Chapter 2

Property Management

Legislative Changes

House Bill 311

Amends Property Code Sections 5.062, 5.064, 5.066, 5.070, 5.076, 5.077, 5.079, and 5.081

Effective September 1, 2015

Relating to an executory contract for the conveyance of real property; providing a civil penalty.

This bill amends provisions of the Property Code relating to executory contracts for conveyance of real property (also known as “contracts for deed”) to make contracts for deed more akin to transactions employing traditional seller-financing using a deed and lien (such as a vendor’s lien or deed of trust). In fact, the bill specifies that a recorded executory contract is the same as a deed with a vendor’s lien (in other words, on recording, an executory contract conveys legal title to the purchaser subject to a lien retained by the seller for the amount of the unpaid contract price less any lawful deductions). A seller must record the contract within 30 days after its execution. The bill denies sellers the remedies of rescission and forfeiture and acceleration if the contract has been recorded. A seller who violates the recording requirement is liable to the purchaser in the same manner and for the same amount as a seller who violates statutory requirements for the transfer of recorded, legal title to the property, except that damages are limited to $500 per year of noncompliance (but without prejudice to other remedies a purchaser may have under other law).

Senate Bill 478

Adds Government Code Section 22.019

Effective September 1, 2015

Relating to the promulgation of certain forms for use in landlord-tenant matters.

This bill requires the Supreme Court of Texas to promulgate standardized forms to be used by individuals representing themselves in residential landlord-tenant matters and to provide instructions for the proper use of each form. The bill requires the forms and instructions to be written in plain language easy for the general public to understand, to clearly and conspicuously state that the form is not a substitute for an attorney’s advice, to be made readily available in the manner prescribed by the Supreme Court, and to be translated into Spanish (though the Spanish forms are for information only and may not be used in court). The bill requires the clerk of a court to inform members of the public of the availability of the forms and to make the forms available free of charge. A court must accept use of a form unless the form has been completed in a manner that causes an uncurable substantive defect.
House Bill 1510

Adds Property Code Section 92.025
Effective January 1, 2016

Relating to liability of persons who lease dwellings to persons with criminal records.

Establishes that no cause of action accrues against a landlord or its manager or agent solely for leasing a dwelling to a tenant who has been convicted of, or arrested or placed on deferred adjudication for, an offense. (The intent of this bill being to make available more housing opportunities for formerly incarcerated individuals, thereby decreasing homelessness and recidivism.) Causes of action for negligence, however, are not precluded if the tenant was convicted of (or has a reportable offense for) one of a list of crimes involving murder, burglary, sexual assault, indecency with a child, prostitution, human trafficking, elder or child abuse, sex offenses, and similar offenses and the landlord, manager, or agent knew or should have known of the conviction or adjudication.

Senate Bill 1626

Amends Property Code Section 202.010
Effective Date: September 1, 2015

Relating to the regulation by a developer of the installation of solar energy devices in a residential subdivision.

Chapter 202 of the Property Code limits restrictions that may be imposed against installation of solar energy devices in a residential subdivision. Prior to this bill, however, Chapter 202 allowed developers to limit or restrict property owners from installing solar energy devices during the development period. This bill limits this right to developers of developments of 50 units or less.

House Bill 2066

Adds Property Code Section 51.016
Effective September 1, 2015

Relating to the rescission of non-judicial foreclosure sales.

This bill applies only to non-judicial foreclosure sales of residential property and permits a mortgagee, trustee, or substitute trustee to rescind a sale within 15 days after the foreclosure if

* statutory requirements for the sale were not met,
* the underlying default was cured before the sale,
* a receivership or dependent probate administration involving the property was pending at the time of sale,
* a sale condition specified by the trustee or substitute trustee before the sale was not met,
* the mortgagee or mortgage servicer and the debtor agreed to cancel the sale beforehand based on the debtor’s agreement to cure, or
* a bankruptcy stay was in effect at the time of sale.

The sales price must be returned to the purchaser and the debtor must return excess proceeds if the sale is rescinded. Challenges to the rescission must be brought within 30 days after the date required notices of the rescission are recorded. A purchaser who effectively challenges a rescission is entitled to damages only in the amount of the portion (if any) of the purchase price not returned to the purchaser plus interest (unless the rescission is due to bankruptcy, in which case no interest is payable).
House Bill 2207

_Adds Property Code Chapter 66_  
_Effective September 1, 2015_

_Relating to the foreclosure sale of property subject to an oil or gas lease._

Makes clear that a foreclosure sale does not cut off an oil and gas lease if the lease is recorded prior to the sale. (An oil and gas lease is not a “lease” in the traditional sense; rather it is a determinable conveyance of an interest in the mineral estate.) Notwithstanding the preceding, if the foreclosed property includes an interest in hydrocarbons as well as the surface, the foreclosure sale terminates the oil or gas lessee’s surface rights to the extent the foreclosed mortgage had priority over the lease.

**Property Management Issues**

The Real Estate Center at Texas A&M University publishes _Landlord and Tenants Guide_ that is helpful in addressing many questions for property managers, tenants and landlords. The manual is a free download on the Center’s website (recenter.tamu.edu).

The Property Code has three chapters which specifically govern the Landlord-Tenant relationship:

* Chapter 91, applies to both residential and commercial tenancies;
* Chapter 92, applies to residential tenancies; and
* Chapter 93, applies to commercial tenancies.

There are other statutes that may affect residential and commercial tenancies not discussed here, such as lead-based paint disclosures, asbestos removal, American with Disabilities Act, and others.

**Questions Related to Residential Tenancies**

Which conditions must a landlord repair regardless of what the lease may provide? Unless the landlord agrees otherwise, which conditions might the landlord not repair?

What is a reasonable time for making repairs in a residential tenancy?

What is the definition of a security deposit?

When should a residential landlord return a security deposit?

What charges may a landlord deduct from the security deposit?

Why is it important for a tenant to provide the landlord with a forwarding address after a lease ends?

May a tenant use the security deposit to pay the last month’s rent?

Is a landlord required to provide an itemization of charges he withholds from the security deposit?

Where must smoke alarms be located in the premises?

When must the landlord inspect the smoke alarm, and how is it inspected?

Does a landlord have a duty to install fire extinguishers in the dwelling?

Do certain conditions have to be met before a landlord may charge a late fee?

Must a landlord provide a copy of the lease to the tenant?

May a landlord refuse to accept cash from a tenant?

What should the landlord do with the tenant’s property and the security deposit if the tenant dies?
What security devices must the landlord install, and when must the landlord rekey the security devices?

Questions Relating to Both Commercial and Residential Tenancies

What is normal wear and tear?
Is subletting of leased premises permitted?
Does a landlord have a duty to mitigate damages if the tenant abandons the lease early?

Questions Relating to Commercial Tenancies

Can a commercial landlord interrupt a tenant’s utility service if the tenant does not pay rent?
When may a commercial landlord prohibit the tenant from entering the leased premises?
When does a commercial tenant abandon the premises?
When must a commercial tenant’s security deposit be refunded?
What may the commercial landlord deduct from the security deposit? What type of documentation must the landlord provide to the tenant about deductions?
What items may not be deducted from the commercial tenant’s security deposit?
If ownership of the property changes during a commercial tenancy, which owner is liable for the return of the security deposit, the former or new owner?
May a commercial tenant withhold the last month’s rent in lieu of the security deposit?
Must a commercial tenant provide an itemized list of deductions to the security deposit?
Marisol contacted Manfred, a Texas real estate agent, to help her purchase a rental property in the Plano area. Manfred found a condo for sale. The listing agent for the unit was Dantrell. Dantrell was also the principal in Outasight Property Management, which was the leasing agent for the unit. Dantrell informed Manfred that the unit was ready and available to be leased immediately, either to the existing tenant or a new tenant after the sale. The sale closed; Marisol did not retain Outasight Property Management as her property manager. Within one month of the sale, Marisol leased the condo unit to a new tenant on a two-year lease. The next month, the condo association informed Marisol that the property was subject to a lease restriction in which a new owner could not lease a unit for 12 months from the purchase date, there was up to a $500 per day fine for the violation, and the tenant would have to move out. The tenant refused to move out voluntarily, and Marisol had to hire an attorney to start eviction proceedings. The tenant fought the eviction proceedings, including filing bankruptcy. Marisol was fined $4,000 by the association and incurred attorney fees and costs in excess of $16,000. She also lost eight months of rental income totaling nearly $10,000. The cost to lease the condo, after the 12-month period expired, was estimated to be $2,400. Marisol sued Dantrell and his broker for all of her losses plus triple damages under the DTPA.

**DISCUSSION**

1. Should Dantrell have known that there was a leasing restriction for new owners of the property?
2. Would it make a difference if Dantrell’s broker represented sellers or buyers in the sale of seven other units in that building in the past year?
3. Would it make a difference if, in his role as property manager for the unit, Dantrell signed a document on behalf of the landlord that stated “tenant has been provided a copy of the HOA rules and regulations or is aware they can be viewed on the condominium website at www.condowebsite.com” six months before the sale?
4. Did Dantrell have a duty to disclose the leasing restriction on the property if he was aware of it?
5. Should Manfred, as the buyer’s agent, have known that there was or could have been a leasing restriction on the property?
6. What steps should an agent take as a property manager, listing agent or buyer’s agent to be sure their clients are fully informed about condominium property restrictions?