



CITY OF SAN ANTONIO
**NEIGHBORHOOD & HOUSING
SERVICES DEPARTMENT**

FAIR HOUSING PROGRAM: HUD HOUSING COUNSELING AGENCY



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THE EVICTION PROCESS

The Notice to Vacate

Your eviction process will start when you receive a Notice to Vacate. The landlord or the landlord's agent will deliver this to you personally or to a person that is living with you. If you are not home, this notice is frequently taped to the main door of the property. The notice will usually contain a stated reason for the eviction, a delivery date and a notice when to vacate the property. The notice generally demands that you leave the property within 3 days. **You do not have to leave the property by the date indicated.** This is an attempt to have you vacate the property.

The Eviction Hearing

Although you are not required to leave by the date on the notice, your failure to leave will probably result in the landlord filing an eviction suit against you. The suit is an effort by the landlord to obtain a Forcible Entry and Detainer. It is a lawsuit whereby the landlord seeks to obtain a court order requiring you to leave the premises. Your court hearing will generally be 6—10 days from the delivery date. **If you miss the court hearing, you will lose by default** and your rental history and credit will be damaged. If the landlord is seeking to evict you because of rent delinquency, the judge will most likely order the eviction. If rent is withheld, it should be in the form of a money order dated for the day the rent is due. However, it is not recommended that you withhold rent.

If the judge grants the eviction, you will have 5 days to vacate the property before the landlord and constable can remove all your possessions. **If you feel the need to appeal, you may do so within 5 days of the eviction hearing.** The appeals process is complex and may require an attorney and a deposit to the court in the amount of one month's rent. If you have the landlord's consent to pay late, then an eviction will not occur. Make sure to get that agreement in writing.

SECURITY DEPOSITS

A security deposit is money given to a landlord to provide some protection to the landlord for damage to the rented premises or for some other failure of a tenant.

A security deposit should not be confused with an Application Deposit or some other fee. Advanced rent (like first month or last month's rent) is not generally a part of a security deposit either. The rules and suggestions in this section are only for security deposits. (A pet deposit is an additional security deposit usually required if you want to keep a pet on the premises. The same rules apply to regular security deposits apply to pet deposits).

Non-Refundable

A “non-refundable deposit” is a contradiction in terms. This is money that will not be returned to you.

Don't use deposit as rent

Do not use your deposit as rent for the last month of your lease. There are few exceptions to this rule and even when the law allows it, landlords usually file eviction suits if you try it. Also, if you wrongfully use your deposit as the last month's rent, you can be liable for three times of the rent wrongfully unpaid. It is much better to wait and sue the landlord if your deposit is wrongfully kept.

How much is too much?

There is no limit on how much a landlord can charge for a security deposit. It should not vary based upon your race, color, religion, sex, whether you have children, or national origin, or disability.

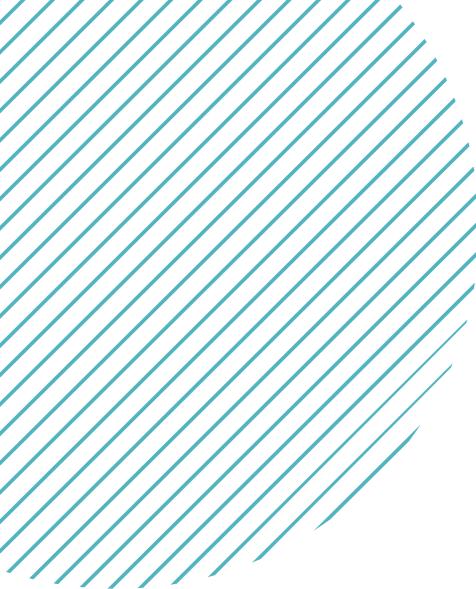
Tenant's Obligations for Refund of Deposit

- No damages to property rented
- Not break the lease
- Give, in writing, via Certified Mail, 30 day notice of Intent to Vacate prior to end of lease
- Give forwarding address with Notice to Vacate
- Not use deposit for rent

Landlord's Obligation to Refund Deposit

- Deposit must be returned within 30 days after tenant's move out.
- Must provide itemized list of any deductions taken from the deposit.
- Landlord may not deduct for “normal wear and tear.”





Ways to Help Insure Return of Your Deposit

Request and complete a Rental Property Inventory and Condition Form during your initial walk-thru of your new rental unit. This is an inventory of damages existing prior to move-in. Be sure to fill out form and receive a copy within 48 hours of move-in.

Fill out and receive on the spot a copy of a Final Walk-thru. This form is similar to the inventory form but will identify any damages made by you during your tenancy.

A landlord can be responsible for up to three times the amount of a withheld deposit plus attorney's fees if wrongfully withholds a tenant's security deposit. The landlord gives up the right to withhold any of the security deposit and might have to pay attorney fees the tenant incurs trying to recover their deposit if the landlord does not provide a written notice of any damages for the portion of security withheld. The tenant may sue in a small claims court.

Never Moved In

If you signed a lease and gave the landlord a security deposit, you may still get your deposit back if you never moved in. (You also can get the rent you gave the landlord.) You can get this back ONLY if you find another tenant acceptable to the landlord to move in or the landlord finds a replacement tenant. If the landlord finds the replacement tenant, the landlord can deduct a cancellation fee, if it is stated in the lease. If it is not stated in the lease, the landlord can deduct the actual expenses of finding the new tenant. Keep in mind that a land-lord does have a duty to find a replacement tenant should the current tenant not go through with the lease. This is called their "duty to mitigate." Be sure to read the lease for provisions stating the deposit is non-refundable should you change your mind about the move-in.

If neither you nor the landlord locates a replacement tenant, then you need to be more concerned about the rent owed under the lease contract, than whether you are going to get your deposit back. Most landlords agree to let tenants out of their lease if they agree to forfeit the security deposit and pay the landlord one-month's rent. But this is negotiable. For additional information/assistance, please call our office or contact an attorney.

SIGNS OF PREDATORY LENDING

Steering

Putting borrowers with good credit into high interest rate loans

Unnecessary Insurance

This practice is when lenders are increasing the cost of credit by needlessly selling insurance to borrowers that is often financed over the life of the loan. Insurance sold includes credit life, credit disability, involuntary unemployment insurance, etc.

Prepayment Penalty

Charging prepayment penalties so to lock the borrower into the loan. Borrower is then unable to refinance or get out of the loan.

Flipping

Repeated refinancing of the loan by rolling the balance of an existing loan into a new loan.

Hidden Balloon Payments

Where at the end of the loan, the borrower still owes most of the principal amount borrowed. Predatory lenders then contact the borrower to refinance the remaining amount and charge excessive fees to do so.

More Deceptive Acts:

- Excessive fees
- High interest rates
- Hidden costs
- High pressure sales tactics
- Making loans without regard to borrower's ability to pay
- Home improvement scams
- Home equity loan scams



HOW TO AVOID PREDATORY LENDING

Obtain copy of credit report and understand how to read it

Get references on lenders

Shop around

- Do not trust ads promising “No Credit? No Problem!”
- Do not give in to high-pressure sales tactics
- Do not take the first loan you are offered
- Remember that a low monthly payment is not always a “deal”. Look at the TOTAL cost of the loan
- Be wary of promises to refinance loan to a better rate in the future

Avoid bad loan terms

- Balloon payments
- High interest rates
- Monthly payments you can't afford
- Penalties for early pay-off of the loan
- Unauthorized refinancing of your loan

Don't sign...

- A blank document or anything the lender promised to fill in later
- Anything you don't like or understand, even if they
- cancel the loan offer
- Ask questions. If you don't understand the loan terms, talk to someone you trust to look at the documents for you. Take your time.

No one to go to? Contact your local Consumer Credit Counseling Agency for advice

If you have any doubts, do not sign!

PROCEDURE FOR OBTAINING REPAIRS

Always Give Written Notice

You must give notice of the problem to the person to whom you pay rent. Texas law states that your repair requests are to be in writing and delivered via Certified, Registered or Return Receipt Requested mail. Sending the request in this manner proves the delivery of the letter.

The letter should state the problem and that a reasonable time would be allowed for repairs. Time considered reasonable will depend on the circumstances including the nature of the problem, availability of materials and labor. During this time, the landlord must make a diligent effort to repair the problem. For broken water pipes and overflow of sewer, reasonable time is considered 1—3 days. For other problems such as leaky faucets, inoperable appliances, a/c not cooling properly, etc., reasonable time is longer; usually 5—10 days.

Pay Your Rent

The landlord is not obligated to make repairs unless your rent is current. You must perform your duty to pay rent or you cannot force the landlord to perform his duty to make repairs. Your rent must be current at the time you give your first notice. If your rent is not current, that notice may not have any legal effect. You may NOT withhold rent unless you have a written agreement with your landlord. If you do withhold your rent, your landlord may evict you.

Call an Inspector

If the landlord has had reasonable amount to fix a health or safety problem and has not done so, you should call an inspector (housing authority, health, or fire). This may put additional pressure on the landlord if the problem violates local ordinances. The inspector may also help you determine if the problem affects health or safety codes. Be sure to get a written report and name of the inspector.

Give Second Notice

After the landlord has had reasonable time to remedy the problem, but has not done so, you must mail another written notice detailing the repair and request reason for delay. Again reasonable time must be given. This notice **MUST** explain what you plan to do if the landlord does not make the repair.

A tenant has three (3) options:

1. Terminate the lease,
2. *Repair and deduct the amount from the rent, or
3. File a law suit.

**However, to repair and deduct from the rent requires attorney's advice. You may exercise these options if the landlord fails to remedy the problem.*

Remember, you have the right to terminate the lease only if the problem affects the physical health or safety of the tenant **AND** you are not delinquent on your rent. If you must terminate, you must move out and you are entitled to a refund of unused rent and your deposit.

Retaliation for Requesting Repairs

Your landlord is restricted for six months from retaliating against you because you gave him a repair notice or called a legal agency for assistance. Illegal retaliation occurs when the landlord wrongfully terminates the lease, files for eviction, deprives the tenant of the use of the property, decreases services to the tenant, increases rent or interferes with the tenant's rights. However, he can terminate the lease or evict you if you fail to pay rent, cause property damage, threaten the personal safety of the landlord, landlord's employees or other tenants or, if you have a lease violation.



HOW TO AVOID FORECLOSURE

Special Forbearance/Repayment Plan

Your lender may be able to arrange a repayment plan based on your financial situation. Your lender may even provide for a temporary reduction or suspension of your payments. You may qualify for this if you have recently lost your job or your source of income or if you had an unexpected increase in living expenses. You must furnish information to your lender to show that you would be able to meet the requirements of the new plan.

Loan Modification

You may be able to refinance the debt and/or extend the term of your mortgage loan. This may help you catch up by reducing the monthly payments to a more affordable level. You may qualify if you have recovered from a financial problem but your net income is less than it was before the default (failure to pay).

Partial Claim

Your lender may be able to work with you to obtain an interest-free loan from HUD to bring your mortgage current.

You may qualify if:

- Your loan is at least 4 months delinquent but no more than 12 months
- Your mortgage is not in foreclosure; and
- You are able to begin making full mortgage payments

When your lender files a Partial Claim, HUD will pay your lender the amount necessary to bring your mortgage current. You must execute a promissory note, and a Lien will be placed on your property until the promissory note is paid in full. The promissory note is interest-free and will be due if you sell or leave your property, or when your mortgage matures.



Short Sale

This will allow you to sell your property and pay off your mortgage loan to avoid foreclosure.

You may qualify if:

- The “as is” appraised value is at least 70% of the amount you owe
- The sales price is 95% of the appraised value
- The loan is at least 2 months delinquent prior to pre-foreclosure sale closing date; and
- You are able to sell your house within 3 to 5 months (depending on what your lender agrees to).

An additional benefit to this option is the assistance you may receive with the Seller-paid closing costs.

Deed-in-Lieu of Foreclosure

As a last resort, you may be able to voluntarily “give back” your property to the lender. This will not save your house, but it will help your chances of getting another mortgage loan in the future.

You may qualify if:

- You are in default and don’t qualify for any of the other options
- Your attempts at selling the house before foreclosure were unsuccessful
- You don’t have another FHA mortgage in default

What happens when you miss your mortgage payments?

Foreclosure may occur. This is the process the lender can use to repossess (take over) your home. When this happens, you must move out of your house. If your property is worth less than the total amount you owe on your mortgage loan, your lender or HUD could seek a deficiency judgment. If that happens, you not only lose your home, you also would owe your lender or HUD additional debt. Foreclosure or a deficiency judgment could seriously affect your ability to qualify for credit in the future. Therefore, you should avoid it if possible.

CONTACT US



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www.sanantonio.gov/NHSD/Programs/FairHousing

For Everyone – Any age, any income status
First-time homebuyers Homeowners &
Renters Homeowners at risk of foreclosure
Homeless



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