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AUSTIN LEGAL

by judon fambrough

The 79th Texas Legislature changed Texas real estate law more than any other session in recent years. Real estate licensees need to be aware of how the changes affect real estate law and possibly their Texas practices. This article summarizes the more important changes.

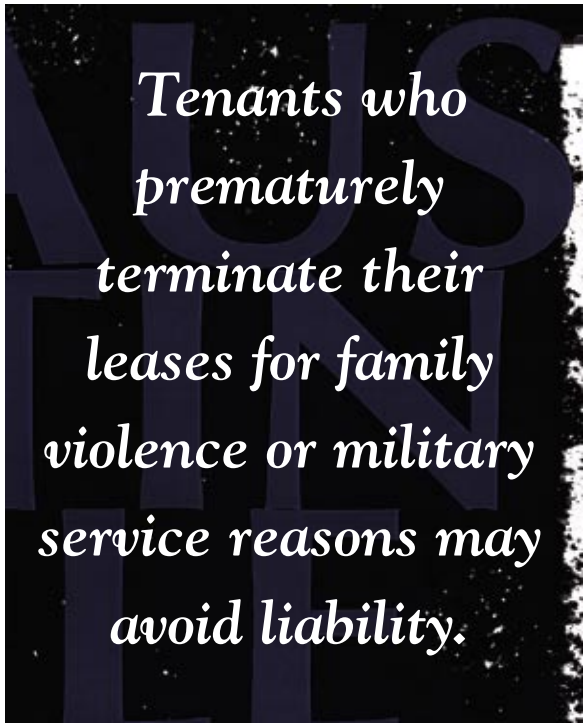
Landlords and Tenants

Family violence and military service now provide cause for residential tenants to prematurely terminate their leases without liability. According to Texas law, family violence occurs when a member of a family or household threatens, physically harms or sexually assaults another member of the family or household. The term also includes abuse of a child by a member of the family or household and dating violence.

Prior to vacating the premises, the tenant must have a judge sign a temporary injunction or a protective order under the Family Code and deliver a copy to the landlord.

Similar termination rules apply to persons who enter the military and to members of the military who face a permanent change of station or deployment for at least 90 days. In such instances, the tenant must deliver the landlord a copy of the government document showing either his or her entry into the military or change of station. The tenant may then vacate the premises.

Tenants who terminate leases for either family violence or military service reasons may avoid future rent, current unpaid rent and other delinquencies if the lease agreement does **not** contain the following language: "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or military deployment or transfer."



The tenant's right to terminate the lease for family violence cannot be waived, but waivers are permitted for the military in limited circumstances.

Under the new laws, landlords and managers of multiunit complexes have a greater duty to inform tenants of parking and towing rules when the lease is signed and when subsequent rule changes occur. The new statute details how and when copies of the rules must be provided.

A rule or policy change during the lease term does not become effective until 14 days after a notice is delivered, unless the changes result from a construction or utility emergency. The landlord bears the burden of proving the tenant received these notices and faces stiff penalties for violations.

Property Owners Associations

Legislators implemented rules regarding a property owners association's (POA's) right to regulate political signs.

POAs cannot adopt or enforce restrictions that prohibit owners from displaying signs on their property advertising a political candidate or a ballot item. Signs may be placed on the property anytime 90 days before an election and ten days thereafter.

POAs may require signs to be ground-mounted with no more than one sign per candidate or ballot item. They may also regulate the composition and size of the signs.

Priority of property tax liens versus POA liens for unpaid assessments, dues, fines and so forth was addressed as well. Effective Sept. 1, 2005, the tax lien takes priority regardless of when the POA lien arose. However, some distinction is made between POA liens filed in deed records and those that are not.

In an action to collect (foreclose) on the tax lien, the taxing authorities must join the POA as a necessary party if the POA recorded its lien in the deed records. If the taxing authorities fail to join the POA, the subsequent tax foreclosure does not extinguish the POA's lien.

In 2003, the 78th Legislature introduced three ways for subdivisions to create, change or extend deed restrictions when the present ones were about to expire and lacked provisions for extending or amending them. Legislators instituted changes based on county population and whether the subdivision was in a municipality or not. In 2005, two more ways were added.

Legislators addressed entry into gated communities in unincorporated county areas. To assure reasonable access for law enforcement personnel and for firefighting and other emergency vehicles, counties may now require the owner or the POA of a gated community to comply with rules for location of lockboxes and the width of entryways. Pedestrian gates must allow firefighters, law enforcement officers and other emergency personnel reasonable access to buildings.

The county may require the owner or the POA to obtain a permit from the county fire marshal or other authority with firefighting jurisdiction.

In a related matter, the county commissioners may now regulate the location of communication towers in the unincorporated areas of counties having a population of at least 1.4 million. In particular, county commissioners may prohibit the construction of cell towers within 300 feet of residential subdivisions or a distance equal to the height of the tower, whichever is greater.

Taxpayers may appeal the appraisal review board's decision to binding arbitration when the value of property is $1 million or less. Licensees may be arbitrators if they have 30 hours training and charge no more than $450.

Foreclosure Sales

Mortgage foreclosure sales may now be conducted at places other than the courthouse. County commissioners may designate a public place for the sale in reasonable proximity to the courthouse and accessible to the public. The commissioners court must record the locations in the real property records.

Lenders may now authorize mortgage servicers to conduct foreclosure sales and appoint a substitute trustee or trustees. (A mortgage servicer is the last person or entity to whom the mortgagee instructs the mortgagor to send payments.) The trustee conducting the sale need not have a real estate license as of Sept. 1, 2005.

Beginning Oct. 1, 2003, bidders at tax sales had to obtain a statement from the local county assessor-collector showing that the bidder owed no delinquent property taxes. Effective Sept. 1, 2005, the requirement applies only to counties having a population of at least 250,000 and in other counties where the commissioners court adopts the requirement.

Property Taxes

Effective Jan. 1, 2006, the chief appraiser must state on tax notices the difference in the appraised value of the property for the current tax year compared with its value five years ago. The difference must be expressed as a percentage and not as a dollar amount.

Prior to 2005, tax collectors had the option of allowing taxpayers to pay a portion of their property taxes monthly into an escrow account maintained by the collector. The account, based on an estimate of the property taxes, could not be less than the amount imposed on the property the preceding year.

Now, the collector must establish an escrow account for the payment of taxes when requested to do so by a disabled veteran or a recipient of the Purple Heart, Congressional Medal of Honor, Bronze Star Medal, Silver Star, Legion of Merit or a service cross. However, the account must apply solely to the owner's residence homestead.

Starting Sept.1, 2005, taxpayers may appeal the appraisal review board's decision to binding arbitration when the appraised or market value of property is $1 million or less. The taxpayer must complete several steps including depositing $500 with the comptroller. The comptroller then appoints a qualified arbitrator to hear the case. Real estate licensees may be "qualified arbitrators" if they have completed 30 hours of training and agree to conduct the arbitration for no more than $450.

The $500 is returned to the property owner if the arbitrator's award is closer to the property owner's opinion of value than that of the taxing entity.

Finally, a new statute affords some relief for purchasers who receive faulty tax certificates. Prior to 2005, a certificate that mistakenly indicated no delinquent taxes, penalties or interest were due on the property eliminated any tax lien and any personal liability for the purchaser to pay the delinquencies. The prior owner (seller) remained personally liable. The same rule applies after Sept. 1, 2005, except it now includes property erroneously omitted from the appraisal roll.

New Disclosure Requirement

Texas legislators added yet another notice requirement for the sale of residential property located in public improvement districts. Effective Jan. 1, 2006, sellers of single-family residential properties located in these districts must give a specific written notice of this fact to purchasers in the contract on or before the contract becomes binding. The purchaser's sole remedy for a violation is to terminate the contract at closing or within seven days after the notice is delivered, whichever occurs first.

Mold Remediation

In 2003, legislators implemented rules for licensing mold assessors and mold remediators. Legislation passed in 2005

requires candidates for licensing to score at least 70 percent on any required tests.

In 2003, a licensed remediator was required to issue a "Certificate of Mold Remediation" to the property owner within ten days of completing a project. Among other things, the license holder was required to state that the mold contamination identified in the plan had been remediated. Property owners had to provide this certificate to anyone purchasing the property. This changed Sept. 1, 2005. Now property owners must provide the certificate to anyone purchasing the property within five years after the certificate was issued.

Recreational Property Use

Chapter 75 of the Texas Civil Practices and Remedies Code limits landowners' liability to recreational guests. Landowners owe the guests no greater duty than is owed a trespasser when the property is used for agricultural purposes, and the charges to all guests in the aggregate do not exceed 20 times the amount of ad valorem taxes levied on the property the preceding year. If charges exceed this level, landowners must acquire liability insurance to continue to receive the statutory protection.

Prior to 2005, Chapter 75 listed 11 activities as recreational. The 79th Legislature added six more: off-road motorcycling, off-road automobile driving, all-terrain vehicle use, bicycling (including mountain bikes), disc golf and dog walking.

Effective Sept. 1, 2005, a new statute imposes limits on hunting on privately owned land temporarily submerged by public fresh water caused by seasonal or occasional inundation. The prohibition applies to land conspicuously marked as privately owned with, for example, signs such as "posted," "private property" or "no hunting."

Landowners and hunters alike need to be aware of a new law that prohibits the discharge of a firearm across property lines without permission of the adjoining landowner. Offenders face fines from $25 to $500.

Off-road motorcycling, off-road automobile driving, all-terrain vehicle use, bicycling (including mountain bikes), disc golf and dog walking now qualify property for recreational-use status.

Filing Documents with County Clerk

Two new laws address filing documents in the deed record (sometimes called the official records.)

Effective Sept. 1, 2005, the county clerk may refuse to file any instrument he or she "believes in good faith" creates a fraudulent lien. The county clerk may request the assistance of the county or district attorney in determining the validity of the lien, or may request more verification from the prospective filer.

The other statute amends a law effective Jan. 1, 2004, requiring a 12-point, boldfaced-type notice to be printed across the top of the first page of each deed or deed of trust. The notice informed individuals that they do not have to disclose their social security or driver's license numbers in the document.

This notice is no longer required. The county clerk cannot refuse to record the document solely because the notation is missing. Instead the county clerk must post the notice in the county clerk's office informing individuals of their rights to withhold such information on any filed document.

On-Site Aerobic Treatment

Prior to Sept. 1, 2005, owners of single-family residences in counties with populations of less than 40,000 had the option of entering a contract for maintenance of their onsite sewage disposal system that used aerobic treatment or maintaining it themselves after obtaining training in the system maintenance from the authorized agent or the installer.

Now the option to maintain the system applies to all owners of single-family residences no matter the county's population. The onsite training cannot exceed six hours, and the Texas Water Commission dictates the course material.

The new statute grants the water commission or an authorized agent the right to periodically inspect anyone's system and impose sanctions if the system is not properly maintained.

Impact Fees

Impact fees were addressed by Texas legislators for the first time in several years. A new law deals with apportioning the municipal infrastructure costs between the developer and the municipality. Basically, the developer must bear that portion approved by a professional engineer retained by the municipality for the proposed development.

Developers may appeal the decision to the governing body of the municipality and then to the county or district court. If successful, developers can recover applicable costs, reasonable attorney fees and expert witness fees. The municipality cannot require developers to waive their right to appeal as a condition for approval for a development project.

Note: The Real Estate Center's online articles have been revised to reflect these changes. For an in-depth analysis of these and other legal changes, see the Center's technical report No. 1757 at recenter.tamu.edu.

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