



THE DUST SETTLES

In part one of a two-part article, we look at industry-related bills from the 2017 Texas Legislative Session.

ON MAY 29, the 2017 legislative session came to a close. As usual, it was a busy session. 6,631 bills were filed. 1,211 bills passed through the legislative process and were sent to Gov. Greg Abbott for signature. It's interesting to note that in the 2015 legislative session (the previous session), only 6,276 bills were filed, but 1,323 bills passed. In other words, although 355 more bills were filed this session, 112 less bills were passed.

The legislative process is designed to make it very difficult for bills to pass. Bills must go through an intensive committee process and then be passed by both the Texas House of Representatives and the Texas Senate. Finally, the bills are then sent to the governor for signature.

Although the legislative session ended May 29, Abbott has until June 18 to sign or veto bills passed during the session. If the governor neither vetoes nor signs the bill within the allotted time, the bill becomes law.

Let's look at some of the more significant apartment-related bills that passed and either is or will be the law of the land. Please note that this is part one of a two-part article. Please look for coverage on more legislative issues in next month's article.

Water Allocation and Submetering Charges

• **Amends Texas Water Code:** Sections 13.501, 13.503, 13.5031 and 13.505. (SB 873 effective June 1, 2017)

• **Changes to the Law:** The new law gives exclusive jurisdiction to the Texas Public Utility Commission for violations of the water allocation and submetering rules. If an owner violates a rule of the TPUC regarding utility costs, the person claiming the violation may file a complaint with the TPUC. If the TPUC determines that the owner has overcharged a complaining resident for water or wastewater service, the TPUC will require the owner to

repay the complaining resident the amount overcharged. If the owner refuses to comply with a requirement of the TPUC, the TPUC has authority to assess an administrative penalty.

The new law also provides clarification on what an owner or management company can bill a resident for. The law does not limit the authority of an owner or manager to charge, bill for or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, other building systems or any other amount that is unrelated to utility costs. The term utility costs means any amount charged to the owner by a retail public utility for water or wastewater service.

The new law also clarifies that the term owner means the legal titleholder or any individual, firm or corporation expressly identified in a lease agreement as the landlord. The term does not include the manager unless the manager is expressly identified as the landlord in the lease.

• **Comment:** The TPUC now has exclusive jurisdiction to determine whether an owner violated a TPUC water billing rule. This should eliminate the possibility that an owner will be sued in court over a rule violation before the owner has notice of the complaint or an opportunity to resolve the matter.

The rules relating to the allocation and submetering costs have not changed. These are the TPUC's rules and have not been required to be changed by this legislation. However, since the new law gives exclusive jurisdiction to the TPUC, it is important for owners to be responsive to complaints filed with the TPUC.

You may see more complaints filed with the TPUC. The TPUC's complaint process involves

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notifying the owner of resident complaints. If you receive a complaint from the TPUC, you need to take the complaint seriously and attempt to resolve the complaint to avoid unnecessary problems.

In light of the clarification of the definition of an owner, it is imperative that management companies not be identified as an owner in the lease. Doing so would bring the management company into the definition of owner under the Texas Water Code and potentially make the management company liable for water rule violations. When a management company is mentioned in any lease documents (including lease addenda, community policies and notices), the company should be identified as the agent for the owner.

A Resident's Right to Summon Police or Emergency Assistance

• **Amends Texas Property Code:** Section 92.015 (HB 1099, effective Sept. 1, 2017)

• **Changes to the Law:** Both the old law and the amended law protect a resident's right to call the police or emergency assistance. However, the new law has expanded this right from a right that protected a resident for calling the police or emergency assistance in response to family violence to a resident's right to call the police or emergency assistance any time a resident reasonably believes that an in-

dividual was in need of intervention or emergency assistance.

The law provides that an owner may not prohibit or limit a resident's right to summon the police or other emergency assistance based on the resident's reasonable belief that an individual is in need of intervention or emergency assistance. The law also provides that an owner may not impose monetary or other penalties on a resident who summons the police or emergency assistance if the assistance was requested or dispatched based on the resident's reasonable belief that an individual was in need of intervention or emergency assistance.

• **Comment:** A resident has always had the right to call the police or emergency assistance if a resident feels the need to do so. In the event of a security concern, residents are encouraged to call the police. A potential issue may arise when trying to evict a resident for conduct that involves police intervention.

Under the existing law as well as the new law, an owner needs to be careful that an allegation of default is not due to a resident's call for the police or for emergency assistance. The default must be based solely on the conduct of a resident or others, as the case may be. For example, if a resident is being evicted because

they were in a fight with another resident, the altercation may constitute evidence of a default, even if the resident being evicted was the one who called the police. However, in light of the new law, it is important to make a distinction between the conduct that results in a default and the fact that police were called.

Entry by a Former or Co-Resident to Retrieve Personal Property

• **Amends Texas Property Code:** Sections 24A.001, 24A.002 and adds Section 24A.0021. (SB 920, sent to the governor, probable effective dated Sept. 1, 2017)

• **Changes to Law:** The new law expands a person's right to enter his or her residence or former residence to retrieve their personal property because the current occupant is denying entry. The new law authorizes the justice court to issue a writ so that a person can gain entry to his or her unit or former unit if the current resident has denied that person access to the unit or poses a clear and present danger of family violence to the applicant or the applicant's dependent. The ability of an applicant for such a writ was expanded to allow the justice court to issue the writ for concerns over family violence, even if the resident has

not denied the person access to the unit.

An owner's immunity from liability is substantively unchanged. An owner or an owner's agent who permits or facilitates entry into a residence in accordance with a writ issued by the justice court, is not civilly or criminally liable for an action or omission that arises in connection with permitting or facilitating the entry.

• **Comment:** The change in the law should not have too much effect on your policy or practice. As with the prior law, if you are served with a writ issued by the justice court, you will not be civilly or criminally liable if you comply with the writ.

Many of the bills that could have affected our industry died during the session. However, there were some significant changes that can't be ignored. Of course, these new laws are subject to interpretation by the courts and various governmental agencies. Some could also be subject to additional regulation. As always, keep abreast of these interpretations and additional rules. 🏠

See the August ABODE for Part II of HAA General Counsel Howard Bookstaf's coverage of the 2017 Texas Legislature.

THE ADVENTURES OF ORANGE CONE MAN FROM PAVEMENT SERVICES!
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BRADLEY DT

I NEED TO FIX THESE POTHOLES ON MY PARKING LOT, AND I WANT TO USE THE CONE MAN COMPANY. WHAT'S THEIR PHONE NUMBER?

LOOK, HERE'S A CONE MAN FLYER!

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LATER THAT AFTERNOON...

AAAAAGH!! THIS IS EVEN WORSE THAN BEFORE! WHO ARE YOU? HELP! HELP!

I'M EVIL-ER-GOOD CONE MAN, JUST DOING MY JOB! MWAHAHA!

DANG!

THERE AREN'T ANY TRICKS UP OUR SLEEVES HERE AT PAVEMENT SERVICES - HOME OF THE REAL ORANGE CONE MAN!

THANKS, CONE MAN! DR. POTHOLE SURE IS A MEAN CON ARTIST!

HOLD IT RIGHT THERE, IMPOSTER! YOUR TERRIBLE, TWISTED TACTICS ARE OVER... EVIL DR. POTHOLE!

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