



CHANGES OF NOTE

Understanding the 2016 Texas Apartment Association lease changes.

THE LEASE IS your most important document. It outlines the rights and responsibilities of you and your residents. Questions about your relationship can probably be answered through the lease. You should know what you have agreed to in the lease.

In the latter part of 2015, there were certain changes made to the TAA lease. Some of the changes were the result of new laws being adopted in the 2015 legislative session. Some are the result of case law. Let's take a look at these changes.

1. Top of Page 1

Change: The shaded portion at the top of page one was changed from "This Lease Contract is valid only if filled out before January 1, 2016" to "This Lease Contract is only valid if filled out before January 1, 2018".

Reason: In order to take advantage of the most recent changes the lease requires you to use the most current form as of the date the lease is signed.

Practice Tip: It is critical you use the current lease form. Otherwise, you risk the argument that the lease is not valid.

2. Paragraph 5: Keys, Move-Out and Furniture

Change: The phrase "unless authorized by court order" was added at the end of the sentence. It states that any resident, occupant or spouse who, according to a remaining resident's affidavit, has permanently moved out or is under court order to not enter the unit, is no longer entitled to occupancy, keys or other access devices.

Reason: A new Texas law effective September 1, 2015 allows a person who is unable to enter his or her residence or former residence to retrieve personal property because the current occupant is denying the person entry. This change reflects the fact that the law allows a resident or former resident entry into

the unit, even if a remaining resident has signed an affidavit moving the co-resident out.

Practice Tip: The new law provides that an owner or owner's agent who permits or facilitates entry into a residence in accordance with a court order is not liable for an act or omission that arises in connection with permitting or facilitating the entry. The new law also provides that a person who interferes with a person or peace officer entering a residence under the new law is committing an offense. If served with a court order to allow entry to a former resident who previously moved out, comply with the order.

3. Paragraph 6: Rent and Charges

Change: A statement was added that reads if a resident does not pay rent on the first of each month, it is a material breach of the lease.

Reason: Rent is due on or before the first day of each month with no grace period. The lease allows for late charges to be imposed no earlier than the third of the month. Some Texas courts have indicated the failure to pay by the first does not amount to a material breach of the lease. This added language supplements an argument that no matter when a late charge is imposed, the failure to pay on or before the first day of the month is a material breach of the lease.

Practice Tip: Be careful! If you have an established policy of sending notices to vacate after the third day of the month, be careful before sending a notice to vacate for nonpayment of rent on the second. If there is a conduct violation that occurred late in the previous month or on the first or second of the current month, the notice to vacate should outline the conduct violation. If the resident has also failed to pay rent by the second, you can add the nonpayment of rent allegation to the notice.

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4. Paragraph 19.2: Community Policies and Rules (Some Specifics)

Change: This paragraph welcomed the addition of the sentence "You will use balconies with care and will not overload them".

Reason: Due to a national problem with balcony collapses, residents are warned to use balconies with care and to avoid overloading them.

Practice Tip: Although "use balconies with care" is not specified nor does it explain how much would constitute an "overload," this sentence gives you a tool to use when confronting a situation in which a resident had either too many people or too much stuff on their balcony. You could also adopt a rule specifying balcony requirements.

5. Paragraph 20: Prohibited Conduct

Change: Paragraph 20(a) was modified to add the words "except when allowed by law" before the prohibition of displaying or possessing a gun, knife or other weapons in the common area or in a way that may alarm others.

Reason: Language was added to paragraph 20(a) as a result of the new open carry law in Texas, which took effect January 1.

Practice Tip: Under the new law, persons who are properly licensed to openly carry a handgun may do so by displaying the handgun in a shoulder or hip holster. Although an owner may restrict a person from openly carrying a handgun on the owner's property, without this restriction, the law would allow

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displaying the handgun. Keep in mind however, neither the lease nor the law allows anyone to display or possess a weapon in a threatening manner.

6. Paragraph 21: Parking

Change: Paragraph 21(l) was modified to delete a restriction that a person can be towed if a current inspection sticker is not displayed.

Reason: Texas no longer requires an inspection sticker. All that is required now is a registration sticker.

Practice Tip: There may be vehicles in your lot that display an expired inspection sticker. Be sure that your towing contractors are not towing vehicles because of an expired inspection sticker.

7. Paragraph 28: When We May Enter

Change: The words “law officers” was removed from the list of persons who are authorized to enter a unit peacefully at reasonable times for reasonable business purposes. Additionally, the sentence “Law officers with a search or arrest warrant or those in hot pursuit may be allowed to enter,” was added at the end of this paragraph.

Reason: The change clarifies that law officers with a search or arrest warrant or those in hot pursuit are allowed to enter under any circumstances. The change clarifies that law officers are not held to a standard of only entering “peacefully” at “reasonable times” for “reasonable business purposes.”

Practice Tip: As a practical matter, operations should not be affected by this change. However, it would be beneficial to have an in-house policy of how to handle law officers asking for entry.

8. Paragraph 30.3: Replacements and Subletting (Rental Prohibited)

Change: Paragraph 30.3 was added to have the resident agree that the resident won't: (i) rent or offer to rent the unit; (ii) accept anything of value from anyone else for the use of the unit; or (iii) list any part of the unit on any lodging rental website or any service that advertises dwellings for rent.

Reason: The addition of subparagraph 30.3 addresses the recent phenomenon in the apartment industry of residents advertising units for lease on social media. Although the previous lease terms prevent

subletting or unauthorized occupants, this addition clarifies that the resident is in default if the resident merely advertises the unit for lease on a website.

Practice Tip: Remember that this new paragraph only applies to residents who have signed the new TAA lease form. Most of your residents are probably still on the old lease form. If you want to clarify that the resident can't advertise their unit, you can do so by adopting a rule in accordance with paragraph 19.1 of the lease.

9. Paragraph 31.3: Our Responsibilities (Request by Mail)

Change: Language is added to paragraph 31.3 providing that instead of requiring two written requests for a repair before holding an owner responsible for a lease violation, one request can be given by any trackable mail or delivery method through the postal service or a private delivery service.

Reason: In order for an owner to be liable to a resident for failing to repair or remedy a condition in the unit, the resident has to follow certain procedures. These procedures include giving the owner a written notice by certified mail, return receipt requested or by registered mail. A new Texas law effective January 1, allows a notice by any other form of mail that allows tracking of delivery from the United States Postal Service or a private delivery service.

Practice Tip: The change should not have a substantial impact on the rights or remedies of owners or residents. However, the resident can now provide one notice if it is sent by trackable mail or private delivery.

10. Paragraph 32.2: Default by Resident (Eviction)

Change: Paragraph 32.2 was modified to: (i) allow a notice to vacate to be delivered by securely affixing the notice to the outside of the unit's main entry door as allowed by law; and (ii) clarify that in an eviction, rent is owed for the full rental period and will not be prorated.

Reason: The first change was the result of a new law that took effect January 1, which al-

lows under certain circumstances an owner to post a notice to vacate on the outside of the door. The second change was to clarify that under the TAA lease, since rent is due on or before the first day of the month in advance, in evictions, rent is owed for the full rental period and will not be prorated, even though the eviction trial would occur sometime during the month.

Practice Tip: With respect to the new law allowing notices to vacate to be delivered on the outside of the door, be careful! There are several circumstances that must be present in order for the notice to be posted in this fashion. The notice must be affixed to the outside of the main entry door in a sealed envelope, bearing the resident's name and address and with the words “IMPORTANT DOCUMENT” (or substantially similar language) written on the envelope in capital letters. This type of delivery is only permitted if the owner reasonably believes that harm to any person would result from personal delivery of the notice to the resident or the unit. Additionally, a notice posted on the outside of the door must be mailed no later than 5 p.m. on the same day it is posted in the same county in which the unit is located. With respect to the second change, in an eviction action, the Texas Rules of Civil Procedure allows a judge to award delinquent rent as of the date of entry of judgment. If a judgment were granted on the 15 of the month, since all of the rent is due on or before the first day of each month, the entire month's rent would be due. The additional language clarifies that rent will not be prorated.

11. Paragraph 32.5: Default by Resident (Other Remedies)

Change: The words, “as allowed by law” were added to the first sentence clarifying that the owner may report unpaid amounts to credit agencies.

Reason: The change was made as a result of a new law, which took effect January 1. Under the new law, if a security deposit is not required, and the resident is liable for damages and charges after surrendering the unit, the owner is required to notify the resident in writing of the owner's claims for damages and charges on or before the date the owner reports the claim to a consumer reporting agency or a third-party debt collection.

Practice Tip: Be careful! The new law only pertains to circumstances in which a security

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deposit was not required, however, if an owner does not provide the required notice in a timely fashion, the owner forfeits the right to collect damages and charges from the resident.

A security device must be rekeyed by the owner not later than the seventh day after the turnover date. The change allows an owner to recover the costs to rekey the device if a resident **vacates the unit in breach of the lease.**

12. Paragraph 40: Security Deposit Deductions and Other Charges

Change: A sentence was added to the end of this paragraph stating that the owner may deduct reasonable costs from a security deposit when incurred in rekeying security devices if the resident vacates the unit in breach of the lease.

Reason: A new Texas law that took effect January 1 provides that if a resident vacates a unit in breach of the lease, the owner may deduct from the resident's security deposit the reasonable cost to re-key a security device, but only if the lease includes a provision that is underlined or printed in boldface type authorizing the deduction. The new language in the lease meets the statutory requirements.

Practice Tip: A security device must be rekeyed by the owner not later than the seventh day after the turnover date. The change in the law allows an owner to recover the costs to rekey the device if a resident vacates the unit in breach of the lease. But be careful! An owner only has the right to deduct the cost of re-keying from the resident's deposit if the proper language is in the lease. You cannot deduct the cost of re-keying until a resident breaches the lease, which contains the required language.

Take time to read the new form of the lease. Hopefully, these explanations will help you better understand the changes. 🏠

Want to know more about legal issues affecting the apartment industry? Come see HAA General Counsel Howard Bookstaff live on Friday, April 29 from 11:30 a.m. to 1 p.m. for HAA's first **It's the Law Luncheon** of 2016. See the HAA calendar at www.haaonline.org for details.

