



# AND THE WINNER IS ...

*In honor of it being award show season, here are a handful of movies that depict odd apartment owner and resident issues.*

**IT'S THAT TIME** of year. The Golden Globe Awards and People's Choice Awards are already in the books. The Oscars are coming.

It fascinates me when Hollywood features owner/resident situations in movies and TV. With some exceptions (like Fred and Ethel Mertz from *I Love Lucy*), apartment owners typically are not painted as very nice people. They always seem to be knocking on a locked door asking for the past due rent (while the star of the show either hides behind the door or is escaping through a back window).

Although the movies are works of fiction, we can learn something from the owner/resident situations they pose. I have selected a few movies, of varying degrees of popularity (I must confess, not all were box office hits) that present these situations. After an exhaustive research effort (including a lifetime of watching movies and scouring the internet), I came up with a few examples that merit discussion. My goal was to find movies that depict "interesting" residents of apartments and analyze how the situations might play out in Texas. Please note that much of the plot and character summaries were found on Wikipedia, but were verified by my memory of the movie!

## **The Super (1991)**

The *Super* stars Joe Pesci as Louie Kritski, a heartless New York slumlord, who was convicted of violating the New York City housing code. The sentencing judge gives Kritski an option of either going to prison or living in a vacant apartment in one of his shoddy run-down apartment units until he brings it up to livable standards. Fearing prison, in a close decision, Kritski chooses to live in one of his apartments.

Kritski is not allowed to leave the apartment except for routine exercise, grocery shopping, medical emergencies and business relating to building repairs. Additionally, Kritski is not authorized to make any changes to his apart-

ment unless all other apartments have been afforded the same upgrade.

Over time, Kritski grows sympathetic with the problems of the residents and makes amends for his greediness through actions such as donating space heaters to residents to help them cope with the winter.

Could something like this happen in Texas? The movie is more fiction than fact; however, the Texas Property Code does have a number of provisions and procedures for residents to get help if an owner fails to repair or remedy conditions in the unit.

Section 92.056 of the Texas Property Code requires an apartment owner to make a diligent effort to repair or remedy the condition considering the severity and nature of the condition and the reasonable availability of materials and labor and of utilities from a utility company. If an owner fails to comply with these obligations, the resident has certain rights including terminating the lease, having the condition repaired or remedied, repairing and deducting the repair costs from the next month's rent or obtaining certain judicial remedies.

A resident's judicial remedies do not include putting the apartment owner in jail or requiring the owner to actually live in the apartment community. Rather, a resident's judicial remedies include: (i) a court order requiring the owner to take reasonable action to repair or remedy the condition; (ii) a court order reducing the resident's rent; (iii) a judgment against the owner for a civil penalty of one month's rent plus \$500; (iv) a judgment against the owner for the amount of the resident's actual damages; and (v) court costs and attorneys' fees.

## **Pacific Heights (1990)**

*Pacific Heights* is about a couple (husband and wife) who buy an expensive 19th-century

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house in an exclusive area in San Francisco. The apartment owners live upstairs and have two rental units downstairs. They rent one of the downstairs units to a couple. They then get a visit from Carter Hayes (played by Michael Keaton). Hayes visits to view the remaining vacant unit and immediately expresses a desire to move in. Hayes drives an expensive Porsche and carries large amounts of cash, but is reluctant to undergo a credit check. He convinces the owners to waive the credit check in exchange for a list of references and an upfront payment of the first six months' rent, to be paid by wire transfer.

Before any money is paid, Hayes arrives unannounced one morning and shuts himself into the apartment. As the days passed, Hayes' promised wire transfer fails to materialize. From inside the apartment, sounds of loud hammering and drilling are heard at all hours of the day and night, however the door is seldom answered. It turns out that Hayes has changed the locks and won't let the owners in. The owners cut the electricity and heat to the apartment, which causes Hayes to call the police, who reprimands the apartment owners.

Hayes goes on to infest the house with cockroaches, which causes the other downstairs residents to move out. The apartment owners go further into debt, the husband/owner drinks heavily and the wife/owner suffers a miscarriage. Hayes files a lawsuit against the husband/owner after the husband/owner assaults Hayes because he is so mad about what Hayes has done.

When an eviction is finally obtained, Hayes has disappeared and the apartment

has been destroyed and stripped bare of all of its appliances, light fixtures, wood paneling and the toilet. Turns out Hayes stole the identity of a prior owner, and had a long history of wrongdoing.

The movie paints a dim picture on an apartment owner's ability to get rid of a problem resident under California law. What would happen in Texas?

First, never give the keys to a resident unless: (i) the lease has been signed by all parties; and (ii) all monies to be paid prior to occupancy (such as the security deposit and prorated rent for the first month) have been paid in full.

Treat all residents equally with respect to credit and criminal background checks. Don't be fooled by a resident's well-groomed, smooth-talking outward appearance. If you have a policy of waiving or minimizing credit requirements when rent is prepaid, that's up to you. However, be sure to get the prepayment before the credit check is waived.

Once a resident becomes a problem, prompt action should be taken. Remedies could include providing a notice of lease violation, advising the resident of the problems and asking the resident to cease the inappropriate conduct or pursuing the eviction action. Unlike

California, Texas has fairly favorable laws allowing an apartment owner to retake possession in a relatively quick and inexpensive manner through the eviction process.

If a resident disturbs others or acts in an abusive or threatening manner towards other residents or management personnel, the conduct would constitute a default under the standard TAA lease. Section 20 of the lease prohibits criminal conduct, engaging in or threatening violence, behaving in a loud or obnoxious manner, disturbing or threatening the rights of others and disrupting the owner's business operations.

Most of the conduct of Carter Hayes would fall within one or more of these categories. If you discover that a resident has falsified their identity, the resident would be in default of section 32.1 of the lease, which provides that the resident is in default if the resident gave incorrect or false answers in a rental application. Future notices, and the eviction petition against the resident, should be done in the name of the resident's real name and then "a/k/a" followed by the resident's fake name. This will allow the judge, jury and constable to match the lease, notice to vacate, eviction petition and judgment.

## Ghostbusters (1984)

Ghostbusters stars Bill Murray, Dan Aykroyd and Harold Ramis as Peter Venkman, Raymond Stantz and Egon Spengler as eccentric parapsychologists who start a ghost-catching business in New York City. Although the movie does not focus on owner/resident issues, if you are an apartment owner, a number of scenes may have caught your eye.

During the movie, the ghostbusters are retained by Dana Barrett (played by Sigourney Weaver), whose apartment is haunted by a demonic spirit, Zuul, a demigod worshipped as a servant to Gozer the Gozerian, a shape-shifting Sumerian god of destruction and chaos. Louis Tully (played by Rick Moranis) is Barrett's accountant/neighbor. Barrett becomes possessed by Zuul, which declares itself as the "Gatekeeper," and Tully becomes possessed by the demon, Vinz Clortho, who is the "Keymaster."

The ghosts wreak havoc throughout the city while Tully (possessed by Clortho) advances toward Barrett's (possessed by Zuul) apartment. The Ghostbusters get the blueprints for Barrett's apartment building and discover the

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building is a gateway to summon Gozer and bring about the end of the world. The Ghostbusters' goal is to keep the Gatekeeper away from the Keymaster.

Barrett's and Tully's apartments are a mess after each is demonized. In one scene, a demonic dog breaks through the wall of Tully's apartment to the hallway. Once Zuul and Clortho go to the roof, the structure is torn apart (despite the best efforts of the Ghostbusters). A lot of damage and destruction to the apartment building.

What would we do in Texas? Residents come in all shapes, sizes and mental states, and (believe it or not) claims of residents being visited by demons is nothing new. However, if you have complaints about excessive noise and disturbances, the conduct would be a violation of paragraph 20 of the lease.

Although it would be best to deal with the situation before the demons go to the roof and tear apart the building, this conduct would also present a violation of the lease. Section 25.2 of the lease requires that the resident use customary diligence in maintaining the apartment and not damaging or littering the common areas. This provision was clearly violated by Tully and the demon/dog that broke through his apartment to the hallway.

Section 13.1 provides that the resident must promptly pay or reimburse the apartment owner for loss, damage or costs of repairs or service in the apartment community because of a lease or rules violation, improper use, negligence or other conduct by the resident, invitees, occupants and guests. This section 13.1 could also support a default of the lease if the damages were not paid for by the residents.

### American Psycho (2000)

Similar to Ghostbusters, American Psycho was not focused on an owner/resident situation, but featured many issues that would be

sensitive to any apartment owner-watching audience. The movie involved a wealthy New York investment banker named Patrick Bateman (played by Christian Bale) whose life revolves around dining at trendy restaurants and keeping up appearances for his circle of wealthy and shallow associates.

When Bateman is upset, he murders a homeless man and kills the man's dog. He then gets a coworker drunk at a Christmas party and takes him back to Bateman's apartment. He then murders his coworker with an axe in his apartment. He then goes to the coworker's apartment to stage a situation so that others believe the coworker has left the country.

After being interviewed about the coworker's disappearance, Bateman takes two prostitutes to his apartment, tortures them and they leave bruised and bloodied. Bateman then gets together with two other women in his missing coworker's apartment. He kills one of the women and chases the other while naked and wielding a chainsaw down the stairs of the apartment building. He then kills her with the chainsaw.

Very disturbing conduct! If you have someone like Bateman in your apartment community and discover any disturbing criminal conduct, the police should be called immediately. Bateman has committed a bunch of lease violations (not the least of which is keeping corpses in his apartment!). He is also an unauthorized occupant in his coworker's apartment (where he also left corpses). Violations would include several subsections of paragraph 20 and paragraph 25.2 regarding maintaining the apartment and not damaging or littering the common areas.

### Eagle Eye (2008)

The plot of Eagle Eye also had nothing to do with apartment owners and residents, but depicts a resident situation that merits discussion.

Jerry Shaw (played by Shia LaBeouf) is a Stanford University dropout who learns his identical twin brother Ethan, an officer in the U.S. Air Force has been killed. Following the funeral, Shaw is surprised to find \$751,000 in his bank account. Later he finds his Chicago apartment filled with weapons, ammonium nitrate, classified DOD documents and forged passports. He receives a phone call from a mysterious computer-generated voice who warns that the FBI is about to come to his apartment and arrest him.

Of course, before he finds out he had a bunch of money in his bank account, the owner of his apartment approached him for his rent, which Shaw did not have. Before he got the money, he tried to avoid the apartment owner, but afterward, he was happy to pay the owner in cash.

What would you do with Shaw in Texas? Discovery of weapons, bomb making materials and forged passports would be disturbing to say the least. After you call the police, you would have to determine what other action should be taken against Shaw. Although you may believe his story that he had no idea that these items were in his apartment, can you take the risk?

Sometimes it's better to try to evict and lose than do nothing at all. If you try to evict Shaw, but lose because the judge believes that he was set up (as the movie later shows), you may have additional defenses if he later causes problems at the property consistent with what was in his apartment. If, on the other hand, you do nothing (believing Shaw's story that he was set up), and something happens later, you can be assured that you would be held accountable to any victims of his conduct in a subsequent lawsuit.

Good luck to all the Oscar nominees! Be sure to watch for apartment owner/resident situations in future movies. 🐞

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