



CHANGES FOR THE BETTER

Analyzing 2018 TAA Lease changes.

WHAT IS THE most important document between you and your residents? The lease, of course!

The lease tells you what you can and cannot do. The lease tells you and your residents what your deal is. If there are problems in your relationship, we look to the lease.

After each legislative session, the lease is reviewed, inspected and revised. Changes are influenced by not only the legislative session, but also issues that have come up over the past two years from owners, court cases and administrative rulings.

Changes to the TAA lease came out at the end of last year. Let's take a look at some of the most important changes.

Occupants (paragraph 2)

The change (revised sentence): *Anyone not listed here cannot stay in the apartment for more than consecutive days in one week without our prior written consent, and no more than twice that many days in any one month.*

This change means that an unauthorized person cannot stay in the apartment for more than the number of days indicated **in one week**, whether or not those days are consecutive. For example, if you do not allow unauthorized occupants to stay in your residents' apartment homes for more than two days, and an unauthorized person stays in an apartment home on Monday, Wednesday and Friday, the resident would be in default of the revised lease, but would not have been in default of the prior lease.

The most common issue with this paragraph is the number of days the owner fills in indicating how many days an unauthorized person is allowed to stay in the apartment. This number should be minimal (perhaps two or three). This will give you the best chance of proving that an unauthorized person is in the apartment. If the number is too large, for example seven days, you would have to prove

that the unauthorized person was in the apartment for **more than** seven days in a week or 14 days in a month. This may be quite difficult.

Other Utilities and Services (paragraph 12)

The change (revised sentence): *"If you delay getting it (the electricity service) turned on in your name by the Lease's start date or cause it to be transferred back into our name before you surrender or abandon the apartment, you'll be liable for a \$ ___ charge (not to exceed \$50 per ~~violation~~ billing period), plus the actual or estimated cost of the utilities used while the utility should have been ~~connected in your name~~ billed to you.*

Under the new and old lease, if a resident delayed in getting electricity turned on in his or her name by the lease's start date or caused the electricity service to be transferred back to the owner's name before the resident surrendered or abandoned the apartment, the resident would be responsible for a charge (not to exceed \$50) plus the actual or estimated cost of the utilities used during the time the utilities should have been billed to the resident.

Under the old lease, the confusion was over whether the \$50 charge was a daily, monthly or one-time assessment. The change clarifies that the charge for which the resident is responsible for is not to exceed \$50 per "billing period."

Prohibited Conduct (paragraphs 20(a) and 20(j))

The change (two revised subsections): You, your occupants, and your guests may not engage in the following activities:

- a. "criminal conduct, regardless of whether or where arrest or conviction

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occurs, including, but not limited to:

- j. "injuring our reputation by making bad-faith or false allegations against us or our agents to others"

The description of criminal conduct in subsection (a) clarifies that a person's conduct may be a violation of the lease even if the person was not arrested or convicted of an offense. Additionally, this revision clarifies that conduct can be a violation of the lease even if the conduct is not committed on the property. In other words, if a resident assaults someone across town, that conduct can be a default under the lease.

With respect to subsection (j), the revision clarifies that it is not necessary to prove that the bad faith allegations injured the owner's reputation. It is a default if allegations are made in bad faith. Additionally, if an allegation is false, it can be a violation of the lease. Finally, the addition of "or our agents" clarifies that bad faith or false allegations are also defaults under the lease if made against management personnel.

When We May Enter (paragraph 28)

The change (added a sentence): *"We are under no obligation to enter only when you are present, and we may, but are under no obligation to, give prior notice or make appointments."*

Often, you may be involved in a conversa-

tion with a resident where the resident requests that you refrain from entering the unit unless the resident is present or schedules entry. The problem is that this is contrary to what the resident has already agreed to in the lease. Paragraph 28 provides that you (or your representatives) may enter the apartment home at reasonable times for reasonable business purposes. If no one is in the apartment, you can still enter peacefully and at reasonable times for reasonable business purposes. The only condition on your entry when someone is not present is that you have to leave written notice of the entry in a conspicuous place in the apartment immediately after the entry.

You should always comply with your obligation to leave a written notice of the entry in a conspicuous place if you have entered when no one is home. However, the revision clarifies that you are under no obligation to enter only when: (i) the resident is present; (ii) you give prior written notice of entry; or (iii) you make an appointment.

Replacements and Subletting, Rental Prohibited (paragraph 30.3)

The change (revised sentence): "You agree

that you won't rent, ~~or offer to rent~~, or license all or any part of your apartment to anyone else unless otherwise agreed to by us in writing.

The revision clarifies that this conduct is prohibited even though the arrangement between your resident and a third party may be considered a "license," rather than a sublease arrangement.

Default by Resident; Acts of Default (paragraph 32.1)

The change (revised subsections): You'll be in default if:... (E) "you or any occupant is arrested, charged, detained, convicted, or given deferred adjudication or pretrial diversion for (1) ~~an felony~~ offense involving actual or potential physical harm to a person, or involving ~~possession~~, the manufacture or delivery of a controlled substance, marijuana, or drug paraphernalia as defined in the Texas Controlled Substances Act... (F) ~~you are found to have any illegal drugs or paraphernalia are found in your apartment.~~"

The revision in subsentence (E) clarifies that an offense that could trigger a default does not need to be a felony. If the resident is arrested, charged, detained, convicted or given deferred adjudication or pretrial diver-

sion for **any** offense involving actual or potential physical harm or involving drug activity, the resident would be in default of the lease. Note that, although the word "possession" has been removed from this provision, pursuant to paragraph 20(a), criminal conduct, including possession of a controlled substance, constitutes prohibited conduct, which could support a default of the lease.

The revision to subsentence (F) clarifies that a default occurs if any drugs are found in the apartment, whether or not the resident is found with the drugs.

Defaults by Resident, Eviction (paragraph 32.2)

The change (revised sentence): Notice by mail should be under (A) or (B) (notice by regular or certified mail) will be considered delivered on the earlier of actual delivery, or 3 days ~~(not counting Sundays or federal holidays)~~ after the notice is deposited in the U.S. Postal Service with postage.

A notice to vacate can be given (under the lease and the Texas Property Code) by: (i) regular mail; (ii) certified mail, return receipt requested; (iii) personal delivery to

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the resident; (iv) personal delivery to any person residing at the apartment who is 16 years of age or older; (v) affixing the notice to the inside of the apartment's main entry door; or (vi) securely affixing the notice to the outside of the apartment's main entry door as allowed by law (which requires that certain conditions be met). The revision clarifies a notice to vacate is deemed delivered if the notice is sent by regular mail or certified mail. The revision allows Sundays and federal legal holidays to be counted in the three days that is required before the notice is deemed delivered (unless you have evidence that the notice was actually delivered).

Remember, if you are relying on delivery of the notice by mail, unless you can prove actual delivery, you will need to wait three extra days (in addition to the number of days you give to vacate) before an eviction can be filed. If your notice is affixed to the inside of the main entry door of the premises, you would only need to wait the number of days

provided in your notice for the resident to vacate (typically three days, but the lease allows a 24-hour notice).

Class Action Waiver (paragraph 43)

The change (adds a section): A class action waiver was added under which the resident agrees not to participate in any class action claims against the owner or the owner's representatives.

Class action lawsuits have been filed over the last few years with respect to claims relating to water and sewer allocation and sub-metering and late fees. Each class action claim often involves a plaintiff's counsel seeking recovery of damages as well as civil penalties and attorney's fees. Under the revised lease, the resident waives the ability to participate in a class action suit. This does not mean that you have any additional pro-

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tection against any particular claims. It only means that residents would need to file claims one at a time, as opposed to participating in a class action suit.

Read the lease! You are expected to know its contents. The changes are designed to be helpful and answer many questions you and your residents may have had over the years.

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