived by the Justice of the Peace upon the filing of Pauper's Affidavit by the tenant.

TEX. PROP. CODE § 92.009(l).

4. Initial ex Parte Hearing.

The tenant must state the facts orally under oath to the Justice of the Peace. TEX. PROP. CODE § 92.009(b).

5. Issuance of Writ of Re-Entry.

If the Justice of the Peace reasonably believes that an unlawful lockout has likely occurred, the Court issues a Writ of Re-Entry. TEX. PROP. CODE § 92.009(c). When a tenant resides in leased premises under the provisions of a commercial lease, a Writ of Re-Entry may issue for the failure to provide a key. *Warehouse Partners v. Gardner*, 910 S.W. 2nd 19 (Tex. App. – Dallas 1995, writ den.).

6. The Writ of Re-Entry.

The Writ of Re-Entry:

- a. **Effect.** Entitles the tenant to immediate and temporary possession of the premises. TEX. PROP. CODE § 92.009(c); and,
- b. **Notice.** Must advise the landlord of the right to a hearing. TEX. PROP. CODE § 92.009(e).

7. Service.

The Writ of Re-Entry:

- a. **Party to be Served.** Must be served on the landlord, landlord's management company, on-premises manager or rent collector. TEX. PROP. CODE § 92.009(d);
- b. **Use of Reasonable Force.** May be executed by the Constable using reasonable force. TEX. PROP. CODE § 92.009(d).

8. Hearing on Writ of Re-Entry.

a. Landlord's Request.

The landlord is entitled to request a hearing on the tenant's Sworn Complaint for Writ of Re-Entry. TEX. PROP. CODE § 92.009(e).

b. Timing of Request.

The landlord must request a hearing before the eighth day after service of writ. TEX. PROP. CODE § 92.009(f).

c. Hearing Date.

Upon the timely request of the landlord, the hearing on the tenant's Sworn Complaint for Writ of Re-Entry must be between the first day after and the seventh day after the Landlord requests the hearing. TEX. PROP. CODE § 92.009(e).

d. Failure to Request Hearing.

If the Landlord fails to timely request a hearing, a judgment for court costs may be rendered against the Landlord. TEX. PROP. CODE § 92.009(f).

⁶ TEX. PROP. CODE § 92.009(a) refers to “TEX. PROP. CODE § 92.008;” when the legislature made revisions to the statute, it appears they inadvertently failed to revise TEX. PROP. CODE § 92.009 to refer to TEX. PROP. CODE § 92.0081 to eliminate the inconsistency in the codification.

9. Failure to Comply With the Writ.

a. Contempt.

Failure to immediately comply with the writ subjects the Landlord to contempt. TEX. PROP. CODE § 92.009(i).

b. Affidavit.

Tenant may file affidavit describing disobedience. TEX. PROP. CODE § 92.009(i).

c. Fee.

Service fee for show cause order is the same as that for a civil citation. TEX. PROP. CODE § 92.009(l).

d. Show Cause Order.

After receipt of affidavit, the Justice of the Peace must issue an order to show cause. TEX. PROP. CODE § 92.009(i).

e. Punishment.

i. **No Compliance.** If the Court finds direct or indirect disobedience of the writ, the court may commit the person to jail without bail until contemnor purges contempt in a manner and form as the Justice of the Peace may direct. TEX. PROP. CODE § 92.009(i).

ii. **Compliance Before Receiving Order to Show Cause.** Justice of the Peace may punish the contemnor with a fine of not more than \$100.00 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail. TEX. PROP. CODE § 92.009(i).

10. Appeal.

a. Procedure.

A party may appeal a judgment from the hearing on the sworn complaint for Writ of Re-Entry in the same manner as a forcible detainer appeal. TEX. PROP. CODE § 92.009(g).

b. Writ of Certiorari.

A party may appeal a judgment from the hearing on the sworn complaint for writ of re-entry by writ of certiorari. *Big State Pawn and Bargain Center No. 1 v. Garton*, 833 S.W. 2nd 669 (Tex. App. – Eastland 1992, writ den.) (upholding writ of certiorari filed in County Court less than thirty minutes before show cause hearing in Justice Court).

11. Separate Causes of Action.

a. Tenant.

i. **Separate Cause of Action.** The tenant can pursue damages under TEX. PROP. CODE §

92.008⁷ in a separate cause of action. TEX. PROP. CODE § 92.009(j).

ii. **Forcible Detainer.** The Writ of Re-Entry statute does not affect the rights of a tenant in a forcible detainer action. TEX. PROP. CODE § 92.009(m).

b. Landlord.

i. **Separate Cause of Action.** If the tenant in bad faith files a sworn complaint for writ of re-entry, a landlord may pursue damages under TEX. PROP. CODE § 92.008 in a separate cause of action. TEX. PROP. CODE § 92.009(k).

ii. **Forcible Detainer.** The Writ of Re-Entry statute does not affect the rights of a landlord in a forcible detainer action. TEX. PROP. CODE § 92.009(m).

⁷ See Footnote 6.

APPENDIX I

ABC APARTMENT HOMES

23234 Oak San Antonio, Texas 78201

(210) 222-2222

Facsimile (210) 222-2221

NOTICE TO VACATE FOR NONPAYMENT OF RENT

July 1, 2009

Dee Fallting
23234 Oak, Apartment No. 1410
San Antonio, Texas 78201

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED NO. 7890 0987 0000 6543 0123,
FIRST CLASS MAIL and HAND DELIVERY

RE: Notice to vacate for nonpayment of rent under October 24, 2006, Lease (the "Lease") between XYZ Apartments, Ltd. d/b/a ABC Apartments Homes and Dee Fallting for 23234 Oak, Apartment No. 1410, San Antonio, Texas 78201 (the "Property")

Dear Ms. Fallting:

Because you have not paid rent on the Property under your Lease, your rights to occupancy and possession of the Property are hereby terminated under the provisions of the Lease. You are still liable for rent and other charges you may owe under the Lease.

Demand for possession of the Property is hereby made. You are hereby given notice to vacate the Property on or before midnight, the 4th day of July, 2009, which is at least three days from the delivery of this notice to you and to the Property as required by TEX. PROP. CODE §§ 24.005(a) and 24.005(f). Your failure to vacate then will result in appropriate legal action before the Justice of the Peace. Delay or postponement of such action shall not constitute waiver.

Very truly yours,

XYZ APARTMENTS, LTD. d/b/a
ABC APARTMENT HOMES

By: _____
Manny Jerr, Its Authorized Agent

APPENDIX II

ABC APARTMENT HOMES

23234 Oak San Antonio, Texas 78201

(210) 222-2222

Facsimile (210) 222-2221

NOTICE TO VACATE FOR NON-RENT BREACH OF LEASE

July 1, 2009

Dee Fallting
23234 Oak, Apartment No. 1410
San Antonio, Texas 78201

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED NO. 7890 0987 0000 6543 0123,
FIRST CLASS MAIL and HAND DELIVERY

RE: Notice to vacate for non-rent breach of October 24, 2006, Lease (the "Lease") between XYZ Apartments, Ltd. d/b/a ABC Apartments Homes and Dee Fallting for 23234 Oak, Apartment No. 1410, San Antonio, Texas 78201 (the "Property")

Dear Ms. Fallting:

You have violated Lease Paragraph Numbers 20 and 32 of the Lease, in that you and your occupant engaged in the following activities: criminal conduct; manufacturing, delivering, possession with intent to deliver, or otherwise possessing a controlled substance or drug paraphernalia. This is a substantial breach of the Lease AND a violation of the requirements of Paragraphs 20 and 32 of the Lease. This is to notify you that we are therefore exercising our right under the Lease to terminate your rights of occupancy and possession, effective immediately. You are still liable for rent and other charges you may owe under the Lease.

If you have not already moved out, demand for possession is hereby made and you are hereby given notice to vacate the Property on or before midnight, July 4, 2009, which is at least one day from the delivery of this notice to you or to the Property. Failure to move out by then will result in legal action before the Justice of the Peace. Delay or postponement of such action shall not constitute waiver.

Very truly yours,

XYZ APARTMENTS, LTD. d/b/a
ABC APARTMENT HOMES

By: _____
Manny Jerr, Its Authorized Agent

APPENDIX III

NO. _____

XYZ PROPERTY, LTD. d/b/a ABC APARTMENT
HOMES,*Plaintiff*

VS.

DEE FALLTING AND ALL OTHER OCCUPANTS,

Defendant§
§
§
§
§
§
§

IN THE JUSTICE COURT

PRECINCT NUMBER ____

____ COUNTY, TEXAS

SWORN COMPLAINT FOR FORCIBLE DETAINER

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Plaintiff **XYZ PROPERTY, LTD. d/b/a ABC APARTMENT HOMES ("Plaintiff")**, complaining of Defendant **DEE FALLTING AND ALL OTHER OCCUPANTS ("Defendant")**, and would respectfully show the Court as follows:

DISCOVERY

1. Discovery will be conducted under TEX. R. CIV. P. 190.2, Level 1.

JURISDICTION

2. Pursuant to TEX. GOV'T. CODE § 27.031(a)(2) and TEX. PROP. CODE § 24.004, this Court has jurisdiction over this matter as the real property the subject matter of this suit is located in this Justice Precinct.

PARTIES**Plaintiff**

3. Plaintiff is [an individual] [a Texas Limited Partnership] [a Texas Corporation] [a Texas Limited Liability Company] authorized to do business in the State of Texas.

Defendant

4. Defendant is an individual residing in _____ County Justice Precinct ____ and may be served by personal service at 23234 Oak Run, Apartment No. _____, San Antonio, _____ County, Texas 78201 (the "Property") under TEX. R. CIV. P. 742, or, if required, TEX. R. CIV. P. 742a. Plaintiff knows of no other home addresses⁸, or, work addresses of Defendant in the county where the Property is located.

⁸ Plaintiff must include all home addresses of the Defendant of which Plaintiff is aware. In *Thomas v. Olympus/Nelson Property Management*, 148 S.W. 3rd 395 (TEX. APP.—Houston [14th District] 2004, no pet.), Plaintiff failed to list the temporary VA hospital address of the Defendant and the Court of Appeals reversed a judgment for possession based upon substituted service under TEX. R. CIV. P. 742a.

VENUE

5. Under TEX. CIV. PRAC. & REM. CODE § 15.0115, venue is proper in _____ County Precinct No. ____ because all or part of the premises complained of is located in _____ County Precinct No. ____.

[Rent Breach Allegation:]

FACTS

6. Plaintiff and Defendant entered into a written lease for the Property on October 24, 2008 (the "Lease").
7. Plaintiff has owned and managed the Property at all dates mentioned herein and owns and manages the Property as of this date.
8. Plaintiff has complied with all provisions of the Lease.
9. Defendant has materially breached the Lease in that Defendant has failed to timely make rental payments; Defendant is currently in arrears in the amount of \$_____.

PLAINTIFF'S RIGHT TO POSSESSION

10. On July 1, 2009, Plaintiff delivered written notice to vacate and demand for possession of the Property pursuant to TEX. PROP. CODE § 24.005(a).
11. Defendant has failed to surrender possession of the Property to Plaintiff.
12. Pursuant to TEX. PROP. CODE § 24.002, Defendant has committed a forcible detainer and Plaintiff is entitled to immediate possession of the Property.

[Non-Rent (Conduct) Breach Allegation:]

FACTS

6. Plaintiff and Defendant entered into a written lease for 23234 Oak Run, Apartment No. _____, San Antonio, _____ County, Texas 78201 (the "Property"), on October 24, 2008 (the "Lease").
7. Plaintiff has owned and managed the Property at all dates mentioned herein and owns and manages the Property as of this date.
8. Plaintiff has complied with all provisions of the Lease.
9. Defendant has materially breached the Lease in that⁹ Defendant has violated Lease Paragraph Numbers 20 and 32 in that Defendant and Defendant's occupants engaged in the following activities: criminal conduct; manufacturing, delivering, possession with intent to deliver, or otherwise possessing a controlled substance or drug paraphernalia.

⁹Track language in Notice to Vacate.

PLAINTIFF'S RIGHT TO POSSESSION

10. On July 1, 2009, Plaintiff delivered to the Defendant at the Property written notice to vacate and demand for possession pursuant to TEX. PROP. CODE § 24.005(a).

11. Defendant has failed to surrender possession of the Property to Plaintiff.

12. Pursuant to TEX. PROP. CODE § 24.002, Defendant has committed a forcible detainer and Plaintiff is entitled to immediate possession of the Property.

[Foreclosure – Prior Owner in Possession (Tenant at Will/Tenant at Sufferance) Allegation:]

FACTS

6. Defendant entered into a [Deed of Trust] [Contract for Deed] for 23234 Oak Run, San Antonio, _____ County, Texas 78201 (the "Property") in trust to _____, Trustee.

7. Defendant defaulted under the [Deed of Trust] [Contract for Deed] and on July 7, 2009, [Plaintiff purchased the Property in foreclosure and has title to the Property pursuant to a Trustee's Deed] [[Defendant defaulted under the Contract for Deed] or [Defendant's interest in the Property was foreclosed pursuant to TEX. PROP. CODE § 5.066(a)]].

8. Defendant is a [tenant at sufferance] [tenant at will] and Plaintiff is entitled to immediate possession of the Property.

PLAINTIFF'S RIGHT TO POSSESSION

9. On July 8, 2009, Plaintiff delivered to the Defendant at the Property written notice to vacate and demand for possession pursuant to TEX. PROP. CODE § 24.005(b).

10. Defendant has failed to surrender possession of the Property to Plaintiff.

11. Pursuant to TEX. PROP. CODE § 24.002, Defendant has committed a forcible detainer and Plaintiff is entitled to immediate possession of the Property.

[Foreclosure – Tenant of Prior Owner in Possession - Allegation:]

FACTS

6. Defendant is a tenant of the prior owner of the Property (the "Prior Owner") subject to a [Deed of Trust] [Contract for Deed] for 23234 Oak Run, San Antonio, _____ County, Texas 78201 (the "Property") executed by the Prior Owner.

7. Prior Owner defaulted under the [Deed of Trust] [Contract for Deed] and on July 7, 2009, [Plaintiff purchased the Property in foreclosure and has title to the Property pursuant to a Trustee's Deed] [[Prior Owner defaulted under the Contract for Deed] or [Prior Owner's interest in the Property was foreclosed pursuant to TEX. PROP. CODE § 5.066(a)]].

8. Defendant [has paid] [has not paid] rent and Plaintiff is entitled to possession of the Property.

PLAINTIFF'S RIGHT TO POSSESSION

9. On July 8, 2009, Plaintiff delivered to the Defendant at the Property [three day] [thirty day] written notice to vacate and demand for possession pursuant to TEX. PROP. CODE § 24.005(b).

10. Defendant has failed to surrender possession of the Property to Plaintiff.

11. Pursuant to TEX. PROP. CODE § 24.002, Defendant has committed a forcible detainer and Plaintiff is entitled to immediate possession of the Property.

[Forcible Entry and Detainer Allegation:]**FACTS**

6. Plaintiff is the [owner] [tenant] of real property described as 23234 Oak Run, San Antonio, _____ County, Texas 78201 (the "Property").

7. Defendant entered the Property [[without legal authority] [by force TEX. PROP. CODE § 5.066(a)]].

8. Plaintiff is entitled to possession of the Property.

PLAINTIFF'S RIGHT TO POSSESSION

9. On July 8, 2009, Plaintiff delivered [oral] [written] notice to vacate and demand for possession pursuant to TEX. PROP. CODE § 24.005(d).

10. Defendant has failed to surrender possession of the Property to Plaintiff.

11. Pursuant to TEX. PROP. CODE § 24.001, Defendant has committed a forcible entry and detainer and Plaintiff is entitled to immediate possession of the Property.

ATTORNEYS' FEES

#. Pursuant to TEX. PROP. CODE § 24.006 [and the Lease] [and the Deed of Trust] [and the Contract for Deed], Plaintiff is entitled to recover attorneys' fees in the event Plaintiff prevails in this action. As a result of Defendant's default under the Lease, Plaintiff has found it necessary to employ THE LAW OFFICES OF R. DAVID FRITSCH, to bring suit. Consequently, Plaintiff is entitled to recover reasonable attorneys' fees and expenses for the services of its attorneys through a rehearing before the Texas Supreme Court for which sums Plaintiff hereby sues.

[Reservation of Rights when Amount in Controversy Exceeds \$10,000.00:]**RESERVATION OF RIGHTS**

#. Plaintiff expressly reserves the right to seek all amounts due under the Lease in a court of competent jurisdiction.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be served with citation and that after final trial hereof, Plaintiff have judgment against Defendant for:

- i. Possession of the Property, including removal of Defendant, removal of Defendant's possessions and removal of all other occupants;
- ii. All rents and charges due and owing [under the Lease] as of the date of judgment ***[delete this subparagraph if reserving rights to seek amounts due in court of competent jurisdiction when amount in controversy exceeds \$10,000.00];***

- iii. All reasonable and necessary attorneys' fees through a rehearing before the Texas Supreme Court;
- iv. Pre-judgment and post-judgment interest on the above sums at the highest rate allowed by law;
- v. Costs of court; and,
- vi. Such other and further relief as the Plaintiff may show itself justly entitled.

DATED: July 11, 2009.

Respectfully submitted,

LAW OFFICES OF R. DAVID FRITSCHÉ
921 Proton Road
San Antonio, Texas 78258-4203
(210)227-2726 FAX (210)227-5550

BY: _____
R. David Fritsche
State Bar No. 07481200
ATTORNEYS FOR PLAINTIFF

Manny Jerr

STATE OF TEXAS
COUNTY OF _____

§
§

BEFORE ME, the undersigned authority, on this day personally appeared Manny Jerr, the authorized agent and attorney-in-fact of XYZ PROPERTY, LTD. d/b/a ABC APARTMENT HOMES and stated that he has read the above and foregoing Sworn Complaint for Forcible Detainer, that he has personal knowledge of the facts set forth therein and that each and every statement contained therein is true and correct.

SWORN TO AND SUBSCRIBED before me on July 11, 2009, to certify which witness my hand and official seal.

Notary Public, State of Texas



This Lease Contract is only valid if filled out before January 1, 2010.

Apartment Lease Contract

This is a binding contract. Read carefully before signing.

Date of Lease Contract:

(when this Lease Contract is filled out)

Moving In — General Information

1. **PARTIES.** This Lease Contract is between you, the resident(s) (list all people signing the Lease Contract):

_____ and us, the owner:

(name of apartment community or title holder). You've agreed to rent Apartment No. _____ at _____

in _____ (city), Texas, _____ (zip code) for use as a private residence only.

The terms "you" and "your" refer to all residents listed above, and a person authorized to act in the event of a sole resident's death. The terms "we," "us," and "our" refer to the owner listed above and not to property managers or anyone else. Written notice to or from our managers constitutes notice to or from us. If anyone else has guaranteed performance of this Lease Contract, a separate Lease Contract Guaranty for each guarantor must be executed.

2. **OCCUPANTS.** The apartment will be occupied only by you and (list all other occupants not signing the Lease Contract):

No one else may occupy the apartment. Persons not listed above must not stay in the apartment for more than _____ consecutive days without our prior written consent, and no more than twice that many days in any one month. If the previous space isn't filled in, two days per month is the limit.

3. **LEASE TERM.** The initial term of the Lease Contract begins on the _____ day of _____ (year), and ends at midnight the _____ day of _____ (year). This Lease Contract will automatically renew month-to-month unless either party gives at least _____ days written notice of termination or intent to move-out as required by paragraph 37. If the number of days isn't filled in, at least 30 days notice is required.

4. **SECURITY DEPOSIT.** The total security deposit for all residents is \$_____, due on or before the date this Lease Contract is signed. This amount (check one): ☐ does or ☐ does not include an animal deposit. Any animal deposit will be stated in an animal addendum. See paragraphs 41 and 42 for security deposit return information.

5. **KEYS, FURNITURE AND AFFIDAVIT OF MOVE-OUT.** You will be provided _____ apartment key(s), _____ mailbox key(s), and _____ other access devices for _____. Any resident, occupant, or spouse who, according to a remaining resident's affidavit, has permanently moved out or is under court order to not enter the apartment, is (at our option) no longer entitled to occupancy, keys, or other access devices. Your apartment will be (check one): ☐ furnished or ☐ unfurnished.

6. **RENT AND CHARGES.** You will pay \$_____ per month for rent, in advance and without demand (check one): ☐ at the on-site manager's office, ☐ through our online payment site, or ☐ at _____.

Prorated rent of \$_____ is due for the remainder of (check one): ☐ 1st month or ☐ 2nd month, on _____ (year).

Otherwise, you must pay your rent on or before the 1st day of each month (due date) with no grace period. Cash is unacceptable without our prior written permission. You must not withhold or offset rent unless authorized by statute. We may, at our option, require at any time that you pay all rent and other sums in cash, certified or cashier's check, money order, or one monthly check rather than multiple checks. If you don't pay all rent on or before the _____ day of the month, and we haven't given notice to vacate before that date, you'll pay an initial late charge of \$_____ plus a late charge of \$_____ per day after that date until paid in full.

Special Provisions and "What If" Clauses

10. **SPECIAL PROVISIONS.** The following or attached special provisions and any addenda or written rules furnished to you at or before signing will become a part of this Lease Contract and will supersede any conflicting provisions of this printed Lease Contract form.

We will not impose late charges until at least the third day of the month. You'll also pay a charge of \$_____ for each returned check or rejected automatic electronic draft, plus initial and daily late charges until we receive acceptable payment. Daily late charges will not exceed 15 days for any single month's rent. If you don't pay rent on time, you'll be in default and all remedies under state law and this Lease Contract will be authorized. If you violate the animal restrictions of paragraph 27 or other animal rules, you'll pay an initial charge of \$_____ per animal (not to exceed \$100 per animal) and a daily charge of \$_____ per animal (not to exceed \$10 per day per animal) from the date the animal was brought into your apartment until it is finally removed. We'll also have all other remedies for such violation.

7. **UTILITIES.** We'll pay for the following items, if checked: ☐ gas ☐ water ☐ wastewater ☐ electricity ☐ trash ☐ cable TV ☐ master antenna ☐ internet service ☐ other utilities.

You'll pay for all other utilities, related deposits, and any charges or fees on such utilities during your Lease Contract term. You must not allow any utilities (other than cable or Internet) to be cut off or switched for any reason—including disconnection for not paying your bills—until the Lease Contract term or renewal period ends. If a utility is submetered or provided by an allocation formula, we will attach an addendum to this Lease Contract in compliance with state agency rules. If a utility is individually metered, it must be connected in your name and you must notify the utility provider of your move-out date so the meter can be timely read. If you delay getting it turned on in your name by lease commencement or cause it to be transferred back into our name before you surrender or abandon the apartment, you'll be liable for a \$_____ charge (not to exceed \$50), plus the actual or estimated cost of the utilities used while the utility should have been connected in your name. If you are in an area open to competition and your apartment is individually metered, you may choose or change your retail electric provider at any time. If you qualify, your provider will be the same as ours, unless you choose a different provider. If you choose or change your provider, you must give us written notice. You must pay all applicable provider fees, including any fees to change service back into our name after you move out.

8. **INSURANCE.** Our insurance does not cover the loss of or damage to your personal property. You are (check one):

☐ required to buy and maintain renter's or liability insurance (see attached addendum), or

☐ not required to buy renter's or liability insurance.

If neither is checked, insurance is not required but is still strongly recommended. If not required, we urge you to get your own insurance for losses due to theft, fire, water damage, pipe leaks and other similar occurrences.

9. **SECURITY DEVICES. What We Must Provide.** Texas law requires, with some exceptions, that we must provide at no cost to you when occupancy begins: (1) a window latch on each window; (2) a door viewer (peephole) on each exterior door; (3) a pin lock on each sliding door; (4) either a door handle latch or a security bar on each sliding door; (5) a keyless bolting device (deadbolt) on each exterior door; and (6) either a keyed doorknob lock or a keyed deadbolt lock on one entry door. Keyed lock(s) will be rekeyed after the prior resident moves out. The rekeying will become either before you move in or within 7 days after you move in, as required by statute. If we fail to install or rekey security devices as required by the Property Code, you have the right to do so and deduct the reasonable cost from your next rent payment under Section 92.168(1) of the Code.

What You Are Now Requesting. Subject to some limitations, under Texas law you may at any time ask us to: (1) install one keyed deadbolt lock on an exterior door if it does not have one; (2) install a security bar on a sliding glass door if it does not have one; and (3) change or rekey locks or latches. We must comply with those requests, but you must pay for them. Subject to statutory restrictions on what security devices you may request, you are now requesting us to install or change at your expense: _____

If no item is filled in, then you are requesting none at this time.

Payment. We will pay for missing security devices that are required by statute. You will pay for: (1) rekeying that you request (except when we failed to rekey after the previous resident moved out); and (2) repairs or replacements due to misuse or damage by you or your family, occupants, or guests. You must pay immediately after the work is done unless state statute authorizes advance payment. You also must pay for additional or changed security devices you request, in advance or afterward, at our option.

11. **UNLAWFUL EARLY MOVE-OUT; RELETTING CHARGE.** You'll be liable for a reletting charge of \$_____ (not to exceed 85% of the highest monthly rent during the Lease Contract term) if you:

- (1) fail to move in, or fail to give written move-out notice as required in paragraphs 23 or 37; or
- (2) move out without paying rent in full for the entire Lease Contract term or renewal period; or
- (3) move out at our demand because of your default; or
- (4) are judicially evicted.

The reletting charge is not a cancellation fee and does not release you from your obligations under this Lease Contract. See the first paragraph of page 2.

YOUR INITIALS _____ INITIALS OF OUR REPRESENTATIVE _____

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SAMPLE ONLY—

Not a Release. The reletting charge is not a Lease Contract cancellation or buyout fee. It is a liquidated amount covering only part of our damages; that is, our time, effort, and expense in finding and processing a replacement. These damages are uncertain and difficult to ascertain—particularly those relating to make ready, inconvenience, paperwork, advertising, showing apartments, utilities for showing, checking prospects, overhead, marketing costs, and locator-service fees. You agree that the reletting charge is a reasonable estimate of such damages and that the charge is due whether or not our reletting attempts succeed. If no amount is stipulated, you must pay our actual reletting costs so far as they can be determined. The reletting charge does not release you from continued liability for: future or past-due rent; charges for cleaning, repairing, repainting, or unreturned keys; or other sums due.

- 12. DAMAGES AND REIMBURSEMENT.** You must promptly pay or reimburse us for loss, damage, consequential damages, government fines or charges, or cost of repairs or service in the apartment community due to: a violation of the Lease Contract or rules; improper use; negligence; other conduct by you or your invitees, guests or occupants; or any other cause not due to our negligence or fault. You will indemnify and hold us harmless from all liability arising from the conduct of you, your invitees, guests, or occupants, or our representatives who perform at your request services not contemplated in this Lease Contract. Unless the damage or wastewater stoppage is due to our negligence, we're not liable for—and you must pay for—repairs, replacements and damage in the following if occurring during the Lease Contract term or renewal period: (1) damage to doors, windows, or screens; (2) damage from windows or doors left open; and (3) damage from wastewater stoppages caused by improper objects in lines exclusively serving your apartment. We may require payment at any time, including advance payment of repairs for which you're liable. Delay in demanding sums you owe is not a waiver.

- 13. CONTRACTUAL LIEN AND PROPERTY LEFT IN APARTMENT.** All property in the apartment is (unless exempt under Section 54.042 of the Texas Property Code) subject to a contractual lien to secure payment of delinquent rent. For this purpose, "apartment" excludes common areas but includes interior living areas and exterior patios, balconies, attached garages, and storerooms for your exclusive use.

Removal After We Exercise Lien for Rent. If your rent is delinquent, our representative may peacefully enter the apartment and remove and/or store all property subject to lien. Written notice of entry must be left afterwards in the apartment in a conspicuous place—plus a list of items removed. The notice must state the amount of delinquent rent and the name, address, and phone number of the person to contact about the amount owed. The notice must also state that the property will be promptly returned when the delinquent rent is fully paid. All property in the apartment is presumed to be yours unless proven otherwise.

Removal After Surrender, Abandonment, or Eviction. We or law officers may remove or store all property remaining in the apartment or in common areas (including any vehicles you or any occupant or guest owns or uses) if you are judicially evicted or if you surrender or abandon the apartment (see definitions in paragraph 42).

Storage. We will store property removed under a contractual lien. We may, but have no duty to, store property removed after judicial eviction, surrender, or abandonment of the apartment. We're not liable for casualty loss, damage, or theft except for property removed under a contractual lien. You must pay reasonable charges for our packing, removing, storing, and selling any property. We have a lien on all property removed and stored after surrender, abandonment, or judicial eviction for all sums you owe, with one exception: Our lien on property listed under Property Code Section 54.042 is limited to charges for packing, removing, and storing.

Redemption. If we've seized and stored property under a contractual lien for rent as authorized by the Property Code, you may redeem the property by paying all delinquent rent due at the time of seizure. But if notice of sale (set forth as follows) is given before you seek redemption, you may redeem only by paying the delinquent rent and reasonable charges for packing, removing, and storing. If we've removed and stored property after surrender, abandonment, or judicial eviction, you may redeem only by paying all sums you owe, including rent, late charges, reletting charges, storage, damages, etc.

We may return redeemed property at the place of storage, the management office, or the apartment (at our option). We may require payment by cash, money order, or certified check.

Disposition or Sale. Except for animals and property removed after the death of a sole resident, we may throw away or give to a charitable organization all items of personal property that are: (1) left in the apartment after surrender or abandonment; or (2) left outside more than 1 hour after writ of possession is executed, following judicial eviction. Animals removed after surrender, abandonment, or eviction may be kennel or turned over to local authorities or humane societies. Property not thrown away or given to charity may be disposed of only by sale, which must be held no sooner than 30 days after written notice of date, time, and place of sale is sent by both regular mail and certified mail (return receipt requested) to your last known address. The notice must itemize the amounts you owe and the name, address, and phone number of the person to contact about the sale, the amount owed, and your right to redeem the property. Sale may be public or private, is subject to any third-party ownership or lien claims, must be to the highest cash bidder, and may be in bulk, in batches, or item-by-item. Proceeds exceeding sums owed must be mailed to you at your last known address within 30 days after sale.

- 14. FAILING TO PAY FIRST MONTH'S RENT.** If you don't pay the first month's rent when or before the Lease Contract begins, all future rent will be automatically accelerated without notice and immediately due. We also may end your right of occupancy and recover damages, future rent, reletting charges, attorney's fees, court costs, and other lawful charges. Our rights, remedies, and duties under paragraphs 11 and 32 apply to acceleration under this paragraph.

- 15. RENT INCREASES AND LEASE CONTRACT CHANGES.** No rent increases or Lease Contract changes are allowed before the initial Lease Contract term ends, except for changes allowed by any special provisions in paragraph 10, by a written addendum or amendment signed by you and us, or by reasonable changes of apartment rules allowed under paragraph 18. If, at least 5 days before the advance notice deadline referred to in paragraph 3, we give you written notice of rent increase or Lease Contract changes effective when the Lease Contract term or renewal period ends, this Lease Contract will automatically continue month-to-month with the increased rent or Lease Contract changes. The new modified Lease Contract will begin on the date stated in the notice (without necessity of your signature) unless you give us written move-out notice under paragraph 37. The written move-out notice under paragraph 37 applies only to the end of the current Lease Contract or renewal period.

- 16. DELAY OF OCCUPANCY.** If occupancy is or will be delayed for construction, repairs, cleaning, or a previous resident's holding over, we're not responsible for the delay. The Lease Contract will remain in force subject to: (1) abatement of rent on a daily basis during delay; and (2) your right to terminate as set forth below. Termination notice must be in writing. After termination, you are entitled only to refund of deposit(s) and any rent paid. Rent abatement or Lease Contract termination does not apply if delay is for cleaning or repairs that don't prevent you from occupying the apartment.

If there is a delay and we haven't given notice of delay as set forth immediately below, you may terminate up to the date when the apartment is ready for occupancy, but not later.

- (1) If we give written notice to any of you when or after the Lease Contract begins—and the notice states that occupancy has been delayed because of construction or a previous resident's holding over, and that the apartment will be ready on a specific date—you may terminate the Lease Contract within 3 days of your receiving the notice, but not later.
- (2) If we give written notice to any of you before the effective Lease Contract date and the notice states that construction delay is expected and that the apartment will be ready for you to occupy on a specific date, you may terminate the Lease Contract within 7 days after any of you receives written notice, but not later. The readiness date is considered the new effective Lease Contract date for all purposes. This new date may not be moved to an earlier date unless we and you agree.
- 17. DISCLOSURE RIGHTS.** If someone requests information on you or your rental history for law-enforcement, governmental, or business purposes, we may provide it. At our request, any utility provider may furnish us information about pending or actual connections or disconnections of utility service to your apartment.

While You're Living in the Apartment

- 18. COMMUNITY POLICIES OR RULES.** You and all guests and occupants must comply with any written apartment rules and community policies, including instructions for care of our property. Our rules are considered part of this Lease Contract. We may make reasonable changes to written rules, effective immediately, if they are distributed and applicable to all units in the apartment community and do not change dollar amounts on page 1 of this Lease Contract.

- 19. LIMITATIONS ON CONDUCT.** The apartment and other areas reserved for your private use must be kept clean. Trash must be disposed of at least weekly in appropriate receptacles in accordance with local ordinances. Passageways may be used only for entry or exit. Any swimming pools, saunas, spas, tanning beds, exercise rooms, storerooms, laundry rooms, and similar areas must be used with care in accordance with apartment rules and posted signs. Glass containers are prohibited in or near pools and all other common areas. You, your occupants, or guests may not anywhere in the apartment community: use candles or use kerosene lamps or heaters without our prior written approval; cook on balconies or outside; or solicit business or contributions. Conducting any kind of business (including child care services) in your apartment or in the apartment community is prohibited—except that any lawful

business conducted "at home" by computer, mail, or telephone is permissible if customers, clients, patients, or other business associates do not come to your apartment for business purposes. We may regulate: (1) the use of patios, balconies, and porches; (2) the conduct of furniture movers and delivery persons; and (3) recreational activities in common areas.

We may exclude from the apartment community guests or others who, in our judgment, have been violating the law, violating this Lease Contract or any apartment rules, or disturbing other residents, neighbors, visitors, or owner representatives. We may also exclude from any outside area or common area a person who refuses to show photo identification or refuses to identify himself or herself as a resident, occupant, or guest of a specific resident in the community.

You will notify us within 15 days if you or any occupants are convicted of any felony, or misdemeanor involving a controlled substance, violence to another person or destruction of property. You also agree to notify us within 15 days if you or any occupants register as a sex offender in any state. Informing us of criminal convictions or sex offender registry does not waive any rights we have against you.

- 20. PROHIBITED CONDUCT.** You and your occupants or guests may not engage in the following activities: criminal conduct; behaving in

SAMPLE ONLY—

a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the apartment community; disrupting our business operations; manufacturing, delivering, or possessing a controlled substance or drug paraphernalia; engaging in or threatening violence; possessing a weapon prohibited by state law; discharging a firearm in the apartment community; displaying or possessing a gun, knife, or other weapon in the common area in a way that may alarm others; storing anything in closets having gas appliances; tampering with utilities or telecommunications; bringing hazardous materials into the apartment community; using windows for entry or exit; beating the apartment with gas-operated cooking stove or oven; or injuring our reputation by making bad faith allegations against us or others.

21. **PARKING.** We may regulate the time, manner, and place of parking all cars, trucks, motorcycles, bicycles, boats, trailers, and recreational vehicles. Motorcycles or motorized bikes may not be parked inside an apartment or on sidewalks, under stairwells, or in handicapped parking areas. We may have unauthorized or illegally parked vehicles towed according to state law at the owner or operator's expense at any time if it:
- (1) has a flat tire or is otherwise inoperable
 - (2) is on jacks, blocks or has wheel(s) missing
 - (3) takes up more than one parking space
 - (4) belongs to a resident or occupant who has surrendered or abandoned the apartment
 - (5) is in a handicap space without the legally required handicap insignia
 - (6) is in a space marked for office visitors, managers, or staff
 - (7) blocks another vehicle from exiting
 - (8) is in a fire lane or designated "no parking" area
 - (9) is in a space marked for other resident(s) or apartment(s)
 - (10) is on the grass, sidewalk, or patio
 - (11) blocks garbage trucks from access to a dumpster, or
 - (12) has no current license, registration or inspection sticker, and we give you at least 10 days notice that the vehicle will be towed if not removed.

22. **RELEASE OF RESIDENT.** Unless you're entitled to terminate this Lease Contract under paragraphs 10, 16, 23, 31 or 37, you won't be released from this Lease Contract for any reason—including but not limited to voluntary or involuntary school withdrawal or transfer, voluntary or involuntary job transfer, marriage, separation, divorce, reconciliation, loss of co-residents, loss of employment, bad health, death, or property purchase.

Death of Sole Resident. If you are the sole resident, upon your death you may terminate the Lease Contract without penalty with at least 30 days written notice. You will be liable for payment of rent until the latter of: (1) the termination date, or (2) until all possessions in the apartment are removed. You will be liable for all rent, charges, and damages to the apartment until it is vacated, and any removal and storage costs.

23. **MILITARY PERSONNEL CLAUSE.** You may terminate the Lease Contract if you enlist or are drafted or commissioned in the U.S. Armed Forces. You also may terminate the Lease Contract if:

- (1) you are (i) a member of the U.S. Armed Forces or reserves on active duty or (ii) a member of the National Guard called to active duty for more than 30 days in response to a national emergency declared by the President; and
- (2) you (i) receive orders for permanent change-of-station, (ii) receive orders to deploy with a military unit or as an individual in support of a military operation for 90 days or more, or (iii) are relieved or released from active duty.

After you deliver to us your written termination notice, the Lease Contract will be terminated under this military clause 30 days after the date on which your next rental payment is due. You must furnish us a copy of your military orders, such as permanent change-of-station orders, call-up orders, or deployment orders or letter. Military permission for base housing doesn't constitute a permanent change-of-station order. After your move-out, we'll return your security deposit, less lawful deductions. For the purposes of this Lease Contract, orders described in (2) above will only release the resident who qualifies under (1) and (2) above and receives the orders during the Lease Contract term and such resident's spouse or legal dependents living in the resident's household. A co-resident who is not your spouse or dependent cannot terminate under this military clause. Unless you state otherwise in paragraph 10, you represent when signing this Lease Contract that: (1) you do not already have deployment or change-of-station orders; (2) you will not be retiring from the military during the Lease Contract term; and (3) the term of your enlistment or obligation will not end before the Lease Contract term ends. Liquidated damages for making a false representation of the above will be the amount of unpaid rent for the remainder of the lease term when and if you move out, less rents from others received in mitigation under paragraph 32. You must immediately notify us if you are called to active duty or receive deployment or permanent change-of-station orders.

24. **RESIDENT SAFETY AND LOSS.** You and all occupants and guests must exercise due care for your own and others' safety and security, especially in the use of smoke and other detection devices, door and window locks, and other safety or security devices. You agree to make every effort to follow the Security Guidelines on page 5. Window screens are not for security or keeping people from falling out.

Detection Devices. We'll furnish smoke or other detection devices required by statute or city ordinance, and we'll test them and provide working batteries when you first take possession. After that, you must pay for and replace batteries as needed, unless the law provides otherwise. We may replace dead or missing batteries at our expense, without prior notice to you. You must immediately report detector malfunctions to us. Neither you nor others may disable detectors. *If you damage or disable the smoke detector, or remove a battery without replacing it with a working battery, you may be liable to us under Section 92.2611 of the Property Code for \$100 plus one month's rent, actual damages, and attorney's fees.* You also will be liable to us and others if you fail to report malfunctions, or any loss, damage, or fines result from fire, smoke, or water.

Loss. We're not liable to any resident, guest, or occupant for personal injury or damage, loss of personal property, or business or personal income from any cause, including, but not limited to, fire, smoke, rain, flood, water leaks, hail, ice, snow, lightning, wind, explosions, interruption of utilities, pipe leaks, theft, negligent or intentional acts of residents, occupants or guests, or vandalism unless otherwise required by law. We have no duty to remove any ice, sleet, or snow but may remove any amount with or without notice. Unless we instruct otherwise, you must: for 24 hours a day during freezing weather—(1) keep the apartment heated to at least 50 degrees; (2) keep cabinet and closet doors open; and (3) drip hot and cold water faucets. You'll be liable for damage to our and others'

property if damage is caused by broken water pipes due to your violating these requirements.

Crime or Emergency. Dial 911 or immediately call local medical emergency, fire, or police personnel in case of accident, fire, smoke, suspected criminal activity, or other emergency involving imminent harm. You should then contact our representative. You won't treat any of our security measures as an express or implied warranty of security, or as a guarantee against crime or of reduced risk of crime. Unless otherwise provided by law, we're not liable to you or any guests or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism, or other crimes. Even if previously provided, we're not obligated to furnish security personnel, patrols, lighting, gates or fences, or other forms of security unless required by statute. We're not responsible for obtaining criminal-history checks on any residents, occupants, guests, or contractors in the apartment community. If you or any occupant or guest is affected by a crime, you must make a written report to our representative and to the appropriate local law-enforcement agency. You also must furnish us with the law-enforcement agency's incident report number upon request.

25. **CONDITION OF THE PREMISES AND ALTERATIONS.** You accept the apartment, fixtures, and furniture as is, except for conditions materially affecting the health or safety of ordinary persons. We disclaim all implied warranties. You'll be given an Inventory & Condition form on or before move-in. Within 48 hours after move-in, you must sign and note on the form all defects or damage and return it to us. Otherwise, everything will be considered to be in a clean, safe, and good working condition.

You must use customary diligence in maintaining the apartment and not damaging or littering the common areas. Unless authorized by statute or by us in writing, you must not do any repairs, painting, wallpapering, carpeting, electrical changes, or otherwise alter our property. No holes or stickers are allowed inside or outside the apartment. We'll permit a reasonable number of small nail holes for hanging pictures on sheetrock walls and grooves of wood-paneled walls, unless our rules state otherwise. No water furniture, washing machines, extra phone or TV-cable outlets, alarm systems, or lock changes, additions, or rekeying is permitted unless allowed by statute or we've consented in writing. You may install a satellite dish or antenna provided you sign our satellite dish or antenna lease addendum which complies with reasonable restrictions allowed by federal law. You agree not to alter, damage, or remove our property, including alarm systems, detection devices, furniture, telephone and cable TV wiring, screens, locks, and security devices. When you move in, we'll supply light bulbs for fixtures we furnish, including exterior fixtures operated from inside the apartment; after that, you'll replace them at your expense with bulbs of the same type and wattage. Your improvements to the apartment (whether or not we consent) become ours unless we agree otherwise in writing.

We are committed to the principles of fair housing. In accordance with fair housing laws, we will make reasonable accommodations to our rules, policies, practices or services, and/or will allow reasonable modifications under such laws to give persons with disabilities access to and use of this apartment community. We may require you to sign an addendum regarding the approval and implementation of such accommodations or modifications, as well as restoration obligations, if any.

26. **REQUESTS, REPAIRS, AND MALFUNCTIONS.** If you or any occupant needs to send a notice or request—for example, for repairs, installations, services, ownership disclosure or security-related matters—IT MUST BE SIGNED AND IN WRITING to our designated representative (except in case of fire, smoke, gas, explosion, overflowing sewage, uncontrollable running water, electrical shorts, or crime in progress). Our written notes on your oral request do not constitute a written request from you.

Our complying with or responding to any oral request regarding security or any other matters doesn't waive the strict requirement for written notices under this Lease Contract. You must promptly notify us in writing of: water leaks; mold; electrical problems; malfunctioning lights; broken or missing locks or latches; and other conditions that pose a hazard to property, health, or safety. We may change or install utility lines or equipment serving the apartment if the work is done reasonably without substantially increasing your utility costs. We may turn off equipment and interrupt utilities as needed to avoid property damage or to perform work. If utilities malfunction or are damaged by fire, water, or similar cause, you must notify our representative immediately. Air conditioning problems are normally not emergencies. If air conditioning or other equipment malfunctions, you must notify our representative as soon as possible on a business day. We'll act with customary diligence to make repairs and reconnections, taking into consideration when casualty insurance proceeds are received. Rent will not abate in whole or in part.

If we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate this Lease Contract by giving you at least 5 days written notice. We may also remove personal property if it causes a health or safety hazard. If the Lease Contract is so terminated, we'll refund prorated rent and all deposits, less lawful deductions.

27. **ANIMALS.** No animals (including mammals, reptiles, birds, fish, rodents, amphibians, arachnids, and insects) are allowed, even temporarily, anywhere in the apartment or apartment community unless we've so authorized in writing. If we allow an animal, you must sign a separate animal addendum and pay an animal deposit. An animal deposit is considered a general security deposit. We will authorize a support animal for a disabled person but will not require an animal deposit. We may require a written statement from a qualified professional verifying the need for the support animal. You must not feed stray or wild animals.

If you or any guest or occupant violates animal restrictions (with or without your knowledge), you'll be subject to charges, damages, eviction, and other remedies provided in this Lease Contract. If an animal has been in the apartment at any time during your term of occupancy (with or without our consent), we'll charge you for defecating, deodorizing, and shampooing. Initial and daily animal-violation charges and animal-removal charges are liquidated damages for our time, inconvenience, and overhead (except for attorney's fees and litigation costs) in enforcing animal restrictions and rules. We may remove an unauthorized animal by (1) leaving, in a conspicuous place in the apartment, a 24-hour written notice of intent to remove the animal, and (2) following the procedures of paragraph 28. We may keep or kennel the animal or turn it over to a humane society or local authority. When keeping or kenneling

an animal, we won't be liable for loss, harm, sickness, or death of the animal unless due to our negligence. We'll return the animal to you upon request if it has not already been turned over to a humane society or local authority. You must pay for the animal's reasonable care and kenneling charges. We have no lien on the animal for any purpose.

- 28. WHEN WE MAY ENTER.** If you or any guest or occupant is present, then repairers, servicers, contractors, our representatives, or other persons listed in (2) below may peacefully enter the apartment at reasonable times for the purposes listed in (2) below. If nobody is in the apartment, then such persons may enter peacefully and at reasonable times by duplicate or master key (or by breaking a window or other means when necessary) if:

- (1) written notice of the entry is left in a conspicuous place in the apartment immediately after the entry; and
- (2) entry is for: responding to your request; making repairs or replacements; estimating repair or replacement costs; performing pest control; doing preventive maintenance; checking for water leaks; changing filters; testing or replacing detection device batteries; retrieving unreturned tools, equipment, or appliances; preventing waste of utilities; exercising our contractual lien; leaving notices; delivering, installing, reconnecting, or replacing appliances, furniture, equipment, or security devices; removing or rekeying unauthorized security devices; removing unauthorized window coverings; stopping excessive noise; removing health or safety hazards (including hazardous materials), or items prohibited under our rules; removing perishable foodstuffs if your electricity is disconnected; removing unauthorized animals; cutting off electricity according to statute; retrieving property owned or leased by former residents; inspecting when immediate danger to person or property is

reasonably suspected; allowing persons to enter as you authorized in your rental application (if you die, are incarcerated, etc.); allowing entry by a law officer with a search or arrest warrant, or in hot pursuit; showing apartment to prospective residents (after move-out or vacate notice has been given); or showing apartment to government representatives for the limited purpose of determining housing and fire ordinance compliance, and to lenders, appraisers, contractors, prospective buyers, or insurance agents.

- 29. MULTIPLE RESIDENTS.** Each resident is jointly and severally liable for all Lease Contract obligations. If you or any guest or occupant violates the Lease Contract or rules, all residents are considered to have violated the Lease Contract. Our requests and notices (including sale notices) to any resident constitute notice to all residents and occupants. Notices and requests from any resident or occupant constitute notice from all residents. Your notice of Lease Contract termination may be given only by residents. In eviction suits, each resident is considered the agent of all other residents in the apartment for service of process. Any resident who defaults under this Lease Contract will indemnify the non-defaulting residents and their guarantors.

Security deposit refund check and any deduction itemizations will be by: (check one)

- ☐ one check jointly payable to all residents and mailed to any one resident we choose, OR
☐ one check payable and mailed to _____

(specify name of one resident)

If neither is checked, then the refund will be made in our check jointly payable to all residents.

Replacements

- 30. REPLACEMENTS AND SUBLETTING.** Replacing a resident, subletting, or assignment is allowed only when we consent in writing. If departing or remaining residents find a replacement resident acceptable to us before moving out and we expressly consent to the replacement, subletting, or assignment, then:

- (1) a reletting charge will not be due;
- (2) a reasonable administrative (paperwork) fee will be due, and a rekeying fee will be due if rekeying is requested or required; and
- (3) the departing and remaining residents will remain liable for all Lease Contract obligations for the rest of the original Lease Contract term.

Procedures for Replacement. If we approve a replacement resident, then, at our option: (1) the replacement resident must sign this Lease Contract with or without an increase in the total security deposit; or (2) the remaining and replacement residents must sign an entirely new Lease Contract. Unless we agree otherwise in writing, your security deposit will automatically transfer to the replacement resident as of the date we approve. The departing resident will no longer have a right to occupancy or a security deposit refund, but will remain liable for the remainder of the original Lease Contract term unless we agree otherwise in writing—even if a new Lease Contract is signed.

Responsibilities of Owner and Resident

- 31. RESPONSIBILITIES OF OWNER.** We'll act with customary diligence to:

- (1) keep common areas reasonably clean, subject to paragraph 25;
- (2) maintain fixtures, hot water, heating, and A/C equipment;
- (3) substantially comply with all applicable laws regarding safety, sanitation, and fair housing; and
- (4) make all reasonable repairs, subject to your obligation to pay for damages for which you are liable.

If we violate any of the above, you may possibly terminate this Lease Contract and exercise other remedies under Property Code Section 92.056 by following this procedure:

- (a) all rent must be current and you must make a written request for repair or remedy of the condition—after which we'll have a reasonable time for repair or remedy;
- (b) if we fail to do so, you must make a second written request for the repair or remedy (to make sure that there has been no miscommunication between us)—after which we'll have a reasonable time for the repair or remedy; and
- (c) if the repair or remedy still hasn't been accomplished within that reasonable time period, you may immediately terminate this Lease Contract by giving us a final written notice. You also may exercise other statutory remedies, including those under Property Code Section 92.056.

Instead of giving the two written requests referred to above, you may give us one request by certified mail, return receipt requested, or by registered mail—after which we will have a reasonable time for repair or remedy. "Reasonable time" takes into account the nature of the problem and the reasonable availability of materials, labor, and utilities. Your rent must be current at the time of any request. We will refund security deposits and prorated rent as required by law.

- 32. DEFAULT BY RESIDENT.** You'll be in default if: (1) you don't pay rent or other amounts that you owe us; (2) you or any guest or occupant violates this Lease Contract, apartment rules, or fire, safety, health, or criminal laws, regardless of whether or where arrest or conviction occurs; (3) you abandon the apartment; (4) you give incorrect or false answers in a rental application; (5) you or any occupant is arrested, charged, detained, convicted, or given deferred adjudication or pretrial diversion for (i) a felony offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, marijuana, or drug paraphernalia as defined in the Texas Controlled Substances Act, or (ii) any sex-related crime, including a misdemeanor; (6) any illegal drugs or paraphernalia are found in your apartment; or (7) you or any occupant, in bad faith, makes an invalid habitability complaint to an official or employee of a utility company or the government.

Eviction. If you default, we may end your right of occupancy by giving you a 24-hour written notice to vacate. Notice may be by: (1) regular mail; (2) certified mail, return receipt requested; (3) personal delivery to any resident; (4) personal delivery at the apartment to any occupant over 16 years old; or (5) affixing the notice to the inside of the apartment's main entry door. Notice by mail only will be considered delivered on the earlier of: (1) actual delivery, or (2) three days (not counting Sundays or federal holidays) after the notice is deposited in the U.S. Postal Service with postage. Termination of your possession rights or subsequent reletting doesn't release you from liability for future rent

or other Lease Contract obligations. After giving notice to vacate or filing an eviction suit, we may still accept rent or other sums due; the filing or acceptance doesn't waive or diminish our right of eviction, or any other contractual or statutory right. Accepting money at any time doesn't waive our right to damages; past or future rent or other sums; or to continue with eviction proceedings.

Acceleration. All monthly rent for the rest of the Lease Contract term or renewal period will be accelerated automatically without notice or demand (before or after acceleration) and will be immediately due and delinquent if, without our written consent: (1) you move out, remove property in preparing to move out, or give oral or written notice (by you or any occupant) of intent to move out before the Lease Contract term or renewal period ends; and (2) you've not paid all rent for the entire Lease Contract term or renewal period. Such conduct is considered a default for which we need not give you notice. Remaining rent also will be accelerated if you're judicially evicted or move out when we demand because you've defaulted. Acceleration is subject to our mitigation obligations below.

Holdover. You or any occupant, invitee, or guest must not hold over beyond the date contained in your move-out notice or our notice to vacate (or beyond a different move-out date agreed to by the parties in writing). If a holdover occurs, then: (1) holdover rent is due in advance on a daily basis and may become delinquent without notice or demand; (2) rent for the holdover period will be increased by 25% over the then-existing rent, without notice; (3) you'll be liable to us (subject to our mitigation duties) for all rent for the full term of the previously signed Lease Contract of a new resident who can't occupy because of the holdover; and (4) at our option, we may extend the Lease Contract term—for up to one month from the date of notice of Lease Contract extension—by delivering written notice to you or your apartment while you continue to hold over.

Other Remedies. If your rent is delinquent and we give you 5 days' prior written notice, we may terminate electricity that we've furnished at our expense, unless government regulations provide otherwise. We may report unpaid amounts to credit agencies. If you default and move out early, you will pay us any amounts stated to be rental discounts or concessions agreed to in writing, in addition to other sums due. Upon your default, we have all other legal remedies, including Lease Contract termination and statutory lockout under Section 92.0081 of the Property Code. Unless a party is seeking exemplary, punitive, sentimental, or personal-injury damages, the prevailing party may recover from the non-prevailing party attorney's fees and all other litigation costs. We may recover attorneys' fees in connection with enforcing our rights under this Lease Contract. You agree that late charges are liquidated damages and a reasonable estimate of such damages for our time, inconvenience, and overhead in collecting late rent (but are not for attorney's fees and litigation costs). All unpaid amounts you owe, including judgments, bear 18% interest per year from due date, compounded annually. You must pay all collection-agency fees if you fail to pay all sums due within 10 days after we mail you a letter demanding payment and stating that collection-agency fees will be added if you don't pay all sums by that deadline.

Mitigation of Damages. If you move out early, you'll be subject to paragraph 11 and all other remedies. We'll exercise customary diligence to relet and minimize damages. We'll credit all subsequent rent that we actually receive from subsequent residents against your liability for past-due and future rent and other sums due.

SAMPLE ONLY

General Clauses

33. **MISCELLANEOUS.** Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us. Our representatives (including management personnel, employees, and agents) have no authority to waive, amend, or terminate this Lease Contract or any part of it, unless in writing, and no authority to make promises, representations, or agreements that impose security duties or other obligations on us or our representatives unless in writing. No action or omission by us will be considered a waiver of our rights or of any subsequent violation, default, or time or place of performance. Our not enforcing or belatedly enforcing written-notice requirements, rental due dates, acceleration, liens, or other rights isn't a waiver under any circumstances. Except when notice or demand is required by statute, you waive any notice and demand for performance from us if you default. Written notice to or from our managers constitutes notice to or from us. Any person giving a notice under this Lease Contract should retain a copy of the memo, letter, or fax that was given, as well as any fax transmittal verification. Fax signatures are binding. All notices must be signed. Notices may not be given by email.

Exercising one remedy won't constitute an election or waiver of other remedies. Insurance subrogation is waived by all parties. All remedies are cumulative. No employee, agent, or management company is personally liable for any of our contractual, statutory, or other obligations merely by virtue of acting on our behalf. This Lease Contract binds subsequent owners. Neither an invalid clause nor the omission of initials on any page invalidates this Lease Contract. All notices and documents may be in English and, at our option, in any language that you read or speak. All provisions regarding our non-liability and non-duty apply to our employees, agents, and management companies. This Lease Contract is subordinate to existing and future recorded mortgages, unless the owner's lender chooses otherwise. All Lease Contract obligations must be performed in the county where the apartment is located.

We may deactivate or not install keyless bolting devices on your doors if: (1) you or an occupant in the dwelling is over 55 or disabled; and (2) the requirements of Section 92.153(e) or (f) of the Property Code are satisfied.

Cable channels that are provided may be changed during the Lease Contract term if the change applies to all residents. Utilities may be used only for normal household purposes and must not be wasted. If your electricity is ever interrupted, you must use only battery-operated lighting.

Residents may have rights under Texas law to terminate the lease in certain situations involving family violence or a military deployment or transfer.

34. **PAYMENTS.** Payment of all sums is an independent covenant. At our option and without notice, we may apply money received (other than sale proceeds under paragraph 13 or utility payments for gas, water or electricity) first to any of your unpaid obligations, then to current rent—regardless of notations on checks or money orders and regardless of when the obligations arose. All sums other than rent are due upon our demand. After the due date, we do not have to accept the rent or any other payments.
35. **TAA MEMBERSHIP.** We represent that, at the time of signing this Lease Contract or a Lease Contract Renewal Form: (1) we; (2) the management company that represents us; or (3) any locator service that procured you is a member in good standing of both the Texas Apartment Association and the affiliated local apartment association for the area where the apartment is located. The member is either an owner/management company member or an associate member doing business as a locator service (whose name and address is disclosed on page 6). If not, the following applies: (1) this Lease Contract is voidable at your option and is unenforceable by us (except for property damages); and (2) we may not recover past or future rent or other charges. The above remedies also apply if both of the following occur: (1) the Lease Contract is automatically renewed on a month-to-month basis two or more times after membership in TAA and the local association has lapsed; and (2) neither the owner nor the management company is a member of TAA and the local association at the time of the third automatic renewal. A signed affidavit from the local affiliated apartment association which attests to non-membership when the Lease Contract or renewal was signed will be conclusive evidence of non-membership. Governmental entities may use TAA forms if TAA agrees in writing.

Security Guidelines for Residents

36. **SECURITY GUIDELINES.** We care about your safety and that of other occupants and guests. No security system is fail-safe. Even the best system can't prevent crime. Always act as if security systems don't exist since they are subject to malfunction, tampering, and human error. We disclaim any express or implied warranties of security. The best safety measures are the ones you perform as a matter of common sense and habit.

Inform all other occupants in your apartment, including any children you may have, about these guidelines. We recommend that all residents and occupants use common sense and follow crime prevention tips, such as those listed below:

- In case of emergency, call 911. Always report emergencies to authorities first and then contact the management.
- Report any suspicious activity to the police first, and then follow up with a written notice to us.
- Know your neighbors. Watching out for each other is one of the best defenses against crime.
- Always be aware of your surroundings and avoid areas that are not well-traveled or well-lit.
- Keep your keys handy at all times when walking to your car or home.
- Do not go inside if you arrive home and find your door open. Call the police from another location and ask them to meet you before entering.
- Make sure door locks, window latches and sliding glass doors are properly secured at all times.
- Use the keyless deadbolt in your apartment when you are at home.
- Don't put your name or address on your key ring or hide extra keys in obvious places, like under a flower pot. If you lose a key or have concerns about key safety, we will rekey your locks at your expense, in accordance with paragraph 9 of the Lease Contract.

- Check the door viewer before answering the door. Don't open the door if you don't know the person or have any doubts. Children who are old enough to take care of themselves should never let anyone inside when home without an adult.
- Regularly check your security devices and detection devices to make sure they are working properly. Detection device batteries should be tested monthly and replaced at least twice a year.
- Immediately report in writing (dated and signed) to us any needed repairs of security devices, doors, windows, detection devices, as well as any other malfunctioning safety devices on the property, such as broken access gates, burned out exterior lights, etc.
- If your doors or windows are not secure due to a malfunction or break-in, stay with a friend or neighbor until the problem is fixed.
- When you leave home, make sure someone knows where you're going and when you plan to be back.
- Lock your doors and leave a radio or TV playing softly while you're gone. Close curtains, blinds and window shades at night.
- While gone for an extended period, secure your home and use lamp timers. Also stop all deliveries (such as newspaper and mail) or have these items picked up daily by a friend.
- Know at least two exit routes from your home, if possible.
- Don't give entry keys, codes or gate access cards to anyone.
- Always lock the doors on your car, even while driving. Take the keys and remove or hide any valuables. Park your vehicle in a well-lit area.
- Check the backseat before getting into your car. Be careful stopping at gas stations or automatic-teller machines at night—or anytime when you suspect danger.

There are many other crime prevention tips readily available from police departments and others.

When Moving Out

37. **MOVE-OUT NOTICE.** Before moving out, you must give our representative advance written move-out notice as provided below. Your move-out notice will not release you from liability for the full term of the Lease Contract or renewal term. You will still be liable for the entire Lease Contract term if you move out early (paragraph 22) except under the military clause (paragraph 23). YOUR MOVE-OUT NOTICE MUST COMPLY WITH EACH OF THE FOLLOWING:

Notice of move-out. The advance notice must be at least the number of days of notice required in paragraph 5 or in special provisions—even if the Lease Contract has become a month-to-month lease. If a move-out notice is received on the first, it will suffice for move-out on the last day of the month of intended move-out, provided that all other requirements below are met.

- The move-out date in your notice (check only) must be the last day of the month, or it may be the exact day designated in your notice. If neither is checked, the second applies.

- Your move-out notice must be in writing. Oral move-out notice will not be accepted and will not terminate your Lease Contract.
- Your move-out notice must not terminate the Lease Contract sooner than the end of the Lease Contract term or renewal period.
- If we require you to give us more than 30 days written notice to move out before the end of the lease term, we will give you a written reminder not less than 5 days nor more than 90 days before your deadline for giving us your written move-out. If we

MAIL IS REQUIRED

YOUR NOTICE IS NOT ACCEPTABLE IF IT DOES NOT COMPLY WITH ALL OF THE ABOVE. We recommend you use our written move-out form to ensure you provide the information needed. You must obtain from our representative written acknowledgment that we received your move-out notice. If we terminate the Lease Contract, we must give you the same advance notice—unless you are in default.

SAMPLE ONLY—

38. MOVE-OUT PROCEDURES. The move-out date can't be changed unless we and you both agree in writing. You won't move out before the Lease Contract term or renewal period ends unless all rent for the entire Lease Contract term or renewal period is paid in full. Early move-out may result in reletting charges and acceleration of future rent under paragraphs 11 and 32. You're prohibited by law from applying any security deposit to rent. You won't stay beyond the date you are supposed to move out. All residents, guests, and occupants must surrender or abandon the apartment before the 30-day period for deposit refund begins. You must give us and the U.S. Postal Service, in writing, each resident's forwarding address:

39. CLEANING. You must thoroughly clean the apartment, including doors, windows, furniture, bathroom, kitchen appliances, patios, balconies, garages, carports, and storage rooms. You must follow move-out cleaning instructions if they have been provided. If you don't clean adequately, you'll be liable for reasonable cleaning charges—including charges for cleaning carpets, draperies, furniture, walls, etc. that are soiled beyond normal wear (that is, wear or soiling that occurs without negligence, carelessness, accident, or abuse).

40. MOVE-OUT INSPECTION. You should meet with our representative for a move-out inspection. Our representative has no authority to bind or limit us regarding deductions for repairs, damages, or charges. Any statements or estimates by us or our representative are subject to our correction, modification, or disapproval before final refunding or accounting.

41. SECURITY DEPOSIT DEDUCTIONS AND OTHER CHARGES. You'll be liable for the following charges, if applicable: unpaid rent; unpaid utilities; unreimbursed service charges; repairs or damages caused by negligence, carelessness, accident, or abuse, including stickers, scratches, tears, burns, stains, or unapproved holes; replacement cost of our property that was in or attached to the apartment and is missing; replacing dead or missing detection device batteries at any time; utilities for repairs or cleaning; trips to let in company representatives to remove your telephone or TV cable services or rental items (if you so request or have moved out); trips to open the apartment when you or any guest or occupant is missing a key; unreturned keys; missing or burned-out light bulbs; removing or rekeying unauthorized security devices or alarm systems; agreed reletting charges; packing, removing, or storing property removed or stored under paragraph 13; removing illegally parked vehicles; special trips for trash removal caused by parked vehicles blocking dumpsters; false security-alarm charges unless due to our negligence;

animal-related charges under paragraphs 6 and 27; government fees or fines against us for violation (by you, you occupants, or guests) of local ordinances relating to detection devices, false alarms, recycling, or other matters; late-payment and returned-check charges; a charge (not to exceed \$100) for our time and inconvenience in our lawful removal of an animal or in any valid eviction proceeding against you, plus attorney's fees, court costs, and filing fees actually paid; and other sums due under this Lease Contract.

You'll be liable to us for: (1) charges for replacing all keys and access devices referenced in paragraph 5 if you fail to return them on or before your actual move-out date; (2) accelerated rent if you have violated paragraph 32; and (3) a reletting fee if you have violated paragraph 11.

42. DEPOSIT RETURN, SURRENDER, AND ABANDONMENT. We'll mail you your security deposit refund (less lawful deductions) and an itemized accounting of any deductions no later than 30 days after surrender or abandonment, unless statutes provide otherwise.

You have *surrendered* the apartment when: (1) the move-out date has passed and no one is living in the apartment in our reasonable judgment; or (2) all apartment keys and access devices listed in paragraph 5 have been turned in where rent is paid—whichever date occurs first.

You have *abandoned* the apartment when all of the following have occurred: (1) everyone appears to have moved out in our reasonable judgment; (2) clothes, furniture, and personal belongings have been substantially removed in our reasonable judgment; (3) you've been in default for non-payment of rent for 5 consecutive days, or water, gas, or electric service for the apartment not connected in our name has been terminated or transferred; and (4) you've not responded for 2 days to our notice left on the inside of the main entry door, stating that we consider the apartment abandoned. An apartment is also "abandoned" 10 days after the death of a sole resident.

Surrender, abandonment, or judicial eviction ends your right of possession for all purposes and gives us the immediate right to clean up, make repairs in, and relet the apartment; determine any security deposit deductions; and remove property left in the apartment. Surrender, abandonment, and judicial eviction affect your rights to property left in the apartment (paragraph 13), but do not affect our mitigation obligations (paragraph 32).

Signatures, Originals and Attachments

43. ORIGINALS AND ATTACHMENTS. This Lease Contract has been executed in multiple originals, each with original signatures—one for you and one for us. Our rules and community policies, if any, will be attached to the Lease Contract and given to you at signing. When an Inventory and Condition form is completed, both you and we should retain a copy. The items checked below are attached to this Lease Contract and are binding even if not initialed or signed.

- ☐ Access Gate Addendum
- ☐ Additional Special Provisions
- ☐ Animal Addendum
- ☐ Apartment Rules or Community Policies
- ☐ Asbestos Addendum (if asbestos is present)
- ☐ Early Termination Addendum
- ☐ Enclosed Garage, Carport or Storage Unit Addendum
- ☐ Inventory & Condition Form
- ☐ Intrusion Alarm Addendum
- ☐ Lead Hazard Information and Disclosure Addendum
- ☐ Lease Contract Guaranty (____ guaranties, if more than one)
- ☐ Legal Description of Apartment (if rental term longer than one year)
- ☐ Military SCRA Addendum
- ☐ Mold Information and Prevention Addendum
- ☐ Move-Out Cleaning Instructions
- ☐ Notice of Intent to Move Out Form
- ☐ Parking Permit or Sticker (quantity: ____)
- ☐ Rent Concession Addendum
- ☐ Renter's or Liability Insurance Addendum
- ☐ Repair or Service Request Form
- ☐ Satellite Dish or Antenna Addendum
- ☐ TCEQ Tenant Guide to Water Allocation
- ☐ Utility Allocation Addendum for: ☐ electricity ☐ water ☐ gas
- ☐ central system costs ☐ trash removal ☐ cable TV
- ☐ Utility Submetering Addendum for: ☐ electricity ☐ water ☐ gas
- ☐ Other _____
- ☐ Other _____

Name and address of locator service (if applicable)

You are legally bound by this document.
Please read it carefully.

Before submitting a rental application or signing a Lease Contract, you may take a copy of these documents to review and/or consult an attorney.

Additional provisions or changes may be made in the Lease Contract if agreed to in writing by all parties.

You are entitled to receive an original of this Lease Contract after it is fully signed. Keep it in a safe place.

Resident or Residents (all sign below)

Date signed

Date signed

Date signed

Date signed

Owner or Owner's Representative (signing on behalf of owner)

Address and phone number of owner's representative for notice purposes

After-hours phone number

(Always call 911 for police, fire or medical emergencies.)

Date form is filled out (same as on top of page 1)



APPENDIX V

TEXAS ASSOCIATION OF REALTORS®

RESIDENTIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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1. PARTIES: The parties to this lease are:

the owner of the Property, Landlord,: _____; and

Tenant(s): _____.

2. PROPERTY: Landlord leases to Tenant the following real property:

Address: _____
legally described as: _____

in _____ County, Texas, together with the following non-real-property items: _____.

The real property and the non-real-property are collectively called the "Property".

3. TERM:**A. Primary Term:** The primary term of this lease begins and ends as follows:

Commencement Date: _____ Expiration Date: _____.

B. Delay of Occupancy: Tenant must occupy the Property within 5 days after the Commencement Date. If Tenant is unable to occupy the Property by the 5th day after the Commencement Date because of construction on the Property or a prior tenant's holding over of the Property, Tenant may terminate this lease by giving written notice to Landlord before the Property becomes available to be occupied by Tenant, and Landlord will refund to Tenant the security deposit and any rent paid. Landlord will abate rent on a daily basis for a delay caused by construction or a prior tenant's holding over. This paragraph does not apply to any delay in occupancy caused by cleaning, repairs, or make-ready items.**4. AUTOMATIC RENEWAL AND NOTICE OF TERMINATION:****A.** This lease automatically renews on a month-to-month basis unless Landlord or Tenant provides the other party written notice of termination not less than: *(Check only one box.)*

- ☐ (1) 30 days before the Expiration Date.
☐ (2) _____ days before the Expiration Date.

B. If this lease automatically renews on a month-to month basis, it will continue to renew on a month-to-month basis until either party provides written notice of termination to the other party and the notice of termination will be effective: *(Check only one box.)*

- ☐ (1) on the last day of the month following the month in which the notice is given. Landlord is not obligated to prorate rent even if Tenant surrenders the Property before the termination date.
☐ (2) on the date designated in the notice but not sooner than 30 days after the notice is given and, if necessary, rent will be prorated on a daily basis.

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Residential Lease concerning: _____

- C. Oral notice of termination is not sufficient under any circumstances. Time is of the essence for providing notice of termination (strict compliance with dates by which notice must be provided is required). If a box is not checked under Paragraph 4A, Paragraph 4A(1) will apply. If a box is not checked under Paragraph 4B, Paragraph 4B(1) will apply.

5. RENT:

- A. Monthly Rent: Tenant will pay Landlord monthly rent in the amount of \$_____ for each full month during this lease. The first full month's rent is due and payable not later than _____. Thereafter, Tenant will pay the monthly rent so that Landlord receives the monthly rent on or before:

☐ (1) the first day of each month during this lease.

☐ (2) _____. Weekends, holidays, and mail delays do not excuse Tenant's obligation to timely pay rent.

- B. Prorated Rent: On or before _____ Tenant will pay Landlord \$_____ as prorated rent from the Commencement Date through the last day of the month in which this lease begins.

- C. Place of Payment: Unless this lease provides otherwise, Tenant will remit all amounts due to Landlord under this lease to the following person or entity at the place stated and make all payments payable to the named person or entity. Landlord may later designate, in writing, another person or place to which Tenant must remit amounts due under this lease.

Name: _____

Address: _____

Notice: Place the Property address and Tenant's name on all payments.

- D. Method of Payment:

(1) Tenant must pay all rent timely and without demand, deduction, or offset, except as permitted by law or this lease.

(2) Time is of the essence for the payment of rent (strict compliance with rental due dates is required).

(3) Unless the parties agree otherwise, Tenant may not pay rent in cash and will pay all rent by check, cashier's check, money order, or other means acceptable to Landlord.

(4) Landlord ☐ requires ☐ does not require Tenant(s) to pay monthly rents by one check or draft.

(5) If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is not honored by the institution on which it was drawn, Landlord may require Tenant to pay such amount and any subsequent amounts under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

- E. Rent Increases: There will be no rent increases through the primary term. Landlord may increase the rent that will be paid during any month-to-month renewal period by providing at least 30 days written notice to Tenant.

6. LATE CHARGES:

- A. If Landlord does not actually receive a rent payment in the full amount at the designated place of payment by 11:59 p.m. on the _____ day (*insert a number of 2 or more*) after the date on which it is due according to Paragraph 5A, Tenant will pay Landlord for each late payment:

(1) an initial late charge equal to (*check one box only*): ☐ (a) \$_____; or ☐ (b) _____% of one month's rent; **and**

(2) additional late charges of \$_____ per day thereafter until rent and late charges are paid in full. Additional late charges for any one payment may not exceed more than 30 days.

Residential Lease concerning: _____

B. For the purposes of paying rent and any late charges, the mailbox is not the agent for receipt for Landlord (the postmark date is not the date Landlord receives the payment). The parties agree that the late charge is based on a reasonable estimate of uncertain damages to the Landlord that are incapable of precise calculation and result from late payment of rent. Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 27.

7. **RETURNED CHECKS:** Tenant will pay Landlord \$_____ for each check Tenant tenders to Landlord which is returned or not honored by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment. Tenant must make any returned check good by paying such amount(s) plus any associated charges in certified funds.

8. **APPLICATION OF FUNDS:** Regardless of any notation on a check, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to, late charges, returned check charges, repairs, brokerage fees, periodic utilities, pet charges, and then to rent.

9. **PETS:**

A. Unless the parties agree otherwise in writing, Tenant may not permit, even temporarily, any pet on the Property (including but not limited to any mammal, reptile, bird, fish, rodent, or insect).

B. If Tenant violates this Paragraph 9 or any agreement to keep a pet on the Property, Landlord may take all or any of the following action:

- (1) declare Tenant to be in default of this lease and exercise Landlord's remedies under Paragraph 27;
- (2) charge Tenant, as additional rent, an initial amount of \$_____ and \$_____ per day thereafter per pet for each day Tenant violates the pet restrictions;
- (3) remove or cause to be removed any unauthorized pet and deliver it to appropriate local authorities by providing at least 24-hour written notice to Tenant of Landlord's intention to remove the unauthorized pet; and
- (4) charge to Tenant the Landlord's cost to:
 - (a) remove any unauthorized pet;
 - (b) exterminate the Property for fleas and other insects;
 - (c) clean and deodorize the Property's carpets and drapes; and
 - (d) repair any damage to the Property caused by the unauthorized pet.

C. When taking any action under Paragraph 9B Landlord will not be liable for any harm, injury, death, or sickness to any pet.

10. **SECURITY DEPOSIT:**

A. Security Deposit: On or before execution of this lease, Tenant will pay a security deposit to Landlord in the amount of \$_____. "Security deposit" has the meaning assigned to that term in §92.102, Property Code.

B. Interest: No interest or income will be paid to Tenant on the security deposit. Landlord may place the security deposit in an interest-bearing or income-producing account and any interest or income earned will be paid to Landlord or Landlord's representative.

C. Refund: Tenant must give Landlord at least thirty (30) days written notice of surrender before Landlord is obligated to refund or account for the security deposit.

Notices about Security Deposits:

(1) **§92.108, Property Code provides that a tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.**

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- (2) Bad faith violations of §92.108 may subject a tenant to liability up to 3 times the rent wrongfully withheld and the landlord's reasonable attorney's fees.
- (3) The Property Code does not obligate a landlord to return or account for the security deposit until the tenant surrenders the Property and gives the landlord a written statement of the tenant's forwarding address, after which the landlord has 30 days in which to account.
- (4) "Surrender" is defined in Paragraph 16 of this lease.
- (5) One may view the Texas Property Code at the Texas Legislature's website which, as of the date shown in the lower left-hand corner of this form, is <http://tlo2.tlc.state.tx.us/statutes/pr.toc.htm>.

D. Deductions:

- (1) Landlord may deduct reasonable charges from the security deposit for:
 - (a) damages to the Property, excluding normal wear and tear, and all reasonable costs associated to repair the Property;
 - (b) costs for which Tenant is responsible to clean, deodorize, exterminate, and maintain the Property;
 - (c) unpaid or accelerated rent;
 - (d) unpaid late charges;
 - (e) unpaid utilities and utility expenses Landlord incurs to maintain utilities to the Property as required by this Lease;
 - (f) unpaid pet charges;
 - (g) replacing unreturned keys, garage door openers, security devices, or other components;
 - (h) the removal of unauthorized locks or fixtures installed by Tenant;
 - (i) Landlord's cost to access the Property if made inaccessible by Tenant;
 - (j) missing or burned-out light bulbs and fluorescent tubes (at the same location and of the same type and quality that are in the Property on the Commencement Date);
 - (k) packing, removing, and storing abandoned property;
 - (l) removing abandoned or illegally parked vehicles;
 - (m) costs of reletting (as defined in Paragraph 27), if Tenant is in default;
 - (n) attorney's fees, costs of court, costs of service, and other reasonable costs incurred in any legal proceeding against Tenant;
 - (o) mailing costs associated with sending notices to Tenant for any violations of this lease; and
 - (p) any other unpaid charges or fees or other items for which Tenant is responsible under this lease.
- (2) If deductions exceed the security deposit, Tenant will pay to Landlord the excess within 10 days after Landlord makes written demand.

11. UTILITIES:

- A. Tenant will pay all connection fees, service fees, usage fees, and all other costs and fees for all utilities to the Property (for example, electricity, gas, water, wastewater, garbage, telephone, alarm monitoring systems, cable, and Internet connections) except the following which Landlord will pay: _____

Unless otherwise agreed, amounts under this paragraph are payable directly to the service providers.

- B. Unless provided by Landlord, Tenant must, at a minimum, keep the following utilities on, if available, at all times this lease is in effect: gas; electricity; water; wastewater; and garbage services.

Notice: Before signing this lease, Tenant should determine if all necessary utilities are available to the Property and are adequate for Tenant's use.

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12. USE AND OCCUPANCY:

- A. Occupants: Tenant may use the Property as a private residence only. The only persons Tenant may permit to reside on the Property during the term of this lease are *(include names and ages of all occupants)*: _____
 _____.
- B. Phone Numbers: Tenant must promptly inform Landlord of any changes in Tenant's phone numbers (home, work, and mobile) not later than 5 days after a change.
- C. HOA Rules: Tenant must comply with any owners' association rules or restrictive covenants affecting the Property. Tenant will reimburse Landlord for any fines or other charges assessed against Landlord for violations by Tenant of any owners' association rule or restrictive covenant.
- D. Prohibitions: Unless otherwise authorized by this lease, Tenant may not install or permit any of the following on the Property, even temporarily: a spa, hot tub, above-ground pool, trampoline, or any item which causes a suspension or cancellation of insurance coverage or an increase in insurance premiums. Tenant may not permit any part of the Property to be used for: (1) any activity which is a nuisance, offensive, noisy, or dangerous; (2) the repair of any vehicle; (3) any business of any type, including but not limited to child care; (4) any activity which violates any zoning ordinance, owners' association rule, or restrictive covenant; (5) any illegal or unlawful activity; or (6) activity that obstructs, interferes with, or infringes on the rights of other persons near the Property.
- E. Guests: Tenant may not permit any guest to stay on the Property longer the amount of time permitted by any owners' association rule or restrictive covenant or _____ days without Landlord's written permission, whichever is less.
- F. Common Areas: Landlord is not obligated to pay any non-mandatory or user fees for Tenant's use of any common areas or facilities (for example, pool or tennis courts).

- 13. PARKING RULES:** Tenant may not permit more than _____ vehicles, including but not limited to automobiles, trucks, recreational vehicles, trailers, motorcycles, all-terrain vehicles, jet skis, and boats, on the Property unless authorized by Landlord in writing. Tenant may not park or permit any person to park any vehicles in the yard. Tenant may permit vehicles to be parked only in drives, garages, designated common parking areas, or in the street if not prohibited by law or an owners' association. Tenant may not store or permit any person to store any vehicles on or adjacent to the Property or on the street in front of the Property. In accordance with applicable state and local laws, Landlord may have towed, at Tenant's expense: (a) any inoperative vehicle on or adjacent to the Property; (b) any vehicle parked in violation of this paragraph or any additional parking rules made part of this lease; or (c) any vehicle parked in violation of any law, local ordinance, or owners' association rule.

14. ACCESS BY LANDLORD:

- A. Advertising: Landlord may prominently display a "For Sale" or "For Lease" or similarly worded sign on the Property during the term of this lease or any renewal period. Landlord or Landlord's contractor may take interior or exterior photographs or images of the Property and use the photographs or images in any advertisements to lease or sell the Property.
- B. Access: Before accessing the Property, Landlord or anyone authorized by Landlord will attempt to first contact Tenant, but may enter the Property at reasonable times without notice to make repairs or to show the Property to prospective tenants or buyers, inspectors, fire marshals, lenders, appraisers, or insurance agents. Additionally, Landlord or anyone authorized by Landlord may peacefully enter the Property at reasonable times without first attempting to contact Tenant and without notice to: (1) survey

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Residential Lease concerning: _____

or review the Property's condition and take photographs to document the condition; (2) make emergency repairs; (3) exercise a contractual or statutory lien; (4) leave written notices; or (5) seize nonexempt property if Tenant is in default.

- C. Trip Charges: If Landlord or Landlord's agents have made prior arrangements with Tenant to access the Property and are denied or are not able to access the Property because of Tenant's failure to make the Property accessible, Landlord may charge Tenant a trip charge of \$_____.

- D. Keybox: **A keybox is a locked container placed on the Property holding a key to the Property. The keybox is opened by a special combination, key, or programmed access device so that persons with the access device may enter the Property, even in Tenant's absence. The keybox is a convenience but involves risk (such as unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a keybox.**

(1) Tenant authorizes Landlord, Landlord's property manager, and Landlord's broker to place on the Property a keybox containing a key to the Property:

- (a) during the last _____ days of this lease or any renewal or extension; and
(b) at any time Landlord lists the Property for sale with a Texas licensed broker.

(2) Tenant may withdraw Tenant's authorization to place a keybox on the Property by providing written notice to Landlord and paying Landlord a fee of \$_____ as consideration for the withdrawal. Landlord will remove the keybox within a reasonable time after receipt of the notice of withdrawal and payment of the required fee. Removal of the keybox does not alleviate Tenant's obligation to make the Property available for showings as indicated in Paragraph 14B.

(3) If Landlord or Landlord's agents have notified Tenant of their intent to access the Property to show it to prospects and are denied or are not able to access the Property because of Tenant's failure to make the Property accessible, Landlord may charge Tenant a trip charge of \$_____.

(4) Landlord, the property manager, and Landlord's broker are not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses arising from use of the keybox unless caused by Landlord, the property manager, or Landlord's broker.

15. MOVE-IN CONDITION:

- A. ~~Landlord makes no express or implied warranties as to the Property's condition.~~ Tenant has inspected the Property and accepts it **AS-IS** provided that Landlord: _____

- B. Tenant will complete an Inventory and Condition Form, noting any damages to the Property, and deliver it to Landlord within _____ days after the Commencement Date. If Tenant fails to timely deliver the Inventory and Condition Form, the Property will be deemed to be free of damages, unless otherwise expressed in this lease. The Inventory and Condition Form is not a request for repairs. Tenant must direct all requests for repairs in compliance with Paragraph 18.

16. MOVE-OUT:

- A. Move-Out Condition: When this lease ends, Tenant will surrender the Property in the same condition as when received, normal wear and tear excepted. Tenant will leave the Property in a clean condition free of all trash, debris, and any personal property. Tenant may not abandon the Property.

- B. Definitions:

(1) "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.

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- (2) "*Surrender*" occurs when all occupants have vacated the Property, in Landlord's reasonable judgment, and one of the following events occurs:
 - (a) the date Tenant specifies as the move-out or termination date in a written notice to Landlord has passed; or
 - (b) Tenant returns keys and access devices that Landlord provided to Tenant under this lease.
- (3) "*Abandonment*" occurs when all of the following occur:
 - (a) all occupants have vacated the Property, in Landlord's reasonable judgment;
 - (b) Tenant is in breach of this lease by not timely paying rent; and
 - (c) Landlord has delivered written notice to Tenant, by affixing it to the inside of the main entry door or if the Landlord is prevented from entering the Property by affixing it to the outside of the main entry door, stating that Landlord considers the Property abandoned, and Tenant fails to respond to the affixed notice by the time required in the notice, which will not be less than 2 days from the date the notice is affixed to the main entry door.

C. Personal Property Left After Move-Out:

- (1) If Tenant leaves any personal property in the Property after surrendering or abandoning the Property Landlord may:
 - (a) dispose of such personal property in the trash or a landfill;
 - (b) give such personal property to a charitable organization; or
 - (c) store and sell such personal property by following procedures in §54.045(b)-(e), Property Code.
- (2) Tenant must reimburse Landlord all Landlord's reasonable costs under Paragraph 16C(1) for packing, removing, storing, and selling the personal property left in the Property after surrender or abandonment.

17. PROPERTY MAINTENANCE:

A. Tenant's General Responsibilities: Tenant, at Tenant's expense, must:

- (1) keep the Property clean and sanitary;
- (2) promptly dispose of all garbage in appropriate receptacles;
- (3) supply and change heating and air conditioning filters at least once a month;
- (4) supply and replace all light bulbs, fluorescent tubes, and batteries for smoke detectors, carbon monoxide detectors, garage door openers, ceiling fan remotes, and other devices (of the same type and quality that are in the Property on the Commencement Date);
- (5) maintain appropriate levels of necessary chemicals or matter in any water softener;
- (6) take action to promptly eliminate any dangerous condition on the Property;
- (7) take all necessary precautions to prevent broken water pipes due to freezing or other causes;
- (8) replace any lost or misplaced keys;
- (9) pay any periodic, preventive, or additional extermination costs desired by Tenant;
- (10) remove any standing water;
- (11) know the location and operation of the main water cut-off valve and all electric breakers and how to switch the valve or breakers off at appropriate times to mitigate any potential damage; and
- (12) promptly notify Landlord, in writing, of all needed repairs.

B. Yard Maintenance:

- (1) "*Yard*" means all lawns, shrubbery, bushes, flowers, gardens, trees, rock or other landscaping, and other foliage on or encroaching on the Property or on any easement appurtenant to the Property, and does not include common areas maintained by an owners' association.
- (2) "*Maintain the yard*" means to perform activities such as, but not limited to: (a) mowing, fertilizing, and trimming the yard; (b) controlling pests in the yard; and (c) removing debris from the yard.

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- (3) Unless prohibited by ordinance or other law, Tenant will water the yard at reasonable and appropriate times including but not limited to the following times: _____

_____. Other than watering, the yard will be maintained as follows:

- ☐ (a) Landlord, at Landlord's expense, will maintain the yard. Tenant will permit Landlord and Landlord's contractors reasonable access to the yard and will remove any pet from the yard at appropriate times.
- ☐ (b) Tenant, at Tenant's expense, will maintain the yard.
- ☐ (c) Tenant will maintain in effect a scheduled yard maintenance contract with: ☐ a contractor who regularly provides such service; ☐ _____.

C. Pool/Spa Maintenance: Any pool or spa on the Property will be maintained according to a Pool/Spa Maintenance Addendum.

D. Prohibitions: If Tenant installs any fixtures on the Property, authorized or unauthorized, such as additional smoke detectors, locks, alarm systems, cables, satellite dishes, or other fixtures, such fixtures will become the property of the Landlord. Except as otherwise permitted by law, this lease, or in writing by Landlord, Tenant may not:

- (1) remove any part of the Property or any of Landlord's personal property from the Property;
- (2) remove, change, add, or rekey any lock;
- (3) make holes in the woodwork, floors, or walls, except that a reasonable number of small nails may be used to hang pictures in sheetrock and grooves in paneling;
- (4) permit any water furniture on the Property;
- (5) install additional phone or video cables, outlets, antennas, satellite receivers, or alarm systems;
- (6) replace or remove flooring material, paint, or wallpaper;
- (7) install, change, or remove any: fixture, appliance, or non-real-property item listed in Paragraph 2;
- (8) keep or permit any hazardous material on the Property such as flammable or explosive materials;
- (9) keep or permit any material or item which causes any liability or fire and extended insurance coverage to be suspended or canceled or any premiums to be increased;
- (10) dispose of any environmentally detrimental substance (for example, motor oil or radiator fluid) on the Property; or
- (11) cause or allow any lien to be filed against any portion of the Property.

E. Failure to Maintain: If Tenant fails to comply with this Paragraph 17 or any Pool/Spa Maintenance Addendum, Landlord may, in addition to exercising Landlord's remedies under Paragraph 27, perform whatever action Tenant is obligated to perform and Tenant must immediately reimburse Landlord the reasonable expenses that Landlord incurs.

18. REPAIRS: (Notice: Subchapter B, Chapter 92, Property Code governs repair obligations).

A. Repair Requests: All requests for repairs must be in writing and delivered to Landlord. If Tenant is delinquent in rent at the time a repair notice is given, Landlord is not obligated to make the repair. In the event of an emergency related to the condition of the Property that materially affects the physical health or safety of an ordinary tenant, call: _____. Ordinarily, a repair to the heating and air conditioning system is not an emergency.

B. Completion of Repairs:

- (1) Tenant may not repair or cause to be repaired any condition, regardless of the cause, without Landlord's permission. All decisions regarding repairs, including the completion of any repair, whether to repair or replace the item, and the selection of contractors, will be at Landlord's sole discretion.

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- (2) Landlord is not obligated to complete a repair on a day other than a business day unless required to do so by the Property Code.
- C. **Payment of Repair Costs:** Tenant will pay Landlord or any contractor Landlord directs Tenant to pay, the first \$_____ of the cost to repair each condition in need of repair, and Landlord will pay the remainder, except for the following conditions which will be paid as follows.
- (1) **Repairs that Landlord will Pay Entirely:** Landlord will pay the entire cost to repair:
- (a) a condition caused by the Landlord or the negligence of the Landlord;
 - (b) wastewater stoppages or backups caused by deterioration, breakage, roots, ground condition, faulty construction, or malfunctioning equipment;
 - (c) a condition that adversely affects the health or safety of an ordinary tenant which is not caused by Tenant, an occupant, a member of Tenant's family, or a guest or invitee of Tenant; and
 - (d) a condition in the following items which is not caused by Tenant or Tenant's negligence:
 - (1) heating and air conditioning systems;
 - (2) water heaters; or
 - (3) water penetration from structural defects.
- (2) **Repairs that Tenant will Pay Entirely:** Tenant will pay Landlord or any contractor Landlord directs Tenant to pay the entire cost to repair:
- (a) a condition caused by Tenant, an occupant, a member of Tenant's family, or a guest or invitee of Tenant (a failure to timely report an item in need of repair or the failure to properly maintain an item may cause damage for which Tenant may be responsible);
 - (b) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively service the Property;
 - (c) damage to doors, windows, or screens; and
 - (d) damage from windows or doors left open.
- (3) **Appliances or Items that will not be Repaired:** Landlord does not warrant and will not repair or replace the following: _____
- D. **Trip Charges:** If a repair person is unable to access the Property after making arrangements with Tenant to complete the repair, Tenant will pay any trip charge the repair person may charge, which amount may be different from the amount stated in Paragraph 14C.
- E. **Advance Payments and Reimbursements:** Landlord may require advance payment of repairs or payments under this Paragraph 18 for which Tenant is responsible. Tenant must promptly reimburse Landlord the amounts under this Paragraph 18 for which Tenant is responsible.
- F. **NOTICE:** If Landlord fails to repair a condition that materially affects the physical health or safety of an ordinary tenant as required by this lease or the Property Code, Tenant may be entitled to exercise remedies under §92.056 and §92.0561 of the Property Code. If Tenant follows the procedures under those sections, the following remedies may be available to Tenant: (1) terminate the lease and obtain an appropriate refund under §92.056(f); (2) have the condition repaired or remedied according to §92.0561; (3) deduct from the rent the cost of the repair or remedy according to §92.0561; and (4) obtain judicial remedies according to §92.0563. Do not exercise these remedies without consulting an attorney or carefully reviewing the procedures under the applicable sections. The Property Code presumes that 7 days is a reasonable period of time for the Landlord to repair a condition unless there are circumstances which establish that a different period of time is appropriate (such as the severity and nature of

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the condition and the availability of materials, labor, and utilities. Failure to strictly follow the procedures in the applicable sections may cause Tenant to be in default of the lease.

19. SECURITY DEVICES AND EXTERIOR DOOR LOCKS:

- A. Subchapter D, Chapter 92, Property Code requires the Property to be equipped with certain types of locks and security devices. Landlord has rekeyed the security devices since the last occupant vacated the Property or will rekey the security devices within 7 days after Tenant moves in. "Security device" has the meaning assigned to that term in §92.151, Property Code.
- B. All notices or requests by Tenant for rekeying, changing, installing, repairing, or replacing security devices must be in writing. Installation of additional security devices or additional rekeying or replacement of security devices desired by Tenant will be paid by Tenant in advance and may be installed only by contractors authorized by Landlord.

20. SMOKE DETECTORS: Subchapter F, Chapter 92, Property Code requires the Property to be equipped with smoke detectors in certain locations. Requests for additional installation, inspection, or repair of smoke detectors must be in writing. Disconnecting or intentionally damaging a smoke detector or removing a battery without immediately replacing it with a working battery may subject Tenant to civil penalties and liability for damages and attorney fees under §92.2611, Property Code.

21. LIABILITY: Unless caused by Landlord, Landlord is not responsible to Tenant, Tenant's guests, family, or occupants for any damages, injuries, or losses to person or property caused by fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, condition of the Property, environmental contaminants (for example, carbon monoxide, asbestos, radon, lead-based paint, mold, fungus, etc.), or other occurrences or casualty losses. Tenant will promptly reimburse Landlord for any loss, property damage, or cost of repairs or service to the Property caused by Tenant, Tenant's guests, any occupants, or any pets.

22. HOLDOVER: If Tenant fails to vacate the Property at the time this lease ends Tenant will pay Landlord rent for the holdover period and indemnify Landlord and prospective tenants for damages, including but not limited to lost rent, lodging expenses, costs of eviction, and attorneys' fees. Rent for any holdover period will be three (3) times the monthly rent, calculated on a daily basis, and will be immediately due and payable daily without notice or demand.

23. RESIDENTIAL LANDLORD'S LIEN: Landlord will have a lien for unpaid rent against all of Tenant's nonexempt personal property that is in the Property and may seize such nonexempt property if Tenant fails to pay rent. Subchapter C, Chapter 54, Property Code governs the rights and obligations of the parties regarding Landlord's lien. Landlord may collect a charge for packing, removing, or storing property seized in addition to any other amounts Landlord is entitled to receive. Landlord may sell or dispose of any seized property in accordance with the provisions of §54.045, Property Code.

24. SUBORDINATION: This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to: (i) any lien or encumbrance now or later placed on the Property by Landlord; (ii) all advances made under any such lien or encumbrance; (iii) the interest payable on any such lien or encumbrance; (iv) any and all renewals and extensions of any such lien or encumbrance; (v) any restrictive covenant; and (vi) the rights of any owners' association affecting the Property.

25. CASUALTY LOSS OR CONDEMNATION: Section 92.054, Property Code governs the rights and obligations of the parties regarding a casualty loss to the Property. Any proceeds, payment for damages, settlements, awards, or other sums paid because of a casualty loss to the Property will be Landlord's sole property. For the purpose of this lease, any condemnation of all or a part of the Property is a casualty loss.

Residential Lease concerning: _____

26. SPECIAL PROVISIONS: *(Do not insert a lease-option or lease-purchase clause without the assistance of legal counsel. Special obligations and liabilities under statute apply to such transactions.)*

27. DEFAULT:

- A. If Landlord fails to comply with this lease, Tenant may seek any relief provided by law.
- B. If Tenant fails to timely pay all amounts due under this lease or otherwise fails to comply with this lease, Tenant will be in default and:
 - (1) Landlord may terminate Tenant's right to occupy the Property by providing Tenant with at least one day written notice to vacate;
 - (2) all unpaid rents which are payable during the remainder of this lease or any renewal period will be accelerated without notice or demand;
 - (3) Landlord may exercise Landlord's lien under Paragraph 23 and any other rights under this lease or the Property Code; and
 - (4) Tenant will be liable for:
 - (a) any lost rent;
 - (b) Landlord's cost of reletting the Property including but not limited to leasing fees, advertising fees, utility charges, and other fees reasonably necessary to relet the Property;
 - (c) repairs to the Property for use beyond normal wear and tear;
 - (d) all Landlord's costs associated with eviction of Tenant, including but not limited to attorney's fees, court costs, costs of service, witness fees, and prejudgment interest;
 - (e) all Landlord's costs associated with collection of amounts due under this lease, including but not limited to collection fees, late charges, and returned check charges; and
 - (f) any other recovery to which Landlord may be entitled by law.
- C. Notice to vacate under Paragraph 27B(1) may be by any means permitted by §24.005, Property Code.
- D. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by attempting to relet the Property to acceptable tenants and reducing Tenant's liability accordingly.

28. EARLY TERMINATION: This lease begins on the Commencement Date and ends on the Expiration date unless: (i) renewed under Paragraph 4; (ii) extended by written agreement of the parties; or (iii) terminated earlier under Paragraph 27, by agreement of the parties, applicable law, or this Paragraph 28.

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Residential Lease concerning: _____

A. Military and Family Violence: Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer.

- (1) **Military:** If Tenant is or becomes a servicemember or a dependent of a servicemember, Tenant may terminate this lease by delivering to Landlord a written notice of termination and a copy of an appropriate government document providing evidence of: (a) entrance into military service; (b) military orders for a permanent change of station (PCS); or (c) military orders to deploy with a military unit for not less than 90 days. Termination is effective on the 30th day after the first date on which the next rental payment is due after the date on which the notice is delivered. Section 92.017, Property Code governs the rights and obligations of the parties under this paragraph.
- (2) **Family Violence:** Tenant may terminate this lease if Tenant obtains and provides Landlord with a copy of a court order described under §92.016, Property Code protecting Tenant or an occupant from family violence committed by a cotenant or occupant of the Property. Section 92.016, Property Code governs the rights and obligations of the parties under this paragraph.

B. Assignment and Subletting:

- (1) Tenant may not assign this lease or sublet the Property without Landlord's written consent.
- (2) If Tenant requests an early termination of this lease under this Paragraph 28B, Tenant may attempt to find a replacement tenant and may request Landlord to do the same. Landlord may, but is not obligated to, attempt to find a replacement tenant under this paragraph.
- (3) Any assignee, subtenant, or replacement tenant must, in Landlord's discretion, be acceptable as a tenant and must sign: (a) a new lease with terms not less favorable to Landlord than this lease or otherwise acceptable to Landlord; (b) a sublease with terms approved by Landlord; or (c) an assignment of this lease in a form approved by Landlord.
- (4) At the time Landlord agrees to permit an assignee, subtenant, or replacement tenant to occupy the Property, Tenant will pay Landlord:
 - (a) if Tenant procures the assignee, subtenant, or replacement tenant:
 - ☐ (i) \$ _____.
 - ☐ (ii) _____ % of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
 - (b) if Landlord procures the assignee, subtenant, or replacement tenant:
 - ☐ (i) \$ _____.
 - ☐ (ii) _____ % of one's month rent that the assignee, subtenant, or replacement tenant is to pay.
- (5) Unless expressly stated otherwise in an assignment or sublease, Tenant will not be released from Tenant's obligations under this lease because of an assignment or sublease. An assignment of this lease or a sublease of this lease without Landlord's written consent is voidable by Landlord.

29. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, attorney's fees, costs of service, and all other costs of the legal proceeding from the non-prevailing party.

30. REPRESENTATIONS: Tenant's statements in this lease and any application for rental are material representations. Each party to this lease represents that he or she is of legal age to enter into a contract. If Tenant makes a misrepresentation in this lease or in an application for rental, Tenant is in default.

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31. ADDENDA: Incorporated into this lease are the following addenda, exhibits and other information. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at Landlord's discretion, amend from time to time.

- | | |
|---|---|
| ☐ Addendum Regarding Lead-Based Paint | ☐ Agreement Between Brokers |
| ☐ Inventory & Condition Form | ☐ Landlord's Rules & Regulations |
| ☐ Landlord's Additional Parking Rules | ☐ Owners' Association Rules |
| ☐ Pet Agreement | ☐ Pool/Spa Maintenance Addendum |
| ☐ Protecting Your Home from Mold | ☐ Residential Lease Application |
| ☐ Agreement for Application Deposit & Hold | ☐ Residential Lease Guaranty |
| ☐ _____ | ☐ _____ |

32. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by electronic transmission to *(Do not insert an e-mail address or a fax number unless the party consents to receive notices under this lease at the e-mail address or fax number specified.)*:

Tenant at the Property and a copy to:

Landlord c/o:

E-mail: _____

E-mail: _____

Fax: _____

Fax: _____

33. AGREEMENT OF PARTIES:

- A. Entire Agreement: There are no oral agreements between Landlord and Tenant. This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties to this lease and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its extension, its renewal, or its termination is binding on all Tenants executing this lease.
- D. Waiver: Landlord's past delay, waiver, or non-enforcement of a rental due date or any other right will not be deemed to be a waiver of any other breach by Tenant or any other right in this lease.
- E. Severable Clauses: Should a court find any clause in this lease unenforceable, the remainder of this lease will not be affected and all other provisions in this lease will remain enforceable.
- F. Controlling Law: The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this lease.
- G. Copyright: If an active REALTOR® member of the Texas Association of REALTORS® or an active member of the State Bar of Texas does not negotiate this lease as a party or for one of the parties, either as a party's broker or attorney, this lease is voidable at will by Tenant.

34. INFORMATION:

- A. Future inquires about this lease, rental payments, and security deposits should be directed to the person listed for receipt of notices for Landlord under Paragraph 32.

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Residential Lease concerning: _____

- B. It is Tenant's responsibility to determine, before signing this lease, if: (i) all services (e.g., utilities, connections, schools, and transportation) are accessible to or from the Property; (ii) such services are sufficient for Tenant's needs and wishes; and (iii) Tenant is satisfied with the Property's condition.
- C. The brokers to this lease have no knowledge of whether Landlord is delinquent in the payment of any lien against the Property.
- D. Unpaid rent and any unpaid amount under this lease are reportable to credit reporting agencies.
- E. Landlord is not obligated to respond to any requests for Tenant's rental and payment history from a mortgage company or other prospective landlord until Tenant has given notice of termination of this lease and Tenant is not in breach of this lease. *(Notice: Landlord or Landlord's agent may charge a reasonable fee for processing such information.)*
- F. If all occupants over 18 years of age die during this lease, Landlord may: (i) permit the person named below to access the Property at reasonable times in Landlord's or Landlord's agent's presence; (ii) permit the named person to remove Tenant's personal property; and (iii) refund the security deposit, less deductions, to the named person. Section 92.014, Property Code governs procedures to follow in the event of a tenant's death.
- Name: _____ Phone: _____
 Address: _____
 E-mail: _____
- G. The Texas Department of Public Safety maintains a database that the public may search, at no cost, to determine if registered sex offenders are located in certain areas (see www.txdps.state.tx.us under on-line services). For information concerning past criminal activity in certain areas, contact the local police department.
- H. Landlord's insurance does not cover Tenant from loss of personal property. Landlord recommends that Tenant obtain insurance for casualties such as fire, flood, water damage, and theft. Tenant represents that Tenant ☐ intends ☐ does not intend to purchase such insurance.
- I. Landlord's broker, _____,
☐ will ☐ will not act as the property manager for landlord.
- J. This lease is negotiable between the parties. This lease is binding upon final acceptance. READ IT CAREFULLY. If you do not understand the effect of this lease, consult your attorney BEFORE signing.

Landlord _____ Date _____

Tenant _____ Date _____

Landlord _____ Date _____

Tenant _____ Date _____

Or signed for Landlord under written property management agreement or power of attorney:

By: _____ Date _____

Tenant _____ Date _____

Tenant _____ Date _____

Printed Name: _____

Firm Name: _____

APPENDIX VI

CAUSE NO. _____

XYZ APARTMENTS, LTD. d/b/a ABC APARTMENT HOMES,	§	IN THE JUSTICE COURT
<i>Plaintiff</i>	§	
VS.	§	PRECINCT No. ____
	§	
DEE FALLTING AND ALL OTHER OCCUPANTS,	§	
<i>Defendant</i>	§	BEXAR COUNTY, TEXAS

JUDGMENT

On this day came on to be heard the above-styled and numbered cause. Plaintiff announced ready and it appears to the Court that Defendant DEE FALLTING and all other Occupants ("Defendant") has been served with citation in accordance with the Texas Rules of Civil Procedure to appear or answer herein and has _____.

The Court, after having examined the pleadings and evidence and hearing the arguments of counsel on all matters in controversy as well as of law, **FINDS** that the facts alleged in Plaintiff's Petition have been proven by full and satisfactory evidence and further **FINDS** that Defendant forcibly detained the premises described as 23234 Oak, Apartment No. 1410, in San Antonio, Bexar County, Texas 78201, and more particularly described in Plaintiff's Petition. The Court further **FINDS** that Plaintiff is entitled the reasonable rental value of the premises in the amount of \$_____, plus attorneys' fees of \$_____, plus court costs and **FINDS** that rent is \$_____ per month. [IF RENT IS SUBSIDIZED BY GOVERNMENTAL AUTHORITY, THEN ADD: \$_____ per month paid by the tenant and \$_____ per month paid by the Housing Authority of the City of San Antonio].

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have possession of 23234 Oak, Apartment No. 1410, in San Antonio, Bexar County, Texas 78201, and have judgment against Defendant DEE FALLTING for rent in the amount of \$_____, attorneys' fees in the amount of \$_____, costs of court, and post-judgment interest on the above sums at _____ percent per annum from the date of judgment until paid, for all of which let execution and a writ of possession issue. Post-judgment interest shall accrue on the above sums until paid. All other relief not specifically granted herein is **DENIED**.

SIGNED on this 19th day of July, 2009.

Justice of the Peace

THE APPEAL BOND IS SET AT \$_____

SUBMITTED BY/APPROVED AS TO FORM:

LAW OFFICES OF R. DAVID FRITSCHKE
921 Proton Road
San Antonio, Texas 78258-4203
Telephone: (210)227-2726
Facsimile: (210)227-5550

BY: _____
R. David Fritsche, State Bar No. 07481200

Defendant, *Pro Se*