

CHAPTER 48

H.B. No. 1300

AN ACT

relating to certain technical and clarifying corrections to the Property Code.

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

SECTION 1. Section 24.0062(b), Property Code, as added by Chapters 314 and 745, Acts of the 70th Legislature, Regular Session, 1987, is reenacted to read as follows:

(b) If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:

(1) the tenant's property is to be removed and stored by a public warehouseman under Section 24.0062 of the Property Code;

(2) the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;

(3) within 30 days from the date of storage, the tenant may redeem any of the property described by Section 24.0062(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;

(4) after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and

(5) subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the property to satisfy reasonable moving and storage charges after 30 days, subject to the requirements of Section 24.0062(j) of the Property Code.

SECTION 2. Section 41.001(b), Property Code, is amended to read as follows:

(b) Encumbrances may be properly fixed on homestead property for:

(1) purchase money;

(2) taxes on the property; or

(3) work and material used in constructing improvements on the property if contracted for in writing *as provided by Sections 53.059(a), (b), and (c)* [~~before the material is furnished or the labor is performed and in a manner required for the conveyance of a homestead, with joinder of both spouses if the homestead claimant is married~~].

SECTION 3. Section 41.005(c), Property Code, is amended to read as follows:

(c) To designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

(1) a description sufficient to identify the property designated;

(2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;

(3) the name of the *current record title holder* [~~original grantee~~] of the property; and

(4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.

SECTION 4. Section 41.007(a), Property Code, is amended to read as follows:

(a) A contract described by Section 41.001(b)(3) must contain the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent, next to the owner's signature line on *the contract* [~~each instrument creating an encumbrance on homestead property~~]:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

SECTION 5. Section 51.002, Property Code, is amended by amending Subsections (b) and (d) and adding Subsection (g) to read as follows:

(b) Notice of the sale, which must include a statement of the earliest time at which the sale will *begin* [~~occur~~], must be given at least 21 days before the date of the sale:

(1) by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) by filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) by the holder of the debt to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of the holder of the debt, is obligated to pay the debt.

(d) Notwithstanding any agreement to the contrary, the holder of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or *other contract lien and giving the* [~~The~~] debtor [~~must be given~~] at least 20 days to cure the default before [~~the entire debt is due and~~] notice of sale can be [~~is~~] given under Subsection (b). *The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.*

(g) *The entire calendar day on which the notice of sale is given, regardless of the time of day at which the notice is given, is included in computing the 21-day notice period required by Subsection (b), and the entire calendar day of the foreclosure sale is excluded.*

SECTION 6. Section 52.001, Property Code, is amended to read as follows:

Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by Section 52.0011, a first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, *if the judgment is not then dormant*, constitutes a lien on the real property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

SECTION 7. Section 53.055, Property Code, is amended to read as follows:

Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who files an affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address not later than *the earlier of*:

(1) the 10th business day after the date the person files the affidavit; or [~~after~~]

(2) the date the affidavit is required to be filed [~~, whichever is earlier~~].

(b) If the person is not an original contractor, the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address within the same period.

SECTION 8. Sections 53.059(b) and (i), Property Code, are amended to read as follows:

(b) The contract must be *executed* [~~entered~~] before the material is furnished or the labor is performed.

(i) For the lien on a homestead to be valid, the notice required to be given to the owner under Section 53.056, 53.057, or 53.058, as applicable, must include or have attached the following statement:

"If a *subcontractor or supplier* [~~person~~] who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

(1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or

(2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim.”

SECTION 9. Section 54.006(a), Property Code, is amended to read as follows:

(a) The person to whom rent or an advance is payable under the lease *or the person's agent, attorney, assign, or other legal representative* may apply to an appropriate justice of the peace for a distress warrant if the tenant:

- (1) owes any rent or an advance;
- (2) is about to abandon the premises; or
- (3) is about to remove the tenant's property from the premises.

SECTION 10. Section 54.025, Property Code, is amended to read as follows:

Sec. 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease *or the person's agent, attorney, assign, or other legal representative* may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

- (1) owes rent;
- (2) is about to abandon the building; or
- (3) is about to remove the tenant's property from the building.

SECTION 11. Section 61.004, Property Code, is amended to read as follows:

Sec. 61.004. AMOUNT OF LIEN. The amount of the lien is the lesser of:

- (1) the fair market value of the *motor* vehicle before the accident;
- (2) the reasonable cost of repair to the *motor* vehicle; or
- (3) the balance owed to the mortgagee by the mortgagor.

SECTION 12. Section 92.001(4), Property Code, is amended to read as follows:

(4) “Normal wear and tear” means deterioration that results from the intended use of a dwelling, including, for the purposes of Subchapter B, breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest *or invitee* of the tenant.

SECTION 13. Section 92.007, Property Code, as amended by Chapters 332 and 650, Acts of the 71st Legislature, Regular Session, 1989, is reenacted to read as follows:

Sec. 92.007. VENUE. Venue for an action under this chapter is in the county in which the premises are [~~dwelling is~~] located.

SECTION 14. Section 92.052(b), Property Code, is amended to read as follows:

(b) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal or extension to repair or remedy a condition caused by:

- (1) the tenant;
- (2) a lawful occupant in the tenant's dwelling;
- (3) a member of the tenant's family; or
- (4) a guest *or invitee* of the tenant.

SECTION 15. Sections 92.054(b) and (c), Property Code, are amended to read as follows:

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty 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 any time before repairs are completed. If the lease is terminated, the tenant is entitled only 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.

(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty 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. A landlord and tenant may agree otherwise in a written lease.

SECTION 16. Section 92.057(c), Property Code, is amended to read as follows:

(c) An eviction based on the following circumstances, which are valid grounds for eviction in any event, does not constitute retaliation:

(1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

(2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

(3) the tenant has materially breached the lease other than by holding over, except as provided by this subsection;

(4) the tenant holds over after giving notice of termination or intent to vacate;

(5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the landlord does not receive actual notice from the tenant to repair until after the landlord gives notice of termination; or

(6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant might:

(A) adversely affect the quiet enjoyment by other tenants or neighbors;

(B) materially affect the health or safety of the landlord, other tenants, or neighbors;

or

(C) damage the property of the landlord, other tenants, or neighbors.

SECTION 17. Section 92.158, Property Code, is amended to read as follows:

Sec. 92.158. LANDLORD'S DEFENSES. The landlord has a defense to liability under Section 92.156 if:

(1) the tenant *has not fully paid all rent then due from the tenant* [~~owes rent~~] on the date the tenant gives a request under Subsection (a) of Section 92.153 or the notice required by Section 92.156; or

(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.154.

SECTION 18. Section 92.204, Property Code, is amended to read as follows:

Sec. 92.204. BAD FAITH VIOLATION. A landlord acts in bad faith and is liable according to this subchapter if the landlord gives an incorrect name or address under Subsection (a) of Section 92.201 by wilfully:

(1) disclosing incorrect information under Subdivision (1) or (2) of Subsection (b) of Section 92.201 [~~92.202~~]; or

(2) failing to correct information given under Subdivision (1) or (2) of Subsection (b) of Section 92.201 that the landlord knows is incorrect.

SECTION 19. Section 92.258(c), Property Code, is amended to read as follows:

(c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke detector, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke detector be inspected or repaired. This duty does not exist with respect to damage or a malfunction caused by the tenant, the tenant's family, or the tenant's guests or invitees during the term of the lease or a renewal or extension, except that the landlord has a duty to repair or replace the smoke detector if the

tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. 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 by the House on March 31, 1993, by a non-record vote; passed by the Senate on April 15, 1993: Yeas 30, Nays 0.

Approved April 28, 1993.

Effective Sept. 1, 1993.