



# HARVEY CONTINUED

*More on Hurricane Harvey and the evolving issues.*

**HARVEY CONTINUES TO** be a name on everyone's mind. As we move through the recovery process, a number of issues have developed. Last month, we responded to questions regarding lease termination, rent abatement, power outage issues, price gouging, repair requests and transferring residents. As we have been working through these issues, other issues have evolved. Let's take a look at some of the more recent topics of discussion.

## **Can I still terminate leases because of the storm/flooding?**

As previously reported, your right to terminate leases is pursuant to statute and the lease.

Section 92.054(b) of the Texas Property Code provides, if after a casualty loss the premises are, as a practical matter, totally unusable for residential purposes, either the owner or the resident may terminate the lease by giving written notice to the other at any time before repairs are completed. Consequently, as long as the repairs have not yet been completed, either party may exercise their right to terminate the lease.

Section 26.5 of the TAA lease provides that if the owner believes catastrophic damage is substantial or that performance of needed repairs poses a danger to the resident, the owner may terminate the lease by giving the resident at least five days written notice.

There may be circumstances where you did not terminate the lease initially after the storm, but, after inspection, you came to realize that the unit needs more work than you thought. If the units are not habitable or need repairs that pose a danger to the resident, the owner still has the right to terminate the lease by giving the appropriate notice. If it has been determined that a notice to terminate is to be given, it would be beneficial to explain why the lease is being terminated 30 to 45 days after the storm.

## **Am I restricted from raising my rents if I am housing residents from flooded apartments and homes?**

Yes, but be careful. As discussed in last month's article, the Texas Deceptive Trade Practices Act provides it is a deceptive practice to take advantage of a disaster declared by the governor by: (a) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or (b) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

Texas Governor Greg Abbott issued a disaster proclamation on Aug. 23, certifying that Hurricane Harvey posed a threat of imminent disaster for a number of counties including Harris County and the surrounding counties. Although the Texas Government Code provides that a state of disaster may not continue for more than 30 days unless renewed by the governor, on Sept. 20, Gov. Abbott renewed the disaster proclamation.

In connection with Hurricane Ike, the court construed "exorbitant or excessive prices" during a disaster to be a rate for a good or service in excess of 10 percent of the "average price." The "average price" was defined by the court as the average price charged for a good or service over a two-month period prior to the declaration of the disaster.

If you are adjusting your prices because the market has changed, you need to be careful not to charge what might be considered an exorbitant or excessive price, which will be determined when measured against pre-Harvey rates. Be careful to document how you arrived at your adjusted rate.

Last month, we responded to questions regarding lease termination, rent abatement, power outage issues, price gouging, repair requests and transferring residents. As we have been working through these issues, other issues have evolved. Let's take a look at some of the more **recent topics of discussion**.

## **What do I do with a resident's personal property left in an uninhabitable unit?**

Generally, you do not have the right to remove the personal property of a resident unless you legally retook possession of the unit. However, if the lease was terminated pursuant to section 26.5 of the standard lease, this section provides that you may remove personal property if it causes a health or safety hazard.

In order to regain possession of a unit, you basically have three options: (A) surrender pursuant to section 41.2 of the lease; (B) abandonment pursuant to section 41.3 of the lease; or (C) eviction pursuant to the lease and Texas law.

Section 41.2 (surrender) and section 41.3 (abandonment) should be reviewed to determine whether the elements of either are present under the circumstances. If not, the more cautious approach is to pursue the eviction process and get judicial blessing on retaking possession.

## **Can I make deductions from a security deposit if the lease was terminated due to the storm/flooding?**

If the lease was terminated pursuant to section 26.5, the owner is required to refund prorated rent and all deposits, less lawful deductions. If the lease was terminated under section 92.054(b), the resident is entitled to a pro rata refund of rent from the date the resi-

If the lease is terminated because the unit is not habitable, it's probably **not a good idea to allow the resident to stay**. If the resident wants to continue living in the unit after the work is completed, you might consider entering into an agreement whereby the resident would temporarily vacate until the work is completed. By agreement, the resident and the owner can agree to amend the lease, temporarily abate rent and have the resident reoccupy the unit once the unit is ready.

**Can I allow a resident to stay in a unit that I have considered to be uninhabitable?**

Once you have exercised your right to terminate the lease under section 26.5, you have taken the position that you believe that catastrophic damage is substantial or that performance of needed repairs poses a danger to the resident. The resident would be required to leave after the termination date or be considered as a holdover resident.

If the lease is terminated because the unit is not habitable, it's probably not a good idea to allow the resident to stay. If the resident wants to continue living in the unit after the work is completed, you might consider entering into an agreement whereby the resident would temporarily vacate until the work is completed. By agreement, the resident and the owner can agree to amend the lease, temporarily abate rent and have the resident reoccupy the unit once the unit is ready.

dent moves out and to a refund of any security deposit otherwise required by law.

Section 92.104(a) provides that before returning a security deposit, the owner may deduct from the deposit damages and charges for which the resident is legally liable under the lease as a result of breaching the lease. While the resident is not responsible for any damages or charges resulting from the storm/flooding, if the resident owes rent or charges unrelated to Harvey, the owner can deduct those damages and charges from the deposit.

**Do I need a licensed mold remediator to perform restoration work?**

No, not now. The governor has waived various rules and regulations relating to a number of issues in light of the disaster. Licensure requirements for unlicensed and out-of-state mold remediation companies have been waived for the duration of the governor's disaster declaration. In lieu of licensure, unlicensed companies wishing to do work under the disaster declaration can do so if they register with the Texas Department of State Health Services and provide certain documentation. No fee is assessed. Registration can be done via email.

Companies wanting to register can do so by sending the following information to [mold.reg@dshs.texas.gov](mailto:mold.reg@dshs.texas.gov).

1. Business name, owner's name and 24/7 contact number;
2. Proof of business registration in another state or a Texas Secretary of State tax ID number;
3. A list of employees working in the impacted area;
4. Verification of training for all employees; and

/ See Law, Page 67

**Outdoor Elements**  
ARCHITECTURE. LANDSCAPE. POOLS.



**Space heater**

- Custom pools & fountains
- Gazebos, patios & pergolas
- Outdoor kitchens & fireplaces
- Dog parks
- Children's playgrounds
- Landscape maintenance
- Outdoor living space renovation
- Pool re-plaster & remodel
- Tennis court refurbishment
- Landscape design & installation
- Custom splash pads
- Creative outdoor lighting solutions



15139 South Post Oak Rd, Houston, TX 77053  
www.OutOfElementsTX.com  
713.955.0990



**Law, continued from Page 12**

**5. Proof of liability insurance.**

Registration will be considered complete when all the information has been sent to the email address. A response from DSHS is not necessary for companies to begin serving in the applicable counties.

**How can I find out if the company I want to hire is properly registered with the state?**

A list of properly registered companies will be posted on the DSHS consumer protection divisions hurricane response website. Notification of mold remediation projects is voluntary for the duration of the disaster declaration.

**What is the difference between a licensed mold contractor and one that is not licensed?**

A contractor licensed by the state of Texas took approved courses and proved their knowledge to the state, of mold and mold related activities, through examination. These Texas licensed mold remediation contractors can issue a Certificate of Mold Damage Remediation. The CMDR is a Texas Department of Insurance form that some owners or insurance companies may want to use to verify that mold has been removed correctly. An unlicensed person may be able to do the work, but will not be able to certify a property is free of mold damage using the CMDR form because they may not be following the Texas Mold Assessment and Remediation Rules.

Be careful! Whoever performs work at your property should be properly qualified to do the work correctly. You don't want to have a mold claim from a resident three months down the road because remediation work was not done correctly.

**Will FEMA assistance cover upgrades if I am required to upgrade when repairing damage caused by the storm/flooding?**

We have received word from the Texas Division of Emergency Management that owners can request funding to bring properties up to established codes and standards if they are required to do so in order to repair damage caused by the storms. However, TDEM suggests that the issue of paying for upgrades be brought up at the beginning of your interaction with the applicable FEMA case manager and to submit copies of the codes requiring the upgrade.

Be careful whenever relying upon unwritten representations from governmental entities. Always try to get as much detail as you can in writing with respect to any governmental assistance program before relying on the program. Unfortunately, in these trying times, written representations and policies may be hard to come by. While everyone is trying to help, you need to keep searching for representations you can count on. 🙏

**GET A JOB  
YOU LIKE.  
JOBLINE**

Visit [www.haaonline.org](http://www.haaonline.org) and click on the **Jobline** link, email [jobline@haaonline.org](mailto:jobline@haaonline.org) or call **713-595-0300** to learn more.



# HONOR INNOVATION QUALITY VALUE

**OUR TOOLS  
OF THE TRADE.**

We take care of fire, storm, and water damage so you can take care of your residents.

**Serving the Texas apartment industry since 1978.**



18920 Freeport Dr, Montgomery, TX 77356  
1-888-4-CATUSA | [DisasterAmerica.com](http://DisasterAmerica.com)