



THE 2019 LEGISLATIVE SESSION IS OVER

Here is a synopsis of the new laws affecting the apartment industry.

THE TEXAS LEGISLATURE meets every odd numbered year from January to late May or early June. In the 2019 legislative session, thousands of bills were filed. As usual, a small percentage passed into law.

A number of bills were passed that affect the apartment industry. This article is part one of a two-part article to discuss these new laws. Below is a summary of the new laws affecting the apartment industry. Each bill in its entirety can be viewed online through the Texas Legislature website at <https://capitol.texas.gov/>.

Deceased Residents

(HB 69 - adds Section 92.0162 to the Texas Property Code) applies to leases entered into on or after Jan. 1, 2020.

Change in the Law: Section 92.0162 provides that a representative of the estate of a tenant who was the sole occupant of a unit may terminate the tenant's lease and avoid future liability if:

- i. the representative provides written notice of the termination;
- ii. the deceased tenant's property is removed from the premises; and
- iii. the representative signs an inventory of the removed property if required by the landlord.

Termination of a lease under this section is effective the later of: (i) 30 days after the date of the notice; or (ii) the date on which the representative removes the tenant's property and signs an inventory of the removed property.

Effect of Change: Section 22.2 of the TAA lease provides that if the resident is the sole resident and dies during the lease term, an authorized representative of the resident's es-

tate may terminate the lease without penalty by giving at least 30 days written notice. The estate would then be liable for lease obligations until the later of: (i) the termination date; or (ii) removal of all possessions in the unit.

The new law provides what the TAA lease already provides. The issue, however, is that the lease and the law require that someone be named as the "representative of the estate." This would only occur if the court appoints an individual to be the representative of the estate.

Dealing with the unit and property of a deceased resident can be a complicated. Even if a representative of an estate of a deceased resident is not appointed, you may consider alternatives under the lease.

Section 92.014 of the Texas Property Code provides that, except when the lease has a different procedure, in the event of the death of a tenant who is the sole occupant of a unit:

- (i) the landlord may remove and store all property found in the unit;
- (ii) the landlord shall turn over possession of the property to the person who is designated by the tenant to contact in the event of the tenant's death (typically this would be the emergency contact) or to any other person lawfully entitled to the property;
- (iii) the landlord shall refund the security deposit, less lawful deductions, including the cost of removing and storing the property, to the person designated by the tenant or any other person lawfully entitled to the refund;
- (iv) the landlord may require any person who removes the property from the unit to sign an inventory of the property being removed; and
- (v) the landlord may discard the property removed by the landlord from the unit if the

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landlord has mailed a written request, certified mail, return receipt requested to the person designated by the tenant, the person failed to remove the property by the 30th day after the post marked date of the notice and the landlord has not been contacted by anyone claiming the property.

Section 41.3 provides that an apartment is considered abandoned 10 days after the death of a sole resident. Section 14.6(A) provides that an owner may throw away or give to a charitable organization all personal property that is left in the apartment after the death of a sole resident.

Parking Permits

(HB 1002 - adds Section 92.0132 to the Texas Property Code) applies to parking permits issued on or after Jan. 1, 2020.

Change in the Law: This section provides that a landlord who issues a parking permit must issue the permit for a term that is coterminous with the lease term and may not terminate or suspend the permit until the date the tenant's right of possession ends.

Effect of Change: An owner is prohibited from issuing a temporary parking permit that expires before the end of the lease term, how-

ever, if a resident loses the right to possession as a result of a default or other reason, the owner can terminate or suspend the permit.

Late Fees

(SB 1414 - amends Section 92.019 and adds 92.0191 to the Texas Property Code) applies to a late fee under a lease entered into or renewed on or after September 1, 2019.

Change in the Law: The new law makes a number of changes to late fee requirements. The current law provides that the late fee is a reasonable estimate of uncertain damages resulting from the late payment of rent. Under the new law, the fee is required to be reasonable. To be “reasonable,” the fee cannot be more than the uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment.

If the building contains four (4) units or less, the late fee is considered to be reasonable if it is not more than 12 percent of the amount of rent. If the building contains more than four (4) units, the late fee is considered to be reasonable if it is not more than 10 percent of the amount of rent. Percentages apply to the total late fee charged in a single month.

If you decide to charge more than what the statute considers to be reasonable, you may do so as long as you are able to show that what you are charging is reasonable. If the late fee is more than the percentage that is considered reasonable, the late fee amount is still proper as long as it is not more than uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment.

The new law also changes when the late fee can be assessed. A late fee can only be assessed if any portion of the rent has remained unpaid two (2) full days after the date the rent was originally due. This changed the previous requirement that the late fee could be assessed one (1) full day after the date the rent was originally due. In other words, if rent is due on or before the first day of the month, the late fee could previously have been charged on the third (3rd) day of the month. Under the new law, the late fee cannot be charged before the fourth (4th) day of the month.

The new law also adds Section 92.0191 to provide that a landlord must provide to the tenant, upon the tenant’s request, a written statement of whether the tenant owes a late fee and, if so, the amount of the late fee.

Effect of Change: A number of class action lawsuits have been filed against owners claiming that excessive late fees were charged. The current law provides a vague standard with respect to how much a late charge can be. Passing a revision to the late fee statute was TAA’s top priority in the legislative session.

The new law provides a safe harbor for owners to charge either 10 percent (when the building has more than four (4) units) or 12 percent (when the building has four (4) units or less) of the amount of the monthly rent as a total late charge for the month. This should provide some certainty for those owners who charge what the safe harbor offers. Owners who want to charge more than the safe harbor amount should be prepared to show that the amount of the fee is “reasonable” in accordance with the parameters outlined by the new law.

Family Violence

(SB 234 – amends Section 92.016 of the Texas Property Code) applies to leases entered into or renewed on or after September 1, 2019.

Change in the Law: Section 92.016 allows a tenant to terminate the tenant’s right and obligations under a lease and vacate the unit and avoid liability for future rent and other sums due when the tenant is the victim of family violence.

The new law provides additional alternative documentation a tenant can provide when requesting to terminate the lease due to family violence. Under the new law, the documentation a tenant will be allowed to submit to the owner to terminate the lease will include a copy of an order of emergency protection under the Code of Criminal Procedure or a copy of documentation of the family violence from a licensed healthcare or mental health services provider who examined the victim or an “advocate” (who is trained in assisting victims and an employee or volunteer of a violence center) as defined by the Texas Family Code who assisted the victim.

Effect of Change: Current law (Section 92.0161 of the Texas Property Code) allows a victim of certain sex offenses or stalking to terminate the lease by meeting certain requirements including providing a copy of similar documentation that the victims of family violence can provide under this new law. Consequently, the new law pertaining to family violence victims is consistent with the current law pertaining to victims of sex offenses and stalking.

Firearms

(HB 302 – amends Section 30.05, 30.06 and 30.07 of the Texas Penal Code and adds Section 92.026 to the Texas Property Code) applies to offenses committed on or after Sept. 1, 2019 and the enforceability of a provision in a lease entered into or renewed on or after Sept. 1, 2019.

Change in the Law: Section 92.026 provides that unless possession of a firearm or firearm ammunition on a landlord’s property is prohibited by state or federal law, the landlord may not prohibit a tenant or a tenant’s guest from lawfully possessing, carrying, transporting, or storing a firearm, or any part of a firearm, or firearm ammunition in the tenant’s unit, in a vehicle located in a tenant or guest parking area or in other locations controlled by the landlord that are needed to enter or exit the tenant’s unit, the property or a vehicle on the property.

The new law provides corresponding changes to the requirements of the Texas Penal Code with respect to the ability of a landlord to prohibit tenants or guests from carrying a firearm or firearm ammunition directly in route to or from the tenant’s unit or storing a firearm or firearm ammunition in the tenant’s unit or vehicle. The new law provides a defense to prosecution under the trespass provisions of the Texas Penal Code if the offender was acting consistent with the new law with respect to possessing, carrying, transporting or storing a firearm or firearm ammunition.

Effect of Change: If you have a “no-guns” policy on your property, your policy will not be allowed to prohibit a resident or the guest of a resident from lawfully possessing, carrying, transporting or storing a firearm, any part of a firearm, or firearm ammunition in the unit, a vehicle (of either the resident or the guest) or in other areas that may be needed by residents or their guests to go to or from a resident’s or guest’s vehicle or the resident’s unit. If you have such a policy, you would be allowed to maintain the policy with respect to common areas of the property that residents and guests do not need to go through in order to enter or exit the resident’s unit.

The legislative session is over! It’s now time to evaluate how the newly passed laws will affect your operations. This includes evaluating policies and procedures to be sure that you comply with the new laws. Look for part two of this article next month, which will discuss new laws pertaining to other facets affecting the ownership, operation and management of apartment communities. 