

Property Management Webinar Series

Evictions & Foreclosures

Instructed by

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I. Eviction Process

Steps:

- 1) Notice to vacate
- 2) Filing suit (eviction complaint in JP court)
- 3) Going to court
- 4) Writ of possession



I. Eviction Process

■ What is an eviction?

- Eviction – a legal means to remove a tenant from the property when they no longer have a right to possess the property

I. Eviction Process

- Forcible entry and detainer v. forcible detainer
 - Forcible entry and detainer – the initial entry was illegal and refusal to surrender possession of property on demand
TPC § 24.001
 - Forcible detainer – refusal to surrender possession of property on demand
TPC § 24.002

I. Eviction Process

■ What is the first step in the eviction process?

- **Step 1:**



- **Notice to Vacate** – The landlord must make a written demand for possession.



TEXAS ASSOCIATION OF REALTORS®

NOTICE TERMINATING RIGHT OF OCCUPANCY

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To: _____ (Tenant)

From: _____ (Landlord)

Re: Lease concerning the Property at _____

A. Tenant failed to comply with the above-referenced lease.

B. Landlord terminates Tenant's right to occupy the Property:

(1) effective _____ days after the date this notice is delivered to the Property by certified mail, return receipt requested.

(2) effective _____.*

C. Landlord demands that Tenant vacate the Property not later than the date stated in Paragraph B.

I. Eviction Process

■ How many days notice is a landlord required to provide?

- If the occupant is a tenant under a **written lease or oral rental agreement**, the landlord must give at least a 3 day written notice to vacate before filing suit **unless** the parties have contracted for a shorter/longer notice period in a written lease or agreement. TPC § 24.005(a).
- The TAR *Residential Lease* (TAR-2001) provides for a 1 day written notice.

- A. If Landlord fails to comply with this lease, Tenant may seek any relief provided by law.
- B. If Tenant fails to timely pay all amounts due under this lease or otherwise fails to comply with this lease, Tenant will be in default and:
 - (1) Landlord may terminate Tenant's right to occupy the Property by providing Tenant with at least **one day written notice to vacate**;
 - (2) all unpaid rents which are payable during the remainder of this lease or any renewal period will be accelerated without notice or demand;
 - (3) Landlord may exercise Landlord's lien under Paragraph 23 and any other rights under this lease or the Property Code; and
 - (4) Tenant will be liable for:
 - (a) any lost rent;
 - (b) Landlord's cost of reletting the Property including but not limited to leasing fees, advertising fees, utility charges, and other fees reasonably necessary to relet the Property;
 - (c) repairs to the Property for use beyond normal wear and tear;
 - (d) all Landlord's costs associated with eviction of Tenant, including but not limited to attorney's fees, court costs, costs of service, witness fees, and prejudgment interest;
 - (e) all Landlord's costs associated with collection of amounts due under this lease, including but not limited to collection fees, late charges, and returned check charges; and
 - (f) any other recovery to which Landlord may be entitled by law.
- C. Notice to vacate under Paragraph 27B(1) may be by any means permitted by §24.005, Property Code.
- D. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by attempting to relet the Property to acceptable tenants and reducing Tenant's liability accordingly.

28. EARLY TERMINATION: This lease begins on the Commencement Date and ends on the Expiration date

I. Eviction Process

■ How many days notice is a landlord required to provide?

- If the occupant is a **tenant at will or by sufferance**, the landlord must give at least a 3 day written notice to vacate before filing suit **unless** the parties have contracted for a shorter/longer notice period in a written lease or agreement. TPC § 24.005(b).

I. Eviction Process

- Tenancy at will v. Tenancy by sufferance
 - Tenancy at will – Terminable at the will of either party.
 - Tenancy by sufferance – The tenant wrongfully holds over after termination of the tenancy.

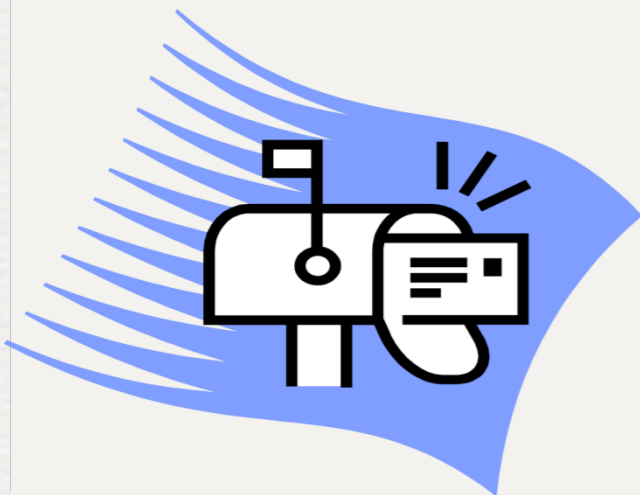
I. Eviction Process

- How many days notice is a landlord required to provide?
 - If the **tenant acquired possession by forcible entry**, the landlord must give at least a 3 day written notice to vacate before filing suit. TPC § 24.005(c)
 - If the **occupant is the person who gained possession by forcible entry**, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files suit. TPC § 24.005(d).
 - The notice to vacate may be to vacate immediately or by a specified deadline.

I. Eviction Process

■ How must the notice to vacate be delivered?

- in person or
- by mail



TPC § 24.005(f)

I. Eviction Process

■ In Person includes:

- Personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or
- Personal delivery to the premises and affixing the notice to the inside of the main entry door

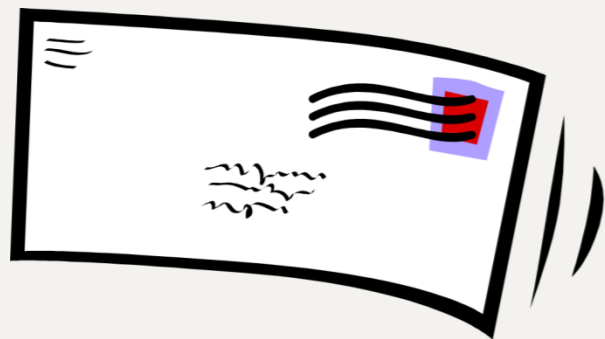
TPC § 24.005(f)

I. Eviction Process

■ By mail:

- Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.

TPC § 24.005(f)



I. Eviction Process

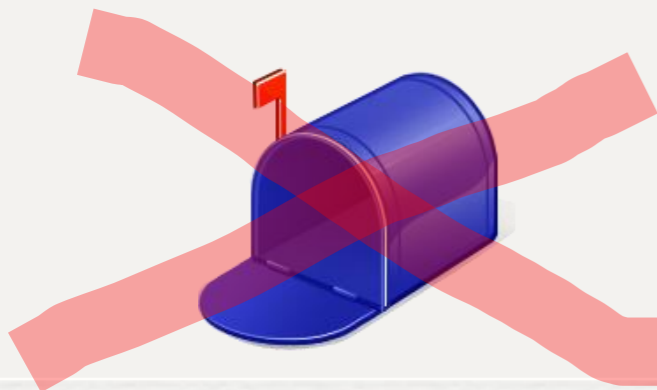
■ Best Practice:

- If notice is delivered by mail, send the notice by certified mail, return receipt requested.
- Why? The notice period is calculated from the day on which the notice is delivered. TPC § 24.005(g)

I. Eviction Process

■ What if the dwelling has no mailbox and affixing the notice to the inside of the main entry door is impossible?

- You may securely affix the notice on the outside of the main entry door. TPC § 24.005(f)



I. Eviction Process

- Can the notice to vacate include a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice?
 - Yes, if the landlord has given the tenant a prior written notice or reminder that rent is due and unpaid. TPC § 24.005(i).

TEXAS ASSOCIATION OF REALTORS®

LATE NOTICE OR NOTICE OF OTHER BREACH OF LEASE

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To: _____ (Tenant(s))

Re: Lease concerning the Property at _____

A. Late Notice:

(1) Late Rent: You are in breach of the above-referenced lease because:

(a) you failed to timely pay rent as required by the lease. You failed to pay rent for the following period(s): _____

(b) your rent for the month of _____ was paid late. It was received on _____.

(c) your payment dated _____ in the amount of \$ _____ was returned unpaid by the institution on which it was drawn.

(2) Opportunity to Cure:

(a) You may cure your breach of the lease by paying \$ _____, which is the total amount past due as of the date of this notice, inclusive of unpaid rent and other charges. For each day after the date of this notice you must pay an additional late charge of \$ _____ per day. You must remit payment not later than _____ to the person and place your lease requires. You must pay the amount only by the following means: [] check

I. Eviction Process

■ What is the second step in the eviction process?

- **Step 2:**



- **Filing Suit** – File an eviction complaint and pay filing fee

I. Eviction Process

■ Where do you file an eviction suit?

- In a justice court in the precinct where the property is located

TPC § 24.004



I. Eviction Process

■ Justice Courts

- Justice courts have original jurisdiction of cases of forcible entry and detainer. TPC § 27.031(a)(2).

I. Eviction Process

■ The Complaint:

- What are the requirements for the complaint?
 - The complaint must describe the lands, tenements or premises, the possession of which is claimed, with sufficient certainty to identify the same, and it shall also state the facts which entitled the complainant to the possession and authorize the action under Sections 24.001-24.004 of the Texas Property Code. Tex. R. Civ. P. 741.

I. Eviction Process

■ Possession Bond:

- The party aggrieved may, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute and file a possession bond to be approved by the justice in such amount as the justice may fix as the probably amount of costs of suit and damages which may result to the defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against plaintiff. Tex. R. Civ. P. 740.

I. Eviction Process

- May a suit for rent be joined with an eviction suit?
 - Yes, if the suit for rent is within the jurisdiction of the JP court. Tex. R. Civ. P. 738.

I. Eviction Process

■ The Citation:

- Once an eviction complaint has been filed with the JP court, the Justice will issue a citation commanding the defendant (tenant) to appear at a certain time and place, not more than 10 days nor less than 6 days from the date of service of the citation.
- The citation shall inform the parties that, upon timely request and payment of a jury fee no later than 5 days after the defendant is served with citation, the case shall be heard by a jury.

Tex. R. Civ. P. 739.

I. Eviction Process

■ The Citation must include certain notices:

- FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.
- **SUIT TO EVICT. THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.**

TPC § 24.0051.

I. Eviction Process

- Who may serve a citation in an eviction suit?
 - Only a sheriff or constable may serve a citation in an eviction suit unless otherwise authorized by a court order. Tex. R. Civ. P. 536a.



I. Eviction Process

■ Service of Citation:

- The officer shall execute the citation by delivering a copy to the defendant or by leaving a copy with some person over the age of 16, at his usual abode, at least 6 days before the return day; and on or before the day assigned for trial he shall return the citation, with his action written, to the justice who issued the citation.
Tex. R. Civ. P. 742.

I. Eviction Process

- What if the constable is unsuccessful in serving the citation?
 - Alternative service of process may be available
 - In order to use alternative service, complainant must list in the eviction complaint all home and work addresses of the defendant known to the person filing the complaint.

Tex. R. Civ. P. 742a

I. Eviction Process

- The cause shall be docketed and tried as other cases. If the defendant shall fail to enter an appearance upon the docket in the justice court or file answer before the case is called for trial, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly. The justice shall have authority to issue subpoenas for witnesses to enforce their attendance, and to punish for contempt. Tex. R. Civ. P. 743.

I. Eviction Process

■ Postponement

- For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days. Tex. R. Civ. P. 745.

I. Eviction Process

■ What is the third step in the eviction process?

- **Step 3:**



- **Going to court** – presentation of your case

I. Eviction Process

■ Representation by Agents

- In eviction suits for nonpayment of rent or holding over, parties may represent themselves or be represented by their authorized agents in justice court.

TPC § 24.011

Tex. R. Civ. P. 747a

I. Eviction Process

- The only issue shall be right to actual possession. Tex. R. Civ. P. 746.
 - Exception: the issue of unpaid rent in the eviction suit

Tex. R. Civ. P. 738

I. Eviction Process

■ Going to court

- Present the facts that support your case in chronological order
 - Date the lease was executed
 - Amount of rent owed
 - Date the Notice to Vacate was delivered and method of delivery
- Present any evidence that will support your case
 - Lease
 - Notice to vacate
 - Any other evidence

I. Eviction Process

■ Going to court

- Ask for:
 - Eviction Judgment (judgment for possession)
 - Judgment for unpaid rent
 - Court costs

I. Eviction Process

■ What is the fourth step in the eviction process?

- Step 4:

- **Writ of Possession**



I. Eviction Process

Judgment and Writ

- If the judgment or verdict be in favor of the plaintiff, the justice shall give judgment for plaintiff for possession of the premises, costs, and damages; and he shall award his writ of possession.
- If the judgment or verdict be in favor of the defendant, the justice shall give judgment for defendant against the plaintiff for costs and any damages.
- No writ of possession shall issue until the expiration of five days from the time the judgment is signed.

Tex. R. Civ. P. 748

I. Eviction Process

■ Writ of Possession

- A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. TPC § 24.0061(a).

I. Eviction Process

- The writ of possession shall order the officer executing the writ to:
 - 1) post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than **24 hours** after the warning is posted; and
 - 2) when the writ is executed:
 - a) deliver possession of the premises to the landlord;
 - b) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;
 - c) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and
 - d) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

TPC § 24.0061(d)

I. Eviction Process

■ The Writ of Possession:

- The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ. TPC § 24.0061(e).
- The officer may not require the landlord to store the property. TPC § 24.0061(f).
- The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence. TPC § 24.0061(g).
- A sheriff or constable may use reasonable force in executing a writ under this section. TPC § 24.0061(h).

I. Eviction Process

■ Writ of Possession

- If a bond for possession was filed, the plaintiff is entitled to immediate possession 6 days after service if the defendant fails to file a counterbond or demand early trial.
- If no bond was filed, the judge has to wait 5 days after judgment before the writ of possession is issued.

Tex. R. Civ. P. 739, 748

I. Eviction Process

■ Attorney's Fees and Costs of Suit

- If the written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant. TPC § 24.006(b).
- If the written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. TPC § 24.006(c).
 - A prevailing tenant is not required to give notice in order to recover attorney's fees.
- The prevailing party is entitled to recover all costs of court. TPC § 24.006(d).

the lease or a copy of the lease without Landlord's written consent is voidable by Landlord.

29. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, attorney's fees, costs of service, and all other costs of the legal proceeding from the non-prevailing party.

30. REPRESENTATIONS: Tenant's statements in this lease and any application for rental are material representations. Each party to this lease represents that he or she is of legal age to enter into a contract. If Tenant makes a misrepresentation in this lease or in an application for rental, Tenant is in default.

31. ADDENDA: Incorporated into this lease are the following addenda, exhibits and other information. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at Landlord's discretion, amend from time to time.

- | | |
|---|---|
| <input type="checkbox"/> Addendum Regarding Lead-Based Paint | <input type="checkbox"/> Agreement Between Brokers |
| <input type="checkbox"/> Inventory & Condition Form | <input type="checkbox"/> Landlord's Rules & Regulations |
| <input type="checkbox"/> Landlord's Additional Parking Rules | <input type="checkbox"/> Owners' Association Rules |
| <input type="checkbox"/> Pet Agreement | <input type="checkbox"/> Pool/Spa Maintenance Addendum |
| <input type="checkbox"/> Protecting Your Home from Mold | <input type="checkbox"/> Residential Lease Application |
| <input type="checkbox"/> Agreement for Application Deposit & Hold | <input type="checkbox"/> Residential Lease Guaranty |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

I. Eviction Process

■ Appeal

- Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the justice within five days after the judgment is signed, a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him.

Tex. R. Civ. P. 749

I. Eviction Process

Steps in the Eviction Process

Notice to Vacate

File suit (eviction complaint)

Going to court

Writ of possession

II. Foreclosures

■ Texas Law

- If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. TPC § 24.005(b).

II. Foreclosures

■ Protecting Tenants at Foreclosure Act of 2009

- (a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—
 - 1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and
 - 2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—
 - A. under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or
 - B. without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

Title VII, P.L. 111-22

II. Foreclosures

■ Protecting Tenants at Foreclosure Act of 2009

- The purchaser of a foreclosed property must allow the tenant to remain in the property until the end of the lease.
 - Exception – The purchaser must give at least 90 days notice if:
 - if the lease is on a month-to-month status or
 - if the purchaser intends to use the property as his primary residence.

II. Foreclosures

■ Protecting Tenants at Foreclosure Act of 2009

- What does the Act cover?
 - Federally-related mortgage loans
 - Any dwelling or any residential property
 - Single family (1-4 units) and multifamily (5 or more units)

II. Foreclosures

- In the event of a foreclosure:
 - Refer to Paragraph 4I of the **Residential Leasing and Property Management Agreement (TAR-2201)**.
 - Provide the tenant with the **General Information for Tenant of Property Facing Foreclosure (TAR-2220)**.



L-mail.

- I. **Foreclosure:** If Broker receives notice of the Owner's delinquency in the payment of: (1) any mortgage or other encumbrance secured by the Property; (2) property taxes; (3) property insurance; or (4) owners' association fees, Broker may give Owner 15 days to cure the delinquency during which period Owner authorizes Broker to freeze any funds held by Broker and no disbursements will be made to Owner related to this agreement or the Property. If after the 15 day period, the delinquency is not cured and the foreclosure process is initiated, Owner authorizes Broker to deduct from any other funds being held by Broker for Owner any remaining Broker Fees or funds due to Broker related to services performed under this agreement. Additionally, Owner authorizes Broker to return any security deposit being held by Broker to a tenant of the Property in addition to any prorated amount of rent being held by Broker and Broker may terminate this agreement. This paragraph does not preclude the Broker from seeking any other remedies under this agreement or at law that may be available to the Broker.
5. **LEGAL COMPLIANCE:** The parties will comply with all obligations, duties, and responsibilities under the Texas Property Code, fair housing laws, and any other statute, administrative rule, ordinance, or restrictive covenant applicable to the use, leasing, management, or care of the Property.
6. **RESERVES:** Upon execution of this agreement, Owner will deposit the following amount with Broker to be held in a trust account as a reserve for Owner: \$ _____ for each unit within the Property or Properties managed by Broker under this agreement. Broker may, at Broker's discretion, use the reserve to pay any expense related to the leasing and management of the Property(ies) (including but not limited to Broker's fees). If the balance of the reserve becomes less than the amount stated, at any time



TEXAS ASSOCIATION OF REALTORS®

GENERAL INFORMATION FOR TENANT OF PROPERTY FACING FORECLOSURE

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GENERAL NOTICE. You recently requested information from me regarding the property you are currently renting and notice you received that it could be facing foreclosure. As either the current or former property manager for the property you understand that my relationship is with the owner of the property and I do not represent you. I am not an attorney and cannot give you legal advice. You need to seek the advice of an attorney to receive information about any rights you may have. This notice is being furnished to you to provide general information about foreclosure and should not be considered legal advice.

PROTECTING TENANTS AT FORECLOSURE ACT. Recently, the federal government passed legislation offering certain protection to some tenants of residential property in foreclosure. Generally, tenants of foreclosed properties have the right to remain in the property for at least 90 days after foreclosure and may have the right to stay longer. In order for any protection to apply, you must be a tenant in good standing, current on rent and any late fees. For more information on the provisions contained in the Protecting Tenants At Foreclosure Act you may visit <http://www.nlihc.org/template/page.cfm?id=227>.

RENT PAYMENTS AND SECURITY DEPOSIT. Until the property is sold at a foreclosure sale, you should continue to make your rent payments as indicated in your lease. Once the property is sold, you should be notified regarding how and to whom your rent payments should be made. You should also be notified as to whom you should contact regarding your security deposit. Remember, in order to remain eligible to remain in the property and receive your security deposit back, you must remain a tenant in good standing and not abandon the property. The cost of any damage done to the property will be deducted from your security deposit.

RESOURCES FOR MORE INFORMATION In the event you need further information, you should seek the

Questions & Answers

Q1: What if the dwelling has no mailbox and a dangerous animal prevents you from delivering the notice to vacate in person?

- TPC § 24.005(f)



Questions & Answers

A1: If the dwelling has no mailbox and a dangerous animal prevents you from entering the premises to leave the notice to vacate, you may securely affix the notice on the outside of the main entry door. TPC § 24.005(f).

- TPC § 24.005(f)

Questions & Answers

Q2: If the constable is unable to serve the citation on the tenant, may alternative service be utilized?

- TPC § 24.005(f)

Questions & Answers

A2: Alternative service may be utilized if the eviction complaint lists all home and work addresses of the tenant which are known to the person filing the eviction complaint. It is not necessary for the aggrieved party or his authorized agent to make request for or motion for alternative service pursuant to this rule. Tex. R. Civ. P. 742a.

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TPC § 24.005(f)

Questions & Answers

True or False

Q3: If a property is in foreclosure, the purchaser must give the tenant 30 days' written notice to vacate.

- TPC § 24.005(f)

Questions & Answers

A3: False. The Protecting Tenants at Foreclosure Act pre-empts any State or local law unless that law provides a longer time period or additional protections for the tenant. The Act requires the purchaser of a foreclosed property to allow the tenant to remain in the property until the end of the lease with limited exceptions.

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TPC § 24.005(f)



TAR Forms



- The following TAR Forms are available for member use only:
 - Residential Lease (TAR-2001)
 - Notice Terminating Right of Occupancy (TAR-2208)
 - Late Notice or Notice of Other Breach of Lease (TAR-2209)
 - Notice to Tenant of Change in Management and Accountability for Security Deposit (TAR-2210)
 - General Information for Tenant of Property Facing Foreclosure (TAR-2220)

Thank you

- Thanks for your participation in our 8th PM Webinar!
- Future Webinar
 - Oct. 19
- Questions? Contact the Legal Hotline 800/873-9155
 - You can download this presentation by visiting the [Property Management Page](#).
 - View the [Texas Property Code](#).
- Give us your feedback! Send to: kleuffer@texasrealtors.com