



# Finding Safe Haven

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## The Right of Victims of Family Violence to Break a Residential Lease Under Texas Law

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# Requirements for terminating a lease under the new Texas law

- Abuser must be a cotenant or occupant.
- Tenant must have a temporary injunction issued under Subchapter F, Chapter 6 of the Texas Family Code, or a protective order issued under Chapter 85 of the Family Code.
- Tenant must deliver a copy of one of the required orders to the landlord
- Tenant must vacate the dwelling

# What is a cotenant or occupant?

- Cotenant – Not defined by the Texas statute
  - Signatory to the lease?
  - Shares legal responsibility for paying rent? (See definition of “occupant.”)
  - Most likely the same as the definition of tenant under TPC § 92.001(6) – someone authorized by a lease to occupy a dwelling and obligated under the lease to pay rent.
- Occupant
  - § 92.016(a)(2) – “Occupant” means a person who has the landlord’s consent to occupy a dwelling but has no obligation to pay the rent for the dwelling.
  - What does consent mean?
    - Written consent?
    - Oral consent?
    - Implied consent?
    - Authorized on lease?
    - Our position – any form of consent is acceptable

# Who is NOT a cotenant or occupant?

- Someone whose presence in the unit would violate the tenant's lease
- A non-live-in spouse or significant other
- A guest?
  - Unclear if “occupy” includes temporary stays

# What kinds of orders are sufficient to invoke the statute?

- Temporary injunction issued under Subchapter F, Chapter 6, Family Code
  - Texas Family Code § 6.502(a) – “While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties . . . .”
  - Temporary injunction requested by party or court in conjunction with a divorce proceeding
  - Often included automatically in form divorce filings involving family violence
- Protective order issued under Chapter 85, Family Code
  - Permanent, two-year protective order

# What kinds of orders are NOT sufficient to invoke statute?

- Temporary ex parte orders
- Emergency protective orders
- Police reports
- Temporary injunctions OTHER than those granted by a court in conjunction with a filing for the dissolution of marriage under Subchapter F, Chapter 6 of the Texas Family Code

# How should a tenant deliver a copy to the landlord?

- Statute does not specify method
- Statute does not require certified copy
- Mere oral or written notification of the existence of an injunction or protective order is not sufficient

# What does “vacate” mean?

- Presumably the same definition in other parts of the Property Code
- Tenant must completely move out of the dwelling
- Tenant must turn in any keys, keycards, or access devices to the landlord

# When is the termination of the lease effective?

- Once ALL the requirements have been fulfilled
  - Copy of the order given to the landlord AND
  - the tenant has vacated the dwelling
- Statute does not require a specific order – tenant may vacate first and give the copy of the order second, but the termination is not effective until ALL the requirements of the statute are satisfied
- TPC § 92.016(c)

# What happens when a tenant successfully terminates a lease under the statute?

- Tenant has no liability for any rent after the effective date of the termination
- Tenant has no liability for any reletting fees or any other fees for early termination of the lease
- Tenant DOES remain liable for any unpaid rent incurred PRIOR to the effective date of the termination (except in certain cases – see TPC § 92.016(f))
- The landlord may still deduct money for damages, repairs, cleaning, and other legally allowed charges from the tenant's security deposit

# What happens if a landlord does not allow a tenant to terminate the lease?

- A tenant may sue for actual damages, a civil penalty equal to one month's rent plus \$500, and attorney's fees
- Actual damages may include: injuries suffered as a result of not being able to move to a safe destination, costs of alternative housing incurred while landlord refused to terminate existing lease, costs incurred to ensure personal safety as a result of not being able to move

# What constitutes a violation?

- Refusing to terminate the lease once tenant has provided a copy of a required order and vacated the dwelling
- Affirmatively interfering with tenant's attempt to comply with the statute
- Taking adverse action once tenant has satisfied the statute's requirements
  - Filing suit
  - Referring debt to collection agency
  - Reporting debt to credit agency
- Other

# What is the implication of the required lease language in TPC § 92.016(f)?

- Requires leases to include language informing tenants of their statutory right to terminate the lease in situations involving family violence
- If the lease does not contain the language, a landlord may not recover any unpaid rent even if incurred PRIOR to the termination of the lease
- Does NOT mean the tenant may escape liability for unpaid rent in all circumstances if the lease lacks the required language, only if the tenant has otherwise complied with the requirements of the statute

# Implications for public and subsidized housing

- The new provisions of VAWA explicitly preserve any greater rights conferred by state statute or local ordinance
- Tenants in public housing or Section 8 have the right to use this statute
- This statute overrides more stringent requirements for terminating a lease under subsidized housing statutes and regulations, such as a thirty day notice requirement