



TEXAS LAW AND #METOO

Be prepared for family violence, sexual assault and stalking at your community.

THE #METOO MOVEMENT is a movement against sexual harassment and sexual assault. #MeToo spread virally in October 2017 as a hashtag used on social media in an attempt to demonstrate the widespread prevalence of sexual assault and harassment. The #MeToo movement has been brought up in reference to politicians, actors, company executives and, most recently, a candidate for the United States Supreme Court. There are a variety of opinions with respect to how and when a sexual harassment or assault claim should be able to be made. But one thing's for sure, "Me Too" has become part of our everyday vocabulary.

With the awareness the #MeToo movement has brought to our society, it can't help but be part of the fabric of life in an apartment community.

What does Texas landlord/tenant law say about these issues?

Texas law allows residents certain rights if they have been the victim of family violence, sexual assault or stalking.

Family Violence

Does a resident have the right to terminate the lease if the resident is the victim of family violence?

Yes. Pursuant to section 92.016(b), a resident may terminate the lease and vacate the unit and avoid liability for future rent and other sums due if the resident complies with certain requirements.

In order to terminate the lease, the resident must provide the owner a copy of a temporary injunction, temporary ex parte order or protective order issued under the Texas Family Code.

When can the resident terminate the lease?

The resident who is the victim of family violence may exercise the right to terminate the lease after all of the following events have occurred:

1. A judge signs a temporary injunction, temporary ex parte or protective order issued under the Texas Family Code;
2. The resident provides a copy of the order that has been signed to the owner;
3. The resident provides written notice of termination of the lease to the owner on or before the 30th day before the date the lease terminates;
4. The 30th day after the resident provides the notice of termination expires; and
5. The resident vacates the unit.

If the violent conduct is caused by a roommate, can the resident terminate the lease without giving a 30-day notice?

Yes. If the family violence is committed by a co-resident or occupant of the unit, a resident may exercise the right to terminate the lease without the requirement to provide a 30-day notice.

The 30-day notice would still be required if the resident that is the victim of family violence desires to terminate the lease if the violence is committed by anyone other than a person living with the resident.

Sexual Assault

Does a resident have the right to terminate the lease if the resident is the victim of a sexual assault?

Yes, under certain circumstances. If the resident is a victim or a parent or guardian of a victim of sexual assault that takes place during the preceding six-month period in the apartment community or at any unit in the apartment community, the resident can terminate the lease by providing to the owner or the manager a copy of the following:

1. Documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider

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examined by the victim;

2. Documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim;

3. Documentation of the assault or abuse, or attempted assault or abuse, of the victim from an advocate for survivors of sexual assault authorized under the Texas Government Code who provided services to the victim; or

4. Documentation of a protective order issued under The Texas Code of Criminal Procedure, except for a temporary ex parte order.

Stalking

Is a resident entitled to terminate the lease if the resident is a victim of stalking?

Yes, under certain circumstances. If the resident is a victim or a parent or guardian of a victim of stalking that takes place during the preceding six-month period in the apartment community or at any unit in the apartment community, the resident can terminate the lease by providing to the owner or the manager a copy of the following:

1. Documentation of a protective order issued under the Texas Code of Criminal Procedure; or

2. Documentation of the stalking from a licensed health care services provider who examined or evaluated the victim, a licensed mental health services provider who examined or evaluated the victim, or an advocate for survivors of sexual assault authorized

under the Texas Government Code who provided services to the victim.

Applicable to victims of family violence, sexual assault and stalking

If a resident is delinquent when the resident terminates the lease, does the resident have to pay the delinquency?

Yes, as long as certain language is in the lease. As long as a notice is provided in the lease that the resident has special statutory rights to terminate the lease early in certain situations involving family violence, certain sexual offenses or stalking, the termination of the lease does not affect a resident's liability for delinquent, unpaid rent or other sums owed to the owner before the lease was terminated. Section 22.1 of the current TAA lease contains this language.

If a landlord violates the law with respect to family violence, sexual assault or stalking, what is the penalty?

An owner who violates this statute is liable to the resident for actual damages and a civil penalty equal to one month's rent plus \$500 and attorney's fees.

If a parent or guardian claim rights under the law, does the parent or guardian have to live with the victim?

Yes.

Does the law require a victim of family violence, sexual assault or stalking to be transferred to another unit?

No. The law only allows the victim to have the right to terminate the lease and avoid future lease obligations. The law does not require an owner to transfer the victim to another unit.

Does the victim have the right to require a co-resident who committed family violence to be locked out of the unit?

Generally, no. With certain limited exceptions relating to assisted housing programs, the law only allows the victim to terminate the lease. If the victim has a co-resident, the law does not give the owner additional rights to kick out a person who committed the assault. However, if there has been a default under the lease, especially due to the conduct of either resident, the owner would have rights under the lease to terminate the residents' right to possession of the unit. Obviously, this gets a little tricky when the two

residents are fighting and the owner has nothing against the resident who is the victim of the assault. If you have this type of situation, it's best to have counsel involved to determine your best option.

Can an owner agree to terminate the lease of a person who may be a victim but did not provide the proper documents to terminate the lease?

Of course. If all parties to the lease agree to cancel the lease, the lease can be terminated by agreement. It's advisable to have a firm termination date and agree in writing that the residents will leave by that date. You may also want to incorporate appropriate release and confidentiality provisions. This may be a good way to minimize claims down the road.

Family violence, sexual assault and stalking are prominent issues in today's society. Chances are you will have to deal with the legal aspects of these issues in connection with the operation and management of your apartment community. Awareness of your rights and responsibilities will be an essential factor to minimizing potential exposure.

Good luck! 🍀



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