

# **SB 1448 Task Force Report to the Supreme Court Advisory Committee**

**November 9, 2009**

**Submitted By Tom Lawrence, Chairman of SB 1448 Task Force**

**The SB 1448 Task Force also consisted of the following members in addition to the Chairman: Judge Keith Baker, Robert Doggett, David Fritsche, Fred Fuchs, Judge Connie Mayfield, Tom Morgan, Wendy Wilson and Judge Jim Woltz.**

**In addition to SB 1448 I have included several statutes and Rules of Civil Procedure that may be helpful to the Supreme Court Advisory Committee when discussing the SB 1448 Task Force's proposed rules. I also included the original version of SB 1448 to show what was taken out of the bill before it became law. Finally, because the SB 1448 Task Force was divided on whether the rules should contain a provision for the JP to hold the landlord in contempt, I have included relevant sections of the Property Code, Government Code, Civil Practices and Remedies Code, and the Rules of Civil Procedure. The actual draft of the proposed rules begins on page 18.**

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**SB 1448**

AN ACT

relating to actions in a justice court regarding the repair of residential rental property.

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

SECTION 1. Section 92.0563, Property Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) The justice, county, and district courts have concurrent jurisdiction in [of] an action under Subsection (a) ~~[of this section except that the justice court may not order repairs under Subdivision (1) of Subsection (a) of this section]~~.

(d) If a suit is filed in a justice court requesting relief under Subsection (a), the justice court shall conduct a hearing on the request not earlier than the sixth day after the date of service of citation and not later than the 10th day after that date.

(e) A justice court may not award a judgment under this section, including an order of repair, that exceeds \$10,000, excluding interest and costs of court.

(f) An appeal of a judgment of a justice court under this section takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner's appeal and stays the effect of the judgment without the necessity of posting an appeal bond.

SECTION 2. Not later than January 1, 2010, the Texas Supreme Court shall adopt rules of civil procedure applicable to orders of repair issued by a justice court under Subdivision (1), Subsection (a), Section 92.0563, Property Code.

SECTION 3. Section 92.0563, Property Code, as amended by this Act, applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2010.

**Relevant Sections of the Texas Property Code**

PROPERTY CODE

TITLE 8. LANDLORD AND TENANT

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Dwelling" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(2) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

(3) "Lease" means any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

\* \* \*

(5) "Premises" means a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

(6) "Tenant" means a person who is authorized by a lease to occupy a dwelling to the exclusion of others and, for the purposes of Subchapters D, E, and F, who is obligated under the lease to pay rent.

\* \* \*

#### Sec. 92.003. LANDLORD'S AGENT FOR SERVICE OF PROCESS.

(a) In a lawsuit by a tenant under either a written or oral lease for a dwelling or in a suit to enforce a legal obligation of the owner as landlord of the dwelling, the owner's agent for service of process is determined according to this section.

(b) If written notice of the name and business street address of the company that manages the dwelling has been given to the tenant, the management company is the owner's sole agent for service of process.

(c) If Subsection (b) does not apply, the owner's management company, on-premise manager, or rent collector serving the dwelling is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant.

\* \* \*

#### Sec. 92.005. ATTORNEY'S FEES

(a) A party who prevails in a suit brought under this subchapter of Subchapter B, E, or F may recover the party's cost of court and reasonable attorney's fees in relation to work reasonably expended.

(b) This section does not authorize a recovery of attorney's fees in an action brought under Subchapter E or F for damages that relate to or arise from property damage, personal injury, or criminal act.

\* \* \*

Sec. 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR.

\* \* \*

(b) A landlord is liable to a tenant as provided by this subchapter if:

(1) the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;

(2) the condition materially affects the physical health or safety of an ordinary tenant;

(6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

\* \* \*

PROPERTY CODE

TITLE 8. LANDLORED AND TENANT

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

Sec. 92.0563. TENANT'S JUDICIAL REMEDIES.

(a) A tenant's judicial remedies under Section 92.056 shall include:

(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

(2) an order reducing the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(3) a judgment against the landlord for a civil penalty of one month's rent plus \$500;

(4) a judgment against the landlord for the amount of the tenant's actual damages; and

(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(b) A landlord who knowingly violates Section 92.006 by contracting orally or in writing with a tenant to waive the landlord's duty to repair under this subchapter shall be liable to the tenant for actual damages, a civil penalty of one month's rent plus \$2,000, and reasonable attorney's fees. For purposes of this subsection, there shall be a rebuttable presumption that the landlord acted without knowledge of the violation. The tenant shall have the burden of pleading and proving a knowing violation. If the lease is in writing and is not in violation of Section 92.006, the tenant's proof of a knowing violation must be clear and convincing. A mutual agreement for tenant repair under Subsection (g) of Section 92.0561 is not a violation of Section 92.006.

(c) The justice, county, and district courts have concurrent jurisdiction of an action under Subsection (a) of this section except that the justice court may not order repairs under Subdivision (1) of Subsection (a) of this section.

## Contempt Issue

### *1. Original Version of SB 1448*

**This is the original version of SB 1448. This original bill, which amended a section of the Local Government Code, provided for an injunction to be issued if a landlord disobeyed an order to repair or remedy a condition. The committee substitute, which ultimately passed, amended Section 92.0563 of the Property Code, and that section of the Property Code does not specify the punishment if a landlord disobeys an order to repair or remedy a condition. The engrossed version of the bill did not contain any provision for the punishment of a landlord who disobeys such an order.**

By: West      S.B. No. 1448

### A BILL TO BE ENTITLED AN ACT

relating to the enforcement of municipal building and safety ordinances by tenants of buildings; providing civil penalties.

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

SECTION 1. Subchapter B, Chapter 54, Local Government Code, is amended by adding Section 54.011 to read as follows:

Sec. 54.011. DEFINITION. In this subchapter, "tenant" means a person who is authorized by a lease to occupy a dwelling, building, or other structure to the exclusion of others.

SECTION 2. Section 54.012, Local Government Code, is amended to read as follows:

Sec. 54.012. CIVIL ACTION.

(a) A municipality may bring a civil action for the enforcement of an ordinance: for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

relating to dangerously damaged or deteriorated structures or improvements;

relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification; or

relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.

(b) A tenant may bring a civil action against an owner of real property to seek a remedy for an ordinance violation relating to a condition that materially affects the health or safety of an ordinary tenant, if the tenant:

has paid, deposited, or tendered all rental payments owed under the lease agreement;

has provided written notice to the owner or the owner's representative describing the condition; and

has provided the owner a reasonable amount of time to repair or remedy the condition considering:

the severity and nature of a condition that could impact an ordinary tenant; and

the reasonable availability of materials, labor, and utilities to repair or remedy the condition.

(c) A tenant may join an action under this section that relates to the tenant's dwelling, building, or structure. A tenant may not join an action originally brought by a municipality unless the municipality consents.

(d) If a tenant files a suit under this subchapter in bad faith, the owner may recover from the tenant a civil penalty of one month's rent plus \$500, court costs, and reasonable attorney's fees. If the tenant's rent payment to the owner is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus \$500.

SECTION 3. Subchapter B, Chapter 54, Local Government Code, is amended by amending Section 54.013 and adding Section 54.0131 to read as follows:

Sec. 54.013. JURISDICTION; VENUE. (a) Jurisdiction and venue of an action under this subchapter are in a [the] district court, [or the] county court at law, or justice court of the county in which the conduct has occurred or is occurring or the condition or structure [municipality bringing the action] is located.

Sec. 54.0131. VENUE; HEARING; APPEAL IN JUSTICE COURT. (a) Venue of an action relating to a structure brought in a justice court under this subchapter is the precinct of the county where the structure is located.

Unless an emergency exists, the hearing on an action brought in justice court under Section 54.012(b) shall be held not less than six nor more than 10 calendar days after the action is brought.

At the conclusion of the hearing, the justice court shall either grant or deny permanent injunctive relief as appropriate based upon the evidence presented at the hearing.

( c ) Before the justice court grants permanent injunctive relief, there must be a finding that the evidence establishes a violation of an ordinance.

Either party may appeal the judgment of the justice court as in other civil cases. An appeal of a justice court judgment takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. The perfection of an appeal to county court by an owner of real property stays the effect of the judgment without the necessity of posting a supersedeas bond.

SECTION 4. Section 54.016, Local Government Code, is amended to read as follows:

**Sec. 54.016. INJUNCTION. (a) On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the municipality or a tenant may obtain against the owner or owner's representative with control over the premises an injunction that: prohibits specific conduct that violates the ordinance; and requires specific conduct that is necessary for compliance with the ordinance.**

**(b) In determining the specific conduct required under Subsection (a)(2), a court shall consider the severity and nature of the violation and the reasonable availability of materials, labor, and utilities.**

**( c ) It is not necessary for the municipality or tenant to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.**

**A justice court may only require the owner to repair or remedy the condition.**

SECTION 5. Subsection (a), Section 54.018, Local Government Code, is amended to read as follows:

**The municipality or a tenant may bring an action to compel the repair of a structure. A municipality may bring an action to compel the [ø] demolition of a structure or to obtain approval to remove the structure and recover removal costs.**

SECTION 6. Subchapter B, Chapter 54, Local Government Code, is amended by adding Section 54.020 to read as follows:

**Sec. 54.020. NO EFFECT ON OTHER DUTIES OF TENANT. This subchapter does not affect any duties or other obligations or responsibilities a tenant has to an owner or the owner's representative, including an obligation to pay rent or other obligations of the lease agreement.**

SECTION 7. This Act takes effect January 1, 2010.

2. *General Contempt Provisions in the Government Code*

GOVERNMENT CODE  
TITLE 2. JUDICIAL BRANCH  
SUBTITLE A. COURTS  
CHAPTER 21. GENERAL PROVISIONS

Sec. 21.001. INHERENT POWER AND DUTY OF COURTS.

(a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.

(b) A court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.

(c) During a court proceeding a judge may not request that a person remove an item of religious apparel unless:

- (1) a party in the proceeding objects to the wearing of the apparel; and
- (2) the judge concludes that the wearing of the apparel will interfere

with:

- (A) the objecting party's right to a fair hearing; or
- (B) the proper administration of justice; and
- (3) no reasonable alternative exists under which the judge may:
  - (A) assure a fair hearing; and
  - (B) protect the fair administration of justice.

Sec. 21.002. CONTEMPT OF COURT.

(a) Except as provided by Subsection (g), a court may punish for contempt.

(b) The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.

(c) The punishment for contempt of a justice court or municipal court is a fine of not more than \$100 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail.

(d) An officer of a court who is held in contempt by a trial court shall, on proper motion filed in the offended court, be released on his own personal recognizance pending a determination of his guilt or innocence. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to assignment by the presiding judge other than the judge of the offended court to determine the guilt or innocence of the officer of the court.

(e) Except as provided by Subsection (h), this section does not affect a court's power to confine a contemner to compel the contemner to obey a court order.

(f) Article 42.033, Code of Criminal Procedure, and Chapter 157, Family Code, apply when a person is punished by confinement for contempt of court for disobedience



of a court order to make periodic payments for the support of a child. Subsection (h) does not apply to that person.

(g) A court may not punish by contempt an employee or an agency or institution of this state for failure to initiate any program or to perform a statutory duty related to that program:

(1) if the legislature has not specifically and adequately funded the program; or

(2) until a reasonable time has passed to allow implementation of a program specifically and adequately funded by the legislature.

(h) Notwithstanding any other law, a person may not be confined for contempt of court longer than:

(1) 18 months, including three or more periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months, if the confinement is for criminal contempt; or

(2) the lesser of 18 months or the period from the date of confinement to the date the person complies with the court order that was the basis of the finding of contempt, if the confinement is for civil contempt.

3. *Injunction Jurisdiction as Applied to JP Courts*

CIVIL PRACTICE AND REMEDIES CODE  
CHAPTER 65. INJUNCTION  
SUBCHAPTER C. JURISDICTION OF PROCEEDINGS; VENUE

Sec. 65.021. JURISDICTION OF PROCEEDING.

(a) The judge of a district or county court in term or vacation shall hear and determine applications for writs of injunction.

(b) This section does not limit injunction jurisdiction granted by law to other courts.

GOVERNMENT CODE  
CHAPTER 27. JUSTICE COURTS

Sec. 27.034. DEED RESTRICTION JURISDICTION.

\* \* \*

(j) Nothing in this section authorizes a justice of the peace to grant a **writ of injunction**.

4. *Contempt Provisions for JP Courts Entering a Writ of Restoration*

H.B. No. 882  
Effective January 1, 2010

\* \* \*

(i) If the landlord or the person on whom a writ of restoration of utility service is served fails to immediately comply with the writ or later disobeys the writ, **the failure is grounds for contempt of court against the landlord or the person on whom the writ was served under Section 21.002, Government Code.** If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why the person should not be adjudged in **contempt of court.** If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, **the justice may commit the person to jail without bail until the person purges the contempt action or omission in a manner and form as the justice may direct.** If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in **contempt** and assess punishment under Section 21.002(c), Government Code.

\* \* \*

5. *Contempt Provisions for JP Courts Entering a Writ of Re-Entry*

TEXAS PROPERTY CODE  
TITLE 8. LANDLORD AND TENANT  
CHAPTER 92. RESIDENTIAL TENANCIES  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.009. RESIDENTIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT.

\* \* \*

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. **If the justice finds, after considering the**

evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

\* \* \*

6. *Examples of the Use of Contempt in the Rules of Civil Procedure*

**Rule 176.8. Enforcement of Subpoena**

(a) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a **contempt** of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

\* \* \*

**Rule 215.2. Failure to Comply With Order or With Discovery Request**

(a) *Sanctions by Court in District where Deposition is Taken.* If a deponent fails to appear or to be sworn or to answer a question after being directed to do so by a district court in the district in which the deposition is being taken, the failure may be considered a **contempt** of that court.

(b) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rules 199.2(b)(1) or 200.1(b) to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under Rule 204 of 215.1, the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are just, and among others the following:

\* \* \*

(6) in lieu of any of the foregoing orders or in addition thereto, an order treating as a **contempt** of court the failure to obey any orders except an order to submit to a physical or mental examination;

\* \* \*

(c) *Sanction Against Nonparty for Violation of Rules 196.7 or 205.3.* If a nonparty fails to comply with an order under Rules 196.7 or 205.3, the court which made the order may treat the failure to obey as **contempt** of court.

**Rule 267. Witness Placed Under Rule**

\* \* \*

e. Any witness or other person violating such instructions may be punished for **contempt** of court.

**Rule 269. Argument**

\* \* \*

(e) Arguments on the facts should be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the court. Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel. Mere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a **contempt** of court.

\* \* \*

**Rule 561. To Enforce Judgment**

The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, **enforce its judgment by attachment, fine and imprisonment.**

*(While this is not really contempt, it is certainly an extraordinary remedy to enforce a judgment, which is close to contempt. )*

**Rule 670. Refusal to Deliver Effects**

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for **contempt** of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such **contempt** and imprisoned until he shall deliver such effects.

**Rule 692. Disobedience**

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a **contempt**. In case of such disobedience, the complainant, his agent or

attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in **contempt** of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such **contempt**, in such manner and form as the court or judge may direct.

#### **Rule 743. Docketed**

The cause shall be docketed and tried as other cases. If the defendant shall fail to enter an appearance upon the docket in the justice court or file answer before the case is called for trial, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly. The justice shall have authority to issue subpoenas for witnesses to enforce their attendance, and to punish for **contempt**.

### **Miscellaneous Rules of Procedure**

#### **Rule of Civil Procedure 329b. Time for Filing Motions**

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316 in all district and county courts:

\* \* \*

(h) If a judgment is modified, corrected or reformed in any respect, the time for appeal shall run from the time the modified, corrected, or reformed judgment is signed, but if a correction is made pursuant to Rule 316 after expiration of the period of plenary power provided by the rule, no complaint shall be heard on appeal that could have been presented in an appeal from the original judgment.

#### **Rule of Civil Procedure 571. Appeal Bond**

The party appealing, his agent or attorney, shall within ten days from the date a judgment or order overruling motion for new trial is signed, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal; or if the appeal is by the plaintiff by reason of judgment

denying in whole or in part his claim, he shall file with the justice a bond in the same ten-day period, payable to the appellee, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the costs incurred in the justice court and estimated costs in the county court, less such sums as may have been paid by the plaintiff on the costs, conditioned that he shall prosecute his appeal to effect and shall pay off and satisfy such costs if judgment or costs be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed. Within five days following the filing of such appeal bond, the party appealing shall give notice as provided in Rule 21a of the filing of such bond to all parties to the suit who have not filed such bond. No judgment shall be taken by default against any party in the court to which the cause has been appealed without first showing that this rule has been complied with. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five days after notice within which to correct or amend same.

#### **Rule of Civil Procedure 749. May Appeal**

In appeals in forcible entry and detainer cases, no motion for new trial shall be filed.

Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the justice within five days after the judgment is signed, a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him.

The justice shall set the amount of the bond to include the items enumerated in Rule 752.

Within five days following the filing of such bond, the party appealing shall give notice as provided in Rule 21a of the filing of such bond to the adverse party. No judgment shall be taken by default against the adverse party in the court to which the cause has been appealed without first showing substantial compliance with this rule.

#### **Rule of Appellate Procedure 24.3. Continuing Trial Court Jurisdiction; Duties of Judgment Debtor**

(a) *Continuing Jurisdiction.* Even after the trial court's plenary power expires, the trial court has continuing jurisdiction to do the following:

- (1) order the amount and type of security and decide the sufficiency of sureties; and
- (2) if circumstances change, modify the amount or type of security required to continue the suspension of a judgment's execution.

\* \* \*

**Miscellaneous Sections of the Small Claims Act**

GOVERNMENT CODE  
TITLE 2. JUDICIAL BRANCH  
SUBTITLE A. COURTS  
CHAPTER 28. SMALL CLAIMS COURTS  
SUBCHAPTER A. GENERAL PROVISIONS

\* \* \*

Sec. 28.002. JUDGE. Each justice of the peace sits as judge of the small claims court and exercises the jurisdiction provided by this chapter.

Sec. 28.003. JURISDICTION. (a) The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$10,000.

\* \* \*

SUBCHAPTER B. INSTITUTION OF CLAIM

Sec. 28.011. VENUE. An action in small claims court must be brought in the county and precinct in which the defendant resides, except that:

- (1) an action on an obligation that the defendant has contracted to perform in a certain county may be brought in that county; and
- (2) an action for which venue is proper under Section 15.099, Civil Practice and Remedies Code, may be brought as provided by that section.

Sec. 28.012. INSTITUTION OF ACTION.

(a) To institute an action in small claims court, the claimant, attorney for the claimant, or authorized agent of the claimant must:

- (1) appear before the judge or the clerk of the court and file a statement of the claim under oath; or
- (2) file a sworn statement of the claim with the judge or clerk of the court.

Sec. 28.013. CITATION.

(a) On filing the statement and payment of the filing fee, the judge or clerk shall issue process in the manner provided for a case in justice court.

(b) Citation is served by an officer of the state authorized to serve other citations.

(c) Citation may be served in any manner authorized for service of citation in a district court, county court, or justice court.

## SUBCHAPTER C. HEARING

### Sec. 28.031. FAILURE TO APPEAR.

(a) If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge shall enter a default judgment for the plaintiff in the amount proved to be due. The judge may set aside the default judgment if, not later than the 10th day after the default judgment is signed, the defendant files with the court a written motion showing good cause for setting aside the judgment.

(b) If the plaintiff does not appear, the judge may enter an order dismissing the action without prejudice. The judge may set the case for trial if, not later than the 10th day after the judge dismisses the action, the plaintiff files with the court a written motion showing good cause to set aside the dismissal.

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### Sec. 28.033. HEARING.

(a) If both parties appear, the judge shall proceed to hear the case.

(b) Formal pleading other than the statement is not required.

(c) The judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered.

(d) The hearing is informal, with the sole objective being to dispense speedy justice between the parties.

(e) Reasonable discovery in small claims court shall be permitted. Discovery is limited to that considered appropriate and permitted by the judge.

Sec. 28.034. DUTY OF JUDGE TO DEVELOP CASE. The judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

Sec. 27.032. EXTRAORDINARY REMEDIES. A justice of the peace may issue writs of attachment, garnishment, and sequestration within the justice's jurisdiction in the same manner as judges and clerks of the district and county courts.



**Miscellaneous Sections of the Code Construction Act**

GOVERNMENT CODE  
TITLE 3. LEGISLATIVE BRANCH  
SUBTITLE B. LEGISLATION  
CHAPTER 311. CODE CONSTRUCTION ACT  
SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

- (1) "**May**" creates discretionary authority or grants permission or a power.
- (2) "**Shall**" imposes a duty.
- (3) "**Must**" creates or recognizes a condition precedent.
- (4) "Is entitled to" creates or recognizes a right.
- (5) "May not" imposes a prohibition and is synonymous with "shall not."
- (6) "Is not entitled to" negates a right.
- (7) "Is not required to" negates a duty

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# SB 1448 TASK FORCE PROPOSED RULES

## PART VII

### SECTION 2. Tenants Suit in Justice Court to Enforce Landlord's Duty to Repair<sup>1</sup>

COMMENT---2010: Rules 737.1-.16 are promulgated to provide procedures for a tenant's request for relief in a justice court pursuant to Section 92.0563(a) of the Property Code. The procedures in Rules 523-574b also apply to the extent they are not inconsistent with the procedures in Rules 737.1-.16. Except when otherwise specifically provided, the terms in Rules 737.1-.16 are defined consistent with Section 92.001 of the Property Code. All suits must be filed in accordance with the venue provisions of Chapter 15 of the Civil Practice and Remedies Code. A suit seeking an order to repair or to reduce rent may only be filed in justice court under Rule 737 or in county or district court.

#### Rule

- 737.1 Tenant's Suit to Enforce Landlord's Duty to Repair**
- 737.2 Requisites of Petition**
- 737.3 Citation**
- 737.4 Service of Citation**
- 737.5 Alternate Service of Citation**
- 737.6 Representation by Agents**
- 737.7 Docketing, Appearance, and Trial**
- 737.8 Judgment**
- 737.9 Counterclaims**
- 737.10 Landlord's Order to Repair or Remedy a Condition**
- 737.11 Landlord's Motion to Modify the Reduction in Rent**
- 737.12 Motion to Set Aside Default Judgments or Dismissal**
- 737.13 Appeal**
- 737.14 Discovery and Trial**
- 737.15 Effect of Writ of Possession**
- 737.16 Trial de Novo**

#### **Rule 737.1. Tenant's Suit to Enforce Landlord's Duty to Repair**

A tenant may file a suit in justice court to seek judicial remedies under Subchapter B of Chapter 92 of the Texas Property Code.

#### **Rule 737.2. Requisites of Petition**

The petition must be in writing<sup>2</sup> and must include the following:

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<sup>1</sup> The Task Force noted that SB 1448 Section 2 mandates rules of procedure applicable to Section 92.0563(a)(1) while SB 1448 Section 1 includes Sections (a)(1)-(5). The Task Force is proposing rules of procedure for all remedies under Section 92.0563(a).

- a) a description of the leased premises with sufficient certainty to identify the same;
- b) the name of the landlord;
- c) the address of the landlord or the address of the landlord's agent for service of process, in accordance with Section 92.003 of the Texas Property Code;
- d) the telephone numbers of the landlord and landlord's agent for service of process, if known;
- e) the date of any notice given to the landlord requesting the condition be repaired or remedied, who specifically the notice was given to, whether the notice was in writing or oral, whether any written notice was given by certified or registered mail, and whether the rent was current or had been timely tendered at the time notice was given;
- f) the condition of the premises the tenant seeks to have repaired or remedied;
- g) a statement that the landlord had a reasonable time to repair or remedy the condition and has not made a diligent effort to do so;
- h) a statement of how the condition occurred, if known;
- i) a statement of the relief being requested by the tenant, including any order to repair or remedy a condition or reduce the rent, or claims for actual damages, attorney's fees, civil penalties, or court costs;
- j) a statement that the total relief being requested will not exceed \$10,000.00;
- k) if the petition includes a request to reduce the rent:
  - 1) the amount of the rent payable, the rental period, and when the rent is due;
  - 2) whether the government pays any portion of the rent and, if known, the amount; and
  - 3) the amount of rent the tenant seeks to have reduced and the date the rent reduction should begin; and
- l) the tenant's name, address, and phone number.

The tenant must provide the court with sufficient copies of any exhibits included with the petition for service on the landlord.

### **Rule 737.3. Citation**

When the tenant files a written petition with a justice court, the justice shall immediately issue citation directed to the landlord, commanding the landlord to appear before such justice at the time and place named in the citation. The appearance date must be not earlier than the sixth day and not later than the tenth day after the date of service of the citation.

The citation shall inform the landlord that, upon timely request and payment of a jury fee no later than five days after the landlord is served with citation, the case shall be heard by a jury.

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<sup>2</sup> The majority view of the Task Force was that the petition need not be sworn. Since the tenant's claim is unliquidated, no action would be taken based on the petition without sworn testimony and evidence in court. A minority view is to require a sworn petition in these suits, with one argument being that a basis for requiring a sworn complaint is to verify the allegations required in 737.5 to support alternative service on a landlord. A sworn petition is required in an eviction and a small claims suit, but not in a justice court civil suit.

**Rule 737.4. Service of Citation**

The sheriff, constable, or other person authorized by law who receives the citation shall serve the citation by delivering a copy of it, along with a copy of the petition including any exhibits, to the landlord at least six days before the appearance day. At least one day before the day assigned for trial, the person serving the citation shall return the citation, with the action written on the citation, to the justice who issued the citation. The citation shall be served and returned in like manner as ordinary citations issued from a justice court. The person serving process shall return and serve it in accordance with the justice court rules in Part V of the Rules of Civil Procedure.

**Rule 737.5. Alternative Service of Citation**

If the petition lists all addresses of the landlord, the landlord's management company, on-premises manager, authorized agent, or rent collector serving the premises that are known to the person filing the petition, and if it states that such person knows of no other home or work addresses of the landlord, service of citation may be by delivery to the landlord's address in question as follows:

If the sheriff, constable, or other person authorized by law who receives the citation is unsuccessful in serving such citation under Rule 737.4, the sheriff, constable, or other person authorized by law shall execute a sworn statement that the sheriff, constable, or other person authorized by law has made diligent efforts to serve the citation on at least two occasions at all addresses of the landlord as well as all other addresses for the landlord's management company, on-premises manager, authorized agent, or rent collector as may be shown on the complaint, stating the times, dates, and places of attempted service. Such sworn statement shall be filed by the sheriff, constable, or other person authorized by law with the justice, who shall promptly consider the sworn statement of the sheriff, constable, or other person authorized by law. The justice may then authorize service by leaving a copy of the citation, petition, and any exhibits with a person over the age of sixteen years, at any address included in the petition. If the sheriff, constable, or other person authorized by law is unsuccessful in serving the landlord after at least one attempt at each address listed in the petition, then the sheriff, constable, or other person authorized by law attempting service may serve the citation according to the following:

- a) the sheriff, constable, or other person authorized by law shall deliver a copy of the citation, petition, and any exhibits to someone over the age of sixteen years, at any address listed in the petition, or, if nobody answers the door at an address, shall either place it through a door mail chute or slip it under the front door, and if neither of the latter methods is practical, the citation, petition, and any exhibits shall be affixed to the front door or main entry to the address;
- b) the sheriff, constable, or other person authorized by law shall that same day or the next day send by first class mail a copy of the citation, petition, and any exhibits addressed to the landlord at the landlord's address on the petition;
- c) the sheriff, constable, or other person authorized by law shall note on the return of the citation the date of delivery under (a) and the date of mailing under (b); and

- d) the delivery and mailing to the address shall occur at least six days before the appearance day. At least one day before the day assigned for trial, the citation, with the action written thereon, must be returned to the justice who issued the citation.

It is not necessary for the tenant to request service as authorized by this rule.

**Rule 737.6. Representation by Agents**

In a case filed under these rules in a justice court, parties may represent themselves or be represented by their authorized agents. Nothing in this rule shall authorize a person who is not an attorney licensed to practice law in this state to represent a party before the court if the party is present.

**Rule 737.7. Docketing, Appearance, and Trial**

- a) The case shall be docketed and tried as other cases.
- b) The appearance date on the citation shall constitute the trial date.
- c) Any party shall have the right to trial by jury, by making a request to the court within five days after the date the landlord is served with citation, and by paying a jury fee. If either party demands a jury, the jury shall be empaneled as soon as practicable. If neither party demands a jury, the justice shall try the case.
- d) The justice may continue the trial for good cause shown. Continuances should be limited, and the case should be reset for trial on an expedited basis.
- e) If the tenant appears at trial, and the landlord has been duly served and fails to appear at trial, the justice may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the justice shall render judgment against the landlord in accordance with the evidence.
- f) If the tenant fails to appear for trial, the justice, on motion of the landlord, may dismiss the suit.

**Rule 737.8. Judgment**

A justice may enter a judgment against the landlord for failure to repair or remedy a condition at the leased premises if the total judgment including the order directing a landlord to repair or remedy a condition does not exceed \$10,000 excluding interest and costs of court. The judgment may:

- a) order the landlord to take reasonable action to repair or remedy the condition;
- b) order the landlord to reduce the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied, as long as the order reducing the rent states the amount of the rent to be paid by the tenant, if any, the frequency with which the rent is to be paid, the condition justifying the reduction of the rent, the effective date of the rent reduction, and the termination date of the order reducing rent. On the date the rent reduction terminates, the rent will revert to the rent specified in the lease agreement.
  - 1) If an order to repair or remedy is issued in addition to an order to reduce the tenant's rent, then the reduction in rent automatically

terminates on the completion date set in the order to repair or remedy, after which the rent returns to the rent amount in the lease.

- 2) If the justice did not issue an order to repair or remedy in addition to an order to reduce the tenant's rent, then the court must hold a hearing to determine when the condition has been repaired or remedied and may modify the rent reduction based on that determination;
- c) award a civil penalty of one month's rent plus \$500;
- d) award the tenant's actual damages; and
- e) award court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

### **Rule 737.9. Counterclaims**

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate cause of action. Any potential causes of action, including a compulsory counterclaim, that are not brought because of this rule shall not be deemed to be waived. Any landlord or tenant who prevails in a suit brought under these rules may recover the party's costs of court and reasonable attorney's fees as allowed by law.

### **Rule 737.10. Landlord's Order to Repair or Remedy a Condition (Option # 1 Contempt)<sup>3</sup>**

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#### **<sup>3</sup> NOTE TO SCAC ON RULE 737.10:**

There is a difference of opinion on the Task Force as to whether the Legislature intended that a JP can find a landlord in contempt of court if the landlord disobeys the order to repair or remedy a condition. One opinion is that Section 21.001 of the Government Code gives a JP the power to enforce his or her orders and therefore a JP may hold someone in contempt for disobeying the justice court's order even without specific contempt provisions in Section 92.0563 of the Property Code. The other opinion is that because the Legislature did not specifically provide for contempt in the event of a landlord disobeying an order to repair or remedy a condition, the Legislature did not intend to grant contempt power to the JP. The Legislature did specifically grant a JP court power to hold landlords in contempt for similar landlord-tenant laws, such as disobeying a Writ of Re-entry or an Order to Restore Utility Service. In the original version of SB 1448, which amended a section of the Local Government Code, the Legislature provided that a JP could enter a permanent injunction to repair or remedy a condition. The committee substitute, which ultimately passed, ended up amending a section of the Property Code that did not specifically speak to the penalty for a landlord who disobeyed an order to repair or remedy a condition. Some on the Task Force argue that since the amended section of the Property Code does not speak to the penalty for disobeying an order to repair or remedy a condition then the rules should also not speak to disobedience either. Therefore, if you believe Section 21.001 of the Government Code applies then you may take the position that no mention is needed as it is obvious, or you may take the position that since it is obvious why not mention it in the rules?

If these rules are silent as to whether a JP can hold a landlord in contempt for disobeying an order to repair or remedy a condition, then some JPs may feel they cannot hold the landlord in contempt because it is not in the SB 1448, nor is it in Section 92.0563 of the Property Code. Section 92.0563 is the focus of SB 1448 and it also does not specifically indicate that a court (either JP, county, or district) can hold a landlord in contempt for disobeying an order to repair or remedy a condition. Some may feel it is permissible to hold a landlord in contempt using the authority in Section 21.002 of the Government Code, but I fear it will cause confusion and inconsistent application of the law in these cases unless a definite statement is placed either in the rules or a comment.

The SCAC can either put something in the rule or a comment, or be silent about the issue. There are at least three possible decisions that could be made:

- a) *Form and Content of the Order.* The order must be directed to the landlord and state:
- 1) the names of the parties to the proceeding;
  - 2) the address of the leased premises where the conditions are to be repaired or remedied;
  - 3) in reasonable detail the actions the landlord must take to repair or remedy the conditions; and
  - 4) the date by which the landlord must repair or remedy the conditions.
- b) *Issuance, Service, and Return of Order.* The justice shall prepare and issue the order. The order may be served on the landlord in open court or by any means provided in Rule 21a at an address listed in the petition, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the justice serves the landlord in open court or by other means provided in Rule 21a, the person serving the order on the landlord shall file a certificate of service of the order.
- c) *Landlord's Failure to Comply with the Order.* If the landlord fails to comply with the order, the failure is grounds for contempt of court against the landlord under Section 21.002 of the Government Code.
- 1) If the landlord fails to comply with an order, the tenant may file in the justice court where the case is pending an affidavit stating that the order has been disobeyed and describing the acts or omissions constituting the disobedience.
  - 2) On receipt of the affidavit, the justice shall issue a show cause order, directing the landlord to appear on a designated date and time and show cause why the landlord should not be adjudged in contempt of court.
  - 3) The order to show cause shall be delivered to the sheriff or constable in the county and must be personally served on the landlord no later than three days prior to the hearing on the order to show cause.
  - 4) If the justice finds after considering the evidence at the hearing, that the landlord violated an order, the justice may assess a fine of not more than \$100 or confinement in the county jail for not more than three days, or both such fine and confinement in jail.

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- (1) Decide that the Legislature did not provide for contempt of court in the rule and so state in a comment so it is clear. In the absence of a reference in the rules, some JPs may still conclude they can hold a landlord in contempt under Section 21.002 of the Government Code but many will believe the opposite because contempt is neither in the statute nor the rule.
  - (2) Decide that the Legislature did provide for contempt and put it in the rule letting all JPs and litigants know the penalty for disobeying an order to repair or remedy a condition. If the SCAC believes contempt is a penalty for disobedience of an order, then the SCAC should put it in the rule so the authority of JPs is clear. A comment to this effect would be just as good.
  - (3) Decide that it is unclear and omit any reference whatsoever to contempt or what the penalty is for disobeying an order to repair or remedy a condition. This is almost guaranteed to cause confusion and the inconsistent application of these rules with regard to the disobedience of the order.

- 5) If the landlord violates an order before receiving the show cause order but has complied with the order after receiving the show cause order, the justice may still find the landlord in contempt and assess punishment as provided for in this rule.
- d) *Modification of the Order to Repair or Remedy.* Either party may move the justice to modify the order to repair or remedy by filing a written motion requesting a hearing with the court within five days from the date the justice signs the judgment.
- 1) If the justice does not grant the motion requesting a hearing within 10 days from the date the justice signs the judgment, then the motion is overruled by operation of law.
  - 2) If the justice grants the motion requesting a hearing, the justice must set the hearing no later than 10 days from the date the justice grants the request for a hearing, unless the parties agree to an extension.
  - 3) If the justice does not grant a party's written motion for a hearing, that party may appeal the judgment within 15 days from the date the justice signs the judgment. A motion for a hearing that was not in writing does not extend the time in which a party may appeal. A motion for a hearing under this rule that is not filed within five days from the date the justice signs the judgment is not timely filed and does not extend the time for a party to appeal.
  - 4) The motion requesting a hearing must show good cause for modification and why a hearing is justified.
  - 5) The justice may modify the order to repair or remedy by:
    - A) changing the date by which the repairs or remediation must be completed;
    - B) changing the actions the landlord must take to repair or remedy the condition at the leased premises; and
    - C) changing any other conditions the court may find appropriate within the scope of the order.
  - 6) If an order is modified, corrected, or reformed in any respect, any party may appeal within 10 days from the date the justice signs the amended order. The appeal must be filed in accordance with Rule 737.13.

**Rule 737.10. Landlord's Order to Repair or Remedy a Condition (Option # 2 No Contempt)**

- a) *Form and Content of the Order.* The order must be directed to the landlord and state:
- 1) the names of the parties to the proceeding;
  - 2) the address of the leased premises where the conditions are to be repaired or remedied;
  - 3) in reasonable detail the actions the landlord must take to repair or remedy the conditions; and
  - 4) the time by which the landlord must repair or remedy the conditions.



- b) *Issuance, Service, and Return of Order.* The justice shall prepare and issue the order. The order may be served on the landlord in open court or by any means provided in Rule 21a at an address listed in the petition, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the justice serves the landlord in open court or by other means provided in Rule 21a, the person serving the order on the landlord shall file a certificate of service of the order.
- c) *Modification of the Order to Repair or Remedy.* Either party may move the justice to modify the order to repair or remedy by filing a written motion requesting a hearing with the court within five days from the date the justice signs the judgment.
- 1) If the justice does not grant the motion requesting a hearing within 10 days from the date the justice signs the judgment, then the motion is overruled by operation of law.
  - 2) If the justice grants the motion requesting a hearing, the justice must set the hearing no later than 10 days from the date the justice grants a request for a hearing, unless the parties agree to an extension.
  - 3) If the justice does not grant a party's written motion for a hearing, that party may appeal the judgment within 15 days from the date the justice signs the judgment. A motion for a hearing that was not in writing does not extend the time in which a party may appeal. A motion for a hearing under this rule that is not filed within five days from the date the justice signs the judgment is not timely filed and does not extend the time for a party to appeal.
  - 4) The motion requesting a hearing must show good cause for modification and why a hearing is justified.
  - 5) The justice may modify the order to repair or remedy by:
    - A) changing the date by which the repairs or remediation must be completed;
    - B) changing the actions the landlord must take to repair or remedy the condition at the leased premises; and
    - C) changing any other conditions the court may find appropriate within the scope of the order.
  - 6) If an order is modified, corrected, or reformed in any respect, any party may appeal within 10 days from the date the justice signs the amended order. The appeal must be filed in accordance with Rule 737.13.

**Rule 737.11. Landlord's Motion to Modify the Reduction in Rent**

The landlord may file a written motion seeking to modify the order reducing the tenant's rent within the time provided by Rule 737.10. If the landlord does not file a motion with the justice court to modify the order reducing the tenant's rent, the rent will be restored to the amount in the lease on the completion date of the order to repair or remedy, if one is entered by the court. If the justice does not order a repair or remedy of

a condition, then the landlord must request the court to modify the reduction of the tenant's rent.

- a) If the landlord has been ordered to repair or remedy a condition and the landlord repairs or remedies the condition before the completion date of the order to repair or remedy, the landlord may request that the order to reduce the tenant's rent be modified.
  - 1) If a landlord repairs or remedies the condition serving as the basis for the order reducing the rent, the landlord may file a written motion with the court stating that the condition has been repaired and remedied, the date it was repaired or remedied, and how the condition was repaired or remedied, and requesting that the order reducing the tenant's rent be modified. The motion must contain the following statement in at least 12-point type: "NOTICE: This motion requests the order reducing rent be modified, which could result in an increase in the rent to the amount listed in the lease. A tenant has a right to contest this motion, but must do so within five days of service of this motion by filing a written response with the court."<sup>4</sup>
  - 2) The landlord must provide proof that the request has been served on the tenant in any method provided for by Rule 21a. The tenant will have five days from the date the tenant receives the notice to contest the motion to modify the order reducing the tenant's rent. If the tenant does not contest the landlord's motion by timely filing a written response with the court, the rent will be fully restored to the amount in the lease effective on the date notice was given to the tenant.
  - 3) If the tenant contests the landlord's request to modify the order reducing rent, then the justice must set a hearing as soon as practicable.
  - 4) If the landlord is ordered to repair or remedy a condition at the leased premises in conjunction with an order reducing the tenant's rent, the order reducing the rent will expire on the completion date of the repair or remediation order.
- b) If the landlord has not been ordered to repair or remedy a condition but has repaired or remedied the condition justifying the order reducing the rent, the landlord may file a written motion to modify the order reducing the tenant's rent. The motion must be filed with the court within 10 days from the date the justice signs the order reducing the tenant's rent. If an order reducing rent is modified, corrected, or reformed in any respect, any party may appeal within 10 days from the date the justice signs the amended order. The appeal must be filed in accordance with Rule 737.13.

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<sup>4</sup> There was disagreement on the Task Force as to whether this notice is a good idea. Some felt this additional mandated notice to the tenant was not needed, as the substance of the landlord's motion should be self-explanatory to a tenant.

### **Rule 737.12. Motion to Set Aside Default Judgments or Dismissal**

A motion to set aside a default judgment or a dismissal for want of prosecution must be in writing and filed within five days from the date the justice signs the judgment or order. A party may file only one motion to set aside a default judgment or a dismissal for want of prosecution.

- a) An order setting aside a default judgment or order of dismissal for want of prosecution must be signed within 10 days after the date the justice signs the default judgment or order of dismissal for want of prosecution.
- b) If a written motion to set aside a default judgment or dismissal for want of prosecution is timely filed but is not granted by written order within 10 days after the justice signs the default judgment or order of dismissal for want of prosecution, then in order to perfect an appeal, the party filing the motion must file a written notice of appeal within 15 days from the date the justice signs the judgment.
- c) When both the tenant and landlord appeared for trial, no motion for new trial may be filed.

### **Rule 737.13. Appeal**

- a) Either party may appeal the decision of the justice court by filing a written notice of appeal with the justice court within 10 days from the date the justice signs the judgment. The posting of an appeal bond is not required for an appeal under these rules, and the appeal shall be considered perfected with the filing of a notice of appeal and the payment of a transcript fee in the justice court. Otherwise, the appeal is in the manner provided by law for appeal from justice court to county court.<sup>5</sup>

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<sup>5</sup> SB 1448 Section 1(f) states “An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner’s appeal and stays the effect of the judgment without the necessity of posting an appeal bond.” While the bill allows an owner to perfect an appeal without posting an appeal bond, it does not specifically provide the same generosity to tenants. The majority of the Task Force considered this and felt equal protection dictates that tenants who wish to appeal be treated in the same manner. A minority of the Task force believed that SB 1448 Section 1(f) should be expressly followed — *i.e.*, tenants must post an appeal bond to appeal. If the SCAC feels the minority view is preferable, here are two alternatives, one based on Rule 571 and the other based on Rule 749.

#### Alternative # 1 (Based on Rule 571)

- a) Either party may appeal the decision of the justice court within 10 days from the date the justice signs the judgment. A landlord may perfect an appeal by filing a written notice of appeal, without the necessity of posting an appeal bond. A tenant may perfect an appeal by posting an appeal bond in an amount double the costs incurred in the justice court and estimated costs in county court plus an amount equal to the attorney’s fees awarded to the landlord, if any. Otherwise, the appeal shall be handled in the same manner as an appeal from justice court to county court.

OR

#### Alternative # 2 (Based on Rule 749)

- a) Either party may appeal the decision of the justice court within 10 days from the date the justice signs the judgment. A landlord may perfect an appeal by filing a written notice of appeal, without the necessity of posting an appeal bond. A tenant may perfect an appeal by posting an appeal bond in an amount set by the justice court. Otherwise, the appeal shall be handled in the same manner as an appeal from justice court to county court.

- b) The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy as well as any other actions.
- c) The filing of a written motion to set aside a dismissal or a default judgment within five days from the date the justice signs the judgment will extend the time to file an appeal. If the justice does not grant the motion within 10 days of signing the default judgment or dismissal order, the party may file a notice of appeal within 15 days from the date the justice signs the default judgment or dismissal order.
- d) If a written motion for a hearing to modify the order to repair or remedy is filed under Rule 737.10 and is not granted within 10 days, then the party may file a notice of appeal<sup>6</sup> within 15 days from the date the justice signs the judgment.
- e) If the appellant fails to pay the costs on appeal in accordance with Rule 143a, the appeal shall be deemed not to be perfected and the judgment of the justice court is reinstated and final. The county clerk shall return all papers in said case to the justice court where the case originated and the justice may proceed as though no appeal had been attempted. The justice may, on the justice's own motion, modify the completion date for the order to repair or remedy.
- f) Within one day following the filing of a motion to set aside a default judgment or dismissal, or within one day following the filing of a notice of appeal, the party filing the motion must give notice under Rule 21a of the filing of the motion or notice to all other parties in the suit.
- g) Even after the justice court's plenary power expires, the justice court has continuing jurisdiction to do the following:
  - 1) modify the order to repair or remedy; and
  - 2) modify the order reducing the rent.
- h) If an order to repair or remedy or an order reducing rent is modified, corrected, or reformed in any respect, any party has the right to appeal within 10 days from the date the justice signs the new order, in the same manner set out in this rule. An appeal of any order will constitute an appeal of the entire suit and will stay the enforcement of any actions.

**Rule 737.14. Discovery and Trial**

Reasonable discovery shall be permitted. Discovery is limited to that considered appropriate and permitted by the justice and must be expedited. In the case of a bench trial, the justice may develop the facts of the case in order to ensure justice. The failure of any party to respond to an order of the court for discovery may be punished in accordance with Rule 215.2.

**Rule 737.15. Effect of Writ of Possession**

If a judgment for the landlord for possession of the leased premises becomes final, any order to repair or remedy is vacated and unenforceable.

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<sup>6</sup> Or file an appeal bond depending on how the SCAC resolves the issue presented in footnote 5.

**Rule 737.16. Trial de Novo**

The suit shall be tried de novo in the county or district court, and judgment shall be rendered. An appeal of a judgment of a justice court under these rules takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in county or district court.