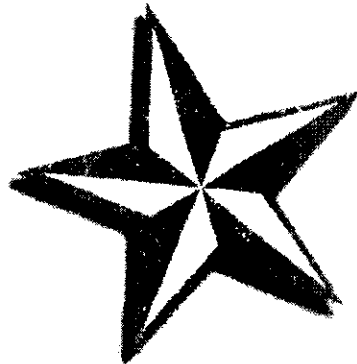


TENANTS' RIGHTS HANDBOOK



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by the
Texas Young Lawyers Association
and the State Bar of Texas
2012

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FOREWORD

This handbook is for residential tenants and is published as a public service by the Texas Young Lawyers Association. It is our goal that distribution and use of this handbook will explain many of the questions and legal issues that arise in a landlord-tenant relationship.

This handbook is intended to provide general guidance only. It is not a substitute for the advice of a lawyer. The Texas Young Lawyers Association hopes, however, that by providing Texas residents with a better understanding of their legal rights and remedies, this handbook will prevent many legal problems from ever arising.

TABLE OF CONTENTS

OVERVIEW	1
Warning	1
SELECTING YOUR NEW HOME	2
Application Fees	3
THE LEASE AND IMPORTANT PROVISIONS	3
Rent and Late Fees	4
House Rules	5
Landlord's Right to Enter	6
Repair Language	6
Occupants and Visitors	6
Parking and Towing Rules and Policies	7
Lease Time Period and Month-to-Month Leases	7
Changing Terms in the Middle or End of a Lease	8
MOVING INTO YOUR NEW HOME	8
INFORMATION ON RENTERS' INSURANCE FROM THE TEXAS DEPARTMENT OF INSURANCE	9
TENANT RIGHTS AND REMEDIES	11
Repairs and Improvements	11
<i>Exceptions to the Landlord's Duty to Repair</i>	12
<i>Procedure for Obtaining Repairs</i>	13
<i>Exception For Major Damage</i>	17
<i>Retaliation for Requesting Repairs or Exercising Your Rights as a Tenant</i>	17
<i>Withholding Rent Is Almost Always a Bad Idea</i>	18
<i>Improving or Changing the Premises</i>	18
<i>Condemned or Closing Property</i>	18
<i>Governmental Fines</i>	19
Locks and Security Devices	19
<i>Landlord Must Rekey Between Tenancies</i>	20
<i>Procedure and Remedies for Lock Problems</i>	20
Smoke Detectors	21
<i>Landlord's Duty to Inspect and Repair</i>	21
<i>Procedure and Remedies for Smoke Detector Problems</i>	21
<i>Tenant Disabling of Smoke Detector</i>	22
Security Deposits	22
<i>Landlord Must Refund or Explain Within 30 Days</i>	22
<i>Exceptions and Miscellaneous</i>	23
<i>Security Deposit of a Deceased Tenant</i>	23
<i>Hold Deposits</i>	24
<i>Don't Use Deposit As Last Month's Rent</i>	24
<i>Tenant's Rights regarding Emergencies, Family Violence, and Military Service</i>	24

Finding Out Who Owns and Manages the Premises	26
Discrimination	26
Landlord's Duty to Accommodate Tenants with Disabilities.....	27
Serving Court Papers on Your Landlord	28
TENANT DUTIES AND CONSEQUENCES	28
Lockouts.....	29
Utility Disconnection	30
<i>Landlord Intentionally Disconnects the Utility</i>	30
<i>Utility Cutoff for Landlord's Failure to Pay Utility Company</i>	31
Landlord's Right to Remove Property.....	31
<i>Landlord Cannot Remove Own Property</i>	31
<i>Landlord May Remove Some Tenant Property</i>	31
<i>Personal Property of Deceased Tenant</i>	32
Subleasing.....	33
Cotenancy	33
Eviction	34
<i>Procedure and Suggestions</i>	34
<i>Appealing an Eviction Case</i>	37
TERMINATION AND MOVING.....	39
By Agreement.....	39
The Lease Ends	39
<i>End of Express Lease Term</i>	39
<i>Month-to-Month Terminations</i>	39
<i>Exceptions to Failing to Renew or</i> <i>Terminating a Month-to-Month</i>	40
Termination for Landlord Failures or Military Transfers	40
Termination for Tenant Breach.....	40
Change in the Landlord Usually Does	
Not Terminate the Lease	41
Disagreements About Terminations	41
Consequences for Terminating Without Excuse	42
Moving	42
Mobile Homes	43

OVERVIEW

This handbook is designed to assist residential tenants in their search for answers to actual legal problems. A residential tenant is a person who has leased or rented a house, duplex, apartment, or other room for use as a permanent residence or home. This handbook does not address laws concerning boarding houses or motels, or commercial tenancies, although some of the legal concepts contained in this handbook may be applicable. Most of the legal material found in this handbook can be located in sections 24, 54, 91 and 92 of the Texas Property Code, which is available in your local law library and online at www.statutes.legis.state.tx.us. Another good online resource for tenants can be found at www.texaslawhelp.org.

Sometimes, the law can only be enforced in court. However, most disputes never reach the court and are settled between the parties. Courteous, professional negotiation is usually the fastest, most efficient solution in any dispute. The law, as interpreted in this handbook, merely sets forth the basic guidelines for negotiation. Often, establishing or joining a tenant organization is an attractive option because such organizations encourage landlords to negotiate fairly. Also, a tenant organization may receive more attention from the media and local elected officials than individual tenants, and the fear of negative publicity or pressure from these officials may affect a landlord's actions.

WARNING: This handbook is not designed to make the reader an expert in landlord-tenant law, but is merely intended as a guide to the general rights and responsibilities of the tenant and landlord in various situations. **If you plan to terminate your lease, withhold rent, repair and deduct, use your deposit for rent, sue your landlord, or take other serious action based on what you have read in the Property Code or this handbook, please consult an attorney or tenant association to ensure all the legal requirements have been met.** This handbook does not address every consideration that may be applicable in a given situation. Also, interpretations of statutes routinely change over time. The judgment of a court will also depend on the exact circumstances of the individual case. If you improperly terminate the lease, withhold rent, sue, etc., the landlord may be entitled to collect damages and attorney's fees from you. **You also need to be aware of the practical considerations of any action.** For example, this handbook indicates the specific instances where you can terminate a lease agreement and move out. Even though you may have correctly terminated your lease, if your landlord does not agree with your decision, she may take action against you (including withholding your deposit and giving a statement to a credit reporting agency). Although the landlord's actions may later be deemed illegal, you may have to go to some trouble to achieve justice.

To find the name of an attorney, contact your local tenant association or local bar association. These numbers should be listed in your telephone directory. You may also call the State Bar of Texas Lawyer Referral and Information Service at 1-800-252-9690. If you have a

very low income, you may be eligible to receive free legal assistance from a legal services office, and if you decide to file a suit, you may also be able to file a statement describing your financial status instead of having to pay court costs. If you need the name and telephone number of the legal services office in your area, you can call Legal Services Support Division at 1-800-204-2222, ext. 1855. A Referral Directory of legal service providers is on the State Bar website, www.texasbar.com. You may also decide to represent yourself in Justice of the Peace Court. Justices of the Peace routinely decide suits filed by parties who do not have lawyers. It is still a good idea to get some tips from an attorney or your local tenant association on the best way to represent yourself.

SELECTING YOUR NEW HOME

The most important thing you can do to avoid hassles with your house or apartment is to start on the right foot. Many problems can be avoided if you do a few things before you agree to rent, put down a deposit, or sign a lease.

Look over the outside of the building. Are the stairs, outside walls, roof, sidewalks, and grounds around it in good shape? Do the buildings need to be painted? Do the apartments have enough parking spaces? If there is a laundry room for all of the residents, look it over. Inspect the swimming pool. Find out what the neighbors are like and what they say about the landlord. Ask whether they ever had something that needed to be repaired by the landlord. Was it fixed quickly? Have they ever had any disputes with the landlord? Do they have roaches? Has anyone in the area had any problem with vandalism, burglaries, rapes, muggings, or other crimes? What is the area like at night? Are the grounds well lit?

NEVER sign a lease or even provide a deposit on an apartment or house until you have seen the exact place you will be renting. Some apartment complexes will show you a model apartment. Often, the apartment you actually rent will not be as nice as the model. When you inspect the place you may rent, look it over carefully. Make sure the place does not smell bad. This could signal mildew caused by roof or plumbing leaks. Make sure the stove works. Check the refrigerator. Turn on the dishwasher. Check the garbage disposal. Turn on the water faucets and make sure the hot water works. Flush the toilet. Test the heating and air conditioning units. Open all of the cabinets and drawers in the kitchen and bathroom. Look for signs of insects or rodents. Look carefully at the carpet. Check around the windows. Are there any signs of leaks or water damage? Does the house or apartment have working smoke detectors? Test all of the lights.

Carry a pen and paper with you. Make a list of anything that is damaged or that needs repair. Take a copy of your list to the landlord and ask to have all the items repaired. Be sure to keep a copy of this list yourself. If the landlord promises to fix the items, get the promise in writing (or, better yet, refuse to sign the lease or give a deposit until

the items are repaired to your satisfaction). Finally, it is wise to review the landlord before you agree to rent or make a deposit. If the city has a tenant association, better business bureau, or consumer protection agency, call and determine whether anyone has complained about the landlord, complex, or management company. Ask if the landlord owns any other rental properties. If so, check into those too.

APPLICATION FEES

Some landlords charge a nonrefundable application fee to pay for the costs or screening of your rental application, and/or they may ask for an application deposit which is refundable if you are rejected as a tenant. When you are provided with the application, the landlord must make available to you written notice of the selection criteria that will be used to determine if your application will be accepted or denied and will state that if you do not meet the selection criteria or provide incomplete information, your application may be rejected and your application fee will not be refunded. These selection criteria may include criminal history, previous rental history, current income, credit history, or failure to complete the information on the application. If the landlord rejects your application, but did not provide you notice of the selection criteria, she must return your application fee and any application deposit. Also, if you request a refund of your application deposit, the landlord must mail you a refund check at the address you provide. If a landlord acts in bad faith by failing to refund your application fee or deposit, she may be liable for \$100, three times the amount wrongfully retained, plus your reasonable attorneys' fees.

THE LEASE AND IMPORTANT PROVISIONS

The importance of the lease cannot be overemphasized. Your basic rights and duties, as well as those of your landlord, will be found in the lease. If you violate the lease, the landlord may have the right to ask you to move and hold you liable for future rent payments and other damages. Many people sign the lease without careful reading. Often the lease consists of a long form which the landlord will say is the "standard" form that everyone signs. Do not sign a lease until you have read, and feel you understand the lease. A lease is valid as soon as it is signed, and you usually cannot terminate the lease if you change your mind. *See "Consequences for Terminating Without Excuse."*

You can modify a lease before signing. The law permits you to make almost any change in the terms of the lease, as long as the landlord agrees to the change. Do not be afraid to propose changes in the lease. Make the changes in ink and make sure that you and the landlord initial the changes. Do NOT leave the manager's office without a copy of the final lease agreement. If you have a dispute with your landlord, you will find it difficult to rely on verbal promises that have not been reduced to writing. Both you and your landlord should sign and date all pages separate from the lease agreement. If you have agreements about pets, replacing the carpet, painting the walls, or

who pays the utilities, such agreements should all be stated clearly in writing. Anything you want replaced or repaired should be requested in writing. It would be wise not to rent from a landlord who will not reduce the agreement to writing.

RENT AND LATE FEES

A landlord can charge any amount she wishes for rent. There are no limits to increases, as long as the lease is expired (or will soon expire) and a proper notice is given. See "Changing Terms in the Middle or End of a Lease."

Often, your lease will state that rent is due on the first day of the month. Many leases provide a "grace period" in which rent can be paid late without penalty. Always get receipts for payments and keep them as long as you live there, especially if you pay cash or by money order. If a landlord claims she did not receive a money order from you and you do not have a receipt, you can run a "trace" on the money order (to determine who may have cashed it) by contacting the company that issued the money order. If any of the landlord's employees cashed the money order, you are probably not responsible for that rent payment. It may take several weeks to trace a money order so be sure to start the process quickly. Usually for a fee, a money order company will reissue a money order that has not been cashed.

A landlord must accept rental payments in the form of cash, unless the written lease provides otherwise. If you pay your rent in cash, your landlord must provide you with a written receipt. The landlord must also keep a record of the date and amount of each cash payment. If a landlord fails to provide receipts or keep a record book, you can file suit and may be entitled to a court order that: (1) directs the landlord to comply with the law; (2) awards you the greater of one month's rent or \$500 for each violation; and (3) awards you court costs and reasonable attorney's fees.

A landlord can charge a reasonable late fee if you pay rent one day or later after the due date in your lease agreement, and if the lease gives notice of the fee. If you do not pay your rent on the due date (or within the grace period if one is provided), the landlord usually has the discretion to either terminate the lease agreement or accept the rent and the appropriate late fee. If you offer to pay the rent and appropriate late fee and the landlord refuses to accept it, you may still have a chance in court if your lease provides for notice and time within which to cure a violation of your lease. A court may also consider your rent to be paid on time if you have established a clear and undisputed pattern of acceptance of late payment by your landlord. You should argue that if your landlord no longer wished to accept late payments, she should have given you some advance notice. See "Termination for Tenant Breach." If you suspect that your landlord may refuse to accept your rent, be sure to offer the money in person and with a witness (not just over the telephone) so that you can later show in court that you attempted to pay rent.

Although there are no specific legal limits on late fees, they must bear some reasonable relationship to the actual costs incurred by the landlord as a result of the late payment. For example, if the landlord's costs as a result of the late payment are \$15 and the landlord charged \$150 as a late penalty, that could be ruled an unenforceable penalty. If a landlord is found to have charged a late fee without notice in the lease regarding such a fee, or if the fee does not bear a reasonable relationship to the landlord's actual costs, the landlord may be liable to you for \$100, three times the amount of the improper late fee, plus your reasonable attorneys' fees. Additionally, a landlord may be in violation of the Deceptive Trade Practices - Consumer Protection Act if the landlord charges extremely excessive late fees. A court may also refuse to evict a tenant if the only alleged violation is that the tenant refused to pay an unreasonable late fee. [Tenants in the Housing Choice Voucher Rental Assistance Program (formerly "Section 8"), government-owned or government-subsidized dwellings have strictly monitored rent that varies with their income level and have additional protections for unfair late fees.]

HOUSE RULES

House rules or apartment regulations are usually a part of the lease even though they are not printed on the lease form itself. Before you sign the lease, ask for a copy of the rules. If the rules have not been written down, ask the landlord to write them down and to sign and date the document. Having written rules will prevent the landlord from changing the rules in the middle of your lease. In general, most house rules are enforceable as long as they do not illegally discriminate. *See* "Discrimination." Rules may be unenforceable if they are completely unreasonable. For example, a broad curfew on adults has been considered unreasonable by some lower courts. If you feel a landlord's rules are unreasonable, it may be safer to follow them temporarily and move rather than attempt to challenge them unless you have an attorney or tenant organization to assist you. *See* "Overview."

Note that a landlord can decide not to renew a lease for almost any reason and, if the landlord has given proper notice of nonrenewal pursuant to the lease, a court will likely uphold that decision. In fact, the landlord is not obligated to give a reason for nonrenewal of a lease. Similarly, a landlord may terminate a month-to-month lease by providing a 30-day notice of nonrenewal. There are some exceptions. For example, a landlord cannot refuse to renew a lease in retaliation for a tenant requesting repairs. Further, a landlord cannot refuse to renew a lease based on a tenant's race, color, religion, sex, familial status, national origin, or disability. *See* "Termination and Moving Out" and "Exceptions to Failing to Renew or Terminating a Month-to-Month." [Tenants in the Housing Choice Voucher Rental Assistance Program (formerly "Section 8"), government-owned or government-subsidized housing have more protections against unreasonable evictions and rules. These tenants should contact their local housing authority or the U.S. Department of Housing and Urban Development (HUD) office to complain of any unfair rules.]

LANDLORD'S RIGHT TO ENTER

Study your lease carefully to determine the circumstances under which the landlord may enter your home. Unless the lease agreement says the landlord can enter your apartment or house, she has NO right to do so, except in emergencies and for routine inspections or repairs and, preferably, when you are provided advance notice. In every residential lease (oral or written), a tenant has an implied right to peaceable, quiet enjoyment of the premises. A tenant also has a right of privacy in her own home.

You may want to have your own keyed lock on the door of the apartment or house. If you want your own keyed lock, be sure you provide for this in your lease or obtain written permission from your landlord. Also, a dwelling must be equipped with a keyless bolting device on each exterior door of the dwelling without necessity of request by the tenant. This will prevent improper entries while you are home. *See* "Locks and Security Devices."

REPAIR LANGUAGE

It is your landlord's duty to repair or remedy most conditions in your unit that affect your health and safety unless you cause the damage through abnormal use, and so long as you follow the proper procedure to request such repairs. Make sure the lease does not say that you waive your rights by requiring the landlord to make these repairs. Although such clauses are often considered void, it is better to modify the lease than rely on the courts to resolve a dispute. *See* "Exceptions to the Landlord's Duty to Repair."

Texas law does NOT require a landlord to repair or remedy a condition that does not affect your health or safety, such as a defective dishwasher. Therefore, you should read the lease to see if the landlord promises to repair such problems. If she does not, you should ask her to change the lease to include repairing these problems. *See* "Repairs and Improvements."

OCCUPANTS AND VISITORS

"Fair housing" (anti-discrimination) laws prohibit discrimination against families with children. For example, it is illegal for a landlord to refuse to rent to a family just because they have children. Often, such discrimination takes the form of occupancy policies. A landlord cannot have occupancy limits that discriminate against families with children. Texas law generally limits occupancy to three adults (persons over 18) for each bedroom of the dwelling, unless the landlord is required by fair housing laws to allow a higher occupancy rate. The U.S. Department of Housing and Urban Development (HUD) has determined that, as a general rule, a landlord's occupancy policy of two persons per bedroom is reasonable, but whether or not such an occupancy policy violates fair housing laws will depend on many factors. When determining whether an occupancy policy violates fair housing

laws, HUD considers such factors as the size and number of bedrooms, the age of the children, the configuration of the unit (for example, additional rooms, such as dens or studies, that could support more occupants), and other factors, such as physical limitations, like the capacity of a septic or sewer system. For example, it would be reasonable for two adult parents to share their bedroom with an infant child, so a landlord's occupancy policy that prohibits such a family from renting a one-bedroom apartment would likely violate fair housing laws.

A landlord generally cannot limit visitors as long as they do not disturb other residents or violate some other provision of the lease. You should use common sense concerning your visitors. For example, even if you are following your lease, you might want to avoid having the same visitor spend the night too many times in a row without the landlord's permission to avoid any accusations of having an unauthorized occupant. Similarly, a visitor who receives mail or other deliveries at your premises might arouse suspicion of an unauthorized occupant. Although the landlord has the burden to prove a tenant has violated the lease in an eviction case, you may be wise to avoid these disputes from arising in the first place. It is often better to work things out with your landlord before the dispute ends up in court.

PARKING AND TOWING RULES AND POLICIES

If you live in a complex with more than one unit with the same owner, same manager, and adjacent location, the landlord must provide you with written vehicle parking/towing rules and policies that apply, and must provide you with copies of any changes that occur to those rules and policies during the term of the lease. To make changes to the rules and policies during the term of the lease, the landlord must either obtain your written consent, or the changes must be based on necessity, safety, or security, and they must apply to all the tenants in the complex. Unless the changes are due to a construction or utility emergency, you must receive 14 days' notice of the changes before they become effective. If a landlord does not follow these requirements regarding parking/towing rules and policies, she may be liable for \$100, any towing or storage costs that you incur if your vehicle is towed, plus your reasonable attorneys' fees and court costs. However, if you do not win a lawsuit based on parking/towing rules and policies, you may be liable to your landlord for her reasonable attorneys' fees and court costs.

Regardless of whether the landlord gives you proper notice regarding parking/towing rules and policies, your landlord is liable to you for any damage to your car that results from the negligence of a towing service that the landlord hires to remove cars parked in violation of the landlord's rules and policies if the towing company that caused the damage does not carry insurance that covers the damage.

LEASE TIME PERIOD AND MONTH-TO-MONTH LEASES

Normally, a written lease will last for a fixed period of time, typically six months or one year. The advantage of having a lease with a fixed

term is that it protects you from rent increases and changes in the terms of the lease during that time. The landlord has the advantage of being assured they will receive rent for that period. One disadvantage of having a long-term lease is that you are obligated to the terms of the lease for the entire lease period, unless the landlord substantially violates the lease or agrees to terminate the lease.

If you never had a written lease agreement or your written lease has expired, you are probably a month-to-month tenant. A month-to-month lease continues from one month to the next, as its name implies, until either you or your landlord gives a one-month advance notice of termination. (If you pay rent weekly, then you are a week-to-week tenant and only one week's notice is required.) No matter who terminates the lease, you should always keep a copy of the notice of termination as proof. *See* "Termination and Moving Out."

CHANGING TERMS IN THE MIDDLE OR END OF A LEASE

During the lease, one party cannot change any terms of the lease agreement without the other party's consent. If an agreement is reached, it should be made in writing, dated, and signed by both parties. Unless an agreement is reached, the parties must abide by every term in the lease agreement (including any house rules). Prior to the end of the lease, either party can propose changes to a future lease agreement. (For month-to-month leases, either party can give a 30-day advance notice of a proposed change.) Unless the other party clearly terminates or does not renew the lease using the notice requirement described in the lease, then that party might be presumed to have accepted the new terms offered by the other party. If you do not want to accept a change in your lease, for example, increased rent, try to negotiate with the landlord and indicate you will not renew the lease unless the rent is lower. You should always obtain agreements in writing and signed by the owner or manager. *See* "Tenant Duties and Consequences."

MOVING INTO YOUR NEW HOME

When you move into your new home make sure all the repairs your landlord promised have been completed. If some of the repairs have not been made, contact your landlord immediately. If the landlord fails to make the repairs she promised before you signed the lease, she may be liable for violating the Texas Deceptive Trade Practices – Consumer Protection Act. Contact a lawyer or tenant association for more details. You should also make a written list noting the condition of the apartment on the day you move in. This list will help you avoid disputes when you move out and may also be crucial in the return of your security deposit. Make a note of every spot on the carpet and every damaged item. Provide a copy of the list to the landlord and keep a copy for yourself. Your landlord has a duty to test all smoke detectors to verify they are in working order when you move in. The landlord also has a duty to rekey the locks between tenants.

INFORMATION ON RENTERS' INSURANCE FROM THE TEXAS DEPARTMENT OF INSURANCE

Your landlord may have an insurance policy for the property you rent, but the policy will probably not cover your belongings. You may want to consider buying renters' insurance to replace or repair your belongings if they are stolen, damaged, or destroyed.

Renters insurance, sometimes called tenant insurance, is a type of residential property coverage for people who rent homes or apartments. Insurance companies can sell several types of renters' policies in Texas, each with a different level of coverage. Two of the policy forms, the Named Perils Policy (NPP) and the All Risk Policy (ARP), are standardized. This means the policy language and coverages will be the same, regardless of the company writing the policy. NPP policies insure your property against losses specified in the policy, such as fire and theft. Losses not specified in the policy are not covered. Most renters buy NPP policies. ARP policies, as the name implies, are "all risk" policies and insure your property against every type of loss, unless specifically excluded by the policy. ARP policies are more expensive than NPP policies because they cover more risks. Companies also may sell alternative policies or modified versions of the NPP and ARP if approved in advance by the Commissioner of Insurance. These alternative policies are not standardized, so coverages may vary. Read your policy carefully to know exactly what it covers.

All policies have a total dollar limit. This is the maximum amount the policy will pay, regardless of the amount of your claim. Make sure you buy a policy with a high enough dollar limit to replace your property if it's stolen or destroyed. Most policies in Texas have a deductible equal to a percentage of the total amount of coverage. A deductible is the amount you must pay out of your own pocket before the insurance company will pay on your claim. For example, if you have a \$25,000 policy with replacement cost coverage and a 1 percent deductible, you would pay the first \$250 of the repair or replacement costs. The company would then pay the remainder, up to your policy's dollar limit. Some companies may require a higher deductible for theft.

Personal property coverage pays to repair or replace your personal property, up to your policy's dollar limit. In addition to a total dollar limit, policies may limit payments for certain kinds of property. For example, limits may be \$100 for cash, \$2,500 for personal property used for business, \$500 for valuable papers, and \$500 for jewelry, watches, and furs. Renters insurance also covers your luggage and other personal items when you travel. This coverage is usually limited to 10 percent of the amount of your policy or \$1,000, whichever is greater.

Loss of use pays for additional living expenses, such as food and housing, if you must move from your home or apartment because of a covered loss. Loss of use coverage is generally limited to 20 percent of a policy's personal property coverage. For example, if you have \$25,000 in personal property coverage, your loss of use coverage would be \$5,000.

Personal liability protects you against a claim or lawsuit if someone is injured in your home. A renters' policy typically automatically provides \$25,000 in liability coverage and pays your legal costs. Extra liability coverage is available for additional premium.

If a policy provides less coverage than you'd like, ask whether you can buy "endorsements." Endorsements increase or expand the coverage provided in the base policy, usually for additional premium. The availability of endorsements varies by company.

Renters policies normally pay the "actual cash value" of your property. This means the insurance company will subtract an amount for depreciation and wear and tear from the value of your property before paying your claim. For example, if someone steals your five-year-old television, the insurance company will only pay you an amount equivalent to the market value of a five-year-old television, minus your deductible. Therefore, you won't receive enough to buy a new television. For a higher premium, you can buy "replacement cost coverage" that pays the full cost of replacing your property, minus your deductible and up to your policy's dollar limit. You can usually add replacement cost coverage to your property for additional premium.

If you have replacement cost coverage and an NPP or ARP policy, your insurance company will pay up to a certain amount to repair or replace your damaged property. If the property damage exceeds that stated amount, the company will pay the actual cash value first. You must then repair or replace the property with an item of like kind and quality before the company will pay the remaining amount of your claim. Other types of policies may pay replacement cost differently. Read your policy or ask your agent to find out how your policy pays a claim.

Note: A complete inventory of your personal property can be helpful if you ever file a claim. Include the item, its value, and a serial number if there is one. Keep receipts for expensive items. Photographs or a videotape of your property can be especially helpful to document your loss to the insurance company. Keep a copy of the inventory and any photos or videos of your property in a secure place, such as a safe deposit box.

Rates can vary widely among companies, even for the same or similar coverage. It pays to shop. Following are a few tips:

- Inventory your property so you know how much coverage you need. Make sure you buy enough coverage to replace your property if it's stolen or destroyed.
- Obtain quotes from several different companies.
- Ask about endorsements if you need or want more coverage than the policy provides.
- When comparing prices, be sure you understand the coverage each policy provides. A less expensive policy could provide less coverage.

- When asking for a price quote or applying for insurance, answer questions truthfully. Wrong information could result in an incorrect price quote or could lead to a denial or cancellation of coverage.
- Be sure to consider factors other than cost, such as a company's financial strength and its customer service record. Buy only from licensed companies and agents. You can find out whether agents or companies are licensed and get information about licensed companies' finances and their complaint histories by calling the Texas Department of Insurance Consumer Help Line (1.800.252.3439) or by visiting the website www.tdi.state.tx.gov.

If you have trouble finding renters' insurance, the Texas FAIR Plan Association offers a tenant policy for qualified consumers who are unable to obtain renters' insurance from a licensed company. To be eligible for this coverage, you must have been denied insurance by at least two licensed insurance companies writing residential property insurance in Texas and may not have received a valid offer of comparable insurance from a company licensed in Texas. FAIR Plan policies are available only through Texas-licensed agents. For more information, contact your agent or the Texas FAIR Plan Association (1.800.979.6440 or www.texasfairplan.org).

For answers to general insurance questions or for information on filing an insurance-related complaint, call the Texas Department of Insurance Consumer Help Line (1.800.252.3439) between 8 a.m. and 5 p.m., Central time, Monday–Friday, or visit the website www.tdi.state.tx.gov.

TENANT RIGHTS AND REMEDIES

This section of the handbook discusses tenant rights and remedies provided by Texas law. Unless otherwise indicated, a lease cannot remove or diminish any right or remedy described below. However, your lease may provide additional protections and remedies. Be sure to read your lease first to see if your problem is addressed.

REPAIRS AND IMPROVEMENTS

Texas law requires landlords to make a diligent effort to repair problems about which they have been notified and that materially affect the physical health or safety of an ordinary tenant. Examples of items that materially affect the health and safety of an ordinary tenant are sewage backups, roaches, rats, no hot water, faulty wiring, roof leaks, and, sometimes, a lack of heat or air conditioning. If the problem violates a provision of your city's building, health, or fire code, then it is more likely to be considered a health or safety risk. State law generally does not cover problems such as broken dishwashers, walls that need painting, unsatisfactory draperies, or grass that needs cutting. However, your lease agreement may require the landlord to repair these problems as well. If you are uncertain how to classify the problem, consult a lawyer, health or building inspector, or tenant association.

A landlord that has an on-site management or superintendent's office must provide to you a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies related to a condition of the property that materially affects your physical health or safety. The landlord must post the phone number prominently outside the management or superintendent's office.

The remaining sections of "Repairs and Improvements" will only discuss the requirements and remedies provided by state law as described above. Although some of the general advice may be applicable in other situations, a tenant should not assume that ANY of the remedies discussed below would be available.

[Tenants with the Housing Choice Voucher Rental Assistance Program (HCVRAP) (formerly "Section 8") rental vouchers or in government-owned or government-subsidized housing have additional rights concerning repairs. For example, a tenant with a HCVRAP rental voucher may request that the housing authority that administers the HCVRAP program inspect the unit. If there are repairs that require the landlord's attention, the housing authority may choose to "abate" (stop) paying its portion of the rent on the tenant's dwelling until the repairs are completed. If the landlord files for eviction, the landlord may not be able to evict the tenant based on nonpayment of the housing authority's rent, as long as the damage was not caused by the tenant's abnormal or reckless use of the premises. For more information about these programs, you should call your local housing authority, attorney, or tenant association.]

Exceptions to the Landlord's Duty to Repair

Texas law does not require a landlord to repair a condition caused by the tenant or a guest, family member, or lawful occupant of the tenant (unless the condition was caused by normal use of the premises). The law also specifically provides that the landlord need not furnish security guards for an apartment complex, although better lighting, locks, fencing, and other security measures could be required in some situations.

Other exceptions to a landlord's duty to repair are only valid if the tenant has agreed to them in a written lease and certain conditions are met. It should also be noted that these exceptions are fairly rarely used. For example, Texas law allows landlords with one rental unit to change, in the lease, their duty to repair, but only if the unit was free of health and safety risks when the tenant moved in and the landlord was unaware that there would be repair problems during the lease, and only if the landlord puts a specific and clear lease provision in the lease to this effect that is underlined or in bold print.

A landlord and a tenant may also agree in a lease that it is the duty of the tenant to pay for the repair of broken windows, screens, and doors, but only if such a lease provision is specific and clear, underlined or bolded, and the conditions were not caused by the negligence of the landlord. Similarly, a landlord and tenant may agree in a lease that it

is the duty of the tenant to pay for the repair damages caused by leaving windows and doors open and from sewage backups if a toy or other improper item is found in the line that exclusively leads to the tenant's unit and is the cause of the backup, but only if such a lease provision is specific and clear and is underlined or bolded in a written lease, and the conditions were not caused by the landlord.

A landlord must provide you with a home that is free from health and safety risks, regardless of what is in the lease. Other than those exceptions listed above, a landlord may not modify her duties under the law to repair a condition that materially affects your physical health and safety. If a landlord intentionally tries to change this duty orally or in your lease, you may have a claim against her for actual damages, one month's rent plus \$2,000, and reasonable attorney's fees. The law presumes the landlord acted without knowledge, so give your landlord a written notice (and keep a copy) if she is violating the law and ask her to change the lease. If the landlord refuses, you may have a stronger claim against the landlord.

Procedure for Obtaining Repairs

Tenants with problems requiring landlord repairs should take the following steps in order to use the remedies provided by state law (your lease may provide you with more rights):

1. Always Provide Notice

You must provide notice of the problem to the person to whom you pay rent. Phoning is usually the fastest way, but you should also provide the notice in writing and keep a copy for yourself as proof. Be sure to date the notice. Many leases require that all requests for repair be in writing. If you mail your rent payments, you can mail the notice to the same address. Sending the notice by certified mail provides the best proof that it has been received. **If you send your first notice requesting repairs by certified mail, return receipt requested, then you are not required to send a second written notice in order to pursue your rights and remedies under state law.**

2. Pay Your Rent

The landlord is not obligated to make repairs required by state law unless you are current on your rent. You must perform your obligation to pay rent or you cannot force the landlord to perform her obligation to repair. Your rent must be current at the time you provide the first notice; otherwise, that notice may not have any legal effect.

3. Give your Landlord a Reasonable Time to Make the Repairs

Your landlord has a "reasonable time" to repair the problem after receiving your initial notice. The length of time considered reasonable will depend on the circumstances, although the law presumes that seven days is a reasonable time. The nature of the problem and the reasonable availability of material, labor, and utilities are all factors that will be taken into consideration in

After providing a proper notice and the conditions outlined above are met, you must wait seven days for the landlord to repair the problem before you can hire a contractor for repairs. (Exception: You do not have to wait at all if the condition involves serious sewage problems or flooding, and you only have to wait three days if the condition involves lack of drinking water, heat, or air conditioning.)

Although the repair and deduct remedy can be used as often as necessary, the amount that can be deducted to repair any one condition CANNOT be greater than one month's rent or \$500, whichever is greater. [A tenant on the Housing Choice Voucher Rental Assistance Program (formerly "Section 8"), government-owned or government-subsidized housing may repair and deduct up to the monthly fair market rent of the dwelling from future rental payments, or \$500, whichever is greater.] Further, the total deductions in any one month cannot exceed one month's rent or \$500, whichever is greater. The company or contractor you hire to make the repairs must be listed in the phone book or classified ads of a local newspaper and must not have any personal or business connection with you. You cannot deduct for repairs made yourself, unless the landlord agrees (obtain the agreement in writing). In addition, all repairs made pursuant to this remedy must be made in compliance with applicable building codes, including a building permit when required. You cannot contract for labor or materials in excess of what you may deduct, and the landlord is not liable for those who furnish the labor or materials to remedy the condition. When deducting the cost of repairs from a rent payment, you must furnish the landlord, along with the payment of the balance of the rent, a copy of the repair bill and the receipt for its payment.

A landlord who is unable to obtain necessary parts or who cannot labor following a natural disaster has the right to delay a tenant from exercising the repair and deduct remedy by delivering to the tenant an Affidavit of Delay. This affidavit can delay repairs up to 30 days, but it must set forth the reasons for the delay, including dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner. Affidavits must be made in good faith and the landlord must continue diligent efforts to repair the condition. A landlord can be severely penalized for wrongfully issuing Affidavits of Delay. Check with a lawyer or tenants association for more details.

(c) Filing Suit

If you are successful in a suit in the matter of repairs, you can obtain a court order requiring the landlord to repair the condition, and you can also recover your actual damages (direct costs resulting from the landlord failing to repair), a reduction in rent in proportion to the reduced rental value effective from the first notice to repair until the condition is remedied, one month's rent plus \$500, reasonable attorney's fees, and court costs. See "Warning."

or safety of an ordinary tenant, you have provided proper notices, and you are not delinquent in paying your rent. See "Warning."

If you terminate the lease, you must move out. You can stop paying rent on the day you move out or the date of termination (whichever is later). If you correctly terminate your lease, you are entitled to a refund of rent from the day you terminated the lease or moved out, if you paid rent in advance. You may also use your security deposit to pay any rent that is owed, and you can do this without having to go to court. If you properly terminate the lease, you may still sue the landlord for one month's rent plus \$500, actual damages, attorney's fees, and court costs. However, if you terminate your lease, you cannot sue to obtain a reduction in rent or to have the condition repaired, nor can you exercise any repair and deduct remedies discussed below.

When you move out, the landlord must return your security deposit unless she has reason to deduct an amount from the deposit (such as for damage you caused to the premises). Your landlord cannot keep your security deposit solely because you terminated the lease under these circumstances. If your landlord does not refund the unearned portion of your rent or wrongfully withholds your security deposit, you may wish to file suit against her. See "Security Deposits."

(b) Using Repair and Deduct

This remedy involves many procedures and conditions, and it is strongly recommended that you consult with an attorney or tenants association before you attempt to use your right to repair and deduct.

In certain circumstances, a tenant can hire a contractor to repair a condition that affects health or safety after giving the required notices and waiting a reasonable time. The tenant is allowed to deduct the money paid to the contractor from the NEXT month's rental payment. See "Warning." However, repair and deduct can be used ONLY if one of the following occurs:

- the landlord has failed to remedy the backup or overflow of raw sewage inside the dwelling, or flooding from broken pipes or natural drainage inside the dwelling;
- the landlord has agreed to furnish water and the water has stopped;
- the landlord has agreed to furnish heating or cooling and the equipment is not working adequately, and the landlord has been notified in writing by a local health, housing, or building official that the lack of heating or cooling materially affects health or safety of an ordinary tenant; or
- the landlord has been notified in writing by a local health, housing, or building official that the condition materially affects health or safety of an ordinary tenant.

determining how much time is reasonable. During this time, the landlord must make a diligent effort to repair the problem. For broken water pipes or sewage blockages, the reasonable time may be much shorter than seven days. For small roof leaks, a reasonable time may be longer.

4. It is Not Required, but It May be Wise to Call a City Inspector
If the landlord has had a reasonable time to fix the problem and has not done so, you may decide to call the appropriate city or county inspector (housing, health, or fire). This may put additional pressure on the landlord if the condition violates local ordinances. The inspector may also help you decide if the problem affects your health or safety. Obtain a written report and the name of your inspector.

5. Provide a Second Notice and Request Explanation
After the landlord has had a reasonable time to repair the condition following your initial notice, you must send a second written notice to repair or remedy the condition. **Remember, you do not have to send a second notice if you sent the first notice by certified mail, return receipt requested.** You should ask the landlord in this second notice for an explanation for any delay, because if she does not respond, you will have an easier case to prove if you go to court. It is a good idea to send this notice by certified mail to prove it was received by the landlord. Remember to save a copy of your notice. The notice should say that it is your second written notice, that you are requesting an explanation, and it **MUST** explain what you plan to do if the landlord does not repair the condition. You have three basic alternatives: (1) terminate the lease; (2) repair and deduct the amount from your rent (this is a tricky alternative, see below); or (3) file a lawsuit seeking an order directing repairs, damages, etc. It may be a good idea to list all the alternatives in your second notice and decide later which ones you will use. You should also consider involving other tenants, city officials, and the media. *See* "Overview."

6. Tenant Remedies

If the landlord has clearly had a reasonable amount of time to repair the condition (usually seven days) and has failed to make a diligent effort to remedy the problem and you have properly followed the procedures above, you may be able to exercise one or more of the alternatives listed in your notice: (1) terminate the lease and move out; (2) have the problem repaired yourself and deduct the amount spent from your rent, but only if you follow ALL of the procedures mentioned below; and/or (3) sue the landlord for failing to repair.

(a) Terminating the Lease

If you decide to terminate the lease, you must inform the landlord in your second written notice that you will terminate the lease unless the condition is repaired or remedied within a reasonable period of time (presumably seven days). Remember, you have the right to terminate only if the condition materially affects the physical health

Filing suit in a Justice of the Peace Court is less expensive and faster than doing so in County Court or District Court. You may represent yourself in a Justice of the Peace Court. However, by filing in a Justice of the Peace Court, you will be limited in some important respects. First, the total amount you recover cannot exceed \$10,000, plus court costs. Second, the Justice of the Peace cannot order your landlord to repair the condition, as described above. Third, either party can appeal the case to the County Court for a new trial and, thus, not be bound by the judgment of the Justice of the Peace Court. One advantage to filing suit in County Court or District Court is that, if you are successful, you can obtain a court order to make the landlord repair or remedy the condition that endangers your health or safety. However, filing suit in these courts will probably require the expertise of a lawyer, the costs will be higher, and it may take the court longer to review your case.

Exception for Major Damage

Special rules apply if the unsafe condition results from an insured casualty loss such as fire, smoke, hail, explosion, or similar cause. Under those circumstances, the landlord is not required to start repairs until her insurance company pays her. She still has a reasonable time after receiving the insurance proceeds to complete the repairs. However, as long as you or your guests were not responsible for the damage and the premises are practically unusable for residential purposes, you (or your landlord) may terminate the lease at any time prior to the completion of the repairs by providing written notice, and you will be entitled to a pro rata refund of any rent paid in advance and your security deposit unless the landlord has reason to deduct an amount from the deposit (such as for damage you caused to the premises). Alternatively, you may be entitled to a reduction in rent proportionate to the extent the premises are unusable (unless the lease states otherwise). If you cannot reach an agreement with your landlord regarding a rent reduction, you can file a suit seeking rent reduction in either County Court or District Court.

Retaliation for Requesting Repairs or Exercising Your Rights as a Tenant

Your landlord is restricted for six months from retaliating against you because you gave her a repair notice, complained to a city code enforcement agency, public utility, or civic or nonprofit agency, or exercised a right or remedy granted to you by lease, municipal ordinance, or state or federal law. Illegal retaliation occurs when the landlord, in retaliation for your requesting repairs, complaining to a city inspector, or asserting a right you have under your lease or another law, wrongfully terminates the lease, files for eviction, deprives you of the use of the premises, decreases your services, increases your rent, or engages in activity that materially interferes with your rights under the lease. There are several exceptions. For instance, your landlord can increase the rent if the lease has a provision for an increase in the rent due to higher utility taxes or insurance costs. The landlord may also increase the rent or reduce services if it is part of a pattern of rent increases or service reductions for the whole complex. Furthermore, the landlord can still terminate the lease and evict you if you fail to pay your rent, intentionally cause property damage to the premises, threaten the personal safety of the landlord or the landlord's employees, or break a promise you made in your lease.

There are other proper grounds for termination available to the landlord that are not considered retaliatory. Of course, if you received a notice of termination at the end of the lease before you provided the landlord notice to repair, you are not protected. This is why it is a good idea to provide the first repair notice in writing, date it, and make a copy for your protection. There may be another exception to obtaining retaliation damages if the landlord legally closes down the premises, but you are typically entitled to damages in this situation. See "Condemned or Closing Property."

If the landlord engages in activity that constitutes unlawful retaliation, you may file a lawsuit and seek a court order against your landlord awarding you: (1) one month's rent, plus \$500; (2) the reasonable costs to move to another place and other actual damages; and (3) attorney's fees and court costs. But remember, the landlord will win if she can prove that her actions were not for purposes of retaliation.

Withholding Rent Is Almost Always a Bad Idea

Your landlord can be awarded actual damages plus other statutory penalties (and she can probably terminate your right to possession and evict you) if you withhold any portion of your rent without an agreement, unless: (1) you first obtain a court order permitting you to do so; (2) you have properly repaired and deducted as described above; or (3) you have lawfully terminated your lease because of the landlord's unlawful behavior with regard to repairs and you are using your deposit as rent, as described above. If you improperly try to use your deposit as rent, you may be liable for three times the amount you withheld, in addition to the landlord's attorney's fees. See "Warning."

Improving or Changing the Premises

If you change the premises and reduce its value, the landlord can hold you responsible. Even if the change increases the value, a tenant has no absolute right to make an alteration and could be responsible for returning the premises to its original condition. If you require a reasonable modification that is related to your disability, for example a wheelchair ramp, your landlord must allow you to install one, at your expense, if it necessary for you to use the housing. (Tenants in public and subsidized housing have additional rights; for example, you may not need to pay for reasonable modifications for your disability.) See "Landlord's Duty to Accommodate Tenants with Disabilities." If you want to install a bookcase, hang a chandelier, paint the walls, lay carpet, or make other alterations, discuss your idea with your landlord. Obtain the landlord's permission first. You may also attempt to obtain the landlord's permission to deduct the costs from your next month's rent. Determine whether you can take the addition with you when you move. Then put your agreement in writing. If an agreement cannot be reached, obtain further advice from an attorney or tenant association, although there is no absolute right for a tenant to make an alteration.

Condemned or Closing Property

The landlord may decide to close the rental property where you live for a variety of reasons. A landlord CANNOT close down the property in the middle of a lease term (with or without notice) without breaking

her agreement with you. If the landlord does this, she can be liable for actual damages, moving expenses, your deposit, and other statutory penalties. If a governmental agency has condemned the premises, contact them to discuss their intentions. They generally cannot take any action against you for continuing to occupy the premises, and you may be entitled to some relocation assistance from the municipality.

A landlord can legally close the premises by failing to renew the lease or may terminate a month-to-month lease by providing you a 30-day advance notice. If the landlord does this in response to your requests for repairs, the landlord will also be liable to you for moving expenses, your deposit, and other statutory penalties for violating the retaliation provision of the Texas Property Code. See "Retaliation for Requesting Repairs or Exercising Your Rights as a Tenant." If you stay longer, after the landlord legally closes down the property, the landlord can remove you ONLY through court action. See "Lockouts" and "Eviction." If the landlord shuts off the utilities, this will have the same effect as closing down the premises, and the landlord will probably still be liable in the situations described above. You may be able to transfer the utilities to your name or be able to make other arrangements, especially if the landlord has shut off the service in the middle of a lease term. See "Utility Disconnection."

The landlord may allow you to transfer to another unit the landlord owns, although this alone will not forgive liability. View the new location as described in "Selecting Your New Home." Make sure your deposit will transfer as well, and negotiate to obtain moving expenses (through one month's rent free, for example). Obtain any agreement in writing. If negotiations cease, contact an attorney or tenant association and ask for advice. In some instances, you may be able to transfer and still sue your landlord for damages as discussed above.

Governmental Fines

If a governmental entity such as a city code enforcement office charges a fine to your landlord, the landlord may not charge you for the fine unless you or an occupant of the property caused the damage or condition that led to the fine.

LOCKS AND SECURITY DEVICES

A landlord must install the following security devices without the necessity of your request: a window latch on each exterior window of the dwelling; a doorknob lock or keyed deadbolt on each exterior door; a sliding door pin lock on each exterior sliding glass door of the dwelling; a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and a keyless bolting device and a door viewer on each exterior door of the dwelling. Keyless deadbolts are not required for units reserved for the elderly (over 55 years of age) or disabled if it is part of the landlord's responsibility as part of a written lease or other written agreement to check on the well being of the tenants. Also, keyed deadbolts or doorknob locks are not

required on all exterior doors as long as one door – if the dwelling has French doors, so long as at least one French door – has both keyed and keyless deadbolts and the rest of the doors have keyless deadbolts.

A landlord may not require you to pay for repair or replacement of a lock or other security device if it breaks because of normal wear and tear. A landlord may require you to pay for repair or replacement of a lock that was damaged by your misuse (or the misuse by your family or guest), but only if authorized by an underlined provision in a written lease. You have the burden to prove that you, your family, or your guest did not cause the damage. Unless a landlord fails to timely install, change, or rekey a lock after giving the appropriate notices and paying any required fee as described below, you cannot install, change, or rekey a lock without the landlord's permission.

Landlord Must Rekey Between Tenancies

A landlord must rekey or change all the key-operated locks (or other combination locks) on the exterior doors between each tenancy at her expense. The landlord must rekey not later than the seventh day after you move in. You can also ask the landlord to rekey or change the locks repeatedly during the tenancy, but these changes will be at your expense.

Procedure and Remedies for Lock Problems

The landlord must install, repair, or rekey devices within a reasonable period of time, usually within seven days of the request. In cases of violence occurring in the complex in the preceding two months, a break-in or attempted break-in of your place, or a break-in or attempted break-in of another unit in your complex within the preceding two months, the reasonable period is shortened to three days. You must notify the landlord of the violence, break-in, or attempted break-in for the shorter time period to apply. Provide your notice and request for installation or repair in writing and be sure to keep a copy of the notice. If you are responsible for paying the landlord for the installation, repair, or modification of the locks, the landlord may require the charges to be paid in advance, but only in very limited circumstances.

If the landlord fails to install, repair, or rekey locks by the deadlines described above, you should give a written notice to the landlord requesting compliance. In some circumstances, a landlord can be liable without this written notice, but you have fewer and smaller remedies. The notice requesting compliance will probably be your second notice concerning your lock or security problem. If the landlord fails to comply within seven days of the compliance notice (or three days if there has been foul play of the sort described above, or if the lease fails to disclose various tenant's rights concerning security devices as described in this section), you may be able to do one or more of the following: unilaterally terminate the lease; install/repair the security device and deduct the cost from the rent; or file suit for a court order requiring the landlord to bring your individual dwelling in compliance and for actual damages, punitive damages, a civil penalty of \$500 and one month's rent, court costs, and attorney's fees. See "Warning."

SMOKE DETECTORS

Smoke detectors are required by state law and may also be mandated by local ordinances. For information on whether your community has adopted such ordinances, consult your local building, fire, or housing codes. The landlord must install at least one smoke detector in each bedroom. If a corridor serves several bedrooms, one smoke detector must be installed in the corridor in the immediate vicinity of those bedrooms. In an efficiency apartment where the same room is used for dining, living, and sleeping purposes, the smoke detector must be located inside the room. If the dwelling is multiple levels, a smoke detector must be placed on each level.

If requested by a tenant for a person with a hearing impairment disability, a smoke detector that is capable of notifying and alerting a person with a hearing impairment disability must be installed in the bedroom of that person.

If a smoke detector in your house or apartment is not properly installed, request that the landlord reinstall it by providing the landlord a written notice. It is a good idea to keep a copy of the notice.

Landlord's Duty to Inspect and Repair

The landlord has the duty to inspect and test the smoke detector at the beginning of your tenancy (or at the time of installation). After you have moved in, the landlord's duty applies only if you provide the landlord notice of a malfunction or request the landlord for inspection or repair. The notice need not be in writing, unless the landlord and tenant agreed in the lease that such notice must be in writing (however, it is always better to notify the landlord in writing and keep a copy). The landlord has a reasonable time to inspect and repair the smoke detector, considering the availability of materials, labor, and utilities. A landlord has no duty to inspect or repair a smoke detector that has been damaged by you or your family or guests, unless you pay in advance for the reasonable costs of the repair or replacement. The landlord also has no duty to provide replacement batteries for a battery-operated smoke detector, as long as it was operating when you moved in.

Procedure and Remedies for Smoke Detector Problems

If you ask your landlord to install or repair a smoke detector in your dwelling and she improperly fails to do so within a reasonable period of time, you should provide your landlord another written notice stating that if she fails to comply with your request within seven days, you may exercise the remedies provided in the Texas Property Code Subchapter 92. If the landlord improperly fails to install or repair a smoke detector within seven days of your request, you may then bring court proceedings against the landlord or you may terminate the lease without court proceedings. See "Warning."

To succeed in court, you must be current on all rent due to the landlord from the time you provided her the first notice. If you, your family

or guests caused the damage to the smoke detector, you must also have paid to the landlord in advance the reasonable costs of the repair or replacement of the smoke detector. If you, bring court proceedings against the landlord, you may be entitled to obtain: (1) a court order directing the landlord to comply with your request (but not in a case filed with a Justice of the Peace Court); (2) a court order awarding you damages that resulted from the landlord's failure to install, repair, or replace the smoke detector; (3) an award of one month's rent plus \$100 as a penalty against the landlord; and (4) court costs and attorney's fees.

Tenant Disabling of Smoke Detector

You may be liable for damages to the landlord for removing a battery from a smoke detector without immediately replacing it with a working battery, or for disconnecting or intentionally damaging a smoke detector, causing it to malfunction. If the lease between the landlord and you contains a notice in underlined or boldfaced print warning you not to disconnect or intentionally damage a smoke detector, or warning you to replace a battery that has been removed from the smoke detector by you, the landlord may be able to obtain a court order directing you to comply with the landlord's notice, to pay a civil penalty of one month's rent plus \$100, and a judgment against you for court costs and reasonable attorney's fees.

SECURITY DEPOSITS

The landlord can only deduct damages and charges from the security deposit for which you are legally liable under the lease agreement, or for physical damage to the property for which you are responsible. Your landlord cannot retain part of your security deposit to cover normal wear and tear. Normal wear and tear means deterioration or damage that occurs based upon the normal, intended use of the premises and not due to your negligence, carelessness, accident, or abuse. For example, the landlord cannot withhold part of your security deposit for worn carpet, small nail holes, scratches on the sink or countertops, or fingerprints on the walls. A landlord may be able to deduct for large, permanent stains on the carpet and pen marks on the walls caused by you or your guests. Even in these cases, the landlord may not be entitled to replace all of the carpet or paint the entire house at your expense.

Landlord Must Refund or Explain Within 30 Days

Your security deposit must be refunded to you within 30 days after you move out of the apartment or house, if you provided a written forwarding address to your landlord. You can provide your forwarding address at any time; however, the landlord's duty to refund does not exist until you do so. If your landlord has cause to retain all or a portion of your security deposit, the landlord must provide you with a refund of the balance of the security deposit, if any, together with a written description and itemized list of all deductions within 30 days of your move out (or within 30 days of you providing her your forwarding address in writing).

A landlord is presumed to have refunded a security deposit or provided you with an itemized description of the security deposit deductions if on or before the thirtieth day from your move or date of your written notice of your forwarding address, whichever is later, the refund or itemization is placed in the United States mail and postmarked. If a landlord who has the tenant's forwarding address fails either to return the security deposit or to provide a written list of deductions on or before the thirtieth day after the tenant moves or the date of the tenant's written notice of forwarding address, whichever is later, then the landlord is presumed to have acted in bad faith. If your landlord retains all or part of your security deposit in bad faith, you may sue her and recover \$100 plus three times the amount of the security deposit that was wrongfully withheld, plus attorney's fees and court costs. If your landlord, in bad faith, fails to provide a written description and itemized list of damages and charges to you for a portion of your security deposit that has been withheld, she has forfeited all rights to withhold any portion of the security deposit or to bring suit against you for damages to the premises. Tenants who wish to sue for their deposits can do so without an attorney in a Justice of the Peace Court. In these courts, you can be awarded up to \$10,000 plus court costs. Contact a lawyer or your local tenant association for tips on suing in a Justice of the Peace Court.

Exceptions and Miscellaneous

The landlord is required by law to keep accurate records of all security deposits; however, the landlord is not obligated to keep the funds in a separate account. The landlord is also not required to pay interest on the security deposit. The landlord is not required to furnish a description or itemized list of deductions, as described above, if any rent is due and unpaid at the time you move out and there was no dispute that the rent was due. If the lease requires you to provide advance notice of termination, you should. However, advance notice of termination may not be a condition for a refund of your security deposit unless the requirement of advance notice is underlined or printed in conspicuous, bold print in the lease agreement. Even if you fail to provide notice, as specified in the lease, and the provision is signed and underlined, the landlord may have to show how she was damaged by your failure to provide advanced written notice before she can keep the deposit. If the house or apartment is sold or otherwise transferred to a new owner, the new owner is responsible for returning the deposit unless the new owner purchased the property at a foreclosure sale. In this case, the old owner remains responsible for the security deposit unless the new owner provides a written notice to you stating that she is responsible for the deposit.

Security Deposit of a Deceased Tenant

Unless your lease specifically provides otherwise during the term of your lease, your landlord can ask you to provide the name, address, and telephone number of a person to contact upon your death and a signed statement authorizing that person to receive your refunded security deposit. If your landlord does not request this information, you can volunteer it at any time. Upon your death, that person will be entitled to receive the balance of the security deposit from your

landlord (minus any allowable deductions, including any costs of removing and storing your property after your death). If you provide your landlord this information and you also give your landlord a copy of the Property Code section governing this matter, your landlord will be liable for the actual damages that result from failure to comply with these requirements.

Hold Deposits

Sometimes people place a deposit on an apartment or house so a landlord will not lease the unit to anyone else. This deposit is not a "security deposit" and does not become a "security deposit" unless that is specified in an agreement between the landlord and the tenant. Rather, this deposit is part of an agreement (often a rental application) between the landlord and the depositor that guarantees the depositor will be able to rent the dwelling and assures the landlord that if the depositor decides not to sign a lease, the landlord will be able to keep the money. In other words, if a person puts down a deposit to hold an apartment or house, that person cannot change her mind in a week or so and expect the landlord to refund the entire deposit. The amount the landlord can lawfully keep will depend on the agreement between the parties, the length of time the depositor took to change her mind, and the actual damage suffered by the landlord. In addition, a landlord must refund an application deposit to an applicant if the applicant is rejected as a tenant. An applicant is deemed rejected by the landlord if the landlord does not provide notice of acceptance on or before the seventh day after the applicant submits a completed rental application to the landlord, or on or before the seventh day the landlord accepts an application deposit if the landlord does not furnish the applicant an applicant form. A landlord who in bad faith fails to refund an application deposit is liable in court for \$100, three times the amount of the application deposit, and reasonable attorney's fees.

Don't Use Deposit as Last Month's Rent

You must not withhold any portion of the last month's rent on grounds that the security deposit serves as security for the unpaid rent. [There are exceptions if you lawfully terminated the lease because of a landlord's failure to repair or pay the utility bills.] If you fail to abide by this requirement, you can be liable to the landlord for three times the amount of the rent that was wrongfully withheld and for reasonable attorney's fees.

Tenant's Right regarding Emergencies, Family Violence, and Military Service

A landlord may not prohibit or limit a tenant's right to summon police or other emergency assistance in response to family violence. In addition, the landlord may not impose any penalties, monetary or otherwise, on a tenant who summons such assistance. Any written provisions in the lease purporting to modify the above rights and duties of the tenant and landlord are void. If a landlord violates your rights under this provision, you will be entitled in court to one month's rent, actual damages, court costs, attorney's fees, and injunctive

relief. A landlord should also not evict, threaten to evict, or fail to renew a lease because the tenant has been a victim of crime, including the crime of domestic violence or sexual assault or abuse.

If you or an occupant of the property are the victim of family violence (meaning, for example, harmful acts – including abuse, sexual assault, and threats – by a member of the family or household against someone else in the family or household), you may terminate your lease and leave the property without further obligation for future rent or termination fees. To exercise this right, you must have a protective order or temporary injunction, signed by a judge, against the occupant or co-tenant of your residence. Once you have delivered a copy of the protective order or temporary injunction to your landlord and you have vacated the unit, you have, by law, terminated your lease and avoided liability for future rent and other sums due under the lease for termination of the lease. If your lease does not contain language informing you of your rights to terminate the lease in situations involving family violence or military deployment/transfer, you will be released from liability for past unpaid rent. If the lease does contain such language, you will still be responsible for rent owed to the landlord before you terminated the lease. If a landlord does not let you terminate the lease under these conditions, she may be liable to you for one month's rent, plus \$500 and attorneys' fees.

If you are a servicemember or a dependent of a servicemember, you may terminate your lease and leave the property without further obligation for future rent or termination fees if the lease was executed by the servicemember before entering military service, or if the servicemember executes the lease while in military service and then is ordered to a permanent change of station or to deploy for more than 90 days. To terminate the lease, you must provide the landlord written notice of termination of the lease and a copy of government documents showing that either the tenant entered military service or was ordered to change station or deploy. If your lease does not contain language informing you of your rights to terminate the lease in situations involving family violence or military deployment/transfer, you will be released from liability for past unpaid rent. If the lease does contain such language, you will still be responsible for rent owed to the landlord before you terminated the lease. If a landlord does not let you terminate the lease under these conditions, she may be liable to you for one month's rent, plus \$500 and attorneys' fees.

A landlord that has an on-site management or superintendent's office must provide to you a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies related to a condition of the property that materially affects your physical health or safety. The landlord must post the phone number prominently outside the management or superintendent's office.

FINDING OUT WHO OWNS AND MANAGES THE PREMISES

As a tenant, you have the right to know the name and address of the owner of the premises. You also have the right to know the name and street address of any property management company that is managing your house or apartment. The landlord may satisfy her duty of disclosure by providing you with a written copy of the information, by having the information posted continuously in a conspicuous place in the apartment complex or resident manager's office, or by having the information included in your copy of the written lease agreement or house rules.

If you want to know the name and address of the owner and property management company for your apartment or house, you should first see if the information is in your lease or posted in the office. If it is not, then request the information from the manager. Your notice need not be in writing unless your written lease agreement requires it (but it is always better to put the request in writing and keep a copy for your records). If the landlord fails to provide the information you requested, you should provide her another written notice that if the information is not furnished to you within eight more days, you may exercise the remedies provided by the Texas Property Code.

If you were current on your rent when you provided the notices and the landlord has not complied with your second notice after eight days (or intentionally provided you incorrect information), you may sue the landlord for a court order that: (1) requires the landlord to disclose the information; (2) awards to you your actual costs incurred in discovering the information; (3) imposes a penalty against the landlord in the amount of one month's rent plus \$100; and (4) awards you attorney's fees and court costs. You may also terminate the lease agreement without court proceedings. *See* "Warning." You may sue your landlord if she furnished an incorrect name or address of the owner or property management company by willfully posting or stating wrong information, or by willfully failing to correct information known by the landlord to be incorrect. You may sue your landlord under these circumstances even if your rent is past due.

DISCRIMINATION

"Fair Housing" (anti-discrimination) laws prohibit a landlord from discriminating against you based on your race, color, national origin, religion, sex, family status, or disability. No one may take any of the following actions based on your race, color, national origin, religion, sex, familial status or disability:

- (1) Refuse to rent you housing;
- (2) Refuse to negotiate for housing;
- (3) Make housing unavailable;
- (4) Set different terms, conditions or privileges for rental of a dwelling;
- (5) Provide different housing services or facilities;

- (6) Falsely deny that housing is available for inspection or rental;
- (7) Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to rental of housing; and
- (8) Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right.

It is also illegal to advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or disability.

If you believe that your rights have been violated because of your race, color, religion, sex, disability, having children, or national origin, you should contact the Fair Housing office in the city where you live or the Department of Housing and Urban Development (HUD) office in your area. You can also call HUD's national number for discrimination complaints at 1.800.669.9777 or visit HUD's website at www.hud.gov. You should also contact your local tenant association or an attorney for advice. If you file a complaint with a city Fair Housing office or HUD, you must do so within one year of the violation, they must investigate the claim and contact you with their findings. You can also file a lawsuit in court for damages, fees, and costs, but you must do so within two years of the violation.

Only the seven groups mentioned above are protected in state and federal fair housing laws, although your city ordinance may include other protections, for example, for students, the elderly, or sexual orientation. A landlord can use any other factor to determine whom they want to rent to as long as that factor does not have the obvious effect of discriminating against one or more of the groups. For example, a landlord cannot discriminate against people who wear dresses (this clearly has the effect of illegal discrimination on the basis of sex). But, a landlord may use financial history, criminal history, previous rental history, and eviction records to determine whether she wants to rent to a tenant.

A landlord is generally not in violation of Fair Housing (antidiscrimination) laws if she wishes to evict you if you have failed to pay the rent or broken some other term of the lease. There are exceptions. For example, it may be illegal for the landlord to provide tenants of Race A more time to pay the rent before they evict than the landlord provides to tenants of Race B. If you were of Race B and in this situation, you might have a Fair Housing claim and maybe a defense in an eviction case.

LANDLORD'S DUTY TO ACCOMMODATE TENANTS WITH DISABILITIES

A tenant with a disability is entitled to a reasonable accommodation of that disability. If you have a disability, your landlord **may not**:

- (1) Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing; and

- (2) Refuse to allow you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for you to use the housing. (Tenants in public and subsidized housing have additional rights under fair housing laws; for example, you may not need to pay for reasonable modifications for your disability.)

If a landlord does not grant your request for a reasonable accommodation or reasonable modification, the landlord may be violating your rights under the "Fair Housing" (anti-discrimination) laws. Such requests for accommodation ensure that tenants with disabilities can enjoy access to housing like a tenant or prospective tenant without disabilities. Some examples of reasonable accommodations and modifications are: accepting alternative assurances of credit when the tenant has no credit history because of a disability; allowing a tenant who uses a wheelchair to build a ramp; allowing a service animal in a "no pets" apartment complex; and allowing a tenant who receives a disability benefits check on the third day of each month to pay the rent on that day without incurring late fees. A landlord whose property is covered by fair housing laws must grant a tenant's request for a reasonable accommodation unless the request is unduly burdensome, a fundamental alteration of the landlord's program, or unless there is another accommodation that is just as reasonable. Tenants should preferably make such requests in writing and provide a reasonable deadline for the landlord to respond. A landlord who has failed to reasonably accommodate a tenant's disabilities has violated fair housing laws, and the tenant can file a complaint with HUD (1-800-669-9777) within one year of the date of the violation or file a lawsuit in court within two years.

SERVING COURT PAPERS ON YOUR LANDLORD

If you wish to sue your landlord, you must list the landlord's name as the defendant and have the court papers served upon your landlord or your landlord's agent. If the owner's name and business street address have been furnished in writing to you, you must serve the court papers at that address. If that information has not been provided, and if the apartment complex is managed by a management company whose name and business address have been furnished in writing to you, that management company is the proper agent for service of court papers. Otherwise, the resident manager or rent collector serving the apartment complex can be the proper person upon whom court papers may be served.

TENANT DUTIES AND CONSEQUENCES

A tenant's main duties are to pay rent on time and to follow the lease and house rules of the landlord by not disturbing others, violating the law on the property, or damaging the property. If the landlord feels you have violated one of these conditions, she may take some of

the actions outlined in this section. Sometimes these actions are legal and sometimes they are illegal according to state law (regardless of what has been put in the lease agreement).

LOCKOUTS

A landlord may prevent you from entering your leased premises only when your rent is not completely paid (and the landlord follows very strict rules and promptly allows you back in the premises), in an emergency situation, to conduct a bona fide repair, or when you have abandoned the premises. The landlord may not change the locks based on your failure to pay rent unless the lease says that she can do so and she has first mailed or delivered a three-day notice that states the earliest date of the proposed lock-out, the amount of rent owed, a location where it can be paid, and your right to receive a key to the new lock at any hour, regardless of whether you pay the delinquent rent. When your landlord changes your door locks because you are behind on paying the rent, the landlord must leave another written notice on your front door describing where a new key may be obtained at any hour and must give the name and location of the individual who will provide you with the new key. The notice must state the fact that the landlord must provide the key to you at any hour (regardless of whether or not you pay any of the delinquent rent) and the notice must state the amount of rent and other charges for which you are delinquent. The new key must be provided to you immediately, regardless of whether you pay the landlord anything, or the notice must provide you with a telephone number that is answered 24 hours a day that you can call to have a key delivered to you within two hours after calling the number. These rules apply no matter what any lease agreement might say and even if the landlord is closing down the premises. The landlord CANNOT remove a door, window, lock, doorknob, or any other appliance furnished by the landlord because you are behind on the rent, unless the removal is for repair or replacement (in which case, a lock, doorknob, or door should be repaired or replaced before nightfall). The landlord also cannot prevent you from entering a common area of the rental property.

If the landlord changes the door locks without providing you the required notices or without providing a new key or removes a door or other item improperly, you may terminate the lease or recover possession of the premises. In either case, you may also recover actual damages, one month's rent plus \$1,000, plus reasonable attorney's fees and court costs, less any past due rent owed by you as the tenant.

To obtain entry, you should contact the manager, management company, or owner for a new key. If your landlord refuses to provide you a key, you can go to the Justice of the Peace Court in your area and request a "writ of reentry" which will order the landlord to provide you with a key to the dwelling.

UTILITY DISCONNECTION

Landlord Intentionally Disconnects the Utility

Sometimes, a landlord will intentionally cut off a tenant's utilities in an attempt to force you to pay rent or move. Even if you are delinquent in rent or have violated some other provision of your lease, your landlord may not interrupt your waste, wastewater, gas or electricity services unless necessary because of bona fide repairs, construction, or an emergency. A landlord may shutoff electric services only in limited circumstances and depending on how the electrical service is paid.

If the landlord disconnects utility services in violation of these rules, a tenant may either recover possession of the premises or terminate the lease, and the tenant also may recover actual damages, one month's rent or \$500 (whichever is greater), attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord. You should also contact the PUC to report the violation by calling 1.888.782.8477 or by writing to the Public Utility Commission of Texas (PUC) Customer Protection, P.O. Box 13326, Austin, TX 78711-3326. You can also file a Writ of Restoration of Utilities with the Justice Court in your jurisdiction. The judge may grant a temporary ex parte order that requires the landlord to restore utilities until a hearing on the merits can be held in court. The landlord may not be liable if the interruption of utilities is a result of actual repairs, construction, or an emergency; however, a reduction in the next month's rent should be requested. If the landlord is shutting off utilities because she is closing down the premises, she may still be liable to you. See "Condemned or Closing Property."

If you have questions about your landlord's billing methods for submetered or master-metered electric services, you have the right to inspect your landlord's billing from the utility company for the current month and preceding 12 months, as well as the calculation of the average cost per billing unit (kilowatt hour) for the current month and 12 preceding months used in assessing tenant billings. If you have a dispute with your landlord about any bill, your landlord must immediately investigate your complaint and report to you her findings within 30 days. If you are dissatisfied with the results of the investigation, your landlord must inform you of the PUC complaint process and provide you the address and telephone number of the PUC's Office of Consumer Protection (1.888.782.8477; PUC Customer Protection, P.O. Box 13326, Austin, TX 78711-3326).

It is unlawful under any circumstances for a landlord to interrupt a utility for which you pay the utility company directly, unless the landlord is making repairs or there is an emergency; however, a reduction in the next month's rent should be requested. If the landlord improperly interrupts such a utility service, you may terminate the lease or obtain a court order to restore the utility. In either case, you may also recover actual damages, the greater of one month's rent or \$500, plus reasonable attorney's fees and court costs, less any past due rent owed by you as the tenant.

The following types of property are exempt and cannot be taken by the landlord under any circumstance, unless the property was abandoned:

1. Clothing;
2. Tools, equipment, and books of the tenant's trade;
3. School books;
4. One automobile and one truck;
5. Family portraits and pictures and the family library;
6. One couch, two living room chairs, one dining table and chairs;
7. All beds and bedding;
8. All kitchen furniture and utensils;
9. Food and foodstuffs;
10. Medicine and medical supplies;
11. Anything the landlord knows belongs to someone else not living in the leased premises;
12. Anything the landlord knows was purchased on a recorded credit arrangement that has not yet been paid for;
13. All agricultural implements; and
14. Children's toys not used by adults.

The landlord must provide you at least 30 days advance notice of the sale by certified and regular mail to your last known mailing address; indicate the time, date, and place of the sale; and provide an itemized account of the rent owed and the name of the person to contact for information. You are allowed to redeem the property prior to the sale if you pay the rent owed and the reasonable packing, moving and storage charges (if these charges are also specified in the lease). At the sale, the property is sold to the highest cash bidder. It is usually a good idea to go to the sale to make sure it is done properly. You are allowed to go to the sale and purchase your own property. The landlord must take the money she receives from the sale and apply it to the rental account. As the tenant, you are entitled to any remainder. The landlord must provide you an accounting within 30 days of your written request.

If the landlord willfully violates this law, you may recover the greater of one month's rent or \$500, return of any property not sold or proceeds from the sale, plus actual damages, and reasonable attorney's fees, less any past due rent. If the sale was conducted improperly, you may also have a claim against the landlord for a violation of the Deceptive Trade Practices – Consumer Protection Act. Contact an attorney or a tenant association for more details.

Personal Property of Deceased Tenant

Unless your lease specifically provides otherwise during the term of your lease, your landlord can ask you to provide the name, address, and telephone number of a person to contact upon your death, and a signed statement authorizing that person to access your unit in the presence of a landlord representative and remove your personal property. If your landlord does not request this information, you can volunteer it at any time. *See* also "Security Deposits."

If you are the sole occupant of your unit, your landlord has the right upon your death to remove and store your personal property. Your

Utility Cutoff for Landlord's Failure to Pay Utility Company

If a utility company disconnects service or provides written notice that service is about to be disconnected because a landlord who is supposed to furnish utilities has not paid the utility bill, then the landlord is liable to the tenant regardless of whether the unit is "all bills paid," sub-metered, or master-metered. If this happens, you can terminate the lease in writing and move out within 30 days of receiving the first notice, as long as the landlord has not presented evidence that the utility bill has been paid prior to your termination. Be sure to provide notice in writing, date it, and keep a copy. If you properly terminate the lease and are planning to move, you may deduct your security deposit from your last month's rent (if you have not paid it yet) and sue for actual damages (such as moving expenses), court costs, and attorney's fees. See "Warning." Rather than terminate the lease, you can try to avoid the disconnection by reconnecting the utility in your name and deducting the amounts paid to the utility company from your rent. If you live in an apartment complex, you may have to organize most of the tenants of the complex in order to be able to negotiate successfully with the utility company. If the landlord has failed to pay the utility bill because she is closing the premises, she may still be liable to you. See "Condemned or Closing Property."

LANDLORD'S RIGHT TO REMOVE PROPERTY

Landlord Cannot Remove Own Property

A landlord CANNOT remove doors, windows, locks, doorknobs, or any other appliance (such as a refrigerator or stove) supplied by the landlord because you are delinquent with the rent. If the landlord improperly removes such property, you may obtain a court order to have the property returned or terminate the lease. See "Warning." In either case, you may also recover actual damages, one month's rent plus \$1,000, plus reasonable attorney's fees and court costs, less any past due rent owed by you as the tenant.

Landlord May Remove Some Tenant Property

If you fail to pay rent, the landlord may have a lien (a right to possess until payment) on all of your "non-exempt" property found in your apartment or house, but only if this is stated in your lease. The landlord's lien provides the landlord the right to peacefully take your property and to sell it after a proper time period and notice, to satisfy the rent outstanding. The landlord can enforce a landlord's lien without taking any formal action in court ONLY if it is spelled out in the lease, and the lease provision is underlined or printed in conspicuous bold print. The landlord cannot sell or dispose of the property unless this is also written in the lease. However, the landlord is allowed to remove all the contents of an apartment or house, without a specific lease provision, when a tenant has abandoned the premises. There is no specific limit on the amount of non-exempt property the landlord can take. Nevertheless, if the landlord takes property (valued at market prices) worth significantly more than the rent owed, you may have a wrongful seizure suit. The landlord also cannot take property for any other charge. Government-owned or government-subsidized housing programs generally forbid landlord's liens.

landlord must turn over your property to the person designated by you (or if you have not yet designated someone, a person who is lawfully entitled to your property), but the landlord may require the person taking your property to sign an inventory. Your landlord may dispose of your property 30 days after sending notice by certified mail to your designated person to pick up your property if the designated person does not contact your landlord and does not take possession of your property.

If the landlord provides you a copy of the Property Code section governing this matter and you fail to provide the required information, the landlord will not have any responsibility for your personal property after your death. If you provide your landlord this information and you also give your landlord a copy of the appropriate Property Code section, your landlord will be liable for the actual damages that result from the failure to comply with these requirements.

SUBLEASING

Unless the lease allows it, a tenant may not sublet (rent the house or apartment to another person) without the written consent of the landlord. If a tenant sublets the house or apartment without the consent of the landlord, the landlord may evict the subtenant and sue both the subtenant and the original tenant for any damages caused by the subletting arrangement.

If the lease does permit you to sublease, subletting can still be complicated. Unless the subtenant and the landlord sign a lease agreement with each other, you will become the landlord of the new tenant. For example, your subtenant will have to request repairs to the apartment from you. You will then have to request the repairs from your landlord. Moreover, you remain liable to your landlord for the rent. So, if your subtenant stops paying rent, you will have to pay rent to your landlord and attempt to seek reimbursement from your subtenant. You will also be liable to your landlord for any damage done by your subtenant. If you must move out of your apartment, you should attempt to get your landlord and the person moving into your apartment to agree to a lease between each other. You should have your landlord release you in writing from any further liability under your lease. This will avoid the undesirable situation where you are stuck in the middle between your landlord and your subtenant.

COTENANCY

You should also be careful about sharing a rental property with another tenant with whom you are not familiar. Even if both of your names are on the lease, the landlord will generally view you and your roommate as one tenant for the purposes of the lease, and each of you will be fully liable for the obligations under the lease, unless your lease specifies otherwise. For example, if your cotenant moves out of the premises, the landlord may hold you responsible for her share of future and past

rent. Also, if you and your cotenant have a disagreement, your landlord probably cannot lockout, evict, or remove that person from the lease on that basis alone. As a cotenant, you can request the landlord change the locks at your expense; however, the landlord will have to provide the new key to any other tenant on the lease.

EVICITION

An eviction is a lawsuit filed by a landlord to remove someone and their possessions from the landlord's property. A landlord may file an eviction lawsuit against you if you fail to pay rent or fail to abide by some other provision of the lease agreement. *See* "Termination for Tenant Breach." The landlord may only terminate your right of possession and probably will not terminate the other obligations of the lease if you violate a provision of the lease for nonpayment or other breach. *See* "Consequences for Terminating Without Excuse." [A tenant in the Housing Choice Voucher Rental Assistance Program (HCVRAP) (formerly "Section 8"), government-owned or government-subsidized housing must commit a serious violation of the lease for the landlord to be able to terminate the lease.] Check the lease for what constitutes a violation of the lease. You may also be evicted if you stay longer than the lease allows without the permission of the landlord. However, there are exceptions. *See* "Exceptions to Failing to Renew or Terminating a Month-to-Month."

Procedure and Suggestions

Even if your landlord has grounds with which to evict you, the landlord and court must perform all of the following steps before you can be legally evicted. A landlord may not remove you from her property without a final order from a Justice of the Peace court.

- (1) The landlord must first give you a written notice to vacate at least three days before a lawsuit is filed to evict you. (The lease agreement may legally shorten or lengthen the time period for the notice to vacate.) At this stage, there has been no filing in court. Because eviction court records are public documents and are used by many landlords to screen potential tenants, it may be best to attempt to negotiate a reasonable solution to your dispute before the landlord files a lawsuit. [A tenant in HCVRAP, government-owned or government-subsidized housing is usually entitled to longer notice periods, as well as an administrative hearing (called a "grievance hearing" or a meeting with the landlord) before any of these eviction procedures can begin, unless the allegations include drug or violent criminal behavior.]
- (2) If you fail to move out before the deadline in the notice to vacate, the landlord may file a written complaint with the appropriate Justice of the Peace Court (called a forcible entry and detainer or "FED" lawsuit). The complaint must state the specific reason the landlord has for terminating your right to possession, contain a complete description of the property from which you are to be evicted, and the landlord must

swear to the contents of the complaint. The landlord may also ask the court to award her back rent, court costs, and attorney's fees (if she is represented by an attorney). The Justice of the Peace Court should not consider other damages (such as late fees) claimed by the landlord in an eviction case. The landlord will be entitled to court costs—that is, the amount the Justice of the Peace charges the landlord to file the lawsuit—if the landlord wins. If the landlord wins and is represented by an attorney, the landlord can recover attorney's fees from you only if the lease provides for attorney's fees, or if the landlord sent to you at least 10 days before the date the suit is filed via certified mail, return receipt requested or registered mail a notice to vacate that demanded that you vacate before the 11th day after the date of the receipt of the notice and warned you about the possibility of having to pay her attorney's fees. If the landlord is entitled to collect attorney's fees as described above and an attorney represents you, then you may obtain attorney's fees if you win.

- (3) After the case is properly filed, the court will serve you with an official notice and a copy of the court papers advising you of the date and time that you must either appear in court or file an answer (or response) to the eviction lawsuit. The papers you receive should notify you in English and Spanish that you may call the State Bar of Texas at 1-877-9TEXBAR for help locating an attorney, and that you may be eligible for free or low-cost legal assistance if you cannot afford to hire an attorney. In many areas in Texas, the Justice of the Peace will simply set a trial date for the eviction case, usually within six to ten days, but sometimes sooner. In other areas, you will first have to answer the eviction lawsuit either orally or in writing by a deadline (for example, by 10 a.m. on the seventh day after receipt of the eviction citation) at which time the court notify you of a trial date. You should carefully read the documents from the court to know and understand your deadlines. If you have a deadline to answer the eviction lawsuit and you do not do so, you will lose the case by default. You can contact the Justice of the Peace Court to find out how it handles the cases. If the official serving the court papers cannot find you, they may leave them under the door or tack them to the door. A constable or sheriff usually serves the papers. **MAKE SURE YOU COMPLETELY READ ALL OF THE PAPERS.** Call an attorney, tenant association, or the court if you have any questions or desire to contest the eviction. If you and your landlord work something out before the trial date, make sure the landlord calls the court to dismiss the case. If the landlord has not dismissed the case, you should go to court to make sure the case gets dismissed.
- (4) **IMPORTANT:** While this is somewhat rare, the landlord has an option of filing a bond for immediate possession. If the landlord does so, the court papers will explain that the landlord

may take possession of the premises six days from the date that you are served with the bond papers **unless you ask for a trial within the six-day period**. If your landlord has filed a possession bond and you do not ask for a trial within the six-day period, you will lose possession of the premises. It is always better to request the trial in writing by filing a request with the court. Make a copy of your request and bring both your original request and the copy to court. The court clerk should stamp both with the date you filed the request, and return one file-stamped copy to you. Requesting a trial does not cost anything.

- (5) You and the landlord must appear on the date set for trial in the Justice of the Peace Court to present evidence. The trial date is usually held between 6 and 10 days of receiving the court papers, or, if you are required to answer the lawsuit, a few days after you submit your answer or response to the court. It is very rare for the Justice of the Peace to postpone the trial unless both parties agree to the delay. Both parties have the right to present their side of the case, including witnesses, receipts, cancelled checks, photographs, and any other evidence that may support their position. You may have the case decided by a jury by paying an additional fee within five days of receiving the eviction papers. Requesting a jury is sometimes a good idea since some of the jurors may be tenants themselves, and they may more fully understand what it is like to be a tenant. You are not required to be represented by a lawyer at the Justice of the Peace Court hearing but may be if you so choose.
- (6) If the judge or the jury finds that you should be evicted, the judge will issue a judgment against you, and, if you do not appeal that judgment in five days, the landlord can request the judge to issue a "writ of possession" that allows the constable or sheriff to physically evict you. The writ cannot be issued until the sixth day after the Justice of the Peace signs the judgment (counting weekends and holidays). Also, a writ of possession can only be issued if you do not appeal the decision of the judge by the fifth day after the judge's decision. See "Appealing an Eviction Case" below. If you do not attend the hearing, you will lose the case by default. Once a writ of possession is obtained, you will be given 24-hours notice that a constable or sheriff will supervise the removal of all persons and property from the premises. The officers cannot execute a writ of possession if it is raining, sleeting, or snowing. Because constables and sheriffs usually do not work on weekends or holidays, writs are not typically executed then.
- (7) If you lose your eviction case in court, the landlord can still allow you to stay in the premises. For example, the landlord may allow you to stay if you pay back rent and court costs before the six days are up. For example, the landlord may let you stay if you pay back rent and court costs before the six days

are up. Warning: Unless you get a signed, written agreement from the landlord saying the judgment from the court is void (or that she will never enforce the judgment) and file it with the Justice of the Peace Court, the landlord can evict you anytime without another hearing or any grace period (as long as it is the sixth day or longer after the hearing and you have not appealed the decision of the judge). The landlord will not need any reason and could conceivably evict you even if you pay back rent. Therefore, if the landlord will not sign an agreement to dissolve the judgment (or promise never to enforce it), it might be better to move.

[Note that if you are a tenant renting a lot for your mobile home, the court must give you 30 days to move your mobile home so long as you pay the rent for 30 days to the landlord. This is true even if you owe rent for previous months. This law was designed with the recognition that it is difficult to move a mobile home in a short time. If you do pay the landlord, be sure to get a receipt and provide a copy to the court to confirm that the court will not issue the eviction writ until after the 30 days expire. You should do this soon after the judge rules against you and certainly by the fifth day after the date the judgment was issued.]

Appealing an Eviction Case

The party that loses in a Justice of the Peace Court may appeal for a new trial in the County Court. Although it is possible to represent yourself at the County Court level, the rules are much more complicated. It is best to obtain legal representation. The party wishing to appeal has only five days after the judge signs the judgment to file an appeal with the Justice of the Peace Court. To determine the deadline: Begin counting on the day after the trial (or date the judgment is signed if that is later). Count weekends and holidays, but the deadline will be extended to the next day the court is open if the fifth day falls on a weekend or holiday. For example, if the trial is Thursday, the deadline to file is Tuesday. If the judgment is signed on Monday, the deadline to file is the next Monday. Ask the court clerk, a lawyer, or tenant association for information on the deadlines and the necessary papers.

To appeal a case to County Court, you must either put up a bond (a bond is a promise to pay a certain amount) or file a pauper's affidavit of inability to pay the bond. If it is the tenant who is appealing, the Justice of the Peace will commonly set the bond at two to three times the amount of your rent. A bond must be signed by you and two others who have real estate in Texas (that no one lives on) or other sufficient assets (e.g., savings accounts, stocks). The judge must approve the bond. A bond guarantees that the other party's costs for the appeal will be paid in case you lose. A tenant can also deposit cash into the court in the place of a bond. The appealing party must also pay court costs for filing the appeal in County Court. If you win in County Court, you will receive the bond back and will be entitled to the court costs from the landlord. If you lose, the landlord will be able to apply for some of the bond money, depending on her costs for obtaining possession and any lost rent.

If you have very little money, low income, and limited personal property, you can appeal by filing a pauper's affidavit instead of posting a bond and paying court costs. A pauper's affidavit is a document signed by you that swears you do not have enough money to make bond or pay costs. The Justice of the Peace Court must make available to you an affidavit that you may use that meets the requirements for a pauper's affidavit (including, for example, your name, the amount of your and your spouse's various forms of income, the amount of available cash in your checking and savings accounts, the property you own, your debts and monthly expenses, and the number and age of dependents you have). The document must be notarized (sometimes the Justice of the Peace clerk will do this for you) and filed with the Justice of the Peace Court on or before the fifth day after the Justice of the Peace makes a decision in your case. A landlord can contest the affidavit and force you, at a hearing with the Justice of the Peace, to prove inability to pay. If you lose this "financial hearing," you have five days to either post a regular bond with the Justice of the Peace Court, as described above, or appeal this decision to the County Court. If you appeal the decision of the Justice of the Peace to deny your pauper's affidavit, the County Court will set a hearing to consider your evidence that you cannot afford the bond. If the County Court does not approve your pauper's affidavit, you can remain in possession of the unit only if you file an appeal bond within five days of the County Court judge's decision.

If the appeal papers are properly filed, you can stay in the premises during the appeal. However, if you have filed a pauper's affidavit, as described above, and the landlord has claimed you violated the lease for nonpayment of rent, you must deposit the rent stated in the judgment (and notice) by the date stated in the notice from the Justice of the Peace, but not later than five days after the date you filed the pauper's affidavit. After that, you must continue to deposit monthly rental payments with the court wherever the case is, but usually the County Court, within five days of the due date under the lease until the trial date. If a portion of your rent is payable by a government agency (for example, in the case of public housing, subsidized housing, or a Housing Choice Voucher Rental Assistance Program (formerly "Section 8") rental voucher), the Justice of the Peace should determine and note in the judgment the portion to be paid by the government and the portion to be paid by you. If the judge does not correctly determine these amounts, within five days of the court's judgment, you must contest in writing the amount incorrectly determined by the court so that you only have to pay your correct portion of the rent to the court. If you fail to make these monthly rental payments to the court, the County Court, after a hearing, may issue a writ of possession to have you removed from the residence pending trial, and you may be responsible for the landlord's reasonable attorneys' fees in filing a motion regarding your failure to pay rent to the court.

No matter who appeals the case, a tenant must also file a written "answer" either in the Justice of the Peace Court or in the County Court within eight days of the case being assigned to a County Court. An answer is a written document that may state your defenses to the suit

but can merely be a short statement listing the parties, the case number, and stating that you generally deny the statements made by the landlord. It does not have to be fancy or have legal terms to be valid. If an answer is not filed, you can lose the eviction case without having a trial.

TERMINATION AND MOVING OUT

A lease can terminate in several ways: by agreement of both parties, when the lease ends, according to state or federal law, or by one of the parties breaching (breaking) the lease. Once the lease terminates, you no longer have a right to possess the premises.

BY AGREEMENT

A landlord and a tenant can agree to change or completely terminate a lease at any time. If you have an agreement, be sure you reduce it to writing and have the landlord sign the agreement. This method is especially useful to avoid having a suit filed against you for rent or a claim placed on your credit report. Often, tenants have to move prior to the end of their lease but do not have a legal excuse, and this method (landlord-tenant agreement) resolves the problem without risk or worry. *See* "Consequences for Terminating Without Excuse."

THE LEASE ENDS

End of Express Lease Term

A main provision of any lease specifies the lease time period. After the lease expires, the landlord-tenant relationship usually continues on a month-to-month basis, unless one of the parties indicates otherwise. Therefore, even if the lease is about to expire, the party wishing to terminate the lease on the expiration date must provide a notice of termination as required by the lease. Often, leases require a 30-day notice to terminate the lease but read your lease carefully to know your specific notice requirements. Also, it is a good idea to provide notice in writing, regardless of the requirements of your lease. Tenants sometimes lose their security deposits because they fail to provide proper notice of termination. *See* "Security Deposits." A landlord can fail to renew a lease agreement for ANY reason, unless the landlord illegally retaliates or discriminates. *See* "Exceptions to Failing to Renew or Terminating a Month-to-Month."

Month-to-Month Terminations

Unless otherwise specified in your lease, either the landlord or you may terminate a month-to-month tenancy for ANY reason (except to retaliate or discriminate) by providing one month's advance notice. For example, if you get into a disagreement with your neighbor after he has a party late at night and you call the landlord to complain, the landlord could ask you to move in 30 days. The landlord could legally terminate the month-to-month lease (or fail to renew your lease at the end of the term). If you failed to move, the landlord would probably succeed in an eviction case.

Unless your lease specifies otherwise, a 30-day notice to terminate can provide for termination on any day of the month, as long as the date of termination is at least one month from the date of the notice. If the notice terminates the tenancy on a day that does not correspond to the end of the month or the beginning of a rent paying period, you need only pay for rent up to the date of termination.

If you pay rent more than once a month and your lease does not specify when the notice to terminate must be provided, it is sufficient to provide a termination notice equal to the interval between rental payments. For example, if you pay your rent weekly, you or your landlord need provide only one week's notice in order to terminate the tenancy. A written notice is not necessarily required but is strongly encouraged.

Exceptions to Failing to Renew or Terminating a Month-to-Month

The only possible exceptions to the landlord's right to terminate a month-to-month lease (or fail to renew at the end of the lease) are if the landlord is illegally retaliating against you or if the landlord is illegally discriminating against you.

[A tenant in the Housing Choice Voucher Rental Assistance Program (formerly "Section 8"), government-owned or government-subsidized housing often has an additional protection concerning a lease renewal. Many government programs require the landlord to have a good cause if she does not wish to renew the lease (or wishes to terminate a month-to-month lease). Good cause is usually defined in the lease. Call an attorney, housing authority, or tenant association for more information.]

TERMINATION FOR LANDLORD FAILURES OR MILITARY TRANSFERS

Texas law specifically allows you to terminate a lease in a few circumstances when the landlord has failed to perform her duties. See "Warning." A federal law allows military personnel to prematurely terminate their leases without penalty if they are transferred by the military or deployed for more than 90 days. A tenant in this situation should contact the applicable military agency or his commanding officer for more details.

TERMINATION FOR TENANT BREACH

If a tenant violates a provision of the lease, the landlord can probably terminate the lease. Read your lease to determine whether the landlord can terminate for a particular violation. Failing to pay rent, severely disturbing neighbors, and committing serious crimes on the property are all fair grounds to terminate. Technical violations may not be enough to terminate, depending on the circumstances. For example, if you have a pattern of paying your rent late, and your landlord has a pattern and practice of accepting your late rent, then this practice may legally change the due date of your rent, unless the landlord provides you advance notice that these payments will be considered grounds for termination. Therefore, a court might rule for you in an eviction case, even though you violated the original

lease provision. A court may also rule for you when paying late if the lease provides for late fees and you offered to pay the rent and the late fees (or at least a reasonable fee). *See* "Rent and Late Fees." However, many judges believe that the landlord has the sole discretion of whether to accept late rent after a notice of termination or a notice to vacate has been issued by the landlord.

Typically, if a tenant violates a provision of the lease, the landlord may initially claim she has "terminated the lease." However, the landlord probably has terminated your right of possession and not your other obligations of the lease agreement. *See* "Consequences for Terminating Without Excuse." [A tenant in the Housing Choice Voucher Rental Assistance Program (formerly "Section 8"), government-owned or government-subsidized housing must commit a serious violation of the terms of the lease for the landlord to be able to terminate.]

CHANGE IN THE LANDLORD USUALLY DOES NOT TERMINATE THE LEASE

If the landlord sells or transfers the property, the new owner is obligated to honor your lease and any other agreement you made with the old owner or management. However, if the property is foreclosed on by a bank or some other entity, the new owner is not obligated to honor your lease (or other agreement), but they must provide you at least 30 days written notice to vacate as long as you are current on your rent. You are considered current on your rent if, during the month of the foreclosure sale, you pay rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled, or you pay rent for that month to the purchaser no later than the fifth day after the date of the receipt of a written notice of the name and address of the purchaser that requests payment. If you receive notice that your landlord is about to be foreclosed on and someone else is demanding you pay them rent or vacate, consult a lawyer or tenant association for advice.

DISAGREEMENTS ABOUT TERMINATIONS

A landlord may terminate if you fail to pay rent on time, violate the rules, or fail to act according to other lease provisions. Most landlords only terminate your right to possession and still require you to complete the obligation to pay rent. However, even if the landlord terminates the lease (or your right to possession), you still have the right to dispute the landlord's decision and stay in your house or apartment and demand a judge or jury make the determination. The landlord cannot physically remove you from the premises unless an eviction suit has been properly filed and a final judgment and writ of possession have been issued against you.

CONSEQUENCES FOR TERMINATING WITHOUT EXCUSE

If you do not have a legal excuse for terminating early (or the landlord legally terminates your right of possession), you can be held

responsible for the remaining rental payments under the lease. This is the maximum potential liability for rent for premature termination. You can also be liable for damages to the property, and also reasonable cleaning fees if authorized in the lease. If you move out early and your deposit is too small to cover these charges, the landlord may pursue other actions to collect the funds and will often report these charges to credit agencies if collection efforts prove unsuccessful. If you want to terminate your lease early, you should try to work with your landlord. If you make a deal, reduce the agreement (referred to legally as a release) in writing to prove you are no longer responsible under the lease. In any case, you should at least provide the landlord notice of your intentions to leave because you should receive credit for any rents collected after you move and another tenant has replaced you. Providing notice may enable the landlord to find another tenant before you actually move out. Your landlord has the duty to mitigate damages if you abandon your residence in violation of your lease. You can also find someone else to rent your place to practically eliminate your liability, as long as the landlord finds him or her acceptable. However, landlords can charge you a reasonable "reletting fee" for having to prepare the dwelling for reletting and having to redo paperwork. The reletting fee must be a fair amount to cover actual expenses and cannot be unfairly inflated (you cannot be "penalized" for breaking a lease). If a new tenant is not found, a landlord can charge you only for the total rent owed under the rest of your lease (and cannot also charge you any reletting fee or other termination fee). If you do move out early, with or without an agreement, follow the advice outlined below. This may avoid additional penalties being assessed.

MOVING

When you are ready to move out at the end of the lease, you should provide your landlord a written copy of your forwarding address. It is always better to supply a local address to your landlord. Your forwarding address can be the address of your attorney, a family member, or someone else acting as your agent. Always leave the place clean and personally return the keys. The landlord may be able to charge you for each day that you have the keys. Take pictures or videotape the residence, have witnesses walk through the place, and ask the landlord or manager to walk through as proof of the condition of the place when you left. Also, ask the landlord if there is any damage she plans to charge to you. Make a list as you go and ask the landlord to sign the list. You have the right to repair or remedy these things yourself. If you disagree with the landlord, try to negotiate in person and in writing. If the landlord will not walk through the place with you (or sign the list), send her a letter requesting a walk through again and state that she would not agree to walk through the place with you or sign the list. Keep a copy of the letter yourself. Later, if the landlord makes deductions from your deposit for repairs that you would have completed yourself (at a lower cost), you have a basis to dispute the amount of the deductions. See "Security Deposits."

MOBILE HOMES

This handbook was written for residential tenants that are renting a dwelling. If you are renting a mobile home and a lot, the rules and advice in this brochure are applicable to you in the same way that they apply to tenants who rent apartments or homes. However, if you are just renting a lot or plot of land from a landlord and you own the mobile home on that lot, this handbook is not complete. While many similar rules and principles do apply to mobile home lot tenants, there are many other rules that are not mentioned in this handbook that protect these tenants. For example, your lot landlord must offer you an initial lease term of at least six months. Regardless of the term of your lease, the landlord must generally provide you 60 days' notice before the lease expires if she is not going to renew the lease. However, if the landlord chooses not to renew a lease agreement because of a change in the land use, she must provide you 180 days' notice before the change in land use. Also, if you are behind in rent and your landlord wants to evict you for this, she has to give you written notice of the delinquency, and you have ten days from that notice to pay your delinquent rent and avoid eviction. In addition, if a judge rules against you in an eviction case, the judge may not issue a writ of possession (to remove your mobile home from the lot) before the 30th day after the date of the judgment if you pay the rent amount due for that 30-day period. These rules and more are described in Chapter 94 of the Texas Property Code which you may find at a public library or online at www.statutes.legis.state.tx.us. Another online resource for mobile home lot tenants can be found at www.texaslawhelp.org.

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