

# Turbocharged Tenant Rights

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## What We Will Cover

- COVID-19 Emergency Orders
- CARES Act
- Protecting Tenants at Foreclosure Act
- Tax Foreclosures
- Bankruptcy Act
- Servicemembers Civil Relief Act
- Fair Housing Act
- Section 8 Housing
- Tenant's Right to a Jury Trial
- Tenant Firearm Rights

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## UPDATE

The first two topics in this presentation have been updated in light of new orders issued by the Texas Supreme Court.

Please see the COVID-19 Emergency Orders and CARES Act webinar and review the updated information on our webinar page at [www.tjctc.org/coronavirus](http://www.tjctc.org/coronavirus).

Thank you!

Stay safe!

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# Protecting Tenants at Foreclosure Act

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## Scenario 1

Owen acquires a house at a foreclosure sale. Tiffany is living there. She claims the house was owned by her aunt, who allowed her to live there as a tenant without paying any rent. But her aunt died and Tiffany claims that she inherited the house and now she owns it.

Owen files an eviction case in your court.

He gave Tiffany a 3-day notice to vacate.

Tiffany shows up at trial with a lawyer. The lawyer argues that Tiffany was entitled to a 90-day notice to vacate under the Permanently Protecting Tenants at Foreclosure Act.

Owen says it doesn't apply to Tiffany.

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## Scenario 1

### You Rule:

- A. Owen wins: I happen to know that Act expired in 2014 (but nice try!)
- B. Owen wins: the Act doesn't apply if the tenant is not paying rent
- C. Tiffany wins: she gets 90 days since she was a tenant and therefore she is "permanently protected"

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## Protecting Tenants at Foreclosure Act

- The Protecting Tenants at Foreclosure Act originally went into effect on May 20, 2009.
- It expired on December 31, 2014.
- But the Permanently Protecting Tenants at Foreclosure Act of 2018 went into effect on June 23, 2018.
- The new Act restores and revives the original one as if it had not expired.

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## What's the Purpose of the Act?

Often, when there is a foreclosure of a rental property, the tenant – who is paying rent – does not know that the landlord is in foreclosure on the property.

The Protecting Tenants at Foreclosure Act protects tenants from eviction because of a **foreclosure** on the property they occupy.

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What's the Purpose of the Act?

- For example: if John Smith is renting a house and the owner of the house fails to make his mortgage payments and the bank forecloses, John is protected from being evicted immediately -- provided he continues to pay his rent and is not otherwise in breach of his lease.

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How Much Time Does the Tenant Get?

- The tenant may remain in the house **until the end of his lease term** if he has a lease for a fixed term and the person who acquires the house at the foreclosure sale is not going to use it as their primary residence.

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## How Much Time Does the Tenant Get?

- For example: suppose John Smith has a written lease that goes from January 1, 2020 until December 31, 2020, and the foreclosure sale occurs in March 2020.
- John can remain in the house **until the end of his lease term on December 31, 2020, unless** the person who acquires the house at the foreclosure sale is going to use the house as their primary residence.

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## How Much Time Does the Tenant Get?

In that case the new owner of the house may give John (the tenant) a 90-day notice to vacate, and he must leave when the 90 days is up.

If he doesn't leave, then the new owner could file an eviction suit just as in any other situation where a tenant fails to leave following a notice to vacate.

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What if the Lease is Terminable at Will?

- If the lease is terminable at will under state law, then the tenant is entitled to a 90-day notice to vacate.

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What if the Lease is Terminable at Will?

Suppose Jane Jones rents a house for \$800 per month but there is no agreement as to how many months she may stay there. This is a tenancy at will.

If the owner of the house defaults on his mortgage and the bank forecloses, then the new owner who buys the house at the foreclosure sale would have to give Jane a 90-day notice to vacate before filing an eviction suit.

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What Foreclosures Are Covered?

The tenant protection provisions apply in the case of any foreclosure on a “federally related mortgage loan” (such as an FHA or VA mortgage) or on any dwelling or residential real property.

They do not apply to a commercial eviction.

But they do apply to a manufactured home eviction.

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Who Has to Give the Notice to Vacate?

- Any “immediate successor in interest” in a foreclosed property, including a bank that takes title to a house upon foreclosure or an individual who purchases the house at the foreclosure sale, assumes the interest subject to the rights of any “bona fide” tenant and must provide the tenant with a notice to vacate **at least 90 days before the effective date of the notice.**

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## Who Has to Give the Notice to Vacate?

- The notice to vacate may not be given before the date on which complete title to a property is transferred to a successor entity or a person as a result of a court order or pursuant to provisions in a mortgage, deed of trust, or security deed.

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- For example: if a bank has issued a notice of foreclosure to the owner/landlord and expects the foreclosure to occur in 60 days, the bank may not issue the notice to vacate to the tenant 60 days before the foreclosure occurs and then give the tenant 30 days after the bank becomes the owner.
- The bank must wait until complete title to the property has been transferred to it and then it must issue at least a 90-day notice to vacate.

## Who Has to Give the Notice to Vacate?

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## Does the Act Apply to All Tenants?

- It applies to all “bona fide” tenants. A lease or tenancy is considered “bona fide” only if:
  - The mortgagor (that is the owner of the property who signed the mortgage that is being foreclosed on) or the child, spouse or parent of the mortgagor, is not the tenant;
  - The lease or tenancy was the result of an arms-length transaction (meaning they are acting independently and in their own self-interest);  
**and**
  - The lease or tenancy requires the receipt of rent that is not substantially less than fair market value for the property.

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Does the Act  
Apply to All  
Tenants?

- For example: suppose the owner of a house who defaults on their mortgage has rented the house to their adult children.
- The children are not “bona fide” tenants and therefore they are not entitled to protection under the Act (that is, they are not entitled to at least a 90-day notice to vacate).

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## For More Information:

- See Handout 1 for more information on the Protecting Tenants at Foreclosure Act.

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# Tax Foreclosures

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## Scenario 2

- Owen files an eviction suit in your court. He acquired the premises (a residence on a lot) after a tax foreclosure sale at which he was the highest bidder.
- The defendant, Taylor, lives in the residence. She claims she is renting the property from her aunt to whom she pays \$600 each month in rent.

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## Scenario 2

- Both parties show up for trial. Taylor's lawyer argues that she is entitled to judgment because Owen only gave her a three-day notice to vacate.
- He claims Taylor is entitled to a **30-day** notice to vacate under the second sentence of Property Code § 24.005(b), which states:

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## Scenario 2

“If a building is purchased at a tax foreclosure sale . . . under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, **the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate** if the purchaser chooses not to continue the lease.”

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## Scenario 2

Owen says he spoke to Taylor's aunt and she says Taylor is sometimes late in paying the rent. So he says Taylor doesn't qualify for a 30-day notice to vacate under Section 24.005(b).

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Scenario 2

After hearing both sides, you:

- A. Find in favor of Owen since Taylor did not timely pay her rent.
- B. Find in favor of Taylor who should get 30 days notice since it's a tax foreclosure.
- C. Decide you want to hear from Taylor's aunt before you rule.

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Bankruptcy

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### Scenario 3

Leonard files an eviction suit against Betty for nonpayment of rent. Betty appears for trial but loses and the court enters a judgment for possession against her.

The next day she files a bankruptcy petition in federal bankruptcy court and notifies your court that the bankruptcy petition has been filed.

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### Scenario 3

Is the case automatically stayed due to the bankruptcy filing?

- A. No; Betty had to file **before** the judgment for possession was entered.
- B. Yes; since Betty filed during the five-day appeal window, the automatic stay applies.

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### Bankruptcy Stay

- If a tenant files a bankruptcy petition **before** a judgment for possession is entered, the eviction suit is automatically stayed (put on hold) and no further proceedings may be held until the landlord obtains an order from the bankruptcy court lifting the stay.

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### Bankruptcy Stay

- The traditional rule has been that if a bankruptcy petition is filed **after** a judgment for possession has been entered, the eviction case is **not** stayed and a writ of possession may issue.

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### Bankruptcy Stay

- However, recent bankruptcy court cases have held that a judgment for possession in an eviction case is not “final” until the appeal period has expired.
  - See Handout 2 for a list of these cases.

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### Bankruptcy Stay

- Under these cases, a tenant could file a bankruptcy petition **after** a judgment for possession has been signed but before the five-day appeal period has run and the case would be stayed automatically by the bankruptcy court until the landlord obtains a lifting of the stay.

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## Bankruptcy Stay

- It is unclear what effect the bankruptcy filing has on the appeal period: in this case, for example, does the tenant get four more days to file an appeal once the stay is lifted?
- Is the 60-day period for issuance of a writ of possession tolled during the stay?
  - See Handout 3 re alternative ground for stay under the Bankruptcy Code.

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## Servicemembers Civil Relief Act

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## Servicemembers Civil Relief Act

- What is the SCRA?
- A federal law that protects members of the armed services and their families in **all civil cases, including eviction cases.**
  - 50 U.S.C. § 3901

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How Does  
the SCRA  
Protect  
Service  
Members?

- The SCRA protects the service member:
  - Before granting a default judgment;
  - By allowing or requiring the court to stay a case;
  - By allowing the court to adjust lease obligations;
  - By allowing the service member to terminate a lease.

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## Default Judgment

- In **any civil case** in which the defendant does not make an appearance, before entering a default judgment, the court “shall require the plaintiff to file . . . an affidavit:
    - Stating whether or not the defendant is in military service **and showing necessary facts to support the affidavit**; or
    - Stating that the defendant is unable to determine whether or not the defendant is in military service.”
- 50 U.S.C. § 3931(b)

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## Default judgment

- This means a justice court may **not** grant a default judgment in **an eviction case** unless an **SCRA affidavit** has been filed first.

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## What Does the Affidavit Have to Say?

- The plaintiff has to say one of three things:
  - The defendant is not in military service;
  - The defendant is in military service; or
  - The plaintiff can't tell whether or not the defendant is in military service.

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## SCRA Affidavit

### Servicemember's Civil Relief Act Affidavit

**Instructions:** The Servicemembers' Civil Relief Act applies to a civil proceeding in the Justice Courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in the military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require plaintiff to file a bond in an amount approved by the court.

To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://www.dhs.gov/e-verify/app/scra/affidavit>. This website will provide the current active military status of an individual.

CASE NO. \_\_\_\_\_

#### AFFIDAVIT 50 USC Sec. 520

Plaintiff being duly sworn on oath deposes\* and says that defendant(s) is (are)

(CHECK ONE)

- not in the military
- not on active duty in the military and/or
- not in a foreign country on military service
- on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- has waived his/her rights under the Servicemembers Civil Act of 2003
- military status is unknown at this time

PLAINTIFF

(Select the applicable title under the signature for the jurat below)

Subscribed and sworn to before me no this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOTARY / CLERK

Notary Public in and for the State of Texas

Clerk of the Justice Court

SEAL

\*Penalty for making or using false affidavit - a person who makes or uses an affidavit knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year or both.

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If the Defendant is in Military Service

- The court may not enter a judgment until after the court appoints an attorney to represent the defendant.

-- 50 U.S.C. § 3931(b)(2)

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What does counsel do?

NO. JP07-18-E00089007

JUL 0 2 2018  
Justice of the Peace  
 Precinct No. 7  
 Tarrant County, Texas

SWH 2017-1 BORROWER, LP § IN THE JUSTICE COURT  
 Plaintiff, §  
 V. § PRECINCT NO. 7  
 §  
 RANDEE HIDALGO AND §  
 OCTAVIOUS LLOYD §  
 Defendants. § TARRANT COUNTY, TEXAS

ATTORNEY AD LITEM'S REPORT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Wayne M. Taylor, Attorney Ad Litem in the above entitled cause, having been appointed to represent Rande Hidalgo and Octavious Lloyd, would show until the court as follows:

I.

I, Wayne M. Taylor, an attorney in good standing with the State bar of Texas, having been appointed by Order of the Court on June 20, 2018, have completed my investigation of the case.

II.

I have reviewed Plaintiff's Petition, the Lease and the Three Day Notice to Vacate. I have conducted extensive research on WestLaw, PeopleMap, Tarrant County District Clerk Online, US Courts Online and other internet search engines. I have drafted emails to the Defendants. I have also driven to the suspected current address of the Defendants, listed as 601 Fox Creek Trail, Fort Worth, Texas 76131, as documented on a PeopleMap report, and attempted to speak to the Defendants in person.

III.

I received an email from Defendant, Octavious Lloyd on June 26, 2018, whereby Mr.

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ATTORNEY AD LITEM REPORT Page 1

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What does counsel do?

Lloyd stated:

JUL 02 2018  
Justice of the Peace  
Precinct No. 7  
Tarrant County, Texas

"No eviction. Signed notice to vacate property months ago. Signed landlord plus house keys also (mailed) given back. The company must have misplaced them. Which doesn't surprise me. Haven't been in home since March. Done what the company wanted us to do due to the fact could not afford rent."

Email requests for additional information to confirm Mr. Lloyd's statements and a request to contact my office via telephone were ignored.

IV.

A request for a copy of the Rental Application for the property in question from the management company that leased the property to Defendants was unsuccessful despite numerous calls to Invitation Homes, the successor to Waypoint Homes, and messages left for the listing agent to contact my office.

VI.

I believe my duties as the Attorney Ad Litem are complete.

VII.

Please see Exhibit "A", Affidavit of Wayne M. Taylor. My time expended and expenses incurred in discharge of my responsibilities under appointment as the Attorney Ad Litem in this matter are reflected on the statement attached hereto as Exhibit "A-1". My hourly rate for my services is \$250.00, which is reasonable and consistent with customary Attorney Ad Litem charges in this locality.

Respectfully submitted,  
By: /s/ Wayne M. Taylor

ATTORNEY AD LITEM REPORT Page 7

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How did this help?

CASE NO. E00089007

SWH 2017-1 Borrower LLC  
PLAINTIFF (PRINT)

IN THE JUSTICE COURT


VS. PRECINCT 7

Randee Hidalgo, Octavious Lloyd  
DEFENDANT (PRINT) TARRANT COUNTY, TEXAS

**PLAINTIFF'S MOTION FOR DISMISSAL**

**THE ABOVE REFERENCED CASE HAS BEEN SETTLED. PLEASE ACCEPT THIS AS THE WRITTEN REQUEST TO DISMISS THE CASE.**

RESPECTFULLY,


 7/2/2018  
PLAINTIFF SIGNATURE DATE


Robert P. Debelak III Attorney  
PLAINTIFF PRINT NAME DEPARTMENT/TITLE

On 3<sup>rd</sup> day of July, 2018, came to be considered the Motion of the Plaintiff to DISMISS the above numbered and entitled cause and the court being of the opinion that same is well taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT THIS CAUSE SHOULD BE AND THE SAME IS HEREBY DISMISSED WITH (circle one) PREJUDICE.

SIGNED AND ENTERED THIS 3<sup>rd</sup> DAY OF July, 2018.

  
JUDGE MATT HAYES  
JUSTICE COURT, PRECINCT 7  
1100 EAST BROAD STREET  
SUITE 202  
MANSFIELD, TEXAS 76063



Rev. 08/18/2015

FILED  
JUL 02 2018  
Justice of the Peace  
Precinct No. 7  
Tarrant County, Texas

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NO. JP07-18-E00089007

SWH 2017-1 BORROWER, LP  
Plaintiff,

V.

RANDEE HIDALGO AND  
OCTAVIOUS LLOYD  
Defendants.

§ IN THE JUSTICE COURT  
§  
§ PRECINCT NO. 7  
§  
§  
§ TARRANT COUNTY, TEXAS  
§

**ORDER APPROVING ATTORNEY AD LITEM FEES**

Name of person or entity appointed: Wayne M. Taylor State Bar No. 24083950

Position to which appointed: Attorney Ad Litem

Source of (payer) of fees: Court Cost / Plaintiff

AMOUNT OF FEE REQUESTED \$1,075.00

*(If amount requested is greater than \$1,000, include the number of hours billed and billed expenses)*


Number of hours billed: 4.3

Billed expenses: 0

AMOUNT OF FEES APPROVED: \$ 1075.00  
(Court Use Only)

IT IS HEREBY ORDERED that the approved fees and expenses for services rendered in this cause shall be paid from the source listed above within thirty (30) days of the date the

DATE: July 3, 2018

  
JUDGE PRESIDING

How do you handle the attorney fees?

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- Stay of the Case
- The SCRA may require a court to stay a case in three situations:
    - When the service member has not appeared in the case.
    - When the service member has actual notice of the case.
    - In a residential eviction suit where the service member's ability to pay rent is materially affected by his military service.

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## Stay: No Appearance

- If the defendant has not appeared in the case and the court determines that **he is in military service** and appoints counsel, **the court shall grant a stay of proceedings for a minimum of 90 days** upon request of counsel or upon the court's own motion if the court determines that:
  - There may be a defense to the action and it cannot be presented without the presence of the defendant; or
  - After due diligence counsel has been unable to contact the defendant or otherwise determine whether a meritorious defense exists.

*-- 50 U.S.C. § 3931(d)*

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## Stay: Actual Notice

- If a service member receives actual notice of an action against him while he is in military service, or within 90 days after the end of his service, then at any time before a final judgment is entered in the case, the court may stay the case for not less than 90 days on its own motion, and shall do so upon application of the service member if the application includes:

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## Stay: Actual Notice

- a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service members' ability to appear and stating a date when the service member will be available to appear; and
- a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents his appearance and that military leave is not authorized for the service member at the time of the letter.

-- 50 U.S.C. § 3932(b).

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## Stay: Actual Notice

- A service member who is granted a stay on this ground may apply for an additional stay, and if it is denied, the court must appoint an attorney to represent the service member.
- 50 U.S.C. § 3932(d)
- If a stay is denied, the service member may not obtain a stay under the procedures for a defendant who has not appeared in the case (discussed above).
- 50 U.S.C. § 3932(e)

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Stay:  
Nonpayment  
of Rent Case

- A justice court may stay an eviction case concerning residential premises that are occupied by a service member or the dependents of a service member and for which the monthly rent does not exceed \$3,991.90 (as of January 1, 2020).
    - The amount of monthly rent escalates each year.
- 50 U.S.C. § 3951(a)(2)

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Stay:  
Nonpayment  
of Rent Case

- If a suit is filed for eviction of a service member or his dependents from such premises, the court may on its own motion, and shall if a request is made by or on behalf of a service member **whose ability to pay the agreed rent is materially affected by military service:**
    - Stay the proceedings for 90 days unless in the opinion of the court, justice and equity require a longer or shorter time; or
    - Adjust the obligations under the lease to preserve the interests of all parties.
- 50 U.S.C. § 3951(b)

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Stay:  
Nonpayment  
of Rent Case

- This is a separate stay provision (in addition to the ones discussed above) and to be eligible for a stay under this section the service member does not have to present a letter from his commanding officer, but instead must show that his ability to pay his rent is materially affected by his military service.

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Stay:  
Nonpayment  
of Rent Case

- If a stay is granted the court may grant to the landlord “such relief as equity may require.”

*-- 50 U.S.C. § 3951(b)*

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### Stay: Nonpayment of Rent Case

- For example, if the court grants relief to the service member under this section, the court may also specify an amount of rent to be paid to the landlord while the case is pending, and the Secretary of the relevant service branch must make an allotment of the service member's pay to satisfy the terms of the court's order.

- Subject to the Secretary's regulations concerning the maximum amount of a service member's pay that may be allotted under the SCRA.

-- 50 U.S.C. § 3951(d)

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### Lease Termination

- A service member may terminate a lease of premises occupied or intended to be occupied by a service member or his dependents for a residential, professional, business, agricultural or similar purpose if:
  - The lease is executed by or on behalf of a person who thereafter enters military service; or
  - The service member, while in military service, executes the lease and thereafter receives orders to permanently relocate or deploy for not less than 90 days.

-- 50 U.S.C. § 3955(a) and (b)

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# SCRA

See Handout 4 for Flowcharts

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# Fair Housing Act

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Fair Housing Act

The Fair Housing Act restricts landlords from refusing housing or showing preferences to renters based on race, color, national origin, sex, familial status (e.g. the person has a child), religion or disability.

- Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 - 3619


Texas has its own Fair Housing Act that reinforces the federal protections.

- Property Code §§ 301.001 – 301.171

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## Who is Covered?

- The Fair Housing Act applies to nearly all forms of housing used as residences, whether for sale or rent.
- This includes:
  - Homes
  - Apartments
  - Condominiums
  - Hospice facilities
  - Nursing homes
  - Shelters for homeless people or battered women



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## Who is Not Covered?

- The Fair Housing Act does not apply to:
  - Transient occupancy, such as a brief stay in a motel
  - A building that is home to four or fewer families, if its owner lives there
  - A dwelling owned by certain religious organizations or private clubs
  - A single-family home that its owner rents or sells without using a realtor
  - A tenant who has been convicted of illegally making or distributing a controlled substance (drugs)

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## Requirement for Reasonable Accommodation

- Requires a landlord to make **reasonable accommodations** in rules, policies, practices, or services when such accommodation is necessary to afford a person with a **handicap** equal opportunity to use and enjoy a dwelling.
- Applies to **ALL** housing providers covered by the FHA and/or the ADA.

-- 42 U.S.C.A. 3604(f), FHEO-2013-01

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## What is a Handicap?

- A mental or physical impairment that substantially limits one or more **major life activities**.
- This includes (but is not limited to):
  - Blindness
  - Hearing impairment
  - Mobility impairment
  - HIV infection
  - Mental retardation

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## What is a Handicap?

- Intellectual disability
- Autism
- Cerebral palsy
- Diabetes
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Bipolar disorder
- PTSD
- Chronic fatigue

-- 42 U.S.C.A. 3602(h), FHEO-2013-01

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## What is a Major Life Activity?

- This includes (but not limited to):
  - Seeing,
  - Hearing,
  - Walking,
  - Breathing,
  - Performing manual tasks,
  - Caring for one's self,
  - Learning,
  - Speaking, or
  - Working

-- FHEO-2013-01

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## Request for Reasonable Accommodation

- A person with a disability may request a reasonable accommodation by the landlord.
- They need to show that an accommodation, or change, is necessary so that they have an equal opportunity to use and enjoy the unit.



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## Request for Reasonable Accommodation

- This may be requested either orally or in writing, and the words “reasonable accommodation” do not need to be used by the individual submitting the request.
- The individual may not be required to use specific forms or be required to follow formal procedures in submitting the request.

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## Limits on Reasonable Accommodation

- Reasonable accommodations are made at the landlord’s expense.
- But a landlord does not have to provide a particular accommodation if the cost would be an “undue burden,” or if the accommodation would cause a “fundamental alteration” to the landlord’s business or services.
  - Those things depend on the specific facts.

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## Limits on Reasonable Accommodation

- The laws generally allow a landlord to evict a tenant if their staying would:
  - be a “direct threat” to the health or safety of others; or
  - result in substantial physical damage to the property of others.
- Also, if the lease violation is related to current illegal drug use, a landlord will not be required to keep a tenant.

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## Examples of Reasonable Accommodation

- The fair housing rules and regulations provide three examples in which a reasonable accommodation would need to be granted to an individual with a disability:
  - (1) a tenant who is blind and requires the use of a seeing-eye dog at a property that prohibits pets;
  - (2) a tenant with a mobility impairment who requires a parking space be reserved for them near their dwelling; and
  - (3) a tenant with a mental disability, who is afraid to leave her residence, to be allowed to pay their rent by mail even though the housing provider requires that the rent must be paid in person at the rental office.



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## More Examples

- Courts have held a reasonable accommodation should have been granted in these situations:
  - A housing provider's refusal to waive a no-pets policy to allow tenant to have a service animal.
  - A housing provider that refused to waive a guest fee for a live-in home health aide for a tenant with a disability.
  - A housing provider that refused to immediately assign a parking space in the property's parking garage without having to be put on the waiting list

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## More Examples

- A housing provider's refusal to allow a tenant with a disability to park a golf cart near his residence and to cover it with a tarpaulin when not in use.
- A housing provider's refusal to allow existing tenants' son with a disability, who cannot live independently, to reside at an age-55-and-older property.

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### More Examples

- A housing provider's refusal to allow a tenant with a disability to transfer from an upper-level apartment to a lower level apartment.
- A housing provider's refusal to waive a no-cosigners rule for an applicant with a disability who was unable to work and therefore could not meet the housing provider's minimum income requirement.

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### Assistance Animals

- Persons with a handicap may request a reasonable accommodation for **ANY** assistance animal, including an emotional support animal.
- The animal is for the benefit of **ONE** person with a handicap.

-- FHEO-2013-01

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## Landlord's Response to Request

- Upon receiving a request for a reasonable accommodation for an assistance animal, the landlord must consider:
    - Does the person seeking to use and live with the animal have a disability?
    - Does the person making the request have a disability-related need for an assistance animal?
- FHEO-2013-01

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## Assistance Animal

- If the answer to **EITHER** question is "no," the landlord may deny the accommodation request.
  - If the answer to **BOTH** questions is "yes," the landlord must allow the assistance animal to live with the tenant.
- FHEO-2013-01

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Assistance  
Animal

- The request may be denied if the specific assistance animal:
  - Poses a direct threat to the health or safety of others that can't be reduced or eliminated by another reasonable accommodation, or
  - Would cause substantial physical damage to the property of others that can't be reduced or eliminated by another reasonable accommodation.

-- FHEO-2013-01

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Fair Housing Act

- See Handout 5 for further information and resources.

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# Section 8 Housing

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## Section 8 Housing

- What is Section 8 Housing?
- Section 8 Housing provides rental assistance payments on behalf of low income individuals and families, including the elderly and persons with disabilities.
- The program provides financial assistance for housing to eligible households whose annual gross income does not exceed 50% of HUD's median income guidelines.

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## Section 8 Housing

- Eligibility is based on the household's income, size and composition, citizenship status, assets, medical and childcare expenses.
- Qualified households may select the best available housing through direct negotiations with landlords to ensure accommodations that meet their needs.
- TDHCA pays approved rent amounts directly to property owners.

83

## Grounds for Termination

- The tenants sign a HUD approved lease.
- The PHA may terminate the tenancy only for:
  - Serious or repeated violation of material terms of the lease (including not paying rent);
  - Being over the income limit for the program;
  - Criminal activity or false statements.

84

Lease  
Termination  
Procedures

- The PHA must give written notice of lease termination of:
  - 14 days for failure to pay rent;
  - Reasonable time (not to exceed 30 days):
    - If the health or safety of other residents or persons is threatened;
    - If there is drug-related criminal activity or violent criminal activity; or
    - If any member of the household is convicted of a felony;
  - 30 days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply.

85

Lease  
Termination  
Procedures

- A notice to vacate may be combined with, or run concurrently with, a notice of lease termination.

86

## Payment of Rent Pending Appeal

- If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment **the portion of the rent to be paid by the government agency and the portion to be paid by the tenant.**
- The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations.



-- Property Code § 24.0053(a)

87

## Payment of Rent Pending Appeal

- If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court to be paid by the tenant during appeal, subject to either party's right to contest that determination.

-- Property Code § 24.0053(b)

88

## Payment of Rent Pending Appeal

- If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section.

-- Property Code § 24.0053(c)

89

## Payment of Rent Pending Appeal

- The contest must be filed on or before the fifth day after the date the justice signs the judgment.
- If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations.

-- Property Code § 24.0053(c); Rule 510.9(c)(5)(B)(iii)

90

## Payment of Rent Pending Appeal

- After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant.
- If the tenant objects to the justice court's ruling on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court.



-- Property Code § 24.0053(d)

91

## Payment of Rent Pending Appeal

- During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

-- Property Code § 24.0053(d)

92

## Section 8 Housing

See Handout 6 for additional resources on Section 8 Housing.

93

## Tenant's Right to a Jury Trial

94

## Scenario 4

- A landlord (Lester) sues a tenant (Travis) for eviction for both nonpayment of rent and a lease violation other than nonpayment of rent. The lease was entered into on April 1, 2016. The lease contains a provision for the waiver of a jury trial for any matters under the lease.

95

## Scenario 4

- Travis timely asks and pays for a jury trial.
- Lester moves to quash the demand for a jury trial under Rule 510.7(b).
- Travis says the provision in the lease waiving his right to a jury trial is unenforceable under Section 92.006(h) of the Property Code, which states: "A tenant's right to a jury trial in an action brought under this chapter may not be waived in a lease or other written agreement."

96



Scenario 4

- Lester argues that Section 92.006 applies only to actions brought under Chapter 92, such as a security deposit case or a wrongful lockout. He says an eviction suit is brought under Chapter 24.

97

Scenario 4

You rule that:

- A. The waiver is not valid so Travis gets a jury trial.
- B. The waiver is valid so Travis does not get a jury trial.

98

## Scenario 4

See Handout 7 for legal analysis of waiver of jury trial issue.

99

# Tenant Firearm Rights

100

## Tenant Firearm Rights

- Unless otherwise provided by state or federal law, lawfully possessing, carrying, transporting, or storing a firearm or ammunition in a person's own unit, vehicle, or as necessary to go to and from the property, their unit, or their vehicle may no longer be prohibited:
  - For a tenant or tenant's guest under Prop Code Ch. 92 or 94.
    - **This does not affect the enforceability of a provision in a lease agreement entered into or renewed before 9/1/19.**
  - For an owner, guest, tenant, or guest of a tenant of a condo governed by Prop Code Ch. 82.
    - Property Code §§ 92.026, 94.257, 82.121

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## Tenant Firearm Rights

See Handout 8 for more  
information on tenant  
firearm rights.

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## Nursing Homes

See Handout 9 for  
information and  
resources on nursing  
homes.

103

Questions?  
Preguntas?  
Fragen?  
ερωτήσεις

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