

## CHAPTER 305

## S.B. No. 1211

An Act relating to residential landlords' liens and the return of security deposits on residential rental property; amending the Property Code by amending Sections 54.042 and 54.044 and Subsection (a), Section 92.105; by adding new Sections 54.045 and 54.047; and by amending and renumbering current Section 54.045.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 54, Property Code, is amended by amending Sections 54.042 and 54.044, by adding a new Section 54.045, by amending and renumbering current Section 54.045, and by adding Section 54.047 to read as follows:

"Section 54.042. **EXEMPTIONS.** A lien under this subchapter does not attach to:

- "(1) wearing apparel;
- "(2) tools, apparatus, and books of a trade or profession;
- "(3) schoolbooks;
- "(4) a family library;
- "(5) family portraits and pictures;
- "(6) one couch, two living room chairs, and a dining table and chairs;
- "(7) beds and bedding;
- "(8) kitchen furniture and utensils;
- "(9) food and foodstuffs;
- "(10) medicine and medical supplies;
- "(11) one automobile and one truck;
- "(12) agricultural implements;
- "(13) *children's toys not commonly used by adults*;
- "(14) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; and
- "(15) ~~[(14)]~~ goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement."

"Section 54.044. **SEIZURE OF PROPERTY.** (a) The landlord or the landlord's agent may not seize exempt property and may seize nonexempt property only if it is authorized by ~~[under]~~ a written lease and can be accomplished without a breach of the peace ~~[agreement]~~.

"(b) Immediately after seizing property under Subsection (a) of this section, the landlord or the landlord's agent shall leave written notice of entry and an itemized list of the items removed. The notice and list shall be left in a conspicuous place within the dwelling. The notice must state the amount of delinquent rent and the name, address, and telephone number of the person the tenant may contact regarding the amount owed. The notice must also state that the property will be promptly returned on full payment of the delinquent rent.

"(c) Unless authorized in a written lease, the landlord is not entitled to collect a charge for packing, removing, or storing property seized under this section.

"(d) If the tenant has abandoned the premises ~~[residence]~~, the landlord or the landlord's agent may remove its contents.

"Section 54.045. **SALE OF PROPERTY.** (a) Property seized under Section 54.044 may not be sold or otherwise disposed of unless the sale or disposition is authorized in a written lease.

"(b) Before selling seized property, the landlord or the landlord's agent must give notice to the tenant not later than the 30th day before the date of the sale. The notice must be sent to the tenant

by both first class mail and certified mail, return receipt requested, at the tenant's last known address. The notice must contain:

"(1) the date, time, and place of the sale;

"(2) an itemized account of the amount owed by the tenant to the landlord; and

"(3) the name, address, and telephone number of the person the tenant may contact regarding the sale, the amount owed, and the right of the tenant to redeem the property under Subsection (e) of this section.

"(c) A sale under this section is subject to a recorded chattel mortgage or financing statement. The property shall be sold to the highest cash bidder. Proceeds from the sale shall be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage, and sale costs.

"(d) Any sale proceeds remaining after payment of the amounts authorized in Subsection (c) of this section shall be mailed to the tenant at the tenant's last known address not later than the 30th day after the date of the sale. The landlord shall provide the tenant with an accounting of all proceeds of the sale not later than the 30th day after the date on which the tenant makes a written request for the accounting.

"(e) The tenant may redeem the property at any time before the property is sold by paying to the landlord or the landlord's agent all delinquent rents and, if authorized in the written lease, all reasonable packing, moving, storage, and sale costs.

"Section 54.046 [54.045]. VIOLATION BY LANDLORD. If a landlord or the landlord's agent wilfully violates this subchapter, the tenant is entitled to:

"(1) actual damages, return of any property seized that has not been sold, return of the proceeds of any sale of seized property, and one month's rent or \$500, whichever is greater, [and reasonable attorney's fees,] less any amount for which the tenant is liable; and

"(2) reasonable attorney's fees.

"Section 54.047. OTHER RIGHTS NOT AFFECTED. This subchapter does not affect or diminish any other rights or obligations arising under common law or any statute."

**SECTION 2.** Subsection (a), Section 92.105, Property Code, is amended to read as follows:

"(a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, *bankruptcy*, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired, regardless of whether notice is given to the tenant under Subsection (b) of this section."

**SECTION 3.** Except as provided by Subsection (c), Section 92.105, Property Code, this Act applies only to seizures of tenants' property and terminations of owners' interests in rental property that occur on or after the effective date of this Act.

**SECTION 4.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 2, 1985, by a viva-voce vote; passed the House on May 17, 1985, by a non-record vote.

Approved: June 7, 1985

Effective: August 26, 1985