



# PUC REVISES WATER RULES

*Texas Water Code provisions required updates in the rules regarding submetering and allocating, which, of course, affects the apartment industry.*

OVER THE PAST two decades, a substantial portion of the apartment industry has recouped water costs by submetering or allocating water service to residents. The submetering and allocation calculations and billing requirements can be complicated, but any owner who submeters or allocates water costs must comply with the rules of the Public Utility Commission.

The PUC rules address a number of issues including the owner's obligation to: (i) register the property; (ii) install certain plumbing fixtures; (iii) maintain and make available records to residents; (iv) include certain information in the lease and bills; and (v) use certain methods in calculating a resident's bill.

Effective June 1, 2017, the Texas Water Code provisions regarding submetering and allocating water costs was revised. This necessitated some changes in the rules.

On May 3, the PUC published its revised rules. Let's take a look at how the revised law and the rules affect apartment owners and residents.

## Attaching the Rules

The rules provide that, at the time a lease is discussed, the owner is required to provide a copy of the rules to the resident. This informs the resident of the resident's rights and the owner's responsibilities.

What this means is that both you and the resident have an opportunity to review the rules to understand each party's rights and obligations and take the appropriate action if rules are not followed.

## The Term "Owner" Defined by Law

Most provisions of the statute and rules require that the owner take responsibility for compliance with submetering and allocation requirements. How the term "owner" is defined in the law is critical when considering who is responsible for compliance with the law.

The term owner means the legal titleholder of the property and any individual, firm or corporation expressly identified in a lease as the landlord. The term does not include the manager of an apartment unless the manager is expressly identified as the landlord in the lease.

Paragraph one of the TAA lease identifies the "owner." This should be either the legal titleholder of the property or the assumed name for the legal titleholder. This should not be the manager or management company. Similarly, other lease documents should be between the resident and the owner of the property, not the manager or management company. Even though the manager or other on-site staff may sign the lease as the owner's agent, the person signing is not the party to the contract.

## Registration Requirement

The rules require that an owner who intends to bill residents for submetered or allocated utility service or who changes the method used to bill residents for utility service must register with the PUC in a form prescribed by the PUC.

Be sure you have properly registered with the PUC. Registration is easy and required! If you have not registered or want to check if you have registered, log on to the PUC website at <http://www.puc.texas.gov/WaterSearch/>.

Your property should be registered either by owner name or by property name. If any registration information changes (such as the identity of the owner or billing method), the PUC requires that an updated registration be filed.

## Maintaining Proper Records

The rules require that an owner must make certain records available for inspection by the resident and/or the PUC in the on-site manager's office during normal business hours. The owner may require that the request by the resi-

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dent be in writing. The records requested by the resident may include the following:

1. a copy of the law from the Texas Water Code;
2. a copy of the rules;
3. a copy of the retail public utility's rate structure applicable to the property's bill;
4. information or tips on how residents can reduce water usage;
5. the bills from the retail public utility to the owner;
6. certain information if the bill is allocated;
7. certain information if the bill is submetered;
8. the total amount billed to all residents each month;
9. total revenues collected from the residents each month to pay for the water and wastewater service; and
10. any other information necessary for a resident to calculate and verify a water and wastewater bill.

If the records are maintained in the on-site manager's office, the owner is required to make the records available within three days after receiving a written request. If the records are not routinely maintained inside the on-site manager's office, the owner is required to make the records available within 15 days of receiving the written request. If there is no on-site manager, the owner must make copies of the records available to the resident's unit at a time agreed upon by the resident within 30 days of the owner receiving a written request. Copies of the



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violation can file a complaint with the commission and may appear remotely for a hearing. The law requires the PUC to establish an online and telephone formal complaint and hearing system through which a person may file a complaint and appear remotely for a hearing before the PUC. If the PUC determines the owner overcharged a complaining resident for water or wastewater service, the PUC will require the owner to repay the complaining resident the amount overcharged.

Nothing in the new law limits or impairs the PUC's enforcement authority that it had before the law went into effect. If a person violates the law or the PUC rules, the PUC may assess a penalty against that person. The penalty may be in an amount not to exceed \$5,000 a day. Each day a violation continues may be considered a separate violation.

In determining the amount of the penalty, the PUC will consider:

1. the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;
2. the history or extent of previous violations, the degree of culpability, the demonstrated good faith to correct the violation, any economic benefit gained through the violation and the amount necessary to deter future violations; and
3. any other matters that justice requires.

If you receive a complaint from the PUC, pay attention. The PUC usually begins with an informal process whereby violations can be cured. If you made a mistake with respect to compliance with any of the rules, you are able to correct the mistake without an expensive and protracted complaint process. If you attempt to cure a violation, but the resident is not reasonable with respect to correcting the issue, that may be used in your favor if you have to defend yourself in a hearing to determine whether an administrative penalty should be assessed.

The changes in the law were geared towards allowing owners to resolve problems without having to deal with the expense and aggravation of litigation. The new rules should be read and complied with. Since you give a copy to the residents, they also have the opportunity to read the rules and know their rights. If you make a mistake and a complaint is filed, you have the opportunity to resolve the issue by working with the PUC and the resident. Avoid unnecessary problems by knowing your rights and resolving issues that arise. ♻️

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