



## Harvey Response Forum

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## Disclaimer

The information provided in this seminar is general in nature and not intended to be legal advice. For advice regarding specific situations, consult the attorney of your choice. Any opinions expressed by a presenter reflect that individual's views and may not be those of the Texas Apartment Association.



## Obligations to Residents

Even when there isn't a legal obligation, TAA encourages owners to be compassionate and work with residents on issues such as transferring units, partial rent abatements or lease terminations when it is practical to do so.



## Habitability

- > What is an owner's duty to make repairs under the habitability law?
- > How are they impacted when waiting for insurance proceeds or there is a shortage of labor or materials?
- > Sec. 92.051 et. al. of the Property Code



## Terminating Leases for Casualty Loss

- > A lease can be terminated by **either party** if the unit is *as a practical matter totally unusable for residential purposes.*
  - Sec. 92.054(b), Property Code
- > TAA lease par. 26.5

**26.5 Our Right to Terminate.** If we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate this Lease by giving you at least 5 days' written notice. We also have the right to terminate this Lease during the Lease term by giving you at least 30 days' written notice of termination if we are demolishing your apartment or closing it and it will no longer be used for residential purposes for at least 6 months. If the Lease is so terminated, we'll refund prorated rent and all deposits, less lawful deductions. We may also remove personal property if it causes a health or safety hazard.



## Delivering Notice when Terminating Leases

- > What is legally required?
- > What is practical if the resident is not at the property?
- > See TAA Termination Notice Due to Natural Disaster or Catastrophe.
- > Note: There is a variation of the form for TDHCA-administered affordable housing properties.



## Questions Regarding Lease Termination

- > How long must the unit be uninhabitable before the owner or renter can terminate the lease?
- > What do you do if the resident refuses to move out after being given a termination notice?
- > If the unit was not damaged but the resident lost their job or had to move for some other hurricane-related reason, do we have to allow them to terminate their lease?
- > If the lease is terminated, does the entire deposit have to be refunded?



## Removing Personal Property

- > *We may also remove personal property if it causes a health or safety hazard.*
  - Par. 26.5, TAA Lease
- > Document removal of any property.
- > What are some considerations when determining whether to store or dispose of personal property?



## Abandonment

- > The property may also have been abandoned under Par. 41.3 of the lease.

**41.3 Abandonment.** You have **abandoned** the apartment when all of the following have occurred: (A) everyone appears to have moved out in our reasonable judgment; (B) clothes, furniture, and personal belongings have been substantially removed in our reasonable judgment; (C) you've been in default for nonpayment of rent for 5 consecutive days, or water, gas, or electric service for the apartment not connected in our name has been terminated or transferred; **and** (D) you've not responded for 2 days to our notice left on the inside of the main entry door stating that we consider the apartment abandoned. An apartment is also considered abandoned 10 days after the death of a sole resident.



## Transferring Residents

- > There is no obligation to transfer residents to new units if their apartment is not habitable or only partially habitable.
- > Someone cannot be forced to transfer units.
- > If a resident does transfer, the parties should enter into a new lease.

Be aware of Sec. 92.062 of the Property Code.

*...the landlord may not require the tenant to execute a lease for a term longer than the term remaining on the tenant's lease...*

However, the parties can voluntarily agree to enter into a longer lease term.



## Evacuees Who Move in with Existing Residents

- > See the TAA Lease Addendum for Allowing Temporary Increased Occupancy Because of Fire, Natural Disaster or Catastrophe.
- > Local ordinances may limit the number of unrelated adult occupants.
- > Note: Section 92.010 of the Property Code generally limits the maximum number of adult occupants to three times the number of bedrooms.



## Partially Habitable Units

- > *If... the rental premises are partially unusable for residential purposes... the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.*
  - Sec. 92.054(c), Property Code
- > TAA Lease Par. 26.4 Air Conditioning and Other Equipment. ...We'll act with customary diligence to make repairs and reconnections, taking into consideration when casualty-insurance proceeds are received. **Your rent will not abate in whole or in part.**
- > This provision does not prevent an owner from voluntarily abating rent or making other concessions.



## Tips for Rent Abatements

- > The TAA lease generally prohibits rent abatement, but if you agree to abate the rent, make sure you document the agreement in writing.
- > Key elements of a rent abatement agreement
  - Date the abatement begins
  - Date it ends
  - How much is the abatement?
  - Why is the abatement being given?



## Insurance

- > Carefully review all policies.
- > If it is unclear whether you have a valid claim, it is best to file one as soon as practical.
- > Even if you are denied coverage, the information could be helpful in documenting the need for a Small Business Administration (SBA) disaster loan or for tax purposes.
  - The SBA disaster loan differs from other SBA loan underwriting requirements.
- > What should an owner do to bolster an insurance claim?



## Mold & Other Issues Arising from Damage

- > Do you have a mold addendum in place?
- > How much liability an owner faces from the presence of mold and other conditions can be affected by factors such as
  - Did the owner take the problem seriously?
  - Was there a prompt response?
  - Was the problem treated correctly?
  - Was it handled thoroughly?
  - Did the owner comply with any applicable laws and regulations?



## Mold & Other Issues Arising from Damage

For mold treatment, remember that Texas law requires use of a state-licensed remediator and certain protocols if the contamination affects a surface area of 25 contiguous square feet or more.



## Learning from Harvey

- > What responsibility does an owner have to keep residents informed when there is an impending disaster or as the property is recovering after a disaster?
- > What responsibility does an owner have in helping residents evacuate a property, particularly if they are elderly or disabled?



## Government Assistance Programs

- > FEMA
- > City of Houston
- > HUD



## Resources and Questions

- > Hurricane Harvey Disaster Relief Resources on TAA's website:  
[www.taa.org/resources/hurricane-harvey-disaster-relief-resources/](http://www.taa.org/resources/hurricane-harvey-disaster-relief-resources/)
  - Includes a link to each form mentioned during this webinar and much more.
- > Questions after today's webinar?

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## TDHCA-Administered Properties

- > Listing tax credit properties on TDHCA portal
- > Notice requirements
- > Accepting new residents
- > Programs for displaced residents



# Thank you for participating!

- > Please complete the evaluation that will appear on your screen.

