

## 4.0 LANDLORD/TENANT ISSUES

### 4.1 Overview

This chapter focuses on Texas statutory and common law regarding the rights of landlords and tenants with respect to residential leases. Be wary of relying on resource materials that may include general statements of what the law usually is across the nation, as Texas law is quite different from the laws of other states, particularly regarding statutory landlord-tenant law.

### 4.2 Most Common Issues/Questions

- Is a tenant entitled to terminate a lease if the dwelling is completely or partially unusable after a disaster?
- What should a tenant do if a landlord tries to evict the tenant following the disaster?
- Does a tenant have any right to recover against any party, including a landlord or neighbor, because of personal property loss or damage?
- What are the rights of a tenant versus someone staying in a hotel, and how can I tell the difference between a tenant and a hotel guest?
- What are some programs for rental assistance for landlords and tenants, how do landlords and tenants apply, and how do courts handle landlords and tenants in eviction lawsuits who participate in these programs?

### 4.3 Summary of the Law

The landlord-tenant relationship in residential leases is governed almost exclusively by sections 91 and 92 of the Texas Property Code. Issues not covered by the Property Code are covered by the common law. The Property Code thoroughly addresses most situations that can arise between a landlord and tenant, e.g., a landlord's duty to repair; when and under what circumstances a tenant may resort to self-help in getting repairs; when and under what circumstances a tenant or landlord may terminate the lease. Subchapter B of section 92 of the Property Code, Repair or Closing of Leasehold, contains many of the provisions relevant to dealing with a disaster situation.

The Property Code is very lengthy and complex. Callers should be strongly discouraged from taking actions until they thoroughly understand their rights under the Property Code, especially as they relate to withholding rent (which they should never do) and/or terminating the lease. If the provisions of the Property Code, e.g., notice provisions, are not followed precisely, the party not following the provisions (either landlord or tenant) may not be able to use certain rights and remedies and could be held liable for damages, attorney's fees, and civil penalties.

It is also important to note that in their leases the parties may contract away certain rights or otherwise modify the landlord-tenant relationship. Of course, there are many tenant rights in the Property Code that the parties cannot waive. For example, the duty to repair under subchapter B of section 92 of the Property Code can only be waived in very limited circumstances. Tex. Prop. Code § 92.006(d)–(f). Other examples of nonwaivable rights include tenant rights regarding security deposits, security devices, landlord's disclosure of ownership and management, or utility shutoffs, Tex. Prop. Code § 92.006(a), tenant rights to a jury trial in an action brought under the relevant provision of the Property Code, Tex. Prop. Code § 92.006(h), tenant rights to summon police, Tex. Prop. Code § 92.015(b)(1), tenant rights

regarding the right to vacate following family violence, sexual assault, or stalking, Tex. Prop. Code §§ 92.016(g), 92.0161(h), tenant rights regarding illegal late fees, Tex. Prop. Code § 92.019(d), and rights regarding rental applications, Tex. Prop. Code § 92.355. Nevertheless, a good starting point in answering a landlord-tenant question is the lease between the parties.

Commercial leases are governed primarily by the common law (although section 93 of the Property Code addresses some aspects of a commercial tenancy, e.g., interruption of utilities, removal of property, and exclusion of the tenant). Parties to commercial leases are given wide latitude in crafting their agreements in any way so long as the terms violate no law or important public policy. Therefore, the lease document will almost exclusively govern the relationship. If a particular situation is not expressly contemplated or addressed by the lease, then the relevant case law and rules of contract construction will apply.

Self-help evictions of tenants are illegal in Texas. A landlord must go through the eviction court process that starts in justice court. Evictions are covered by section 24 of the Texas Property Code. Evictions begin with a notice, followed by a lawsuit in justice court, a hearing, an appeal to county court if necessary, and finally, a writ of possession (order to remove the tenant) if the tenant has not moved out. (See [Q. 4-13](#) below). Of course, tenants can always choose to permanently leave the unit in response to a notice to vacate or threat of eviction from a landlord. There are also limited circumstances under which a landlord may change the locks to a unit for necessary repairs or when a tenant is behind on rent (and the lease allows it), but the landlord must always provide a new key or access to the property and must make sure to follow strict notice requirements. Tex. Prop. Code § 92.0081.

#### **A. *Appeals from Eviction for Nonpayment of Rent***

See Tex. R. Civ. P. 510.9; Tex. Prop. Code §§ 24.00511, 24.00512, 24.0052, 24.0053, 24.0054. To appeal an eviction judgment in the justice court, the tenant must, within five calendar days (including weekends and holidays) of the court's judgment, either (1) file an appeal bond with a good surety in the amount set by the judge, (2) make a cash deposit with the justice court for the amount of the appeal bond, or (3) file with the court a statement that the tenant is financially unable to furnish the appeal bond or pay the cash deposit. In addition, if the tenant is appealing by filing either an appeal bond or a statement of inability to afford payment of court costs, and a reason for the eviction is nonpayment of rent, and the tenant wants to stay in possession during the appeal, then the tenant must pay one rental period's rent into the justice court registry within five days of filing the appeal bond or the statement. If the tenant fails to timely make this payment, the landlord may ask the justice court for a writ of possession and have the tenant removed from the property. Even if that happens, the appeal continues and will still be sent up to the county court.

Also, if the tenant files a statement of inability to afford payment of court costs as an appeal in a nonpayment of rent case, the tenant must pay future rent into the county court at law registry each rental period within five days of its due date under the lease. If the tenant fails to pay this rent payment on time, the landlord may file a sworn motion with the county court and set a hearing to ask the court to issue a writ of possession and have the tenant removed from the residence.

#### **B. *Eviction from Temporary Housing Such as Hotels***

Individuals living in temporary housing such as a hotel may be considered guests rather than tenants and may be subject to self-help methods such as lock changes or peaceable removal by the hotel owner without a court proceeding. In such cases, the hotel owner is not required to file an eviction case and

obtain a writ of possession. If such a guest refuses to leave, the police may decide to handle the matter as a criminal trespass.

However, sometimes people have longer-term stays in hotels, so whether an individual is a tenant (requiring an eviction lawsuit) or a guest (not requiring an eviction lawsuit) depends on the facts, regardless of what it is called in a lease or contract. There is no bright line, but there are factors that may indicate whether an individual is a tenant or a guest.

The chart below illustrates some helpful factors to consider in determining what type of relationship exists. There is no magic number of answers that render a relationship a landlord/tenant relationship.

<b>Question</b>	<b>More likely a guest</b>	<b>More likely a tenant</b>
How long has the occupant stayed there?	A few days or weeks	Longer than a month
What are the terms of the contract signed?	Standard hotel occupancy agreement	Appears more like a residential lease, e.g., restrictions on guests, etc.
How often does the occupant pay to stay there?	Nightly	Monthly
Does the occupant receive mail at that address?	No	Yes
Does the motel/hotel provide cleaning service and towels?	Yes	No
Does the occupant have exclusive control over the unit?	No; cleaning staff routinely enter.	Yes; no one else regularly enters the unit.

The answers to these questions do not automatically determine whether an individual is a tenant or guest. But the more factors weigh in favor of the individual being a tenant, the likelier it is that a judge would find that the occupant is entitled to the tenant protections, including the requirement that a landlord not lock the tenant out, but instead go through the formal eviction process. (Eviction process described in [Q. 4-13](#) below.)

**C. *Tenant’s Remedies Regarding Revocation of Certificate of Occupancy***

Tex. Prop. Code § 92.023 states that a landlord who has the certificate of occupancy revoked for his leased premises is liable to a tenant who is not in default for (1) the full amount of tenant’s security deposit; (2) a pro rata portion of any rental payment paid in advance; (3) tenant’s actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and (4) court costs and attorney’s fees from any related action against the landlord.

**D. *Repair Orders in Justice Courts***

Tex. Prop. Code § 92.0563 and Tex. R. Civ. P. 509.1-509.9 set forth procedures for suits filed in justice court by tenants requesting relief regarding the repair of residential rental property. Justice courts can order repairs to leased premises, order a reduction in the tenant’s rent, award a civil penalty of one month’s rent plus \$500, and assess actual damages to the tenant. The total judgment can be up to \$10,000, excluding interest and court costs but including attorney’s fees. Although the jurisdictional limit of justice courts increased to \$20,000 on September 1, 2020, tenants are still limited by statute and rule

in justice court to \$10,000 for a repair and remedy cause of action. Tex. R. Civ. P. 509.6(a); Tex. Prop. Code § 92.0563(e).

**E. *Tenant’s Right of Restoration after Unlawful Utility Disconnection***

With the exception of electricity in certain circumstances (see below), residential landlords may not interrupt utility service for nonpayment of rent, and Tex. Prop. Code § 92.0091 creates an expedited procedure for the justice court to issue an ex parte writ of restoration, ordering the utilities immediately reconnected. A landlord’s failure to comply is grounds for contempt (Tex. Gov’t Code § 21.002), punishable by a fine and confinement in county jail. The landlord is entitled to request a hearing within seven days after the service of the writ.

In certain circumstances a landlord may interrupt electric utilities due to the nonpayment of electric bills by interrupting electrical service for submetered (meters in individual tenant spaces) or allocated nonsubmetered spaces. The law includes a complex process of notice, protections, and exceptions. See Tex. Prop. Code § 92.008.

**F. *Landlord’s Duty to Name all Occupants in an Eviction Suit***

If an eviction is based on a written lease, then a landlord must sue, by name, all tenants who are obligated under the lease. If the landlord does not name each person who is obligated under the lease, those not named cannot be evicted and a writ of possession cannot be issued against that person. Tex. R. Civ. Proc. 510.3(c).

**4.4 Landlord Tenant Law and Issues During COVID-19**

**A. *Rent Relief***

While many pandemic-era rent-relief programs have been depleted, there are still some local rent assistance programs that are administered by agencies, cities, or municipalities. Tenants can call 211 or visit the website [211 Texas](#) for information about rental assistance. Partial lists of programs are available here:

1. Texas Law Help [Local rental assistance](#)
2. [Texas Emergency Rental Assistance Program contact information](#)

The Texas Rent Relief program, which was administered by the Texas Department of Housing and Community Affairs (TDHCA), provided assistance for rent and late fees, utilities, and future rent for tenants. As of early 2022, it was no longer taking applications, but tenants and landlords can still check the status of existing applications. Texas Rent Relief may take new applications if more funding becomes available. Information about the Texas Rent Relief is available at [texasrentrelief.com](https://texasrentrelief.com) or 1-833-9TX-RENT (1-833-989-7368).

## **B. Texas Eviction Diversion Program (TEDP)**

The Texas Eviction Diversion Program was established to respond to nonpayment of rent eviction cases that have been filed in court. The Supreme Court of Texas established the Texas Eviction Diversion Program (TEDP) through the Twenty-Seventh Emergency Order Regarding the COVID-19 State of Disaster, renewed through subsequent emergency orders. The program seeks to reduce the number of evictions by enabling landlords and tenants to agree upon a resolution to non-payment of rent issues. The current Order, the [Fifty-Third Emergency Order Regarding the COVID-19 State of Disaster](#), is set to expire on September 1, 2022.

When a landlord files an eviction case, the citation (notice that a tenant has been sued for eviction) must contain a statutorily prescribed statement in English and Spanish informing the tenant of the availability of the TEDP. Emergency Order 53, para. 3.

On the date listed in the citation for the trial of the eviction case, the judge must, if rental assistance is available, discuss rental assistance and this program with the landlord and tenant and ask whether the landlord and tenant are interested in the program. If both the landlord and tenant indicate they are interested in the program, or if the landlord has a pending application for rental assistance, the judge is required to delay the proceedings for 60 days, make the records and information on the eviction case confidential, and inform the landlord and tenant about the reinstatement procedure discussed below. *Id.* So, if the tenant advises the court of the landlord's participation in a rent relief program, the judge should abate the case for 60 days. Once the landlord and tenant indicate that they are interested in the program, one or both should then apply for rental assistance (see Rent Relief above). A landlord can request an extension of the delay in 60-day increments. Emergency Order 53, para. 4.

Landlords and tenants can also request to enter the Eviction Diversion Program at any time after the trial as long as the writ of possession has not issued. If this request is made, the judge must set aside any judgment and follow the procedures detailed above. *Id.*, para. 8.

At any time during the 60-day delay period, the landlord can file a motion to reinstate the eviction case with the judge. The motion must be served on the tenant. The judge is then required to reinstate the eviction case, set it for trial within 21 days, inform the parties how to proceed, and make the records and information non-confidential. *Id.*, para. 5.

If the landlord does not file a motion to reinstate the eviction case during the delay period, the judge is required to dismiss the case with prejudice. All records and information will remain confidential. *Id.*, para. 6.

Although the Texas Rent Relief program is depleted at the time of the writing of this manual, certain eviction defenses may still apply to some tenants. A landlord who has received money through the Texas Rent Relief program should not seek to reinstate an eviction case that was filed on the basis of the nonpayment for which rent relief was then received. If a tenant is evicted or otherwise involuntarily removed from the residence after the landlord receives rent assistance through the Texas Rent Relief program, the landlord must repay the assistance to the Texas Department of Housing and Community Affairs (TDHCA) within 10 calendar days. See [Landlord Certification, paragraph 15](#).

Emergency Order 53 also states that the judge “must allow, if available, representatives from legal aid organizations or volunteer legal services to be present—in person or remotely—to provide information, advice, intake, referral, or other assistance for eligible litigants”. *Id.*, para. 3.

**C. Lockouts for Nonpayment during COVID-19**

A landlord can only prevent a tenant from entering the property for nonpayment if a written lease allows it and the landlord gives the tenant specific notices. But, even then, the landlord must ALWAYS give the tenant a key and access to the property upon request, even if the tenant has not paid the rent. If a landlord refuses to grant access or give the tenant a key, the tenant can file a request with a justice court for the issuance of a Writ of Re-Entry, which orders the landlord to allow the tenant back into the property. The Writ of Re-Entry is served on the landlord by a sheriff or constable, and they may use reasonable force to enforce the Writ. See Tex. Prop. Code § 92.009.

**D. CARES Act Protections for Tenants**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided renter protections that have now mostly expired. However, if the tenant lives at a “covered property” and an eviction case is based on nonpayment, the landlord is still required to give a 30-day notice to vacate. (There is also an argument that the 30-day notice requirement applies to cases that are not for nonpayment, although advocates have had mixed success with that.) Full text available at [Congress.gov](https://www.congress.gov). This renter protection is at § 4024(c) of the law.

**E. What is a “covered property” under the CARES Act?**

“Covered properties” include properties that have federally-backed mortgages. These include mortgages backed by the Department of Housing and Urban Development (HUD), Department of Veterans Affairs (VA), Department of Agriculture (USDA), and the government-sponsored enterprises known as Fannie Mae and Freddie Mac.

Covered properties also include properties that participate in the housing programs below. The largest are public housing, Housing Choice Vouchers, Project-Based Section 8 housing, and the Low-Income Housing Tax Credit program.

1. Public housing
2. Section 8 Housing Choice Voucher program
3. Section 8 project-based housing
4. Low-Income Housing Tax Credit (LIHTC) program
5. Section 202 housing for the elderly
6. Section 811 housing for people with disabilities
7. Section 236 multifamily rental housing
8. Section 221(d)(3) Below Market Interest Rate (BMIR) housing
9. HOME
10. Housing Opportunities for Persons with AIDS (HOPWA)
11. McKinney-Vento Act homelessness programs
12. Section 515 Rural Rental Housing
13. Sections 514 and 516 Farm Labor Housing
14. Section 533 Housing Preservation Grants

15. Section 538 multifamily rental housing, and
16. USDA Rural Housing Choice Voucher program.

**F. *How Does a Tenant Know Whether They Live in a Covered Property?***

Check the lease documents, which should state if the property participates in one of the housing programs in the list above. Also, the landlord may know if their mortgages are backed by a federal agency (HUD, VA, USDA), Fannie Mae, or Freddie Mac. You can also search the following sources:

1. [Texas RioGrande Legal Aid map for CARES Act covered properties in Texas](#)
2. The National Low Income Housing Coalition's [database of covered multifamily properties](#) (Note: This database does not cover single-family properties with 1-4 units and does not reflect all multifamily properties with Fannie Mae and Freddie Mac mortgages)
3. Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency (Note: These tools do not cover single-family properties with 1-4 units)
4. [Fannie Mae](#)
5. [Freddie Mac](#)
6. [The National Housing Preservation Database](#) of multifamily properties with certain federal subsidies (Note: Not exhaustive)

**G. *Denial of Housing Due to COVID-19 Illness or Exposure***

The Fair Housing Act prohibits discrimination based on disabilities. A housing provider may not inquire about a person's actual or perceived disability, which could include infection or exposure to COVID-19. A landlord cannot deny housing, ask a tenant to move out or otherwise treat that person differently because they may have a disability, which could include COVID-19, or for exhibiting symptoms associated with the illness (e.g., a tenant overhears another tenant coughing in their unit). Additionally, tenants cannot be evicted because they sought emergency assistance due to a reasonable belief that someone needed help (e.g., calling an ambulance). Tex. Prop. Code 92.015.

**H. *Maintenance of Property during COVID-19***

Property owners are responsible for maintaining their property in accordance with the requirements of the Texas Property Code, which requires that owners repair any conditions that materially affect the physical health or safety of tenants, or the availability of hot water in the unit. Habitability standards also include health and safety standards that may be imposed by a local municipality or county. Before entering a tenant's unit, a property owner may ask the tenant a series of questions about their health, travel, and work that are relevant to possible COVID-19 exposure, but should advise the tenant that answering is optional. Tenants are not required to provide personal health information to landlords or to answer health or screening questions; however, owners may choose to take additional safety measures based on tenant responses.

**I. *Reasonable Accommodations Due to COVID-19***

Falling ill to the symptoms of COVID-19 or being exposed to the virus and quarantined could be recognized as a disability for reasonable accommodation purposes under the Fair Housing Act. For example, if a tenant become ill with COVID-19 and needs help caring for herself, and her resulting health conditions fall

under the definition of a disability for the purpose of the Fair Housing Act, she may be able to terminate her lease without penalty. The tenant should notify the landlord in writing, text, or email that she is asking for an accommodation for a disability.

**J. Homeless Access to Services during COVID-19**

[The Texas Homeless Network](#) provides links to free and reduced cost services like medical care, food and housing, and a statewide COVID-19 resource page to assist homeless service providers' response to the pandemic with links from federal partners at HUD and local agencies.

**K. Public Utility Commission Program during COVID-19**

Electric customers unable to pay their bill due to effects of COVID-19 (i.e. loss of wages) should contact the Low-Income List Administrator (LILA) at the Public Utility Commission (PUC) to enroll in a new relief program adopted by the PUC. Customers can apply by calling 866-454-8387. They will then be compared with an electric company's customer list to determine eligibility. If deemed eligible, a selective moratorium on disconnections will be placed on the customer's account. Main PUC phone: 512/936-7000 Assistance Hotlines: 888/782-8477 or 512/936-7120.

**L. COVID-19 Information and Assistance Websites**

1. [Disability Rights Texas](#)
2. [National Low Income Housing Coalition](#)
3. [211 Texas - Rental, Utility Assistance](#), (or call 211 locally)
4. [Texas Department of Housing and Community Affairs](#)
5. [Texas Homeless Network](#)
6. [Texas Law Help](#)

**4.5 Assistance Numbers**

- American Red Cross Disaster Services Relief Hotline 1-800-RED-CROSS (1-800-733-2767)
- Better Business Bureau 713-868-9500
- FEMA 1-800-621-3362
- State Bar of Texas Legal Disaster Hotline 1-800-504-7030
- Texas Department of Insurance Consumer Helpline 1-800-252-3439
- Texas Attorney General 1-800-252-8011
- Legal Aid:
  - Legal Aid of NorthWest Texas 855-548-8457
  - Lone Star Legal Aid 866-659-0666
  - Texas RioGrande Legal Aid 956-996-TRLA (8752)

## 4.6 FAQs – General

### **Q. 4-1** *What are my rights if I want to terminate my lease at my dwelling, following a disaster?*

Section 92.054 of the Texas Property Code provides that if the rental premises are as a practical matter totally unusable for residential purposes following a disaster and if the loss is not caused by the negligence or fault of the tenant, a member of the tenant’s family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other at any time before repairs are completed. If the lease is terminated under this section of the Property Code, the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law. Tex. Prop. Code § 92.054(b).

### **Q. 4-2** *If the premises are totally unusable because of the disaster, do I have to permanently move out even though I want to stay?*

Most likely yes. If the premises are unfit for human habitation, there is a likelihood that a government agency, e.g., the local building department, will declare the premises off limits for residential use. Also, the landlord and tenant can terminate a lease if the rental premises are totally unusable as a result of a casualty loss (see [Q. 4-1](#) above). Additionally, Tex. Prop. Code § 92.055 allows the landlord to “close the rental premises” by giving written notice by certified mail, return receipt requested, to the tenant, the local health officer, and the local building inspector stating that the landlord is terminating the tenancy as soon as legally possible. (This provision of the Property Code is less frequently used in natural disasters because it is a more cumbersome process, and the landlord cannot re-rent the unit within six months. Also, it requires that the lease contains a provision allowing the landlord to do this, thus making it “legally possible.”) On proper notice, the lease would be terminated. It is unclear exactly how much time a tenant has to move out once proper notice is given. However, it is most likely to be as soon as is reasonably practical. Of course, if it is only the landlord terminating the lease (and not a government official condemning the unit), and the tenant has not moved out, the landlord may not use self-help to remove the tenant. The landlord must still go through the judicial eviction process to remove the tenant from the unit. (See [Q. 4-13](#) below.)

The relief available to a tenant in these situations will depend on how the landlord has terminated the tenant’s lease and whether the tenant has given the landlord a written request for repairs. If the landlord uses Section 92.054 (see [Q. 4-1](#) above) to terminate the tenant’s lease, then the tenant is entitled to pro rata refund of rent from date the tenant moves out and refund of security deposit. If the landlord closes the premises per Section 92.055, and the tenant has given a repair notice and moves out before the end of the lease term, the tenant is entitled to actual and reasonable moving expenses, a refund of the pro rata portion of rent, return of the security deposit, as well as a judgment of actual damages, civil penalties, court costs, and attorney’s fees. Tex. Prop. Code § 92.055(c), (d). If the landlord closes the premises per Section 92.055, and the tenant has not given a repair notice, the tenant cannot get the remedies in Section 92.0055 (c) or (d).

In short, if the tenant has not given a notice of termination pursuant to Section 92.054 ([Q. 4-1](#) above), has not received a termination notice from the landlord, and is not certain of the status of the unit, it is important to immediately send the landlord a proper notice of repair (as described in answer to [Q. 4-4](#) below). That will not only set up possible repair remedies pursuant Section 92.0563 of the Property Code

(described in answer to [Q. 4-4](#) below), but may also give the tenant additional remedies if the landlord chooses to close the premises under section 92.055 of the Property Code.

**Q. 4-3** *If the dwelling is partially unusable because of the disaster and if I don't want to permanently move out, can my rent be partially abated (temporarily reduced)?*

Maybe. The tenant can only get the reduction by a judgment from a county or district court, or by agreement with the landlord. Tex. Prop. Code § 92.054(c) provides that if the rental premises are partially unusable for residential purposes and if the loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, 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*. However, a landlord may include in a written lease a provision prohibiting a tenant from seeking a reduction of rent in these circumstances, so many leases waive a tenant's right to get this rent reduction. Of course, if the tenant has the right to a rent reduction in these circumstances (assuming the lease has not waived that right), the tenant should attempt to negotiate a written agreement with the landlord, since Tex. Prop. Code § 92.005 allows the tenant to recover attorney's fees if the tenant prevails in a lawsuit for such a reduction.

**Q. 4-4** *My current unit is uninhabitable due to a disaster, but my landlord has another available. Is my landlord required to make the other unit available? Can landlord make me sign another lease contract extending the length of my lease in order to move to the new unit?*

No. Neither the landlord nor the tenant has any obligation with respect to other available housing unless expressly set forth in the lease. However, according to Tex. Prop. Code § 92.062, if—due to a disaster—you move to another unit owned by your landlord, your landlord cannot make you sign a new lease extending your lease term past the original end date.

**Q. 4-5** *Do I have to keep paying rent to my landlord while I am not living at my house/apartment?*

Yes, unless and until the lease is terminated (by the tenant or landlord) or the tenant has an agreement with the landlord to do otherwise (in writing, to protect the parties). Unless the rental premises are as a practical matter totally unusable for residential purposes (see [Q. 4-1](#) above), a tenant will generally not be excused from paying rent while not occupying the premises. However, the tenant may be entitled to a rent reduction. (See [Q. 4-3](#) above.) This is true even in a case where authorities have "asked" residents not to return to an area because of the effects of a recent disaster. (This may change, however, in the event the authorities permanently forbid residents from returning to the area.)

**Q. 4-6** *What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?*

Temporary government rent assistance may be available from the Federal Emergency Management Agency (FEMA) or other governmental agencies. Disaster Unemployment Assistance (DUA) may be available to you if you do not qualify for standard Unemployment Insurance (UI), are unemployed as a direct result of the disaster, are able and available to work, file an application for DUA within thirty days of the date of announcement of the availability of DUA, and have not refused employment in a suitable position.

If you live in public or federally subsidized housing or receive Section 8 assistance, you are entitled, in most circumstances, to have your rent reduced when you suffer a loss in income. You must notify your landlord or the housing authority.

If your lease is terminated by your landlord because the premises are *totally* unusable, you will need to move out to avoid an eviction case in justice court—regardless of whether you can or cannot pay the rent. Of course, if you do not leave, the landlord cannot use self-help to remove you—the landlord will have to file an eviction case against you in court and seek an order to remove you. If the premises are only *partially* unusable and if you don't pay the rent, you may need to move out—unless you and your landlord agree otherwise. If the landlord is entitled to evict you and you do not move after the landlord has given you notice to vacate, you can be evicted only through a justice of the peace court eviction lawsuit.

**Q. 4-7      *How could I pay rent if I wanted to during a disaster?***

It is recommended that you contact your landlord to determine what methods of payment may be viable. Should you be unable to successfully contact your landlord, sending a personal check via certified mail to the address set forth in the lease agreement or the last provided address, if different, is advisable. Depending on the landlord, it may also have a website and have payment or other information related to the disaster on such site.

**Q. 4-8      *Can my landlord rent my home/apartment to someone else while I am gone during a disaster?***

No. The landlord must honor the lease unless the dwelling is *totally* unusable, or the lease contains an express provision allowing the landlord to terminate in event of a fire, flood, or similar casualty. If the landlord wants you out in order to move someone else in, then the premises are obviously not “totally unusable” and the landlord cannot terminate the lease. If the landlord unlawfully locks you out, you should contact the justice of the peace about a writ of re-entry. This is an expedited process through which you can get back into your home the same day.

**Q. 4-9      *How do I contact my landlord during a disaster?***

It is advisable to try every means of communication available, including, but not limited to: telephone calls to every available phone number, email correspondence, and letters sent via mail to the address set forth in the lease agreement or last provided address, if different. Depending on the landlord, it may also have a website and have contact or other information related to the disaster on such site. The tenant should document all efforts and attempts to contact her landlord.

**Q. 4-10     *My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?***

If, following the storm, the dwelling is as a practical matter totally unusable for residential purposes, the landlord may terminate the lease by giving written notice to the tenant at any time before repairs to the dwelling are completed. If the dwelling is unusable and the lease is so terminated, the landlord may file an eviction case in justice court if the tenant does not vacate. (See also [Q. 4-1](#), [4-2](#) above.) If the landlord terminates the lease for an unusable dwelling, the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and a refund of any security deposit otherwise required by law. Tex. Prop.

Code § 92.054(b). However, if the tenant disagrees that the dwelling is totally unusable for residential purposes and does not leave, the landlord cannot remove the tenant from the unit and must instead file an eviction case in justice court. Once in court, the tenant can raise as a defense that the dwelling is not totally unusable and should not have been subject to a lease termination. Of course, the tenant should continue to pay rent on the unit in the meantime, since nonpayment could be grounds for the landlord to evict the tenant.

**Q. 4-11** *My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?*

No. The landlord must continue to honor the terms of the lease. The landlord may not change the locks to prevent the tenant from entering the dwelling for such a reason. Tex. Prop. Code § 92.0081. Also, while there are other reasons why a landlord might be able to change your locks, your landlord must ALWAYS give you a key upon request. If your landlord illegally locks you out and refuses to give you a key, you can sue in justice court for an immediate order (“writ of re-entry”) allowing you back in your residence. Tex. Prop. Code § 92.009.

**Q.4-12** *If a city or county revokes a landlord's certificate of occupancy because of the landlord's failure to maintain the residence, for example after a disaster, what are a tenant's rights?*

If a city or county revokes a landlord's certificate of occupancy for the landlord's failure to maintain the residence, the landlord is liable to a tenant not in default under the lease (e.g., doesn't owe rent, etc.) for the following:

1. the full amount of the tenant's security deposit;
2. the pro rata portion of any rental payment the tenant has paid in advance;
3. the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
4. court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

Tex. Prop. Code § 92.023.

**Q. 4-13** *What should I do if I am served with an eviction lawsuit?*

A landlord cannot use self-help to remove a tenant from your apartment, nor can the landlord use the police or law enforcement to assist in the tenant's removal without a final eviction order (writ of possession) issued by a judge. Even if the landlord has properly terminated a lease because of a natural disaster, the landlord cannot remove a tenant without going to court.

To evict a tenant, the landlord must file an eviction lawsuit in justice court in the precinct where the property is located. Then the eviction lawsuit is served on the tenant, which means that a citation and petition for eviction citation will be delivered to the tenant. If the tenant cannot be found for service, then the judge may authorize another means of service of the lawsuit, including slipping it under the door, taping it to the front door, and mailing it. If the tenant is served with an eviction lawsuit, the tenant should carefully read the citation and look for deadlines, including the trial date in court. If the tenant ignores the

eviction lawsuit, she will not know of the trial date, and she will likely lose the case by default. If you want to find out if an eviction case has been filed against you, you should call the justice court in the precinct where the property is located. If you do not call the correct court, the clerk will often be able to direct you to the court where the property is located.

At the trial, the tenant will have the opportunity to tell the judge her side of the story. The tenant can tell the judge about any defenses to eviction she might have, for example: the property is still livable; landlord did not properly terminate the lease; landlord did not give a notice to vacate after terminating the lease; or the landlord is retaliating against the tenant for asking for repairs. A judge can order the tenant's eviction for violating the terms of her lease (e.g., not paying rent) or after the landlord properly terminated the lease and gave a subsequent notice to vacate. If the tenant lives in public housing, federally subsidized housing, or a tax credit property, the landlord must have good cause (like serious violations of your lease) to terminate or not renew the tenant's lease, and there may be other rights such tenants may have, such as access to a grievance procedure.

***Q. 4-14 How can I recover my personal property from the leased premises?***

It depends. If FEMA and federal security officials are in control of when and how evacuees are allowed to return to their homes, you may have to wait to return. If there are no such limitations on your return, you can go and recover your personal property from the leased premises.

Between evacuation and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (1) knows anything about the condition of the property and (2) has been able to do anything to secure the property.

**4.7 FAQs – Can I Hold the Landlord or Previous Homeowner Responsible for Fraud or Negligence?**

***Q. 4-15 May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?***

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injury or property damage. However, the Texas Property Code does not prevent claims made under existing common law and other statutory law, including against the landlord for injuries or property damage resulting from the landlord's negligence. See Tex. Prop. Code § 92.061. The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster. Negligence occurs when a person fails to take reasonable precautions and that failure causes damage.

***Q. 4-16 I have suffered personal injuries, or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?***

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages.

If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. However, failure to disclose the possibility of flooding may, under certain circumstances, support a lawsuit against a landlord or seller who knew of past flooding or knew of the possibility of flooding. Active concealment of known past flooding (for example, painting over flood water marks on walls) may also be the basis for tenant recovery. *See* 37 Am. Jur. 2d, *Fraud and Deceit*, 144–146.

For leases entered into or renewed on or after January 1, 2022, if a residence is located in a 100-year floodplain and does not have an elevation above the floodplain level, the landlord must give the tenant a written notice about this at or before the signing of the lease. Also, a landlord who knows of flooding damages to a residence during a five-year period before the lease must give a tenant a written notice informing them that they are aware of the flooding. These notices have specific statutory language and must be included in a separate written document given to the tenant at or before the signing of the lease. If the landlord violates this law and the tenant suffers a substantial loss or damage to their personal property as a result of flooding, the tenant may terminate the lease with a 30-day notice. Tex. Prop. Code § 92.0135 (effective January 1, 2022).

***Q. 4-17 Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?***

No. As a general rule, the tenant or buyer cannot recover from the landlord or previous owner a loss or damage from flooding if the landlord or previous owner knew nothing about past flooding or the possibility of flooding, and did not tell the tenant or buyer that the property was not subject to flooding.

**4.8 FAQs – Am I Covered by Insurance?**

***Q. 4-18 All of my personal belongings were destroyed at the place I rent. What help can I get from my insurance company?***

If you had renter's insurance or homeowner's contents insurance at the time of the storm, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees that there is coverage, you can ask for advance payment to cover a part of your loss.

Emergency assistance may be available from local Volunteer Agencies (i.e., Red Cross, Salvation Army, United Way).

***Q. 4-19 What should I do if I do not have insurance on my personal belongings?***

If your losses are not covered by insurance, you may be able to receive money from FEMA for "Other than Housing Needs." "Other than Housing Needs" assistance is available for necessary expenses and serious needs caused by the disaster. You may also wish to contact the Red Cross, which may be able to help you.

**Q. 4-20** *If my personal belongings are lost or damaged as a result of the hurricane, flood, or other disaster, may I recover damages from my landlord under the landlord's hazard insurance policy?*

No. The landlord has no "insurable interest" in the tenant's property, and therefore, the landlord's hazard insurance cannot (and does not) insure the tenant's personal property.

However, if the damage or loss of the tenant's property is due in whole or in part to the landlord's negligence, the tenant may be able to sue the landlord and the loss may be covered by the landlord's liability insurance carrier. Negligence occurs when a person fails to take reasonable precautions and that failure causes damage.

**Q. 4-21** *Is flood damage to my home covered under my insurance policy?*

Your homeowner's insurance policy (sometimes called a "casualty insurance policy," "hazard insurance policy," or "fire and extended coverage policy") normally does not cover flood damage. The policy may cover water damage inside the home from direct or blowing rainfall, but it normally does not cover damage from surface water or rising water. Windstorm insurance normally will be limited to greater-than-normal wind conditions, such as from a disaster. You should carefully read your policy, talk to your insurance agent, and consult an attorney if you have questions.

Flood insurance may be purchased from the federal government under the [National Flood Insurance Program \(NFIP\)](#). You can buy policies from any state-licensed local agent if your community is participating in the NFIP. There is usually a thirty-day grace period after purchasing flood coverage until it goes into effect.

**Q. 4-22** *Does my automobile insurance cover the damage to my car resulting from the disaster?*

Normally, disaster damage to an owner's vehicle will be covered under the owner's comprehensive auto coverage, although specific language in the policy and any express policy exclusions will control.

**Q. 4-23** *May I recover damages against my neighbor whose property damaged my property during the disaster?*

The general rule is that a person is not liable for injuries or damages caused by a natural disaster or "Act of God" where there is no fault of negligence on the part of the owner whose property caused damage to others during the disaster. Therefore, your neighbor is liable only when he or she was negligent and such negligence was a cause of the damage. See 1 Am. Jur. 2d, *Act of God*, 11, 15; 57 Am. Jur. 2d, *Negligence*, 669. Negligence occurs when a person fails to take reasonable precautions and that failure causes damage.

**Q. 4-24** *What can I do with someone else's property, which the disaster carried onto my land?*

When personal property is carried away by flood, wind or explosion onto the land of another, such personal property still belongs to the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the owner of the personal property enter, or if the landowner appropriates

the property for the landowner's own use, the owner of the personal property can sue the landowner for the value of the property. The landowner is an "involuntary bailee" and has the right to possession of the property against all others, except the true owner. The landowner may, if necessary, move the property to use the land, provided it is done in a reasonable manner. The landowner may not damage the property either intentionally or through gross negligence. See 1 Am. Jur. 2d, *Abandoned, Lost, Etc., Property*, 24–27.

**Q. 4-25** *May I sue the local, state, or federal government for damages caused by the disaster?*

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. However, under the doctrine of "sovereign immunity," governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of sovereign immunity normally applies to "governmental functions" such as crime prevention, flood control, firefighting, preservation of health, etc.

**Q. 4-26** *What about my commercial lease?*

In commercial leases, the Texas common law has not been pre-empted by statute, but the answer to this question is commonly addressed by the terms of the lease. Therefore, you must review the provisions, preferably with an attorney if possible, to determine the scope of your rights and obligations.

**Q. 4-27** *Must I continue paying rent for my commercial lease space (office, retail, mini-storage, etc.) even though it has been rendered totally or partially unusable by the disaster?*

The particular provisions of a commercial lease will control whether rent must be paid following a complete or partial destruction of the space. If the terms of the lease do not address casualty, then for a lease of space such as office space, retail space or ministorage space (but not for a lease of land), if the storm rendered the space unusable for its intended purpose, the lease is terminated and the tenant is relieved of its obligation to pay rent following the destruction. *Norman v. Stark Grain & Elevator Co.*, 237 S.W. 963, 966 (Tex. Civ. App.—Dallas 1922, writ ref'd).