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LANDLORDS AND TENANTS GUIDE

MANUFACTURED HOME COMMUNITIES

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Landlords and Tenants Guide for Manufactured Home Communities

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This report is for information only; it is not a substitute for legal counsel.

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Introduction

Effective Apr. 1, 2002, Texas legislators implemented Chapter 94 of the Texas Property Code governing the leasing, management and maintenance of manufactured housing communities. Many provisions mirror those pertaining to the leasing, management and maintenance of residential apartments and dwellings.

The new law applies only to the relationship between landlords and tenants in manufactured home communities.

Excluded from coverage are:

- leasing of manufactured homes owned by the landlord and rented to tenants for residential use,
- rental of spaces in the community for placement of personal property for human habitation that are not manufactured houses or recreational vehicles and
- rental agreements in the community between the landlord and an employee or an agent of the landlord (Section 94.002).

Glossary

Affidavit. A statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified by the officer under his seal of office (Texas Government Code, Section 312.011).

Due diligence. Exerting a constant, painstaking effort to accomplish a task.

HUD-code manufactured home. Article 5221f of the Texas Civil Statutes defines a HUD-code manufactured home as a structure constructed on or after June 15, 1976, according to the rules of the U.S. Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems.

Landlord. The owner or manager of a manufactured home community, including an employee or agent of the landlord.

Lease agreement. A written agreement between landlord and tenant that establishes the terms, conditions and other provisions for placing a manufactured home on the premises of a manufactured home community.

Manufactured home community. Parcel of land on which four or more lots are for lease for installing and occupying manufactured homes.

Manufactured home community rules. The rules provided in a written document that establish the policies and regulations of the manufactured home community, including regulations relating to use, occupancy, and quiet enjoyment of and health, safety and welfare of tenants of the community.

Manufactured home lot. Per a lease agreement, space allocated for placement of the tenant's manufactured home and the area adjacent to that space designated for the tenant's exclusive use.

Manufactured home, manufactured housing, recreational vehicle. According to Article 5221f of the Texas Civil Statutes, this is a HUD-code manufactured home or a mobile home and collectively means and refers to both.

Mobile home. Article 5221f of the Texas Civil Statutes defines a mobile home as a structure that

was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes plumbing, heating, air conditioning and electrical systems. (Chapter 94 of the Texas Property Code does not define the term *mobile home*.)

Normal wear and tear. Deterioration that results from intended use of the premises, including breakage or malfunction resulting from age or deteriorated condition. The term does not include deterioration resulting from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the tenant, a member of the tenant's household or a guest or invitee of the tenant (Section 94.001[7]).

Premises. The tenant's manufactured home lot, any area or facility the lease authorizes the tenant to use and the appurtenances, grounds and facilities for the use of all tenants in the community.

Park model unit. A recreational vehicle that is designed primarily as temporary living quarters for recreation, camping or seasonal use and that is built on a single chassis, mounted on wheels and has a gross trailer area not exceeding 400 square feet in the set-up mode.

Recreational vehicle. A vehicle that is primarily designed as a temporary living quarters for recreational camping or travel use and that is permanently tied to, affixed or anchored to the premises as in the case of a park model unit.

Tenant. A person who is authorized by a lease agreement to occupy a lot to the exclusion of others in a manufactured home community and obligated under the lease agreement to pay rent, fees and other charges.

Tenant at sufferance. A type of lease or relationship created when a person has entered a property legally as a tenant with the consent of the owner or landlord for a fixed term but illegally retains possession of the property after the term ends.

Tenant at will. A type of lease or relationship created when a tenant enters into possession of a property lawfully and with the consent of the owner or landlord but for no fixed term. Either the landlord (or owner) or the tenant may terminate the lease or relationship at any time.

Subchapter A — General Provisions

Can any of the Chapter 94 rules be waived?

No. Any attempt to waive a right or exempt a landlord or tenant from a duty or liability required by Chapter 94 is unenforceable (Section 94.003). A landlord who knowingly contracts with a tenant to waive the landlord's duty to repair under Subchapter D (discussed later) is liable to the tenant for actual damages, a civil penalty of one month's rent plus \$2,000 and reasonable attorney fees. The tenant must overcome the presumption that the landlord acted without knowledge by pleading and proving it. However, a mutual agreement for the tenant to repair a condition at the landlord's expense (described in Section 94.157[i]) is permissible and not a violation (Section 94.159[b]).

When may the landlord enter the tenant's manufactured home?

Unless otherwise provided in Chapter 94, landlords may not enter a tenant's manufactured home unless the tenant is present and gives consent or has previously given written consent.

If written consent is given, the agreement must specify the date and time entry is permitted and limit entry to that date and time. The tenant may revoke the consent by written notification at any time without penalty (Section 94.004[a]).

The statute permits landlord entry for emergency reasons or after the tenant abandons the manufactured home (Section 94.004[c]).

What limits may the landlord place on the use of the common area facilities?

Common area facilities must be open and available to tenants. The landlord must post hours of operation or availability in a conspicuous place at each such facility (Section 94.005).

What restrictions may the landlord place on tenant meetings?

Any limitations on tenant meetings in the common area facilities must be included in the manufactured home community rules. A landlord may not interfere with tenant meetings related to the community (Section 94.006).

Must a landlord accept a tenant's rent payment in cash?

Yes. The landlord must accept a tenant's timely rent payment in cash unless the lease agreement requires the tenant to pay by check, money order or

other traceable or negotiable instrument (Section 94.007[a]).

What records must the landlord keep of the cash rental payment?

A landlord who receives a cash rental payment must provide the tenant with a written receipt and enter the payment date and amount in a record book (Section 94.007[b]).

What if the landlord will not accept a cash rental payment, fails to give the tenant a receipt or fails to keep a ledger?

The tenant, a governmental entity or a civic association acting on the tenant's behalf may file to end this violation (Section 94.007[c]).

What types of rules may the landlord impose on the manufactured housing community?

What impact do the rules have on the lease agreement?

The landlord may impose any types of rules on the community as long as they are not arbitrary or capricious. Once adopted, the community rules become part of the lease agreement (Sections 94.008[a] & [b]).

Can the landlord amend the rules? If so, when do the amendments become effective?

The landlord may add to or amend the manufactured home community rules at any time. Amendments are not effective until 30 days after each tenant has been provided a written copy of the additions or changes. If the amendment requires tenants to expend more than \$25 to comply with the change, tenants must be given at least 90 days after receiving written notice to comply (Section 94.008).

Where must notices be sent when the leased premises are not the tenant's primary residence?

If the tenant notifies the landlord in writing when the lease is signed or renewed that the **manufactured home lot is not the tenant's primary residence**, and if the tenant requests that notices be sent to the primary residence as indicated on the notice, the landlord must mail all notices required by the lease agreement to that address (Section 94.009[a]). The tenant must notify the landlord in writing of changes in primary residence address. Oral notices of change are insufficient (Section 94.009[b]).

How must notices be delivered?

Notices must be sent by regular U.S. mail and are considered given on the postmark date (Section 94.009[c]). Notices hand delivered to and received by a person 16 years old or older occupying the leased premises are sufficient in lieu of mailing the notices (Section 94.009[e]).

What if the lease agreement includes more than one tenant and each wants a separate notice?

If more than one tenant is on the lease agreement, the landlord is required to send notices to the primary residence of only one of the tenants (Section 94.009[d]).

Must the landlord disclose the ownership and management of the manufactured housing community?

Yes. The landlord must disclose the ownership and management of the manufactured housing community after receiving a request from a tenant, a government official or an employee acting in an official capacity. The following information must be disclosed.

- Ownership — name and street address (or post office address) of the record title holder for the tenant's manufactured housing lot, as recorded by the county clerk's office.
- Management — name and street address of the entity primarily responsible for management of the manufactured housing community if located off-site (Section 94.010[a]).

If the owner or property manager has filed an assumed name certificate with the county clerk, the landlord may disclose either the owner's or property manager's actual name or the assumed name on the certificate (Section 94.010[f]).

How and when must ownership-management information be disclosed to a tenant?

The landlord must either give the information to the tenant on or before the seventh day after the request is received in writing or by posting the information continuously:

- in a conspicuous place in the manufactured housing community,
- in the office of the on-site manager or
- on the outside of the entry door to the office of the on-site manager.

The landlord may include the information in the lease agreement or in the written manufactured home community rules given to the tenant at the beginning of the lease (Section 94.010[b]).

How and when must ownership-management information be disclosed to a government official or employee?

The landlord must give this information in writing to the official or employee on or before the seventh day after the date the landlord receives the request (Section 94.010[d]).

Does the landlord have an obligation to update the information if ownership or management changes?

Yes. If the information changes, the landlord must make a correction within 15 days in the same manner the notice(s) was originally given (Section 94.010[g]).

If the landlord is sued for violating a provision in Chapter 94, where should the suit be filed?

This is governed by Section 15.0115 of the Texas Civil Practices and Remedies Code, which says, except as provided by another statute prescribing mandatory venue, a suit between a landlord and a tenant arising under a lease is brought in the county in which all or a part of the real property is located.

Subchapter B — The Lease Agreement

Subchapter B of the Texas Property Code addresses the statutory requirements placed on lease negotiations and lease provisions.

What documents must the landlord provide when the tenant completes an application to rent?

When the application to rent is received, the landlord must give the prospective tenant a copy of the following documents:

- the proposed lease agreement,
- the manufactured home community rules and
- a separate disclosure statement in at least ten-point type and in prominent print that contains the following language:

“You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, if the recreational vehicle is tied to, affixed or otherwise a permanent part of the premises, the landlord must give you at least 60 days’ notice if the landlord will not renew your lease and will require that you relocate your manufactured home or recreational vehicle. During the 60-day period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any” (Section 94.051).

What is the minimum lease term that the landlord may offer?

The landlord must offer a lease agreement with an initial term of at least six months. At the tenant’s request, a longer or shorter term may be negotiated. The landlord and tenant may also initially agree on renewal lease periods of any length (Section 94.052[a]).

What items must the lease agreement include?

The lease agreement must contain the following information to comply with Section 94.053[a]:

- the address or number of the manufactured home lot and the number and location of any accompanying parking spaces,
- the lease term,
- the rental amount,

- the interval at which rent must be paid and the date on which periodic rental payments are due,
- any late charge or fee, or charge for any service or facility,
- the amount of any security deposit,
- a description of the landlord’s maintenance responsibilities,
- the telephone number of the person who may be contacted for emergency maintenance,
- the name and address of the person designated to accept official notices for the landlord,
- the penalty the landlord may impose for the tenant’s early termination as provided by Section 94.201,
- grounds for eviction as provided by Subchapter E — Lease Termination,
- a disclosure of the landlord’s right to terminate the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204,
- a disclosure of any incorporation by reference of an addendum relating to submetering of utility services,
- a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law,
- if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires and
- any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

What else does the statute require for the lease agreement to be valid?

The lease agreement must be:

- typed or printed in legible handwriting,
- signed by the landlord and the tenant and
- initialed by the tenant next to any provision requiring any increases in rent, fees or charges during the lease term (Sections 94.053[d]).

After the lease has been signed, the landlord must provide the tenant a copy of the lease and the manufactured home community rules (Section 94.053[b]).

What if part of the lease is later deemed illegal? What effect does it have on the rest of the lease?

Any illegal or unconscionable provision of the lease has no legal force. However, the provision deemed illegal or unconscionable does not affect any other provisions in the lease that do not reference the invalid provision (Section 94.053[e]).

Must the tenant disclose anything to the landlord *before* the lease agreement is signed?

Yes. The tenant must disclose the name and address of any person who holds a lien on the tenant's manufactured home **before** the lease is signed (Section 94.054).

Is the landlord required to give advance notice to the tenant to vacate the premises or renew the lease before it terminates?

Yes. The landlord must give notice to the tenant to either vacate the premises or renew the lease no later than 60 days before:

- the current lease expires or
- the landlord intends to terminate the lease when the lease is on a month-to-month basis (Sections 94.052[b] and 94.055[a]).

What must be included in a notice of the offer to renew the lease?

The offer to renew the lease must contain:

- the proposed rental rate under the new lease,
- any changes in the lease terms and
- a notice that, if the offer is not rejected within 30 days of the termination of the present lease, the lease will automatically be renewed under the newly proposed rent and lease terms (Section 94.055[b]).

How must the tenant respond to the advance notice?

If the tenant accepts the landlord's lease renewal offer, the tenant does not have to do anything. The new lease under the modified terms becomes effective the first day after the existing lease expires.

If the tenant does not want to stay or does not accept the new lease terms, the tenant must notify the landlord of intent to vacate the premises at the conclusion of the existing lease term. This notice must be sent no later than 30 days before the existing lease expires (Section 94.055[c]).

Can the landlord require the tenant to vacate the premises before the end of the 60-day period (that is, before the end of the existing lease)?

The landlord may request the tenant vacate the premises before the end of the 60 days but only if the landlord compensates the tenant in advance for relocation expenses, including the cost of moving and the cost of installing the manufactured home at a new location (Section 94.055[d]).

May the landlord assess a penalty for a late payment?

Yes. The landlord may assess a penalty for a late rent payment, a late fee or other charges paid late as long as the payment is not remitted on or before the date stipulated in the lease agreement (Section 94.056).

May the tenant assign or sublease the premises without the landlord's consent?

No. The landlord may prohibit the tenant from assigning or subletting the leased premises if the prohibition is included in the lease agreement.

If consent is given to sublease or assign, the lease agreement must specify the conditions under which the agreement may be entered (Section 94.057).

Subchapter C — Security Deposits

Subchapter C of the Texas Property Code defines and addresses security deposits for manufactured housing communities. Items regulated include when a deposit may be collected, when it must be refunded and expenses that can be deducted from the deposit.

How is the term *security deposit* defined?

A security deposit is defined as money, other than a rental application deposit or an advance payment of rent, intended primarily to ensure that the tenant adheres to the terms of a lease (Section 94.101). The statute does not dictate the amount of the deposit, which is strictly negotiable. The landlord is required to keep accurate records relating to security deposits (Section 94.102[b]).

When may the landlord require a security deposit?

The landlord **may** require a security deposit at the time the initial lease agreement is signed (Section 94.102[a]). The subchapter seems to indicate that a security deposit cannot be required for an extension of the lease agreement.

When must the landlord refund the security deposit?

Except as otherwise provided in Subchapter C, the landlord is required to refund the tenant's security deposit within 30 days after the tenant vacates the lot. The tenant need not give advance notice of vacating the lot to be eligible for the refund **except when the lease agreement requires it by having that requirement underlined or placed in conspicuous bold print.**

If the landlord is in bankruptcy when the refund is required, the tenant's right to the deposit takes priority over any creditor's claim, including the trustee in bankruptcy (Section 94.103).

Can the landlord retain the security deposit or rent-prepayment fee if the tenant never occupies the manufactured home lot?

No. The landlord may not withhold the security deposit or rent prepayment fee if:

- the tenant secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the lot on or before the commencement date of the lease or
- the landlord secures a replacement tenant satisfactory to the landlord and the replacement

tenant occupies the lot on or before the commencement date of the lease.

In either case, the landlord may retain and deduct from the security deposit or rent prepayment:

- a sum agreed to in the lease as a lease cancellation fee or
- the actual expenses incurred by the landlord in securing the replacement tenant, including a reasonable amount for time spent in securing the replacement tenant (Section 94.104).

What charges may be deducted from the security deposit?

The landlord may deduct damages and charges for which the tenant is legally liable under the lease or as a result of its breach. However, no charges are allowed for normal wear and tear (Sections 94.105[a] & [b]).

Although Section 94.001[7] defines normal wear and tear (see Glossary), there has been no case law to amplify its meaning for manufactured homes. Consequently, the determination is on a case-by-case basis with no precedents.

The landlord is required to give the tenant a written, itemized list of all damages and charges deducted from the security deposit except when:

- the tenant owes rent at the time of surrender and
- the amount of rent owed is not disputed (Section 94.105[c]).

How and when should the lot's condition be verified?

Damages and charges deducted from the security deposit are one of the major areas of dispute between landlords and tenants. The problems center on (1) whether the lot's condition required cleanup or repair, (2) whether a defect was caused by the tenant or resulted from normal wear and tear and (3) the cost of any repairs or cleanup. Unless precautions are taken by the landlord and tenant, proving the lot's condition at move-in and move-out may be difficult. Accumulation and preservation of objective evidence of the lot's condition at move-in and move-out are imperative.

The easiest way to document defects and flaws is for the landlord and tenant to conduct a walk-through inspection and list problems as they are discovered. After the inspection, the list should be dated and signed. Both the landlord and tenant may wish to reserve the right to document other prob-

blems discovered within a certain period of move-in or move-out.

Another approach is to photograph or videotape the lot's condition at move-in and move-out. This may be supplemental to the inspection or in lieu of it if both parties cannot be present at either or both times.

Photographing or videotaping is preferable for several reasons. First, the severity of a problem can be documented better on film. Second, ownership or management may change after move-in. The new owners or managers may dispute the findings of an inspection conducted when they were not present. Third, in major manufactured housing communities, it is physically impossible for the landlord to be present for each move-in and move-out when many tenants arrive and leave at the same time. Finally, photographs or videotapes made both at the beginning and end of a lease term help differentiate damages from normal wear and tear.

Even with careful inspection and documenting photographs or videotapes, such problems as fires or flooding not caused by the tenant may arise.

The tenant should notify the landlord of all problems. If the landlord does nothing to fix the damage and then deducts the damages from the tenant's security deposit, pictorial documentation of damages occurring after move-in would be valuable. Such documentation should be made and preserved.

Tenants should be aware that some leases include provisions permitting clean-up costs regardless of the condition of the property. For instance, the tenant might leave the lot immaculate, but the lease still may allow the landlord to have the lot cleaned for predetermined costs.

Who returns the deposit when ownership changes?

When a change of ownership occurs, the new owner is liable for the return of the security deposit. However, the former owner's liability terminates only after the new owner delivers to the tenant a signed statement acknowledging the current owner's receipt of the deposit and responsibility for its return. The notice must specify the exact amount of the deposit.

This applies to any change of ownership by sale, assignment, death, appointment of receiver, bankruptcy or otherwise except by a mortgage foreclosure (Section 94.106).

The statute gives this directive without imposing a penalty for violation of the directive. It simply states that the landlord must keep accurate records of all security deposits. There is no legal requirement that deposits be held in a separate account or that they accrue interest.

Why is a forwarding address important?

The tenant is required to give the landlord a written statement of the tenant's forwarding address

for purposes of refunding the security deposit. However, the statute does not state **when** or **how** the notices must be given (Section 94.107).

Until the written forwarding address is received, the landlord has no duty to return the tenant's security deposit or give the tenant a written description of damages and charges.

Failure to provide a forwarding address does not cause the tenant to forfeit the right of refund or the right to receive a description of damages and charges (Section 94.107).

If the tenant has a permanent address, as students do while away at college, the forwarding (or home) address may be included on the lease when it is signed.

If the forwarding address is not included on the lease, the tenant may wish to do either or both of the following to document delivery of a forwarding address to the landlord:

- Personally deliver a written copy of the forwarding address and have the landlord or authorized agent sign a receipt (on a separate piece of paper). Keep the receipt for proof of delivery and date notice was given.
- Send the forwarding address to the landlord or authorized agent by certified mail, return receipt requested. Keep a copy of the notice and the return receipt for proof of delivery.

Either of these two delivery methods of a forwarding address, used at least 30 days before the lease terminates, can document several lease requirements.

If the lease mandates advance written notice as a condition for refund of the security deposit (addressed in the discussion of Section 94.103), the advance notice can fulfill such a requirement.

Most leases require the tenant to give the landlord a 30-day advance written notice of move-out, even if the lease is for a fixed term.

Tenants must respond to the landlord's advance notice to either terminate the lease or renew it on the terms disclosed in the notice. This response must be made at least 30 days before the lease terminates (Section 94.055[c]).

If the tenant is moving out and wants to ensure that the landlord cannot claim the "amateur landlord" defense while wrongfully withholding the security deposit, a copy of Section 94.109 of the Texas Property Code, discussed later, may be included with the notice.

How can the tenant ensure that the landlord's security deposit refund is not "lost in the mail"?

At lease signing, the tenant can ask to amend the lease by requiring the landlord to forward both the security deposit and the itemized list of deductions by certified mail, return receipt requested. However,

tenants generally do not have sufficient leverage to negotiate such a change.

May a tenant withhold rent in lieu of having the security deposit refunded?

No. A tenant may not withhold any part of the last month's rent on grounds that the security deposit will cover the balance. Doing so constitutes bad faith, and the tenant is liable for three times the amount of rent wrongfully withheld plus the landlord's reasonable attorney fees in a suit to recover the unpaid rent (Section 94.108).

What are the consequences of the landlord wrongfully withholding the security deposit?

The landlord is prohibited from wrongfully withholding the security deposit or failing to provide a written description and itemization of the deductions (Section 94.109[a]). Wrongfully withholding either or both for more than 30 days after the tenant surrenders the premises constitutes bad faith (Section 94.109[d]).

A landlord who acts in bad faith by withholding all or a portion of a security deposit is liable to the tenant for:

- \$100,
- three times the portion of the deposit wrongfully withheld and
- the tenant's reasonable attorney fees in a suit to recover the deposit.

The landlord, not the tenant, has the burden of proving that the retention of any portion of the deposit was reasonable and not in bad faith (Section 94.109[a]).

The statute does not define *bad faith*, but case law lends some clues. In *Reed v. Ford* (760 S.W. 2d 26), the court held that the term meant ". . . an honest disregard of tenant's rights; bad faith requires intent to deprive tenant of refund known to be lawfully due."

Knowledge of the law may be an issue. In the case of *Ackerman v. Little* (679 S.W. 2d 70), the court held that the landlord was an "amateur lessor" with only one rental property. The landlord was found to be ignorant of the statute, and this factor was considered in determining bad faith.

An appellate decision in 1994, *Leskinen v. Burford* (892 S.W. 2d 135), exonerated a landlord from liability, citing the "amateur lessor" defense. The landlord had returned the deposit 35 days after surrender of the premises.

The appellate court distinguished this case from a former one, *Wilson v. O'Connor* (555 S.W. 2d 776), in which the landlord was held liable for never returning the deposit.

Again, as a precaution, the tenant may wish to include a copy of Section 94.109 of the Texas Property Code with the written notice of forwarding address delivered to the landlord.

What are the consequences for the landlord who in bad faith wrongfully fails to provide an itemized list of deductions?

The landlord who does not provide a written description and itemized list of damages and charges on or before the 30th day after the tenant moves out:

- forfeits the right to withhold any portion of the tenant's security deposit,
- forfeits the right to bring suit against the tenant for damages to the premises and
- is liable for the tenant's reasonable attorney fees in a suit to recover the deposit (Section 94.109[b]).

The landlord is presumed to have acted in bad faith (Section 94.109[d]). However, the statute assumes the landlord has the tenant's forwarding address when this occurs.

What charges are referred to in the phrase "damages and charges for which the tenant is legally liable under the lease"?

Section 94.105 allows the landlord to deduct "damages and charges for which the tenant is legally liable under the lease" from the tenant's security deposit.

The tenant may unknowingly consent to many charges when signing the lease, including:

- cleaning up the lot,
- late rent payments,
- violating pet restrictions,
- unpaid utilities,
- unreimbursed service charges,
- utilities used in cleaning up the lot,
- admitting company representatives to remove resident's telephone or TV cable services,
- reletting costs and
- returned check charges (not to exceed \$100).

If the security deposit is insufficient to cover the charges and damages, the landlord may recover the balance along with attorney fees, filing fees and court costs in a judicial proceeding against the tenant.

The tenant should carefully read lease provisions pertaining to deductible charges before signing the lease.

Subchapter D — Maintenance and Repairs

Subchapter D of the Texas Property Code covers the landlord's obligation to make the manufactured home community habitable. The statute discusses what the landlord must repair, what the tenant must do to invoke the landlord's duty to repair and the tenant's options if the landlord fails to repair.

Landlords and tenants alike should understand Subchapter D to protect their interests. Landlords need to know what items must be repaired and the appropriate steps tenants must take to prompt the repair.

Tenants need to know what options they have to resolve maintenance and repair problems. Tenants who take problems into their own hands or improperly attempt to invoke Subchapter D remedies may be liable to the landlord.

Most tenants may know that they must give the landlord notice of needed repairs. However, few realize that two notices may be necessary. Tenants may not know when notices must be given, where they must be delivered or sent, what they must say and how long they are required to wait before initiating repairs themselves.

Tenants should also know that the landlord has a duty to repair only conditions that materially affect the physical health and safety of an ordinary tenant. Conditions caused by the tenant, a member of the tenant's family, a tenant's guest or a lawful occupant of the dwelling are not covered.

What warranties must the landlord give the tenant when the lease is signed?

By executing the lease agreement, the landlord warrants that the manufactured home lot is suitable for the installation of a manufactured home (Section 94.151).

What are the landlord's maintenance responsibilities?

The landlord of the manufactured home community must:

- comply with all codes, statutes, ordinances and administrative rules applicable to the community,
- maintain all common areas, if any, of the community in a clean and useable condition,
- maintain all utility lines installed in the community by the landlord unless the utility lines are maintained by a public utility or political subdivision, including a municipality,
- maintain individual mailboxes for tenants in accordance with United States Postal Service regulations unless mailboxes are permitted to be on the tenant's manufactured home lot,
- maintain roads in the community to the extent necessary to provide access to each tenant's lot,
- provide services for the common collection and removal of garbage and solid waste from within the community and
- repair or remedy conditions on the premises that materially affect the physical health or safety of an ordinary tenant of the community (Section 94.152).

The landlord has no duty to repair or remedy conditions present in or on the tenant's manufactured home (Section 94.153[a]).

The landlord is not required to furnish utilities from a utility company if the utility lines are not reasonably available (Section 94.153[c] and Section 94.153 [d]).

What conditions must the landlord make a diligent effort to repair?

The landlord must make a diligent effort to repair any condition that materially affects the health or safety of an ordinary tenant if the tenant:

- reports and specifies the condition in a notice to the person who collects rent or to the place where the rent is normally paid and
- is current in rent payments when the notice is given (Section 94.156[b]).

The statute does not state that the notice must be in writing, but for documentation purposes, all notices should be in writing and be delivered in person or sent by certified mail, return receipt requested. If delivered in person, verification by a witness or a written acknowledgment of receipt should be obtained.

What conditions need not be repaired by the landlord?

The landlord's duty to repair does not apply to conditions in or on the tenant's manufactured home (Section 94.153[a]). The landlord has no duty to repair conditions caused by:

- normal wear and tear (see glossary),
- the tenant,
- a lawful occupant of the manufactured home lot,

- a member of the tenant's family or
- the tenant's guest or invitee (Section 94.153[c] & Section 94.153[d]).

How does a loss such as fire, smoke, hail or an explosion affect the landlord's repair obligation?

The landlord is not required to repair an insured loss caused by fire, smoke, hail, explosion or similar causes **until the landlord receives payment on the insurance claim** (Section 94.155[a]). Until the repairs are actually completed, however, either the landlord or tenant may terminate the lease by giving written notice if the loss:

- rendered the leased premises **totally** unusable for the purposes for which they were rented and
- was not caused by the negligence or fault of the tenant, a member of the tenant's family, a guest or invitee of the tenant (Section 94.155[b]).

If the lease is terminated, the tenant is entitled to a prorated refund of rent from the date the tenant moves out and to any security deposit refund required by law.

If the leased premises are rendered **partially** unusable for the purposes for which they were rented and if the loss was not caused by the negligence or fault of the tenant, a member of the tenant's family, a guest or invitee of the tenant, the tenant is entitled to a proportionate rent reduction based on a judgment of a county or district court. This judicial option rarely occurs, however. The landlord and tenant may agree to nonjudicial, proportionate rent reduction measures in the written lease (Section 94.155[c]).

At what point does the landlord become liable for not doing repairs after being notified by the tenant?

Section 94.156[b] lists several requirements for creating landlord liability for nonrepairs, based on how the tenant gave the notice to the landlord.

If the tenant notifies the landlord in person or in writing, the landlord becomes liable when all of the following are true:

- (1) The notice to repair or remedy a condition is given to the person to whom the tenant normally gives rent payments.
- (2) The condition materially affects the physical health or safety of an ordinary tenant.
- (3) The tenant gives a second notice **in writing** to repair or remedy the condition after a **reasonable time** elapses.
- (4) The landlord has had a reasonable time to repair or remedy the condition after receiving the second notice.

- (5) The landlord does not make a diligent effort to repair or remedy the condition after receiving the second notice.
- (6) The tenant was not delinquent in rent at the time the notice(s) were given (Sections 94.156[a] & [b]).

If the tenant initially notifies the landlord by certified mail, the landlord becomes liable when all of the following are true:

- (1) The tenant notifies the landlord to repair or remedy a condition by certified mail, return receipt requested or by registered mail. The notice is sent to the person to whom the tenant normally gives rent payments.
- (2) The condition materially affects the physical health or safety of an ordinary tenant.
- (3) The landlord has had a reasonable time to repair or remedy the condition after receiving the notice by certified or registered mail.
- (4) The landlord does not make a diligent effort to repair or remedy the condition after receiving the notice by certified or registered mail.
- (5) The tenant was not delinquent in rent at the time the notice was given (Sections 94.156[a] & [b]).

What is considered a *reasonable time* for making repairs?

According to Section 94.156[d], seven days is a reasonable time to make repairs. Factors affecting this presumption include:

- the date the landlord **receives** notice,
- the severity and nature of the condition and
- reasonable availability of materials, labor and utilities from the utility company.

When is the notice *received* for purposes of calculating the seven days?

Notice is considered received by the landlord when the landlord's agent or employee (the person to whom the tenant normally gives rent payments) physically receives it or when the U.S. Postal Service attempts to deliver the notice to the landlord (Section 94.156[c]).

If the tenant has properly notified the landlord, are there circumstances in which the landlord is not required to make the repairs?

The landlord has no obligation to repair or remedy a condition when:

- the condition was caused by the tenant (Section 94.152[b]) or
- the landlord is awaiting reimbursement for an insured loss (Section 94.154).

What can the tenant do once the landlord is determined to be liable?

A tenant to whom a landlord is liable may, according to Section 94.156[e]:

- terminate the lease,
- repair or remedy the condition according to Section 94.157 (discussed below),
- deduct the cost of the repair(s) from rent without the necessity of judicial action according to Section 94.157 (discussed below) and
- pursue the judicial remedies in Section 94.157 (discussed below).

What happens if the tenant elects to terminate the lease?

If the tenant elects to terminate the lease, the tenant:

- is entitled to a prorated refund of rent from the date of termination or the date the tenant moves out, whichever is later, and
- may deduct the security deposit from rent.

The tenant is not entitled to pursue any other remedies specified in Section 94.156[e], such as repair and deduct, or obtain a judgment (Section 94.156[f]).

What is the repair-and-deduct option?

The repair-and-deduct option calls for the tenant to arrange and pay for repairs, then deduct the amount from rent payments. Section 94.157 qualifies and limits this option as follows.

First, the maximum amount that may be deducted in any month for repairs is one month's rent or \$500, whichever is greater. Repairs and deductions may be made as often as necessary as long as the total repairs and deductions in any one month do not exceed this limitation. The tenant cannot contract for labor or materials in excess of this amount.

Second, if the tenant's rent is subsidized entirely or in part by a governmental agency, the deduction limitation means the fair market rent for the manufactured home lot and not the amount of monthly rent that the tenant actually pays. The government agency subsidizing the rent makes the determination. Otherwise, fair market rent is a reasonable amount under the circumstances.

Third, the repair person or supplier cannot place a lien on the property for the materials or services contracted by the tenant under this remedy. The landlord is not personally liable for the repairs.

Finally, the statute places the following restrictions on the option.

- In at least one of the preliminary notices given the landlord, the tenant must state the intent to repair and remedy the condition along with a reasonable description of the intended repair or remedy.

- Unless there is an agreement to the contrary, the tenant, the tenant's immediate family, the tenant's employer or employee of a company in which the tenant owns an interest cannot make the repairs.
- The repairs must be made by a company, contractor or repair person listed in the *Yellow Pages* or business section of the telephone directory. Alternatively, they may appear in the classified advertising section of a local or county newspaper or in the newspaper in an adjacent county at the time the tenant gives the landlord notice of having selected the repair-and-deduct option.
- No repairs may be made to the foundation or load-bearing structure of the manufactured home lot.
- All repairs must comply with building codes, including obtaining building permits when required. It is unclear whether the cost of such permits is included in repair costs.
- After the repairs are made, the tenant must furnish the landlord a copy of the repair bill and the receipt for payment with the balance of the next month's rent. The repair bill and the receipt may be the same document.

When can the tenant begin to make repairs?

This depends on the situation.

When the condition involves the backup or overflow of raw sewage inside the manufactured home that results from a condition in the utility lines installed in the manufactured home community by the landlord, the tenant may remedy the situation immediately after giving notice. There is no waiting period.

When the condition involves the breach of an expressed or implied lease agreement to furnish potable water to the tenant's manufactured home lot and the water service has ceased totally, the tenant must wait three days before making the repairs.

After the landlord has received written notification from the appropriate local housing, building or health official or other official having jurisdiction that a condition existing on the manufactured home lot materially affects the health or safety of an ordinary tenant, the tenant must wait seven days before making repairs (Sections 94.157[d] & [f]).

In some situations a local housing, building or health official must verify certain conditions materially affect the health or safety of an ordinary tenant before repairs can begin. This verification is **not** required when the condition involves the backup or overflow of raw sewage from the utility lines, or lack of potable water or water service.

Who is liable when the landlord repairs or remedies the condition after the tenant has contracted for the work but before the repairs begin?

If the landlord repairs or remedies the condition between the time the tenant contracts for the repairs and the actual work begins, the landlord is liable for the costs incurred by the tenant for the repairman's travel to the premises. The tenant may deduct the charges from the rent as if the repairs were made (Section 94.157[l]).

May the landlord and tenant agree for the tenant to make repairs at the landlord's expense?

Yes. The landlord and tenant may mutually agree for the tenant to repair or remedy, at the landlord's expense, any condition on the manufactured home lot regardless of whether it materially affects the health or safety of an ordinary tenant (Section 94.157[i]). This does not waive a right or exempt a landlord or tenant from a duty or liability required by Chapter 94.

May the landlord delay the tenant's option to repair and deduct?

Yes, but only in two circumstances. If the landlord is unable to obtain necessary parts, the landlord's repair obligation may be delayed by 15 days. A general shortage of labor or materials following a natural disaster such as a hurricane, tornado, flood, extended freeze or widespread windstorm may delay the landlord's repair obligation 30 days.

The landlord may delay the tenant's option to repair and deduct by delivering to the tenant a signed and sworn affidavit (Section 94.158). The Affidavit for Delay, as it is called, must be delivered before the tenant contracts for the repairs. The affidavit must be from either the landlord or an authorized agent and be delivered by one of three methods:

- in person,
- by certified mail, return receipt requested or
- left securely fixed on the outside of the manufactured home's main entrance if this method of delivery is authorized in the written lease (Section 94.159[e]).

The affidavit, signed by and sworn to under oath, must summarize the reasons for the delay. The affidavit must state that diligent efforts have been and are being made to effect repairs. The dates, names, addresses and telephone numbers of the contractors, suppliers and repair persons must be included (Sections 194.158[a] & [b]).

The landlord may file repeated affidavits as long as the total delay does not exceed six months (Section 194.158[c]).

Repairs may be delayed with no Affidavit of Delay when the landlord is waiting for insurance proceeds following a loss (Section 94.154).

The law presumes that the landlord acted in good faith and with continued due diligence when the first affidavit is given. However, the tenant may present evidence to the contrary. If the landlord files subsequent affidavits, the landlord bears the burden of proving that he or she is acting in good faith. A landlord who files a false affidavit or does not act with due diligence is liable for one month's rent plus \$1,000 (Section 94.158[f]).

What happens if a new landlord takes over before repairs are made?

The following rules apply when the former landlord was liable to the tenant under Section 94.156, and the new landlord, in good faith and without knowledge of the tenant's notice of intent to repair, acquires title to the tenant's manufactured home through lot foreclosure, a deed in lieu of foreclosure or a general warranty deed in a bona fide purchase. In this situation, when the tenant has opted to terminate the lease, and proper notices have been given to the former landlord, a change of ownership does not necessitate new notices be given. The tenant may terminate the lease as if no change occurred in ownership. Likewise, the tenant's right to repair and deduct for sewage backup or overflow, or for cutting off the potable water is not affected; new notices are not required.

However, different rules apply when:

- the situation does not involve the backup or overflow of sewage, or the cutoff of potable water,
- the new landlord has notified the tenant of the new landlord's name and address or the name and address of the landlord's authorized agent and
- the tenant has not contracted for the repairs.

In this case, the tenant must deliver written notice of the intent to repair or remedy the condition to the new landlord. The new landlord has a reasonable time to complete the repair before the tenant may repair or remedy the condition. Only one notice is required in this situation.

If the tenant has chosen to pursue judicial options rather than terminating the lease or choosing the repair and deduct option, any judicial remedy is limited to recovery against the former landlord until the tenant gives the new landlord notice. If the new landlord does not complete the repairs or remedy the condition after receiving notice, the new landlord is liable to the tenant for a civil penalty of one month's rent plus \$2,000, actual damages and attorney fees.

What judicial options are available to tenants?

Section 94.159 lists five possible judicial remedies a tenant may pursue:

- A court order directing the landlord to take reasonable steps to repair the condition.
- A court order reducing the tenant's rent based on present rental value in light of the needed repairs or condition. The reduction is calculated from the time the first repair notice was given until the condition is repaired or remedied.
- A judgment for a civil penalty of one month's rent plus \$500.
- A judgment for the amount of the tenant's actual damages.
- Court costs and attorney fees, excluding attorney fees relating to recoveries for personal injury.

The tenant's petition may be filed in the justice, county or district courts, depending on the amount of the tenant's claim. The courts have concurrent jurisdiction. However, the justice courts may not order the landlord to make repairs. They can render the other remedies (Section 94.159[c]).

The right of the justice court, the county court or the district court to hear a certain case depends, in part, on the monetary amount of the claim or dispute.

Who has the burden of proof in judicial proceedings related to repair?

Generally, the tenant must prove that the landlord failed to repair or remedy a condition (Section 94.153). However, the landlord must prove a diligent effort was made to repair within a reasonable time if the tenant can show that the landlord failed to make the repairs or give a written explanation for the delay within five days after receiving the written notification (Section 94.154).

Precisely what constitutes *diligent effort* and *reasonable delay* is unclear. Some guidelines are provided later in Section 94.156. If the landlord does not make repairs, the tenant has three options:

- (1) terminate the lease
- (2) repair the condition and deduct the cost from a subsequent rent payment or
- (3) seek judicial remedies.

Consequently, shifting the burden of proof is important only to tenants who pursue the third option.

Can tenants retaliate by withholding rent for failing to repair or remedy?

No. The tenant is prohibited from illegally withholding rents, arranging for repairs to be made or deducting repair costs from rent in violation of the

procedures specified in Subchapter D. If the tenant breaches these rules, the landlord may recover actual damages. The penalties are more severe if the tenant takes any or all three actions in bad faith after the landlord has informed the tenant in writing that the acts are illegal and specifies the penalties. In that case, the landlord may recover a civil penalty of one month's rent plus \$500 and reasonable attorney fees. However, the landlord must prove by clear and convincing evidence that:

- the required written notice that the tenant's acts were illegal was given to the tenant in person, by mail or delivered to the premises and
- the tenant acted in bad faith (Section 94.160).

The tenant cannot take matters in hand but must follow precisely the procedures prescribed in Subchapter D to effect repairs. If the steps are not followed exactly, the tenant, not the landlord, is liable.

Where must the tenant send or deliver notices?

The tenant should send or deliver a notice to repair or remedy or any other communication required or permitted by the Subchapter D (Section 94.161) to a managing agent, leasing agent or resident manager who is the agent of the landlord.

Note. It is unclear whether Section 94.161 (above) contradicts Section 94.156, which requires the tenant to give notice of a condition to the person to whom the rent is normally paid or at the place at which rent is normally paid. That person may not be the managing agent, leasing agent or resident manager as specified in Section 94.161. If they are not the same person, the tenant should send two notices, one to comply with each section.

Are the remedies outlined in Subchapter D for the landlord's failure to repair exclusive? Or, are the remedies in lieu of other available legal remedies?

Subchapter D represents the tenant's sole legal means to prompt a residential landlord to make repairs and the sole legal means for a judicial recovery if the landlord does not comply.

However, the subchapter does not affect any other right of a landlord or tenant under contract, statutory law or common law that is consistent with the purposes of the subchapter. Likewise, the subchapter does not affect any right the landlord or tenant may have to bring an action for personal injury or property damage under Texas law. The subchapter does not impose obligations on a landlord or tenant other than those expressly stated in this subchapter (Section 94.162).

How may lease provisions affect the landlord's duty to repair and other obligations?

Tenants may unwittingly give up or gain certain rights when they sign the lease. Subchapter D mentions the following possible provisions.

- The landlord and tenant can agree that the tenant will make **all** repairs at the landlord's expense. This provision may be placed in the lease or made orally. The statute simply says the parties may mutually agree on this matter (Section 94.157[i]).
- The landlord and tenant may agree to a proportionate reduction in rent if a casualty loss renders the leased premises partially unusable (Section 94.155[c]).
- The landlord and tenant may agree that the tenant, the tenant's immediate family, the tenant's employer or employee of a company in which the tenant owns an interest can make the repairs under the repair-and-deduct option (Section 94.157[g]).
- The landlord may prohibit the tenant from assigning the lease agreement or subleasing the leased premises if so stated in the lease agreement (94.057[a]).
- The landlord must give the tenant three days notice to vacate the premises before filing an eviction suit unless a longer or shorter period is provided in the written lease (24.005[a]).
- The owner of a manufactured home (which could be the tenant) cannot sell a home located on the leased premises without having the sale approved in writing by the landlord (Section 94.252[a]).
- Unless the owner of a manufactured home (which could be the tenant) has agreed in writing (which could be the lease agreement), the landlord cannot require the owner:
 - To pay a commission or fee from the sale of the home or
 - To contract with the landlord to act as an agent or broker for the sale of the home (Section 94.252[b]).

Subchapter E — Lease Termination

Subchapter E of the Texas Property Code focuses on terminating a lease before the end of the lease term. Topics discussed include the duties of the landlord when the tenant prematurely abandons the lease, how the landlord may use a writ of possession to evict a tenant and move the manufactured home and what notices must be sent to terminate a lease when a land use change occurs.

What legal recourse does the landlord have against a tenant who prematurely abandons the leased premises?

The maximum amount of damages a landlord may recover from a tenant who prematurely abandons the leased premises is one month's rent if the manufactured home lot is reoccupied within 21 days after the tenant surrenders the lot.

If the lot is not reoccupied within 21 days, the landlord may recover the remaining balance of the rent due plus any other amounts owed for the remainder of the lease (Section 94.201).

Does the landlord have a duty to mitigate damages (relet the property and lessen the tenant's liability) when the tenant prematurely vacates the leased space?

Yes. The landlord has a legal duty to attempt to relet the manufactured home lot and lessen the tenant's liability when the tenant prematurely vacates. Any provision in a lease agreement that purports to exempt the landlord from this duty or liability is unenforceable (Section 94.202).

Note. The entire eviction statute (Chapter 24 of the Texas Property Code) is reproduced as the last chapter in this technical report, along with a description of the eviction process.

How may a landlord use a writ of possession against a tenant?

By obtaining a writ of possession, which is the final step in the eviction process under Chapter 24 of the Texas Property Code, the landlord may:

- prevent a tenant from entering the manufactured home lot,
- evict a tenant or
- require removal of a manufactured home from the manufactured home lot (Section 94.203[a]).

Must the landlord give written notice of eviction proceedings to the lienholder of the manufactured home?

Yes. The landlord must give written notice of eviction proceedings to the lienholder within three days of filing the application or petition for a judgment for possession but only if the tenant has disclosed the name of the lienholder prior to signing the lease as required by Section 94.054.

What legal restraints or limitations will the court impose on a landlord attempting to evict a tenant?

The court will not approve an eviction if it finds the eviction was retaliatory in nature. Likewise, a writ of possession will not be issued within 30 days of a judgment for possession, which is the second step in the eviction process, when the tenant has paid the full amount due under the lease for that period (Sections 94.203[c] & [d]).

What is a default judgment for possession?

A default judgment occurs when a tenant does not contest the second phase of the eviction process and makes no appearance in his or her defense.

Who must receive notice of a default judgment for possession?

When a default judgment is entered, the court must:

- notify the tenant in writing within 48 hours by sending the notice by first class mail to the leased premises,
- send copies of the default judgment to the owner of the manufactured home if the tenant and the owner are not the same person or entity and
- forward copies of the default judgment to the lienholders if the court has received written notice of their names and addresses (Section 94.203[e]).

Who must receive notice when the manufactured home is removed from the lot under a writ of possession? When must the notices be sent?

After a manufactured home is removed by executing a writ of possession, the landlord must send written notice of the home's new location to the tenant at the tenant's most recent address according

to the landlord's records. The notice must be sent within ten days after the removal.

The same notice must be sent within the same time frame to the owner of the manufactured home when:

- the tenant and the owner are different individuals or entities and
- the landlord has been given the owner's name and address (Section 94.203[f]).

When must notices be sent and posted to terminate leases because of a land use change? Where must the notices be sent and posted?

If a land use change occurs, the landlord must send notice of the change no later than 120 days before the effective date of the change to:

- the tenant,
- the owner of the manufactured home if the tenant and owner are different and the landlord has been given written notice of the owner's name and address and
- the lienholder, if the landlord has been given written notice of the lienholder's name and address.

During this time frame, the same notice must be posted in a conspicuous place in the manufactured home community.

What information must be included in the notices sent and posted regarding a land use change?

The notices, both sent and posted, must:

- specify the effective date of the land use change and

- inform the tenant, owner and lienholder to move the manufactured home by that date (Section 94.204).

May the landlord terminate the lease when the tenant violates a lease provision?

Yes. The landlord may terminate the lease and evict the tenant for violating a lease provision, including a violation of the manufactured home community rules incorporated into the lease (Section 94.205). Section 94.008 states that any adopted manufactured home community rules that are not arbitrary or capricious are considered part of the lease agreement.

May the landlord terminate the lease for nonpayment of rent?

The landlord may terminate the lease and evict the tenant, if need be, when the following three conditions are met.

- The amount of unpaid rent plus the other amounts owed according to the lease equal at least one month's rent.
- The landlord gives written notice to the tenant that the rent and other payments are delinquent.
- The tenant does not tender the full amount due within ten days after receiving the notice (Section 94.206).

Subchapter F — Landlord Retaliation

Subchapter F prohibits a landlord from retaliating when a tenant pursues an option or remedy described in Chapter 94 and outlines a tenant's options if the landlord does retaliate.

Can landlords retaliate?

No. Landlords are prohibited from retaliating against a tenant who:

- (1) in good faith exercises or attempts to exercise an option granted to the tenant by the lease, a municipal ordinance or a federal or state statute,
- (2) gives a landlord a notice to repair or exercises an option granted under Chapter 94 or
- (3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility or a civic or nonprofit agency that a building or housing code has been violated or that a utility problem exists.

At the time the complaint is lodged, the tenant must believe, in good faith, that the complaint is valid and that the violation occurred or the problem exists (Sections 94.251[a]).

What retaliatory actions are prohibited?

For six months after the date a tenant takes one of the three actions described in the previous question, the landlord may not retaliate by:

- filing an eviction proceeding, except for the grounds described in Subchapter E — Lease Termination,
- 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 agreement (Section 94.251[b]).

Do landlords have any defenses against a suit for retaliation?

According to Section 94.253[a], a landlord is not liable if he or she proves the actions were not taken for retaliation purposes. However, liability remains if the landlord violates a prior court order under Section 94.159 for:

- increasing rent under an escalation clause in a written lease for utilities, taxes or insurance or

- increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire manufactured home community.

What if grounds for eviction or lease termination occurs within the six-month period after a tenant takes one of the legally prescribed actions against a landlord?

An eviction or lease termination cannot be deemed retaliatory if the tenant:

- is delinquent in rent or other amounts due under the lease that, in the aggregate, equal one month's rent when the landlord gives notice to vacate or files an eviction action,
- a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or threatens the personal safety of the landlord, the landlord's employees or another tenant by word or conduct,
- materially breaches the lease by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts,
- does not vacate the premises after giving notice of termination or intent to vacate,
- does not vacate the premises after the landlord gives notice of termination at the end of the rental term, and the tenant does not take action under Section 94.251 until after the landlord gives notice of termination or
- does not vacate the premises and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family or a guest or invitee of the tenant might:
 - adversely affect the quiet enjoyment of the community by other tenants or neighbors,
 - materially affect the health or safety of the landlord, other tenants or neighbors or
 - damage the property of the landlord, other tenants or neighbors (Section 94.253[b]).

If a tenant proves a landlord wrongfully retaliated, what may the court award the tenant?

The tenant may recover the following by proving the landlord's retaliatory actions:

- a civil penalty of one month's rent plus \$500. If the tenant's rent is subsidized in whole or in part by a governmental entity, the civil penalty

granted under this section must reflect the fair market rent of the lot plus \$500 (Section 94.254);

- actual damages;
- court costs; and
- reasonable attorney fees in an action to recover property damages, moving costs, actual expenses, civil penalties, or to get a declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord.

When is the tenant deemed to have acted in bad faith in alleging landlord retaliation?

A rebuttal presumption exists that the tenant acted in bad faith when:

- the tenant files a suit for retaliation for an alleged violation of building or housing code or a utility problem and
- a government building or housing inspector or utility company representative determines in writing that no violation exists.

If a tenant makes a bad faith claim against a landlord, what may the court award the landlord?

If a tenant files or prosecutes a suit under Subchapter F in bad faith, the landlord may recover:

- possession of the leased premises and
- a civil penalty of one month's rent plus \$500, court costs and reasonable attorney fees. If the tenant's rent is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section must reflect the fair market rent of the lot plus \$500 (Section 94.255).

What defenses do tenants have against suits filed by a landlord?

The tenant can defend an eviction suit by the landlord by showing that it is retaliatory. Likewise, the tenant can defend a suit for nonpayment of rent by showing that he or she is in compliance with the repair-and-deduct procedures outlined in Subchapter D. Other judicial actions permitted under Chapter 94 may not be joined with or asserted as a defense or cross-claim in an eviction suit (Section 94.256).

May the owner of a manufactured home sell the home located in the manufactured home community without the landlord's written consent?

No. Before the owner of a manufactured home may sell the home, the landlord must approve the sale in writing and the purchaser must sign a lease agreement (Section 94.252[a]).

May the landlord require the owner to use him or her as agent for the sale of the manufactured home and collect a commission?

The landlord may not require the owner to:

- designate the landlord as agent or broker for the sale of the manufactured home or
- pay a commission or fee from the sale of the home unless the owner of the manufactured home agrees in writing (Section 94.252[b]).

Subchapter G — Landlord and Tenant Remedies

Subchapter G of the Texas Property Code describes the remedies available to the tenant or any other person if a landlord breaches any provision in Chapter 94 of the code.

What can a person recover if a landlord violates the provision in Chapter 94?

Any person, not just a tenant, may recover from a landlord who violates any Chapter 94 provision:

- actual damages,
- a civil penalty equal to two month's rent plus \$500 and
- reasonable attorney fees and costs (Section 94.301).

What recourse does the landlord have if a tenant or any other person files a suit in bad faith alleging the landlord violated Chapter 94 provisions?

The court will award the landlord an amount equal to two month's rent plus \$500 and reasonable

attorney fees and costs if it finds a tenant filed a lawsuit in bad faith and for purposes of harassment (Section 94.302).

How do specific remedies for specific violations in Chapter 94 interact with the general remedies just described?

A specific remedy supercedes the general remedies just described but represents an additional remedy to other remedies provided by law. Likewise, the provisions of Chapter 94 are not exclusive and are in addition to any other remedy provided by other law (Section 94.303).

Chapter 24 Texas Property Code — The Eviction Process

Eviction is the legal process by which a tenant may be evicted or prevented from entering a manufactured home community and a landlord may have the manufactured home removed. According to Section 94.205, a landlord may terminate the lease agreement and evict the tenant for a violation of a lease provision including a violation of the manufactured home community rules that have been incorporated in the lease. The four leading causes for eviction in manufactured home communities are breach of the lease agreement or manufactured home community rules, nonpayment of rent, not vacating the premises after the lease term has expired and continued possession of a home in a rented lot after foreclosure.

The statutes addressing the eviction process for manufactured home communities are found in both Chapters 94 and 24 of the Texas Property Code. An evicting landlord must be aware of the rules in both chapters (see pages 19–20 of this publication). Also, a landlord should consult rules 738 through 755 of the Texas Rules on Civil Procedure. These rules parallel and amplify the sections in Chapters 94 and 24.

Several steps for evicting a tenant or removing a manufactured home are discussed on page 19 under "Lease Termination." These steps outlined in Chapter 94 supplement those found in Chapter 24. They require the landlord to:

- give written notice of the eviction to the lienholder within three days after filing the petition for a judgment for possession;
- seek eviction for nonretaliatory purposes only;
- wait 30 days after receiving a writ of possession to get a judgment of possession when the tenant pays the full amount of rent in arrears;
- send written notices to the tenant, the owner of the manufactured home and the lienholders within 48 hours after receiving a default judgment for possession; and
- notify the tenant and the owner of the manufactured home of the home's new location within ten days of the manufactured home being removed from the premises.

The general rules for evicting any tenant, whether or not in a manufactured home community, are detailed in Chapter 24 and in the following discussion. As noted previously, it may take as long as 30 days to get a judgment of possession. This varies from the normal rules for evicting a residential tenant.

Although the word *eviction* is a legal term, it is not used in Chapter 24 or in the Rules of Civil

Procedure. Instead, the terms *forcible entry and detainer* and *forcible detainer* appear. Either action effectively removes a person from wrongful possession of real property.

The statutes do not speak of bringing either a *forcible entry and detainer* action or a *forcible detainer* action. Instead, they describe how both a forcible entry and detainer and a forcible detainer occur.

What is a forcible entry and detainer?

A forcible entry and detainer occurs when an unauthorized person enters the real property of another, without legal authority or by force, and refuses to surrender possession on demand (Section 24.001).

What constitutes a forcible entry?

A forcible entry occurs when a person enters the property without consent:

- of the person in actual possession of the property;
- of a tenant who, at the time, is a tenant at will or a tenant at sufferance; or
- of the person who acquired possession by forcible entry.

What constitutes a forcible detainer?

A forcible detainer occurs when a person refuses to surrender possession of real property on demand (Section 24.002). This is distinguishable from the forcible entry and detainer because under a forcible detainer the person's entry is not necessarily unlawful. Most eviction suits by landlords are forcible detainers, not forcible entry and detainers, because the tenant's initial entry onto the property usually is lawful.

Forcible detainer may occur when a tenant or subtenant has been notified to vacate the premises per section 24.005 but:

- does not vacate the premises willfully and without force after the right of possession terminates,
- is a tenant at will or a tenant at sufferance or occupies the premises when a lien superior to the tenant's lease is foreclosed or
- acquires possession by forcible entry.

A landlord may continue a forcible entry action in the tenant's name without refileing the suit in the landlord's name (Section 24.003). This occurs if the tenant has such a suit pending when the tenant's

lease term expires. It is immaterial that the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

Where is the jurisdiction for an eviction suit?

Jurisdiction for either a forcible entry and detainer or a forcible detainer suit is in the precinct where the real property is located (Section 24.004).

How much notice must a landlord give a tenant who is asked to vacate the premises?

The demand that a tenant leave the premises is the first step in the eviction process. How much notice is required depends on which of the following categories the tenant falls into.

Tenant has defaulted on rent or does not vacate after lease expires

The landlord must give the tenant at least a three-day notice before filing a forcible detainer suit when the tenant has defaulted on rent payments or holds over after the lease term expires (Section 24.005[a]). The three-day notice does not apply if the written or oral lease specifies a different period.

If the tenant is on a month-to-month lease and the rent-paying period is monthly or less than a month, the landlord must comply with the termination requirements described in Section 91.001. This section requires that the length of notice to vacate corresponds with the length of the rent-paying period. If the rent is paid every two weeks, the notice to vacate must be at least two weeks plus one day before an eviction suit can be filed. However, the notices required by Section 91.001 do not apply when:

- the parties have agreed in writing to a different period,
- the parties have agreed in writing that no notice to terminate is required or
- one of the parties has breached the contract in a manner recognized by law.

When the occupant is a tenant at will or a tenant at sufferance (see Glossary), a three-day notice is required unless a different period has been contracted in the written or oral lease (Section 24.005[b]).

Tenant's building (in this instance, the manufactured home community) has been sold at a tax or trustee's foreclosure sale

If the tenant's building has been sold at a tax foreclosure sale or at a trustee's foreclosure sale under a lien superior to the tenant's lease, the statute (Section 24.005[b]) requires the purchaser to give the residential tenant at least a 30-day written notice if the tenant has "timely paid" rent and is not otherwise in default under the lease after the sale.

"Timely paid" means the tenant either pays the monthly rent:

- before receiving notice of the scheduled foreclosure sale; or
- to the "foreclosing lienholder" or purchaser at the sale no later than five days after receiving a written request for rent from such person.

The statute apparently allows the foreclosing lienholder to demand rent from the tenant prior to the foreclosure sale. Otherwise, any monthly rent collected by the landlord **before** the sale belongs to the collecting landlord and not to the purchaser at the foreclosure sale (See *Treetop Apartments General Partnership v. Oyster*, 800 S.W. 2d 628 [Tex. App. 1990]).

A foreclosing lienholder may give written notice to a tenant indicating that a foreclosure notice has been given to the landlord or owner and specifying the scheduled date of the sale. When the tenant acquired possession by forcible entry, a three-day notice is required before filing a forcible detainer suit (Section 24.005[c]).

Tenant rented from someone who does not have ownership rights to the property

Although the possibility that a person would rent from someone lacking possessory rights to the property is remote, this section addresses such a situation.

If the occupant is the person who gained possession by forcible entry under Section 24.001, there is no required waiting period (Section 24.005[d]). The forcible detainer may be filed immediately or at the end of any deadline specified in the oral or written notice to vacate.

The notice differs when the lease or applicable law requires the landlord to allow a tenant to respond to a notice of a proposed eviction (Section 24.005[e]). Here, notice to vacate cannot be given until the response period ends.

The only leases containing a preliminary notice to vacate are HUD subsidized leases. Generally, the response period is ten days. Landlords are required to give two separate notices ten days apart. The first is a proposed notice to vacate; the second is the actual notice to vacate.

How must a notice to vacate be delivered?

The notice to vacate may be given in person or by mail at the premises (Section 24.005[f]). If delivered in person, the notice must be given to the tenant or to any resident who is at least 16 years old. Personal delivery also includes affixing the notice to the inside of the main entry door to the premises (manufactured home). Notice also may be sent by regular mail, registered mail or certified mail with return receipt requested.

What alternatives does the landlord have if there is no mailbox or entry to the premises is impossible, inconvenient or dangerous?

If the dwelling has no mailbox, or if the dwelling has a keyless bolting device, alarm system or dangerous animal that prevents entry, the landlord may affix the notice to vacate outside the main entry door (Section 24.005[f]).

Can the notice to vacate include a demand that delinquent rent be paid to avoid eviction?

The notice to vacate may include a demand for delinquent rent to avoid eviction if the landlord has given the tenant prior written notice or reminder that the rent is due and unpaid. The delinquent rent must be paid by the date and time stated in the notice to avoid eviction (Section 24.005[g]).

The notice period is calculated from the day on which the notice is delivered (Section 24.005). A notice to vacate is considered a “demand for possession” for purposes of Section 24.002 discussed earlier.

How may the landlord recover legal fees?

The landlord must follow specific steps to recover attorney fees (Section 24.006) when the written lease does not address the matter. The landlord must give the tenant who is unlawfully retaining possession of the premises a ten-day written demand to vacate the premises. The demand must be sent by registered or certified mail, return receipt requested, at least ten days before the suit is filed. The demand must state that attorney fees may be recovered if the tenant does not vacate the premises before the eleventh day after receipt of the notice.

The ten-day notice is not necessary if the written lease provides for recovery of attorney fees. Landlords or their agents generally represent themselves in the justice court without attorneys, thus negating the need for a ten-day notice.

When may the tenant recover legal fees?

The tenant may recover attorney fees for successfully defending either a forcible entry and detainer or forcible detainer suit under certain conditions (Section 24.006[c]). Generally, when a lease permits the landlord to recover attorney fees or when the landlord gives the ten-day notice of demand to vacate (Section 24.006), tenants who successfully defend against a suit may recover reasonable attorney fees from the landlord. No notices are required.

Likewise, either prevailing party may recover all court costs. This recovery is separate and apart from recovering attorney fees.

What is a writ of possession?

A *writ of possession* is a court order directing the executing officer to deliver possession of premises to the prevailing landlord (Section 24.0061). A landlord who wins an eviction suit is entitled to both a judgment for possession of the premises and a writ of possession. The *judgment for possession* is the court’s decision that the landlord has prevailed.

The term *premises* here means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral agreement, or that is for the use of the tenants generally.

A writ of possession cannot be issued before the sixth day after the judgment for possession is rendered. The only exception to this is when a possession bond has been filed by the landlord and approved by the justice court, and the judgment for possession is granted by default (Section 24.0061[b]). The procedure for filing a possession bond is described in Rule 740 of the Texas Rules of Civil Procedure.

When may the landlord receive a writ of possession?

If a tenant fails to vacate the premises within the allotted time after the notice to vacate is given, the landlord may initiate the second step in the eviction process. This involves going to court to get a judgment for possession and then, if the tenant still does not leave, getting a writ of possession six days later.

Before a judgment for possession can be rendered, an officer of the court must serve the tenant with notice of the pending lawsuit. This is known as the *service of citation*. If the officer tries twice unsuccessfully to serve the tenant both at the dwelling and at work, Rule 742a of the Texas Rules of Civil Procedure allows service by posting the notice to the front door or main entry to the premises and mailing a copy to the tenant’s address.

May a landlord sue for unpaid rent along with eviction?

If the landlord is evicting a tenant for unpaid rent, Rule 738 of the Texas Rules of Civil Procedure permits the landlord to bring an action for the unpaid rent in the same suit for possession if the amount is within the jurisdictional limits of the court. The landlord can then get two judgments—one for possession and the other for unpaid rent. Normally, the justice court will provide the landlord with a form for filing the petition.

Section 24.0051 provides that in a suit filed in justice court in which the landlord seeks both unpaid rent and possession of the premises, a service on the tenant under Rule 742a is sufficient to support a default judgment for both possession and unpaid rent (Section 24.0051[a]).

This law also allows the landlord to recover unpaid rent under this section whether or not the tenant vacated the premises after the date the sworn statement was filed but before the date the court rendered judgment (Section 24.0051[b]).

Must the court attempt to notify the tenant of the writ of possession if the tenant never made a court appearance (that is, if the writ was acquired by default)?

If the writ is acquired by a default judgment, the court must send a written copy of the judgment to the premises by first class mail no later than 48 hours after the entry of the judgment (Section 24.0061[c]).

A writ of possession orders the officer executing the writ to post a written warning at least 8½ x 11 inches on the exterior of the front door notifying the tenant that the writ has been issued and that it will be executed on or after the date and time stated but not before 24 hours has elapsed from the time of posting.

What does the officer do when executing the writ of possession?

The officer executing the writ will:

- deliver possession of the premises to the landlord and
- instruct the tenant and any guests of the tenant to leave the premises immediately; and that, if they do not comply, they may be physically removed (Section 24.001[d][2]).

If the tenant's manufactured home is removed under a writ of possession, the landlord must notify the tenant in writing where the manufactured home has been taken no later than ten days after the removal (94.203[f]).

Who has the right of appeal?

Chapter 24 does not address the procedure for appealing an eviction suit rendered by the justice court to the county court. The process is described in Rules 749 through 752 of the Texas Rules of Civil Procedure.

According to these rules, either party may appeal the final judgment without cause. The appeal must be to the county court of the county where the judgment was rendered. The appeal must be filed within five days after the judgment is signed; otherwise a writ of possession will be issued on the sixth day. A bond must be posted, approved by the justice and payable to the other party. The amount of the bond is set by the justice depending on the items enumerated in Rule 752.

If the appellant is unable to pay the costs of appeal or file a bond, the action still may be appealed by filing a pauper's affidavit with the justice within five days after the judgment is signed. The procedure for filing a pauper's affidavit is found in Rule 749a of the Texas Rules of Civil Procedure.

Chapter 24 addresses the procedure for appealing an adverse judgment by the county court (Section 24.007). A final judgment of a county court may not be appealed on the issue of possession except when the premises are being used for residential purposes. The judgment may not be stopped pending the appeal unless the appellant files a bond in an amount set by the county court within ten days after the judgment is signed.

The amount of the bond will be set to protect the appellee (landlord), considering:

- the value of the rents likely to accrue during the appeal,
- damages that may occur as a result of the stay during appeal and
- other damages or amounts as the court deems appropriate.

How does an eviction suit relate to other legal action?

According to Section 24.008, an eviction suit has little effect on other legal actions. Basically, either suit does not bar a suit for trespass, damages, waste, rent or *mesne profits* (profits derived from the property while possession was withheld improperly).

When is an attorney required?

A party to an eviction suit need not be an attorney or have an attorney (Section 24.011). Individuals may represent themselves in a justice court to bring either type of suit. Likewise, the authorized agent of a party, whether the agent is an attorney or not, may bring an eviction suit in a justice court for the nonpayment of rent or against a tenant who will not vacate the premises. The only other instance when an authorized agent who is not a lawyer may bring either suit is when the agent requests or obtains a default judgment.

When must a judge or justice of the peace be disqualified?

According to Section 21.005 of the Texas Government Code, a judge or a justice of the peace may not sit in a case if either of the parties is related to the judge by affinity or consanguinity within the third degree. index

Submetering Manufactured Home Communities

The 77th Texas Legislature passed HB 2404 effective September 1, 2001. The new law adds Sections 13.502 and 13.506 to the Texas Water Code and applies to submetering of water use in condominiums, apartment houses with five or more dwelling units, manufactured home rental communities and multiple-use facilities (defined below) on which construction commences after January 1, 2003. Submeters are not required on structures constructed before that date.

The statute discusses the requirements placed on the managers and owners to qualify the buildings or manufactured home rental communities for submetering.

Section 13.501 contains definitions vital to the understanding of Section 13.502. They are:

Apartment house — one or more buildings containing **five or more** dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied and, having rental paid, if a dwelling unit is rented, at intervals of one month or longer.

Dwelling unit — one or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities or a manufactured home in a manufactured home rental community.

Commission — the Texas Natural Resource Conservation Commission.

Customer — the individual, firm or corporation in whose name a master meter has been connected by the utility service provider.

Multiple-use facility — commercial or industrial parks, office complexes, marinas and other types of facilities specifically identified in commission rules with five or more units.

Manufactured home rental community — a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

Nonsubmetered master metered utility service — water utility service that is master metered for the apartment house but not submetered and wastewater utility service based on master-metered water utility service.

Owner — the legal title holder of an apartment house, manufactured home rental community or multiple-use facility and any individual, firm or corporation that purports to be the landlord of

tenants in the apartment house, manufactured home rental community or multiple-use facility.

Tenant — a person who is entitled to occupy a dwelling unit or multiple-use facility unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

What structures or places qualify for submetering?

The statute applies to condominiums, apartment houses, manufactured home rental communities and multiple-use facilities (hereafter collectively referred to as commercial buildings) on which construction begins after January 1, 2003.

Who is responsible for complying with the submetering for water?

The manager of a condominium or the owner of the other named structures must measure water consumed by the occupants of each unit.

How is compliance achieved?

Either the manager or owner must install individual submeters in each dwelling or unit or have the retail public utility install individual meters for each dwelling or unit (Sections 13.502[a] & [b]).

Who must install individual meters?

The manager or owner should request a retail public utility to install individual meters owned by the utility. The retail public utility must comply with the request if the installation is feasible. If not, the manager or owner should install a plumbing system that is compatible with the installation of the submeters or the individual meters of the retail public utility (Section 13.502[d]).

If the apartment house will receive government assistance or government subsidized rent, the owner is responsible for installing a plumbing system compatible with the use of submeters.

Once submetering begins, can the manager or owner switch from submetering billing?

The manager or owner may not change from submetering to allocated billing unless:

- the executive director of the Texas Natural Resource Conservation Commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures and

- the property owner meets rental agreement requirements established by the commission (Section 13.503[e]).

After January 1, 2003, can the manager or owner begin submetering once the submeters or meters have been installed?

Before the managers or owners may begin billing for submetering for allocated water services in the commercial buildings fitted with the required submeters or meters,

- the sink or lavatory faucets, faucet aerators and shower heads must meet the standards prescribed by Section 372.002 of the Texas Health and Safety Code and
- each dwelling unit, rental unit or common area must have a water leak audit performed on it and have any leaks repaired (Section 13.506[a]).

The duty and obligation to conduct these two procedures does not apply to an **owner of a manufactured home rental community** who does not own the manufactured homes located in the manufactured home rental community.

Once billing for submetering or allocated water services commences, are there any subsequent requirements for it to continue?

No later than one year after the manager or owner commences billing for submetering or for allocated water services, the manager or owner shall:

- remove all toilets exceeding a maximum flow of 3.5 gallons of water per flush and
- replace them with 1.6 gallon toilets that meet standards prescribed by Section 372.002 of the Texas Health and Safety Code (Section 13.506[b]).

The duty to replace toilets exceeding 1.6 gallons does not apply to an **owner of a manufactured home rental community** who does not own the manufactured homes located in the manufactured home rental community.

Section 372.002 of the Texas Health and Safety Code, mentioned above, is reproduced below.

§ 372.002. Water Saving Performance Standards:

- (a) A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture for use in this state unless:
 - (1) the plumbing fixture meets the water saving performance standards provided by Subsection (b); and
 - (2) the plumbing fixture is listed by the commission under Subsection (c).
- (b) The water saving performance standards for a plumbing fixture are those established by the American National Standards Institute or the

following standards, whichever are more restrictive:

- (1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch when tested according to testing procedures adopted by the commission;
 - (2) for a shower head, maximum flow may not exceed 2.75 gallons of water per minute at a constant pressure over 80 pounds per square inch when tested according to testing procedures adopted by the commission;
 - (3) for a urinal and the associated flush valve, if any, maximum flow may not exceed an average of one gallon of water per flushing when tested according to the hydraulic performance requirements adopted by the commission;
 - (4) for a toilet, maximum flow may not exceed an average of 1.6 gallons of water per flushing when tested according to the hydraulic performance requirements adopted by the commission;
 - (5) for a wall-mounted toilet that employs a flushometer or flush valve, maximum flow may not exceed an average of two gallons of water per flushing or the flow rate established by the American National Standards Institute for ultra-low flush toilets, whichever is lower; and
 - (6) a drinking water fountain must be self-closing.
- (c) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer or importer to meet the water saving performance standards established by Subsection (b). To have a plumbing fixture included on the list, a manufacturer or importer must supply to the commission, in the form prescribed by the commission, the identification and the performance specifications of the plumbing fixture. The commission may test a listed fixture to determine the accuracy of the manufacturer's or importer's certification and shall remove from the list a fixture the commission finds to be inaccurately certified.
 - (d) The commission may assess against a manufacturer or an importer a reasonable fee for an inspection of a product to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter. A fee received by the commission under this subsection shall be deposited in the state treasury to the credit of the water resource management

account and may be used only for the administration of this chapter.

- (e) The commission shall, to the extent appropriate and practical, employ the standards designated American National Standards by the American National Standards Institute in determining or evaluating performance standards or testing procedures under this chapter.
- (f) This section does not apply to:
 - (1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;
 - (2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards provided by this section;
 - (3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date; or
 - (4) a fixture imported only for use at the importer's domicile.

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