

Guide to Texas Law



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Real Estate Law

Real estate law involves rights in the ownership and possession of land and buildings attached to land. Real estate law often is referred to as the law of real property--the land and buildings upon land--to distinguish it from the law of personal property, which includes all other property. A stumbling block for many consumers entering the real estate market is the number of unfamiliar terms frequently used by real estate professionals. Because real estate is one of the oldest areas of the law, it uses many old terms and concepts, but many rights and responsibilities regarding real estate have evolved and been updated as society has changed.

This chapter summarizes some of the real estate concepts and terms one involved in real estate is likely to encounter, the process one goes through to buy or sell a house, and the rights and responsibilities of landlords and tenants.

Encumbrances

An encumbrance is a legal interest in property held by someone other than the owner of the property. An encumbrance is not an ownership interest in real property, but it creates some kind of obligation for the owner of the property. Encumbrances attach to property, not the property owners, so the property may be bought and sold even though there is an encumbrance attached. A person who buys property with an encumbrance is bound by the encumbrance. Encumbrances include easements, deed restrictions, liens, assessments, and taxes.

Easement

An easement is a nonpossessory interest in real property that gives the holder of the easement the right to use another person's land for a particular purpose. There are many forms of easements. Public utility companies frequently have utility easements that permit them to run gas, water, or electrical lines through the property of others. The owner of property near a lake might buy from the owner of lakeshore property an easement to cross his or her property to access the lake. A person who owns property that is landlocked may receive an easement from an adjacent land owner to have access in and out of the property. This is called a **right of way**.

Deed Restriction

Deed restrictions also may be known as covenants, conditions, or restrictions. Deed restrictions, which usually are included in the seller's deed to the buyer, generally are imposed to maintain certain standards. Restrictions may limit the color one may paint a house, the kind of trees one may plant, or the size of home that may be built on the property.

Lien

A lien is a charge against property that provides security for a debt or obligation of the property owner. The lien holder does not own the property. Some liens are voluntary, such as when the owner of property takes out a mortgage. Other liens may be imposed. For example, a lien may be imposed on property for nonpayment of taxes. One of the most common liens is the **mechanics lien**. A mechanics lien arises when someone furnishes labor or materials to improve a piece of property. A worker or supplier who is not paid may establish a lien by filing an affidavit with the county clerk of the county in which the property is located and sending a copy of the affidavit by registered or certified mail to the property owner. A mechanics lien may be foreclosed only by a judgment of a court ordering the sale of the property subject to the lien.

Assessment

An assessment is a tax levied on real property by a local taxing authority. Real estate taxes are calculated by multiplying the taxable value of a piece of property by the tax rate. Taxable value is calculated by subtracting any allowable exemptions from the appraised value of property to determine net appraised value, multiplying the net appraised value by the assessment ratio to determine assessed value, and then subtracting any allowable exemptions from the assessed value to determine taxable value. Most properties are reappraised periodically, and a property's taxable value may not be the same as its actual market value. A **special assessment** is a tax levied on a piece of property to pay for improvements that benefit the particular property, such as streets, sidewalks, and street lighting. Special assessments are liens on the property until they are paid.

Real Estate Ownership

Typically, ownership of real estate includes the right to sell (convey), the right to use the property as security for loans

(encumber), the right to improve the land or buildings on the land, and the right to use and possess the property.

Property can be owned by one or more persons. The two common ways in which parties co-own a piece of property are joint tenancy and tenancy in common. In Texas, spouses also can own community property.

Joint Tenancy

Although joint tenancy is a popular way for a husband and wife to own property, there is no requirement that joint tenants be married or that there only be two joint tenants. Each individual owner in joint tenancy has a right to sell, encumber, and possess the entire property. Unlike many states, Texas does not allow joint tenants to automatically enjoy a right of survivorship. Under Texas law, if one joint tenant dies before the tenancy is severed, the interest owned by the deceased joint tenant does not survive to the remaining joint tenants, but instead passes by will or intestacy. Joint tenants may agree in writing, however, that the interest of any joint owner who dies will pass to the surviving joint tenants, but no such agreement is inferred from the fact that the property is held in joint ownership.

Tenants in Common

Tenants in common, like joint tenants, share the right to possess, sell, and encumber the property. Upon the death of one tenant in common, his or her ownership interest passes to his or her heirs as part of the estate.

Community Property and Separate Property

In Texas, spouses have separate property and community property. Separate property consists of property owned or claimed by a spouse before marriage; property acquired by a spouse during marriage by gift, devise, or descent; and damages for personal injuries received by a spouse during marriage, except any recovery for loss of earning capacity during the marriage. Community property consists of all property other than separate property acquired by either spouse during marriage. Property possessed by either spouse during or on dissolution of a marriage is presumed to be community property unless a spouse can establish by clear and convincing evidence that the property is separate property.

Each spouse has the sole management, control, and disposition of his or her separate property. In addition, each spouse has the sole management, control, and disposition of the community

property that he or she would have owned if single. Any other community property, such as mixed or combined community property (which neither spouse would have owned if single), is subject to the joint management, control, and disposition of the husband and wife. Spouses can provide otherwise by power of attorney in writing or other agreement.

At any time, spouses may partition or exchange between themselves any part of their community property. Property transferred to a spouse by **partition or exchange agreement** becomes his or her separate property. A partition or exchange agreement must be in writing and signed by both parties. Separate property then can be transferred to both spouses in joint tenancy, discussed above.

Advantages and Disadvantages of Co-Ownership

Although there are advantages to co-owning property, there are drawbacks as well. If co-owners cannot agree on use, sale, or possession of a piece of property, they may have to go to court to resolve the matter in a partition action. In a partition action a joint tenant or tenant in common asks the court to split the property in a fair and just manner. A partition action dissolves the co-tenancy, but does not change the title to the property. Each person will be given a specific share of the property to be used to the exclusion of any other co-tenant, who previously had equal possession rights.

Residential Real Estate

The most common consumer real estate transaction involves the sale of a home. Unlike years past, today a home buyer has a variety of options in deciding the type of dwelling to buy. Single family houses are still the most common selections for home buyers. Single family homes provide the maximum amount of privacy and freedom to their owners, but they also may be the most expensive option and require the most upkeep.

Condominiums and townhouses may be an option for some purchasers. Both give their owners many of the advantages of home ownership, such as tax deductibility of mortgage interest, without some of the responsibilities some people consider to be disadvantages, such as lawn care and exterior upkeep. Residents usually pay association fees to cover maintenance.

A **homestead** is not a particular type of dwelling; instead, it is a tax classification that can dramatically lower what a homeowner pays in real estate taxes. People who live in the

property they own are taxed at a much lower rate than if they rent out that property to others. If a person buys property that currently is rental property, he or she must fill out an application to change the property's tax status; otherwise, the person could end up paying non-homestead taxes for the first year of ownership. An application for homestead status is due before May 1. The chief appraiser may extend the deadline by written order for a single period not to exceed 60 days. The chief appraiser also must accept and either approve or deny an application for a homestead exemption after the deadline for filing has passed if it is filed not later than one year after the date the taxes on the homestead were paid or became delinquent, whichever is earlier.

Title

Title to real estate is the ownership of the property. Title may refer to the actual ownership or to the documentary evidence of that ownership. Title is what gives the owner the right to the property. In order to sell a piece of property, all title matters must be cleared. Usually, this is accomplished through a title search. A title search is a diligent search of all records relating to the property to determine whether the owner is authorized to sell the property and whether there are any claims against it. If any defects in title are discovered during the title search, the seller usually has time to cure the defect.

Often people have title insurance to protect them against any hidden defects in the title. There are two types of title insurance. One type protects the lender's interest in the property and the other protects the home owner's interest.

Deeds

A deed is a written instrument that transfers the title of property from one person to another. There are many different types of deeds. Generally, in Texas, title is transferred by a **general warranty deed**. A general warranty deed provides the greatest protection to the purchaser because the seller pledges or warrants that he or she legally owns the property and that there are no outstanding liens, mortgages, or other encumbrances against it. A warranty deed is also a guaranty of title, which means that the seller may be held liable for damages if the buyer discovers that the title is defective. A warranty deed is no substitute for title insurance, however, because a warranty from a seller who later dies or goes bankrupt may have little value. Texas provides a statutory form for use as a general warranty deed, but any form is acceptable as long as it conforms to the law.

Another type of deed used is a **quitclaim deed**. A quitclaim deed relinquishes whatever interest, if any, the seller may have in the property to the buyer. A quitclaim deed gives the buyer the least protection of any deed. If the seller is the sole owner of the property, the quitclaim deed is enough to transfer title, but the buyer takes a risk by accepting a quitclaim deed because it offers the buyer no guarantee that the title is valid. Quitclaim deeds customarily are used during the property settlement phase of a marriage dissolution.

Recording

In Texas, real estate owners and parties with real estate interests may file with the county all documents affecting their interest in property in order to give public notice of the interest. Although valid title passes without recording any documents, a buyer could later lose the property to a subsequent buyer who purchases the property without notice of the earlier buyer's interest. To prevent such an occurrence, it always is wise to file all documents relating to property ownership or interest. In Texas, titles are transferred under the abstract system. Abstract records go back hundreds of years and an **abstract of title** is a record of all the entries for that property.

Buying or Selling a Home

Because Texas has many programs to help people buy homes, home ownership is a possibility for people at all income levels. Buying a home may be both rewarding and stressful. Every home purchase involves a number of complex legal issues, unfamiliar terminology, and lots of paperwork. Knowing how the process works may reduce much of the headache.

Real Estate Brokers

One of the first decisions for someone interested in buying or selling a home is whether to use the services of a real estate broker. Real estate brokers are hired to help buyers and sellers meet to complete the sale of a house. Home buyers and sellers may choose to work with a broker exclusively or non-exclusively.

A person who decides to work with a broker will sign several contracts to clarify the relationship between the consumer and the broker. These contracts may include provisions regarding **dual agency**. This term refers to the arrangement in which a broker represents both the buyer and the seller of the house. It may be difficult for one broker to represent both a buyer and a

seller fairly. When the broker finds a buyer for a house that the broker has listed, the broker's dual loyalties become apparent. The seller wants the highest price possible while the buyer wants to pay the lowest price. The contracts state what the broker may share with the other party and which information must remain confidential.

Seller Disclosures

In Texas, on or before the effective date of a contract binding the buyer to purchase the property, the seller must deliver to the buyer a disclosure notice. This document must disclose to the buyer any material defects that are known hazards; or problems with the structure; or problems with the heating, plumbing, mechanical, or electrical systems. Just because problems are listed on this statement does not mean that the seller must repair the problems, but the buyer may request either repair or a price break because of the problem. If a contract to purchase a home is entered before the seller provides this disclosure notice, the buyer may cancel the contract for any reason within seven days after receiving the notice.

Foreclosure

Nobody in the process of buying a house wants to think about the possibility of falling behind in house payments to the extent that the bank or mortgage company will foreclose on the loan and claim possession of the house. Nevertheless, it is wise for a consumer to understand why a lender forecloses on a piece of property, so the consumer can minimize the possibility of losing a house.

Up to a point, a lender typically will work with a homeowner who falls behind in making payments because the lender does not want to go through the hassle and expense of foreclosing on a property. Homeowners should communicate with their lenders as soon as financial difficulties arise that make paying the mortgage difficult. It can take months for a lender to begin a foreclosure, and more months before it is completed, so usually there is time to get the money needed to assure a lender that there will not be a default. After a lender has foreclosed on a property, a homeowner may be able to set aside the foreclosure sale, or "redeem" the property, by paying the purchase price at the foreclosure sale plus any taxes or assessments.

Under certain circumstances, a Texas lender may accept the deed to the property instead of foreclosing. The property owner loses the property, but if he or she truly has no other way to avoid foreclosure, offering the deed as a way to satisfy

the debt can prevent his or her credit rating from being severely damaged by a foreclosure. However, because lenders generally want cash and not real estate, there is no guarantee that a lender will accept a deed offered in lieu of foreclosure.

Landlord—Tenant

Under Texas law, whenever the owner (landlord) of a house, apartment, room, or any other living space agrees to let someone else (tenant) use the space for a fee, the two parties enter into a legally binding rental contract. General contract principles are discussed in the Contract Law Chapter. Rental contracts are a special class of contracts that are governed by many unique rules. This section discusses the laws applicable to rental contracts.

Leases

The terms of any rental agreement are stated in the lease. A lease can be an oral agreement or a written document. A lease establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of the rental property. There are two general types of leases: the periodic lease and the lease for a definite term. If the lease is an agreement to rent the property for an unspecified length of time, it is considered a periodic, or month-to-month lease. A periodic lease continues for a specific time period and automatically is renewed at the end of the period for an indefinite time without a specific end date. For example, parties may agree on a month-to-month lease without specifying how many months the renter will stay. The lease continues until one party terminates it. If the periodic lease does not specify when or how notice is to be given, the parties must follow state law. Under Texas law, if the rental period is at least one month, the tenancy terminates on the later of the day given in a notice for termination or one month after the day on which a notice for termination is given. If the rental period is less than one month, the tenancy terminates on the later of the day given in a notice of termination or the day after the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rental period. In lieu of these statutory notice requirements, a landlord and tenant can agree on a different period of notice to terminate or can agree that no notice is required. Such an agreement must be in writing and signed by both parties. A tenant is liable for rent only up to the date of termination, even if this does not correspond to the end of a rental period.

A term lease is a rental agreement specifying a definite time period. For example, a lease for one year is a term lease. Term leases are almost always written. If the parties to the lease do not state when and what kind of notice is required, the lease automatically ends on the last day of the time period.

Security Deposits

A landlord has the right to insist that a renter pay a security deposit before moving in. The security deposit is used to pay for any damage beyond ordinary wear and tear that the tenant might do to the rental property, or to satisfy any debts between the tenant and landlord. The deposit cannot be used by the renter to pay rent. There is no limit to how much the landlord may require for a security deposit. The landlord may increase the security deposit at any time during a periodic lease if the tenant is given proper notice, which generally is one rental period plus one day. If the lease is a term lease, no changes may be made to the deposit until the lease comes up for renewal or the parties agree otherwise.

At the end of the tenancy, the landlord must return the deposit within 30 days to the forwarding address provided in writing by the renter. A requirement that a residential tenant give advance notice of termination as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease. Before returning the security deposit, the landlord may deduct the amount of the deposit necessary to repair damages (beyond normal wear and tear) and any charges for which the tenant is legally liable under the terms of the lease or as a result of breaching the lease. The landlord then must give any remaining balance of the security deposit to the tenant with a written description and itemized list of all deductions.

Repairs

Landlords are required to keep rental property in reasonable repair. If a condition materially affects the physical health or safety of a tenant, the landlord is required to make a diligent effort to repair or remedy the condition if the tenant gives the landlord notice of the condition and the tenant is not delinquent in the payment of rent when the notice is given. The tenant's notice must be in writing only if the tenant's lease is in writing and requires written notice. This repair and remedy requirement generally may not be waived by the parties, but a landlord and tenant may agree that the tenant can make repairs at the landlord's expense. If the parties have not made some contrary agreement, the landlord remains

responsible to make repairs. If the landlord refuses to make repairs, the tenant has several options.

Call an Inspector

The renter may call local fire, health, housing, or energy inspectors to investigate whether there is a code violation in the unit. Often, an inspector's report of a code violation or a notice that the condition materially affects the health or safety of tenants is enough to convince a landlord to correct problems. The law provides protection for a renter if the owner attempts to evict the renter in retaliation for calling an inspector.

Repair and Deduct

If a landlord fails to repair or remedy a problem after notice by the tenant to the landlord of the problem, the tenant may be able to have the problem repaired or remedied and then deduct the cost from a subsequent rent payment. Prior to using this option, the tenant must give the landlord written notice that he or she intends to use the repair or remedy option and a description of the intended repair or remedy. Note, however, that this option is only available for specific serious conditions contained in the Texas Code. If this option is available to a tenant, the tenant's deduction for the cost of repair or remedy may not exceed the amount of one month's rent under the lease. Repairs and deductions may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent.

Judicial Remedies

A tenant also may sue a landlord who fails to repair or remedy a condition after proper notice. Such an action may be brought in the justice, county, or district courts, but the justice courts may not order repairs. In such a civil action, the court can: issue an order directing the landlord to take reasonable action to repair or remedy the condition; issue an order reducing the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied; enter a judgment against the landlord for a civil penalty of one month's rent plus \$500; enter a judgment against the landlord for the amount of the tenant's actual damages; and award the tenant court costs and attorneys' fees.

Terminate the Lease

A tenant may terminate a lease for a failure of a landlord to repair or remedy only after taking several steps. The tenant first must have given the landlord proper notice to repair or remedy the condition. The landlord then must have had a reasonable time to repair or remedy the condition. The tenant then must give subsequent written notice to the landlord stating that the tenant intends to terminate the lease. The tenant must not be delinquent in the payment of rent at the time either of the notices are given. The tenant then may terminate the lease if the condition is not repaired or remedied within seven days after the tenant's notice of intent to terminate. The tenant is entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later. The tenant also may deduct the tenant's security deposit from the tenant's rent or obtain a refund of the tenant's security deposit. A tenant who elects to terminate a lease for the failure of a landlord to repair or remedy is not entitled to the repair and deduct remedies or the judicial remedies discussed above.

Eviction

Under no circumstances may a landlord forcibly remove a tenant from rental property. In order to get a tenant out of a rental unit, the landlord must bring a lawsuit called a **forcible detainer** or **forcible entry and detainer** against the tenant. Legitimate grounds for bringing a suit include nonpayment of rent, breach of a lease, or refusal to leave a unit after the tenancy expires.

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give the tenant at least three days' written notice to vacate the leased premises before the landlord files an action for forcible detainer, unless the landlord and tenant contract otherwise in a written lease or agreement. A landlord who files a forcible detainer suit on the grounds that the tenant is holding over beyond the end of the rental term or renewal period also must comply with the termination requirements discussed above in the Leases section.

A justice of the peace court in the precinct in which the property is located has jurisdiction in forcible detainer actions. If the landlord wants to recover attorneys' fees in a forcible detainer lawsuit, the landlord must give the tenant a written demand to vacate the premises by registered or certified mail at least ten days before the date the action is filed. The landlord then may recover his or her attorneys' fees if he or she

prevails in the lawsuit and either the written lease entitles the landlord to recover attorneys' fees or the written demand to vacate indicated that the landlord could recover attorneys' fees if the tenant did not vacate the premises before the 11th day after the date of receipt of the notice. The prevailing party in a forcible detainer action also is entitled to recover all court costs.

A landlord who prevails in a forcible detainer action is entitled to a judgment for possession of the premises and a writ of possession. The writ of possession orders the officer executing the writ to deliver possession of the premises to the landlord, including, if necessary, physically removing the tenant and his or her property from the premises. If a tenant's personal property is placed in storage, the tenant may recover this property within 30 days by paying the reasonable costs of moving and storage of the property. After 30 days, the tenant's property may be sold to satisfy the moving and storage charges.

Tenant's Rights

Tenants enjoy a number of rights, even if those rights are not specified in the rental contract. The tenant has a right to quiet enjoyment of the premises, which means that the landlord may not interfere illegally or unreasonably in the tenant's life, just because the landlord owns the property. A renter has the right to use the rented premises in any way, as long as it is legal.

Privacy

Generally, a landlord may enter a tenant's unit only with the tenant's consent, except in an emergency. After a tenant has given notice of termination, a landlord has the right to enter the unit to show it to prospective renters. A landlord also may enter for a "reasonable business purpose," such as maintenance, only after giving the tenant reasonable notice. If a landlord fails to get permission or give notice, the landlord is trespassing and may be sued in court. The tenant whose privacy rights have been violated may recover damages.

Access

Tenants have a right of access to the property they rent. It is illegal for a landlord to lock a tenant out of his or her unit without a court order, unless the exclusion results from bona fide repairs, construction, emergency, removing the contents of premises abandoned by a tenant, or changing the door locks of a tenant who is delinquent in paying at least part of the rent. Although a landlord may change the door lock of a tenant who

is delinquent in paying rent, the landlord must follow all the procedures and notices required by law and must provide a new key upon request without the payment of delinquent rent. A tenant who is unlawfully locked out may either recover possession of the premises by going to court or terminate the lease. In addition, the tenant may recover from the landlord a civil penalty of one month's rent plus \$500, actual damages, court costs, and reasonable attorneys' fees, less any delinquent rent or other sums for which the tenant owes the landlord.

Sublease

Subleasing is having someone else take over a tenant's rights and obligations under a lease before the original lease expires. Under Texas law, a tenant may not sublet a unit to any other person without the prior consent of the landlord. A landlord may, however, waive the right to prior consent. If subletting is allowed and the new tenant does not pay rent, damages the unit, leaves before the lease expires, or breaches another condition of the lease, the landlord may hold the original tenant responsible. The original tenant then may sue the new tenant for those costs.

Utilities

Landlords are forbidden under Texas law from shutting off or causing the interruption of utilities, except in bona fide emergencies or for repairs or construction. Electrical service also may be shut off in specific instances as allowed by law. A tenant whose electricity, water, or heat are terminated because the landlord has failed to pay the bills has several options. A tenant may pay the utility company to reconnect or avert the cutoff of utilities. The tenant may deduct from his or her rent the amounts paid to the utility company to reconnect or avert a cutoff. Or, a tenant may terminate the lease if the termination notice is in writing and the tenant will move out within 30 days from the date he or she has notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner. The tenant also may recover any actual damages, including moving costs, utility connection fees, storage fees, and lost wages, as well as court costs and attorneys' fees.

Energy Crises Program

The Texas Department of Housing and Community Affairs is the supervising state agency for the energy crises program. The Department provides grant money to utility companies and to households in cases of undue hardship. The beneficiaries of the grant money must be persons who are in

imminent danger of having utility service terminated, are experiencing other energy-related and supply shortage emergencies, or meet federal poverty income guidelines. Priority is given to the elderly and disabled.

Discrimination in Housing

Federal and Texas laws prohibit home sellers and landlords from discriminating on the basis of race, color, religion, sex, familial status, national origin, or disability. Federal law provides additional protections against discriminating on the basis of other factors, such as age. In Texas, landlords generally cannot discriminate against children unless the building is intended to provide housing for elderly persons.

Resources

Stuart M. Saft, **Commercial Real Estate Transactions**, Shepard's/McGraw Hill, Inc. (Colorado Springs, CO, 2d ed. 1995).

Contact the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-2487 (mailing address), 1414 Colorado Street, Austin, Texas 78701 (street address), (800) 204-2222 or (512) 463-1463, to order **Homeowner's Rights and Tenants Rights Handbook**.

Contact the Office of the Attorney General, Research & Legal Support Division, P.O. Box 12548, Austin, Texas 78711-2548, to order **Your Tenant Rights**, a free brochure.

The Texas Commission on Human Rights, Fair Housing Unit, P.O. Box 13493, Austin, Texas 78711, (800) 735-2989 (TDD) or (512) 437-3450, publishes **Your Fair Housing Rights**, a free brochure.