

TEXAS JUSTICE COURT TRAINING CENTER

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New Justices of the Peace Stage III

Evictions Part III

Commercial, Manufactured Homes & SCRA

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Miscellaneous Evictions

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Commercial and Agric. Tenancies

Commercial Tenancies

- Follow many of the same procedures as residential tenancies
- Governed by Chapter 93 of the Property Code
- Some very key differences to bear in mind

What is “Commercial Property”?

- Rental property that is not covered by Chapter 92
 - Prop. Code 93.001 (b)
- Chapter 92 covers property used for residential occupation

Tricky Issues

- Rental/commercial property
- Storage units (Ch. 59 governs the lien, but what about the right to possession of property?)
- Have to look at actual terms of lease and usage of property

The Eviction Process

- The eviction process is as it is in residential tenancies
- Back rent up to \$10,000 may be awarded
- Be aware of “mere passage of time” allowing awards greater than \$10,000.

Exclusion, Removal of Property

- Like in residential leases, a landlord may not interrupt utilities paid for by the tenant, or remove window covers, door latches, etc, EXCEPT for bona fide repairs, construction, or emergency.
- They may not prevent them from entering the premises unless there are repairs or emergency, they are removing property of an abandoned tenant OR the tenant is delinquent in rent.
 - Prop. Code 93.002 (a), (b), (c)

Exclusion, Removal of Property

- Rights of locked-out commercial tenant are MUCH less expansive than those of residential tenant.
- Landlord must post notice stating name and address of person from whom key can be obtained. Key ONLY required to be provided during tenant's regular business hours AND only if the tenant pays the delinquent rent.
 - Prop. Code 93.002 (f)

Exclusion, Removal of Property

- Commercial tenant can apply for writ of re-entry, procedure is same as in residential tenancies.
 - Prop. Code 93.003
- If landlord violates the section, tenant may terminate lease or recover possession; and recover damages, one month's rent, or \$500, whichever is greater, atty fees, and court costs. You must subtract any amount for which the tenant is liable to the landlord.
 - Prop. Code 93.002 (g)

Exclusion, Removal of Property

- **WAIVER OF LOCKOUT RIGHTS**
 - Commercial tenants CAN waive lockout rights in a lease, “a lease supersedes this section to the extent of any conflict” – Prop. Code 93.002 (h)
 - Whereas residential tenants MAY NOT, “a provision of a lease that purports to waive a right or to exempt a party from a liability or a duty under this section is void” – Prop. Code 92.0081 (j)

Exclusion, Removal of Property

- **ABANDONMENT PRESUMPTION**
 - Removal of goods, equipment, or other property
 - Amount substantial enough to indicate probable intent
 - Has been removed or is being removed
 - Not within normal course of business
 - Prop. Code. 93.002 (d)

Exclusion, Removal of Property

- **REMOVAL AND STORAGE OF PROPERTY**
 - Landlord may remove and store property if premises abandoned
 - SHALL deliver by certified mail notice that landlord may dispose of property if tenant does not claim w/in 60 days.
 - May dispose if tenant does not claim w/in 60 days after date of storage.
 - Prop. Code 93.002 (e)

Security Deposits

- Landlord must refund the security deposit no later than the **60th** day after the tenant surrenders the premises and provides notice to landlord or agent.
- May not deduct for “normal wear and tear”
- Claim takes priority over any creditor, including trustee in bankruptcy.
 - Prop. Code 93.005

Security Deposits

- **ASSESSMENT OF CHARGES**
 - Landlord may not assess charge, other than rent/physical damage **UNLESS**
 - Amount of charge or method of computation is stated in the lease
 - Or in exhibit or attachment that is part of the lease, or in lease amendment

Prop. Code 93.012

Security Deposits

- If the landlord's interest is terminated by sale, assignment, death, appointment of receiver, bankruptcy or otherwise, the new owner is liable for return of the deposit from date acquired.
- The previous owner remains liable until the new owner delivers a signed statement of acknowledgement, confirming receipt and specifying amount.
- Does not apply to a real estate mortgage lienholder who acquires title by foreclosure.
 - Prop. Code 93.007

Security Deposits

- Tenants and landlords have same remedies as in residential tenancies upon acts in bad faith, except the landlord has 60 days, not 30, before bad faith is presumed.
- Tenant who wrongfully w/holds rent liable for 3x rent + atty's fees
- Landlord who wrongfully w/holds liable for 3x deposit + \$100 + fees
 - Prop. Code 93.010, 93.011

Distress Warrants & Landlord's Liens

- Art. 54.021 establishes a Landlord's Lien on property of the tenant or subtenant within the building for rent due and rent to become due in the 12 months succeeding the beginning of the agreement or anniversaries of that date (every year).
- However, if it is a commercial building, if the rent is more than SIX (6) months past due, the landlord must file a lien statement with the county clerk.
 - Prop. Code 54.022

Distress Warrants

- If a tenant
 - Owes rent,
 - Is about to abandon the building, OR
 - Is about to remove the tenant's property from the building

Then the landlord may apply to the JP in the precinct in which the building is located for a distress warrant.

--Prop. Code 54.025

Distress Warrants

- Lien continues for entire time plaintiff occupies and one month thereafter.
 - *Webb v. Bergin*, 38 S.W.2d. 841, 842 (Tex. Civ. App. 1931)
- The JP has jurisdiction, regardless of where the subject property is now located.
 - *Gollehon v. Porter*, 161 S.W.2d. 134, 136 (Tex. Civ. App. 1942)

Distress Warrants

- Application may be supported by affidavit, shall include statement that amount due is for rent or statutory advances and that is not done to vex or harass defendant
 - TRCP 610
- Distress warrant may not issue until lien foreclosure OR after hearing by justice of the peace, which may be ex parte.
 - TRCP 610

Distress Warrants

- DISTRESS WARRANT MUST INCLUDE
 - Specific findings of fact
 - Specify maximum value of property to be seized
 - Specify amount of bond required of plaintiff
 - Command that the property be kept safe and preserved pending an order from court of jurisdiction
 - May direct issuance of multiple warrants to multiple counties
 - Contain the amount of bond necessary for replevy
- TRCP 610

Distress Warrants

- Plaintiff MUST file a bond payable to defendant if there is no final j/m foreclosing the lien. There must be sufficient surety or sureties, conditioned that the plaintiff will prosecute the suit, and pay all damages and costs resulting from wrongfully suing out such warrant.

– TRCP 611

Distress Warrants

- The bond shall be directed to the sheriff or any Texas constable and command to attach and hold, unless replevied, subject to orders of court, non-exempt property in the amount specified.

• TRCP 612

A distress warrant is requested for \$20,000. Can you issue this warrant?



Distress Warrants

- The JP always has jurisdiction to ISSUE the d.w., regardless of amount of foreclosure. However, the warrant must be RETURNABLE to the court having jurisdiction to enter j/m.
- A citation issues with the warrant, containing the language specified in Rule 613, and commanding the defendant to appear in the proper court to answer the charge. If justice court, it is on the first day of the next term. If not, by 10 AM on the Monday following expiration of 20 days.
 - TRCP 613

Distress Warrant

- Service of the citation is as in other civil cases
- If the defendant has removed from the county without service, the officer shall state this fact in the return. The court then shall try the case ex parte and render judgment.
 - TRCP 619

Distress Warrants

- Defendant has a right to replevy property seized. In the initial warrant, the replevy amount is plaintiff's claim, one year's interest plus estimated costs.
- Or the defendant may give bond AFTER SEIZURE approved by the court of jurisdiction in the amount of double the plaintiff's debt, or, at their option, no less than the value of the property sought to be replevied, plus one year's interest.
 - TRCP 614

Distress Warrants

- Either party is entitled to judicial review of amount of bond, sufficiency of sureties, or value of property.
- Such hearing must be held promptly and may be based on uncontroverted affidavits of admissible evidence or live evidence.
 - TRCP 614

Distress Warrants

- Other Defendant Remedies
 - Substitution of Property – TRCP 614
 - Treated as though that property was originally seized
 - Cannot substitute other property subject to lien
 - Dissolution or Modification of D.W. – TRCP 614a
 - MUST file written sworn motion
 - Affidavits showing admissible evidence or live testimony
 - PLAINTIFF has burden to prove facts, but
 - MOVANT has burden to show that property seized exceeds the total

Distress Warrants

- Perishable Property
 - Court to which warrant is returnable may order the property sold prior to j/m if it is shown that the property is in danger of serious and immediate waste and decay, or that keeping until trial will incur such expense or deterioration as greatly to lessen the amount likely to be realized.
 - If party other than defendant requests order of sale, the court must order a bond to protect defendant, with TWO OR MORE sureties, to compensate defendant if sale is illegally and unjustly applied for or made.
 - TRCP 615, 616

Distress Warrants

- Perishable Property
 - Procedure for sale is same as on writ of execution, except that the time of sale and advertisement may be fixed by the court at less than ten days, according to each case, and if so, notice shall be given as specified in the order of sale.
 - The officer making such sale shall immediately pay the proceeds to the court and make a written signed return, with itemized account of expenses.
 - TRCP 617, 618

Agricultural Evictions and Liens

- Applies to property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop for marketing.
- Attaches to property on the leased premises AND on the crop grown on the premises in the year that the rent accrues or the property is furnished.
 - Prop. Code 54.001, 54.002

Agricultural Evictions and Liens

- If the landlord provides everything except labor, lien attaches only to the crop grown in the year the property is furnished.
- Does not attach to goods of a merchant, trader, or mechanic if the tenant sells and delivers goods in good faith in the regular course of business.
- Exemptions on forced sales on agricultural products, animals, and tools do **NOT** apply under this section.
 - Prop. Code 54.002

Agricultural Evictions and Liens

- EXCEPTIONS
 - Lien DOES NOT attach IF
 - A tenant provides everything necessary to cultivate premises and landlord charges rent of more than $\frac{1}{3}$ the value of grain and $\frac{1}{4}$ value of cotton grown on premises OR
 - Landlord provides everything except labor and charges rent of more than $\frac{1}{2}$ the value of grain and cotton grown on premises
 - Prop. Code 54.003

Agricultural Evictions & Liens

- Lien may be enforced via distress warrant, as in commercial cases.
- However, may apply to a justice of the peace in the precinct in which the leasehold is located, where the property subject to lien is located, OR who has jurisdiction of the cause of action.
 - Prop. Code 54.006

Agricultural Evictions & Liens

- As in commercial cases, agricultural evictions follow the provisions of Chapter 24 of the Property Code, with deference to the terms of the written lease agreement.

Manufactured Home Evictions

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When Do These Rules Apply?

- Manufactured home eviction rules apply to the relationship between a landlord who leases a lot in a “manufactured home community” to a tenant for the purpose of putting a “manufactured home” or “recreational vehicle” on the lot
 - Property Code § 94.002(a)

When Do These Rules Apply?

- These rules do **not** apply to the relationship between:
 - A landlord who owns a manufactured home and leases the manufactured home to the tenant ;
 - A tenant who leases a lot from a landlord in a “manufactured home community” for the placement of personal property to be used for human habitation that is not a “manufactured home” or a “recreational vehicle”; or
 - A landlord and an employee or agent of the landlord
 - Property Code § 94.002(b)

When Do These Rules Apply?

- For purposes of this section, a “recreational vehicle” is a vehicle primarily designed as a temporary living quarters for recreational camping or travel use and is permanently tied to, affixed or anchored to the premises as in the case of a park model unit
 - Property Code § 94.001(10)

When Do These Rules Apply?

- What is a Manufactured Home Community?
- A parcel of land on which **four** or more lots are offered for lease for installing and occupying manufactured homes
 - Property Code § 94.001(4)

No Waiver of Rights and Duties

- A provision of a lease agreement or a manufactured home community rule that purports to waive a right or exempt a landlord or a tenant from a duty or from liability under Chapter 94 of the Property Code is void.
 - Property Code § 94.003

Lease Term

- The landlord must offer the tenant a lease agreement with an initial term of at least six months
- If the tenant requests a lease agreement with a different lease period, the landlord and tenant may mutually agree to a shorter or longer lease period
- Landlord and tenant may mutually agree to subsequent lease periods of any length for each renewal of the lease agreement
 - Property Code § 94.052(a)

Notice to Vacate or Offer of Lease Renewal

- Landlord must provide a tenant with a notice to vacate or an offer to renew the lease:
 - Not later than the 60th day before the date the current lease term expires; or
 - If the lease is a month-to-month lease, not later than the 60th day before the date the landlord intends to terminate the current term of the lease
- If landlord offers to renew the lease, the tenant must notify the landlord not later than 30 days before the date the current lease expires whether the tenant rejects the terms of the offer and intends to vacate the leased premises
 - Property Code § 94.055

Notice to Vacate or Offer of Lease Renewal

- If landlord offers to renew lease and tenant does not respond to offer before 30 days from date current lease expires, then the lease is renewed under the modified terms offered by the landlord
- Landlord may ask a tenant to vacate the leased premises on less than 60 days notice only if the landlord compensates the tenant in advance for relocation expenses, including the cost of moving and installing the manufactured home to a new location
 - Property Code § 94.055

Nonrenewal of Lease for Change in Land Use

- If a landlord wants to terminate a lease to change the manufactured home community's land use, he must give the tenant 180 days notice
- He must also place a notice of termination in a conspicuous place in the community
- And notify a lienholder of a manufactured home if he has notice of the name and address of the lienholder
 - Property Code § 94.204

Can a landlord who owns a manufactured home evict his tenant for being \$200 short on \$700 rent?

1. Yes
2. No
3. Only if he gives 10 days to cure the delinquency

Grounds for Eviction

- Landlord may terminate the lease and evict a tenant for a violation of a lease provision, including a manufactured home community rule incorporated in the lease
 - Property Code § 94.205
- Landlord may also terminate lease to change the land use of the manufactured housing community with 180 days notice.
 - Property Code § 94.204

Grounds for Eviction

- Landlord may terminate the lease and evict a tenant if:
 - The tenant fails to timely pay rent or amounts due under the lease that equal at least one month's rent; and
 - The landlord notifies the tenant in writing that the payment is delinquent; and
 - The tenant has not tendered the delinquent payment in full to the landlord before the 10th day after the date the tenant receives the notice
- Property Code § 94.206

Retaliation Defense

- A tenant may raise a defense of retaliation by the landlord:

"In an eviction suit, retaliation by the landlord under Section 94.251 is a defense and a rent deduction lawfully made by the tenant under [Chapter 94] is a defense for nonpayment of the rent to the extent allowed by [Chapter 94]."

Prop. Code § 94.256
- But the tenant must file a separate suit to recover civil penalties, actual damages, court costs and reasonable attorney's fees under Sections 94.254 and 94.301 for retaliation by the landlord

Retaliation Defense

- Landlord may not retaliate against tenant just because the tenant:
 - In good faith exercises a right or remedy granted to the tenant by lease, ordinance or statute;
 - Gives the landlord a notice to repair or exercises a remedy under Chapter 94; or
 - Complains in good faith to a governmental entity, public utility or civic or nonprofit agency and tenant claims a building or housing code violation or utility problem
- Prop. Code § 94.251(a)

Retaliation Defense

- If the tenant takes any of those actions, then the landlord may not, within six months of the tenant's actions, retaliate by:
 - Filing an eviction proceeding except for the grounds stated by Sections 94.201 – 94.206
 - Depriving the tenant of the use of the premises, except for reasons authorized by law
 - Decreasing services to the tenant
 - Increasing the tenant's rent or terminating the tenant's lease; or
 - Engaging in bad faith in a course of conduct that materially interferes with the tenant's rights under the lease
 - Prop. Code § 95.251(b)

Retaliation Defense

- An eviction or lease termination based on the following does not constitute retaliation:
 - Tenant is delinquent in rent when the landlord gives notice to vacate or files eviction action
 - Tenant intentionally damages property on the premises or threatens landlord
 - Tenant holds over after giving notice of termination or intention to vacate

Retaliation Defense

- Tenant holds over after landlord gives notice of termination at end of rental term
- Tenant holds over and landlord's notice of termination is motivated by good faith belief that tenant might disturb the quiet enjoyment by others of the premises, affect the health or safety of the landlord, other tenants or neighbors, or damage the property
 - Prop. Code § 94.253(b)

Jurisdiction and Venue

- Jurisdiction exists in the precinct where the manufactured home community is located
 - Property Code § 24.004
- Venue for a manufactured home eviction suit is in the county “in which all or part of the real property is located.”
 - Property Code § 94.012; CPRC § 15.0115(a)

Eviction Procedures

- If the court finds the landlord initiated the eviction proceeding to retaliate against the tenant in violation of Section 94.251, the court may not approve the eviction of the tenant
 - Property Code § 94.203(c)

Eviction Procedures

- If the tenant has disclosed the name of a lienholder on the manufactured home as required by Property Code § 94.054, the landlord must give written notice of eviction proceedings to the lienholder not later than the third day after the landlord files a petition for a judgment for possession
 - Property Code § 94.203(b)

Eviction Procedures

- A landlord may prevent a tenant from entering the manufactured home lot, evict a tenant, or require the removal of a manufactured home from the manufactured home lot only after obtaining a writ of possession under Chapter 24 (residential evictions)
-- Property Code § 94.203(a)

Eviction Procedures

- Notwithstanding any other law, the court may not issue a writ of possession in favor of a landlord before the 30th day after the date the judgment for possession is rendered if the tenant has paid the amount of rent due under the lease for that 30-day period.
-- Property Code § 94.203(d)

Eviction Procedures

- Court must notify the tenant in writing of a default judgment for possession by sending a copy of the judgment to the leased premises by first class mail not later than 48 hours after the entry of the judgment.
- Court must also send a copy of the judgment to the owner of the manufactured home if the tenant is not the owner, and to any lienholder, if the court has been provided the name and address of the owner and lienholder.
-- Property Code § 94.203(e)

Eviction Procedures

- If, after executing a writ of possession for the manufactured home lot, the landlord removes the manufactured home from the lot, the landlord must send a written notice to the tenant regarding the manufactured home's location no later than the tenth day after the manufactured home is removed; the notice must be sent to the tenant's most recent mailing address as reflected in the landlord's records and to the owner if the landlord is given written notice of the owner's name and address

— Property Code § 94.203(f)

Landlord's Damages

- Maximum amount a landlord may recover as damages for a tenant's early termination of a lease agreement is an amount equal to the amount of rent that remains outstanding for the term of the lease plus any other amounts owed for the remainder of the lease under the terms of the lease.
- But if the manufactured home lot is reoccupied before the 21st day after the date the tenant surrenders the lot, the maximum amount the landlord may recover as damages is one month's rent

-- Property Code § 94.201

If the tenant owns the manufactured home, the W.o.P. should be for . .

1. The lot



2. The manufactured home



Duty to Mitigate Damages

- Landlord has a duty to mitigate damages if a tenant vacates the manufactured home lot before the end of the lease term
- A provision of a lease agreement that purports to waive this duty or exempt the landlord from it is void
 - Property Code § 94.202

Servicemembers Civil Relief Act

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What is the SCRA?

- It is a federal statute signed into law by President Bush on December 19, 2003, which imposes certain procedural requirements in civil cases to protect members of the armed services and their families.
 - Pub. L. 108-189, 50 U.S.C. App. § 501
- These requirements apply to **any** court of any state whether or not a court of record.
 - 50 U.S.C. App. § 511(5)

Does the SCRA Apply to Eviction Cases?

- Yes!

Requirements for a Default Judgment

- In any case in which the defendant does not make an appearance, before entering a judgment for the plaintiff the court “shall require the plaintiff to file with the court 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 the defendant is in military service
 - 50 U.S.C. App. § 521

Requirements for a Default Judgment

- If the plaintiff does not file an affidavit, the court may not grant a default judgment
- If the plaintiff files an affidavit stating that the defendant is not in military service but fails to “show necessary facts to support the affidavit,” the court may not grant a default judgment

Requirements for a Default Judgment

- If a proper affidavit is filed, there are three possibilities:
 - Defendant is not in military service: court may enter a default judgment
 - Court is unable to determine whether defendant is in military service or not: court may – but does not have to – require the plaintiff to post a bond to protect the defendant if it turns out that he is in military service
 - Defendant is in military service: court must appoint an attorney to represent the defendant
 - 50 U.S.C. App. § 521

Requirements for a Default Judgment

- 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 by counsel or on the court's own motion if the court determines:
 - 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 if a meritorious defense exists
 - 50 U.S.C. App. § 521(d)
- This stay is not controlled by the requirements if the defendant has notice of the action
 - 50 U.S.C. App. § 521(e)

Vacating a Default Judgment

- If a default judgment is entered against a servicemember during his period of military service, or within 60 days after end of military service, the court shall re-open the judgment upon application by the servicemember if:
 - The servicemember was materially affected in making a defense by reason of military service; and
 - The servicemember has a meritorious or legal defense to the action or some part of it.
- Request by the servicemember must be made no later than 90 days after end of military service
 - 50 U.S.C. App. § 521

Stay When the Servicemember Has Notice of the Case

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

Stay When the Servicemember Has Notice of the Case

- A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; and
 - A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.
- 50 U.S.C. App. § 522(b)

Stay When the Servicemember Has Notice of the Case

- A servicemember who is granted a stay on this ground may apply for an additional stay based on continuing material affect of military duty
 - If the court refuses to grant an additional stay, it shall appoint an attorney to represent the servicemember
 - If a stay is denied the servicemember may not get a stay under the procedures for a defendant who does not have notice
- 50 U.S.C. App. § 522

Stay of Execution of Judgment

- If a servicemember is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion, and shall on application of the servicemember:
 - Stay execution of any judgment or order entered against the servicemember; and
 - Vacate or stay an attachment or garnishment of property, money or debts in the possession of a servicemember or third party, whether before or after the judgment
- 50 U.S.C. App. § 524

Stay of Execution of Judgment

- This stay applies to an action or proceeding commenced against the servicemember before or during the period of his military service or within 90 days after the end of military service.
- 50 U.S.C. App. § 524

Stay of Eviction Cases

- This applies to premises that are occupied or intended to be occupied by a servicemember or the dependents of a servicemember and for which the monthly rent does not exceed \$2,975.54 (as of 2011)
- 50 U.S.C. App. § 531(a)

Stay of Eviction Cases

- If a suit is filed for eviction of a servicemember or his dependents from such premises, the court may on its own motion, and shall upon request by a servicemember whose ability to pay 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 obligation under the lease to preserve the interests of all parties
 - If a stay is granted the court may grant to the landlord such relief as equity may require
- 50 U.S.C. App. § 531(b)

Stay of Eviction Cases

- The requirements of Section 202 do not apply to an eviction case
 - 50 U.S.C. App. § 531(e)
- This means a servicemember does not have to have a letter from his commanding officer in an evictions case

Eviction Only by Court Order

- Landlord may not evict a servicemember or dependents from such premises during a period of military service, or subject such premises to a distress, except by court order
- A person who knowingly does so or attempts to do so commits a federal criminal offense punishable by a fine and up to one year in prison
 - 50 U.S.C. App. § 531(a) and (c)

Rent Allotment

- To the extent required by a court order related to property subject to court action under the Act, the Secretary (of the Army, Navy or Air Force) shall make an allotment from the pay of a servicemember to satisfy the terms of the order, subject to the Secretary's regulations concerning the maximum amount of pay of a servicemember that may be allotted under the Act.

— 50 U.S.C. App. § 531(d)

Lease Termination

- A servicemember may terminate a lease at any time after his entry into military service or after he receives orders for a permanent change of station or to deploy for a period of not less than 90 days
- This applies to a lease of premises occupied or intended to be occupied by a servicemember or his dependents for a residential, professional, business, agricultural or similar purpose if:
 - The lease is executed by a person who thereafter enters military service; or
 - The servicemember executes the lease and thereafter receives the orders to relocate or deploy

-- 50 U.S.C. App. § 535

Lease Termination

- To terminate the lease the servicemember must deliver a written notice of termination and a copy of his orders to the landlord by personal delivery, business carrier or by mail with a return receipt requested
- Oral termination is not sufficient

— 50 U.S.C. App. § 535(c)

Lease Termination

- If the lease provides for monthly payment of rent, the termination is effective 30 days after the first date on which the next rental payment is due after the date on which the notice is delivered.
– 50 U.S.C. App. § 535(d)(1)
- Example: Rent is due on first day of month; notice given Aug. 5; next rental payment is due on Sept. 1; so lease is terminated 30 days after Sept. 1 or on Oct. 1

Lease Termination

- For any other lease (e.g. one requiring a yearly or quarterly rental payment) termination is effective the last day of the month following the month in which notice is delivered
– 50 U.S.C. App. § 535(d)(1)
- Example: Lease requires a yearly rental; notice of termination is given on Aug. 15; termination is effective on Sept. 30

Lease Termination

- Servicemember is required to pay for rent only for those months before the lease is terminated
- If rent has been paid in advance, the landlord must prorate and refund the unearned portion.
- If a security deposit was required it must be returned to the servicemember upon termination of the lease.
– 50 U.S.C. App. § 535(e) and (f)

Can the court require a landlord to file a SCRA affidavit with every eviction petition?

1. Yes
2. No

Contract for Deed

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What is a Contract for Deed?

- A contractual relationship where instead of paying rent a buyer makes monthly payments toward the purchase of real property; when the purchase price is paid in full the purchaser receives the deed.
- A contract for deed must be in writing; it cannot be an oral agreement.
 - Property Code § 5.021, 5.072(a)

What is a Contract for Deed?

- There is no landlord/tenant relationship unless it is created by the contract or by a separate lease.
- If the parties do not have a landlord/tenant relationship, the remedy of eviction may not be pursued
 - Nor may a writ of possession or a writ of re-entry be issued

What is a Contract for Deed?

- If a residential lease was executed concurrently with the contract for deed, or if a landlord/tenant relationship was created as a result of terms of the contract for deed, then the landlord may seek eviction for a breach of the lease terms
- But only in accordance with the provisions of Chapter 5, Subchapter D, of the Property Code
 - Property Code § 5.064

What to Look For

- If an eviction suit is filed over a written “rent to own” or “lease purchase” agreement, the case probably involves a contract for deed.
- The court should examine the pleadings and contract and ask the following questions:

What to Look For

- Is title to real property at issue in the case?
 - If yes, then the court does not have jurisdiction and must dismiss or stay the case.
 - If no, then the court may proceed.

What to Look For

- Is there a landlord/tenant relationship either by virtue of a separate lease entered into concurrently with the contract for deed or due to terms of the contract for deed?
 - If no, then the seller/landlord does not have grounds for an eviction since there is no landlord/tenant relationship.
 - If yes, then the seller/landlord may proceed with an eviction but only after following the procedures set forth in Subchapter D.

Is Title to Real Property at Issue?

- If the parties dispute who is the rightful owner of the property, then the justice court does not have jurisdiction to hear the case and should either abate the case pending a determination of the title issue or dismiss the case for want of jurisdiction.
 - *Govt. Code § 27.031.*
- If title to the property is not at issue then the court may proceed to hear the case.

Is There a Landlord/Tenant Relationship?

- Whether or not there is a landlord/tenant relationship will depend on the terms of the agreement entered into by the parties.
- If the contract for deed does not create a landlord/tenant relationship, and if the parties did not sign a separate residential lease at the time they signed the contract for deed, then the seller does not have the remedy of eviction.

Is There a Landlord/Tenant Relationship?

- The seller's remedies on default of the contract for deed by the buyer include rescission or forfeiture and acceleration after notice is given under Property Code § 5.064.
- The buyer must be given an opportunity to cure the default under Section 5.065.

Is There a Landlord/Tenant Relationship?

- If a residential lease is included in or signed concurrently with a contract for deed where the delivery of the deed will not occur within 180 days of the date the contract is signed, then the landlord/seller may proceed with an eviction but only after complying with certain procedures set forth in Subchapter D.
Property Code § 5.062(c)

Required Procedures

- Landlord/seller must provide a notice of default in 14 point boldface print specifying the nature of the default, and amount of money due if it is a failure to make a payment, and the remedy he intends to enforce.
- Tenant/purchaser has a right to cure the default within 30 days after the date notice is given.
 - Property Code §§ 5.063, 5.065

Required Procedures

- Provided the Contract for Deed is for more than three years, landlord/seller must provide an annual accounting statement to the tenant/purchaser at the beginning of each year
- If the negotiations that preceded the execution of the Contract for Deed were in a language other than English, then the notice of default, annual accounting statements and all transaction documents and disclosure notices must be in that language
 - Property Code §§ 5.077, 5.068

Required Procedures

- Landlord/seller who fails to provide the annual accounting statement is liable for liquidated damages of either \$100 or \$250 plus reasonable attorney's fees
- Tenant/purchaser has the right to deduct the amount owed by the landlord/seller for any violations of Subchapter D from the payments due under the Contract for Deed "without taking judicial action"
 - Property Code §§ 5.077, 5.084

Prohibited Terms in Contract for Deed

- No additional late-payment fee exceeding the lesser of:
 - 8% of the monthly payment under the contract, or
 - The actual administrative cost of processing the late payment
- No prohibition on tenant/purchaser from pledging his interest in the property as security to obtain a loan to place improvements on the property
- No prepayment penalty

Prohibited Terms in Contract for Deed

- No forfeiture of an option fee or other option payment paid under the Contract for a late payment
- May not increase the purchase price, impose a fee or charge of any type, or otherwise penalize a tenant/purchaser for requesting repairs or exercising any other right of a residential tenant under Chapter 92
 - Property Code § 5.073

Prohibited Terms in Contract for Deed

- Provision of a Contract for Deed that purports to waive a right of a tenant/purchaser or exempt a landlord/seller from a liability or duty under Subchapter D is void
 - Property Code § 5.073

Where May Suit be Brought?

- Contract for Deed may specify the county in which the contract will be enforced
 - CPRC § 15.092(a)
- If contract does not specify where it will be enforced, it may be heard in the county and precinct “in which the contract was to be performed”
 - CPRC § 15.092(a)

Where May Suit be Brought?

- If Contract for Deed is executed concurrently with a residential lease, and the lease is breached, just as in other evictions, the justice court in the precinct in which the real property is located has jurisdiction and venue.
 - Property Code § 24.004; CPRC § 15.085

Where May Suit be Brought?

- However, you may NOT issue a writ of possession if the seller of real estate required the purchaser, before or at the time of the conveyance, to execute and deliver a deed to the seller.
 - Prop. Code 24.004, Business & Commerce Code Ch. 21 (SB 1320)
