

By: Bonnen

H.B. No. 3551

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain procedures concerning forcible entry and
3 detainer actions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 24.005(a), (b), and (c), Property Code,
6 are amended to read as follows:

7 (a) If the occupant is a tenant under a written lease or oral
8 rental agreement, the landlord must give a tenant who defaults or
9 holds over beyond the end of the rental term or renewal period at
10 least one day's [~~three days~~] written notice to vacate the premises
11 before the landlord files a forcible detainer suit, unless the
12 parties have contracted for a shorter or longer notice period in a
13 written lease or agreement. A landlord who files a forcible
14 detainer suit on grounds that the tenant is holding over beyond the
15 end of the rental term or renewal period must also comply with the
16 tenancy termination requirements of Section 91.001.

17 (b) If the occupant is a tenant at will or by sufferance, the
18 landlord must give the tenant at least one day's [~~three days~~]
19 written notice to vacate before the landlord files a forcible
20 detainer suit unless the parties have contracted for a shorter or
21 longer notice period in a written lease or agreement. If a building
22 is purchased at a tax foreclosure sale or a trustee's foreclosure
23 sale under a lien superior to the tenant's lease and the tenant
24 timely pays rent and is not otherwise in default under the tenant's

1 lease after foreclosure, the purchaser must give a residential
2 tenant of the building at least 30 days' written notice to vacate if
3 the purchaser chooses not to continue the lease. The tenant is
4 considered to timely pay the rent under this subsection if, during
5 the month of the foreclosure sale, the tenant pays the rent for that
6 month to the landlord before receiving any notice that a
7 foreclosure sale is scheduled during the month or pays the rent for
8 that month to the foreclosing lienholder or the purchaser at
9 foreclosure not later than the fifth day after the date of receipt
10 of a written notice of the name and address of the purchaser that
11 requests payment. Before a foreclosure sale, a foreclosing
12 lienholder may give written notice to a tenant stating that a
13 foreclosure notice has been given to the landlord or owner of the
14 property and specifying the date of the foreclosure.

15 (c) If the occupant is a tenant of a person who acquired
16 possession by forcible entry, the landlord must give the person at
17 least one day's [~~three days~~] written notice to vacate before the
18 landlord files a forcible detainer suit.

19 SECTION 2. Sections 24.0052 (a) and (d), Property Code, are
20 amended to read as follows:

21 (a) If a tenant in a residential eviction suit is unable to
22 pay the costs of appeal or file an appeal bond as required by the
23 Texas Rules of Civil Procedure, the tenant may appeal the judgment
24 of the justice court by filing with the justice court, not later
25 than the third [~~fifth~~] day after the date the judgment is signed, a
26 pauper's affidavit sworn before the clerk of the justice court or a
27 notary public that states that the tenant is unable to pay the costs

1 of appeal or file an appeal bond. The affidavit must contain the
2 following information:

3 (1) the tenant's identity;

4 (2) the nature and amount of the tenant's employment
5 income;

6 (3) the income of the tenant's spouse, if applicable
7 and available to the tenant;

8 (4) the nature and amount of any governmental
9 entitlement income of the tenant;

10 (5) all other income of the tenant;

11 (6) the amount of available cash and funds available
12 in savings or checking accounts of the tenant;

13 (7) real and personal property owned by the tenant,
14 other than household furnishings, clothes, tools of a trade, or
15 personal effects;

16 (8) the tenant's debts and monthly expenses; and

17 (9) the number and age of the tenant's dependents and
18 where those dependents reside.

19 (d) A landlord may contest a pauper's affidavit on or before
20 the third [~~fifth~~] day after the date the affidavit is filed. If the
21 landlord contests the affidavit, the justice court shall notify the
22 parties and hold a hearing to determine whether the tenant is unable
23 to pay the costs of appeal or file an appeal bond. The hearing
24 shall be held not later than the third [~~fifth~~] day after the date
25 the landlord notifies the court clerk of the landlord's
26 contest. At the hearing, the tenant has the burden to prove by
27 competent evidence, including documents or credible testimony of

1 the tenant or others, that the tenant is unable to pay the costs of
2 appeal or file an appeal bond.

3 SECTION 3. Section 24.0053(c), Property Code, is amended to
4 read as follows:

5 (c) If an eviction case is based on nonpayment of rent and
6 the tenant's rent during the rental agreement term has been paid
7 wholly or partly by a government agency, either party may contest
8 the portion of the rent that the justice court determines must be
9 paid into the county court registry by the tenant under this
10 section. The contest must be filed on or before the third [~~fifth~~]
11 day after the date the justice signs the judgment. If a contest is
12 filed, not later than the third [~~fifth~~] day after the date the
13 contest is filed the justice court shall notify the parties and hold
14 a hearing to determine the amount owed by the tenant in accordance
15 with the terms of the rental agreement and applicable laws and
16 regulations. After hearing the evidence, the justice court shall
17 determine the portion of the rent that must be paid by the tenant
18 under this section.

19 SECTION 4. Section 24.0054(d), Property Code, is amended to
20 read as follows:

21 (d) A writ of possession issued under Subsection (c) may not
22 be executed before the third [~~sixth~~] day after the date the writ is
23 issued.

24 SECTION 5. Section 24.006(a), Property Code, is amended to
25 read as follows:

26 (a) Except as provided by Subsection (b), to be eligible to
27 recover attorney's fees in an eviction suit, a landlord must give a

1 tenant who is unlawfully retaining possession of the landlord's
2 premises a written demand to vacate the premises. The demand must
3 state that if the tenant does not vacate the premises before the
4 fifth [~~11th~~] day after the date of receipt of the notice and if the
5 landlord files suit, the landlord may recover attorney's fees. The
6 demand must be sent by registered mail or by certified mail, return
7 receipt requested, at least five [~~10~~] days before the date the suit
8 is filed.

9 SECTION 6. Sections 24.0061(b), (c), and (d), Property
10 Code, are amended to read as follows:

11 (b) A writ of possession may not be issued before the third
12 [~~sixth~~] day after the date on which the judgment for possession is
13 rendered unless a possession bond has been filed and approved under
14 the Texas Rules of Civil Procedure and judgment for possession is
15 thereafter granted by default.

16 (c) The court shall notify a tenant in writing of a default
17 judgment for possession by sending a copy of the judgment to the
18 premises by first class mail not later than 24 [~~48~~] hours after the
19 entry of the judgment.

20 (d) The writ of possession shall order the officer executing
21 the writ to:

22 (1) post a written warning of at least 8-1/2 by 11
23 inches on the exterior of the front door of the rental unit
24 notifying the tenant that the writ has been issued and that the writ
25 will be executed on or after a specific [~~date and~~] time stated in
26 the warning not sooner than 12 [~~24~~] hours after the warning is
27 posted; and

1 (2) when the writ is executed:

2 (A) deliver possession of the premises to the
3 landlord;

4 (B) instruct the tenant and all persons claiming
5 under the tenant to leave the premises immediately, and, if the
6 persons fail to comply, physically remove them;

7 (C) instruct the tenant to remove or to allow the
8 landlord, the landlord's representatives, or other persons acting
9 under the officer's supervision to remove all personal property
10 from the rental unit other than personal property claimed to be
11 owned by the landlord; and

12 (D) place, or have an authorized person place,
13 the removed personal property outside the rental unit at a nearby
14 location, but not blocking a public sidewalk, passageway, or street
15 and not while it is raining, sleeting, or snowing.

16 SECTION 7. Section 24.007, Property Code, is amended to
17 read as follows:

18 Sec. 24.007. APPEAL. A final judgment of a county court in
19 an eviction suit may not be appealed on the issue of possession
20 unless the premises in question are being used for residential
21 purposes only. A judgment of a county court may not under any
22 circumstances be stayed pending appeal unless, within five [~~10~~]
23 days of the signing of the judgment, the appellant files a
24 supersedeas bond in an amount set by the county court. In setting
25 the supersedeas bond the county court shall provide protection for
26 the appellee to the same extent as in any other appeal, taking into
27 consideration the value of rents likely to accrue during appeal,

1 damages which may occur as a result of the stay during appeal, and
2 other damages or amounts as the court may deem appropriate.

3 SECTION 8. The changes to law made by this Act apply only to
4 a forcible entry and detainer action in which the notice to vacate
5 is given on or after the effective date of this Act. A forcible
6 entry and detainer action in which the notice to vacate is given
7 before the effective date of this Act is governed by the law as it
8 existed immediately before the effective date of this Act, and that
9 law is continued in effect for that purpose.

10 SECTION 9. This Act takes effect September 1, 2009.