

**SCAC Meeting Agenda**  
**Friday, January 30, 2026**  
**9:00 a.m.**

**Location:** State Bar of Texas Building  
1414 Colorado Street  
Austin, TX 78701

**Welcome from Chief Justice Tracy Christopher**

**Status Report from Justice Jane Bland**

Justice Bland will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the October 10, 2025 meeting.

**Comments from Justice Evan Young**

**I. Repair & Remedy Forms**

*Legislative Mandates Subcommittee:*

*Jim M. Perdue, Jr. – Chair*

*Pete Schenkkkan – Vice Chair*

*Hon. John Browning*

*Hon. Jerry Bullard*

*Prof. Elaine A. G. Carlson*

*Hon. Nicholas Chu*

*Hon. Ana E. Estevez*

*Hon. David L. Evans*

*Cynthia Barela Graham*

*Robert L. Levy*

*Richard R. Orsinger*

November 13, 2025 Memo re: Early Termination, Repair and Remedy, and Security Deposit Form Kits

1a- Tenant's Request to Repair or Fix a Problem

1b- FAQs and Instructions- Tenant's Request to Repair or Fix a Problem

2a- Tenant's Notice of Intent to Repair and Deduct

2b- FAQs and Instructions for Tenant's Notice of Intent to Repair and Deduct Allowed in Certain Situations

3a- Landlord's Affidavit for Delay of Repairs

- 3b- Instructions for Landlord's Affidavit for Delay of Repairs
- 4a- Tenant's Notice of Lease Termination for Landlord's Failure to Repair
- 4b- Instructions for Tenant's Notice of Lease Termination for Landlord's Failure to Repair
- 5a- Petition to Repair or Remedy a Condition in a Residential Rental Property
- 5b- Instructions for Petition to Repair or Remedy a Condition in a Residential Rental Property
- 6- Judgment Finding for Defendant in Repair or Remedy Case
- 7- Judgment Finding for Plaintiff to Repair or Remedy a Condition in a Residential Rental Property

## **II. Early Lease Termination Forms**

*Legislative Mandates Subcommittee:*

*Jim M. Perdue, Jr. – Chair*

*Pete Schenkkkan – Vice Chair*

*Hon. John Browning*

*Hon. Jerry Bullard*

*Prof. Elaine A. G. Carlson*

*Hon. Nicholas Chu*

*Hon. Ana E. Estevez*

*Hon. David L. Evans*

*Cynthia Barela Graham*

*Robert L. Levy*

*Richard R. Orsinger*

- 1a- Notice of Termination of Lease Following Death of Sole Tenant
- 1b- FAQs and Instructions for Notice of Termination of Lease Following Death of Sole Tenant
- 2a- Notice of Termination of Lease Following Family Violence
- 2b- FAQs and Instructions for Notice of Termination of Lease Following Family Violence
- 3a- Notice of Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking
- 3b- FAQs and Instructions for Notice of Early Termination of Lease Following Sexual Assault, or Stalking
- 4a- Notice of Termination of Lease Following Certain Decisions Related To Military Service
- 4b- FAQs and Instructions for Early Termination of Lease Due to

## Military Service

### **III. Security Deposit Forms**

*Legislative Mandates Subcommittee:*

*Jim M. Perdue, Jr. – Chair*

*Pete Schenkkkan – Vice Chair*

*Hon. John Browning*

*Hon. Jerry Bullard*

*Prof. Elaine A. G. Carlson*

*Hon. Nicholas Chu*

*Hon. Ana E. Estevez*

*Hon. David L. Evans*

*Cynthia Barela Graham*

*Robert L. Levy*

*Richard R. Orsinger*

- 1a- Tenant's Request for Return of Security Deposit and Statement of Forwarding Address
- 1b- FAQs and Instructions for Tenant's Request for Return of Security Deposit and Statement of Forwarding Address
- 2a- Plaintiff/Tenant's Petition for Return of Security Deposit
- 2b- Instructions for Return of Security Deposit Petition
- 3- Judgment for Petition for Security Deposit

### **IV. Summary Judgment**

*Summary Judgment Ad Hoc Subcommittee:*

*Richard Orsinger – Chair*

*Hon. Ana E. Estevez – Vice Chair*

*Prof. Elaine A. G. Carlson*

*Hon. Tracy E. Christopher*

*Prof. William V. Dorsaneo III*

*Hon. David L. Evans*

*Prof. Lonny S. Hoffman*

*John H. Kim*

*Hon. Emily Miskel*

*Giana Ortiz*

*Jim Perdue, Jr.*

*Pete Schenkkkan*

*Hon. John F. Warren*

January 23, 2026 Memo re: Proposed Changes to TRCP 166a  
January 23, 2026 Redline Rule 166a Amendments

**V. Expedited Actions**

*Rule 167-206 Subcommittee*

*Hon. Ana E. Estevez – Chair*  
*Quentin Smith – Vice Chair*  
*Hon. Harvey G. Brown*  
*Jack P. Carroll*

November 18, 2025 Memo re: Expedited Actions

**VI. Jury Composition**

*Rule 216-299a Subcommittee*

*Prof. Elaine A. G. Carlson – Chair*  
*Thomas C. Riney – Vice Chair*  
*Marcy Hogan Greer*  
*Rusty Hardin*  
*John H. Kim*  
*Hon. Robert Schaffer*  
*Kent C. Sullivan*  
*Hon. John F. Warren*  
*Kennon Wooten*

January 22, 2026 Memo re: Modification of Jury Rules

**VII. Hallucinated Citations**

*Rule 1-14c Subcommittee:*

*Robert L. Levy – Chair*  
*John H. Kim – Vice Chair*  
*Hon. Harvey G. Brown*  
*Constance H. Pfeiffer*  
*Marcy Hogan Greer*  
*Hon. Emily Miskel*  
*Jim M. Perdue, Jr.*

January 23, 2026 Memo re: Proposed Rules on AI-Generated  
("Hallucinated") Citations

# Tab I-Repair and Remedy Forms

## Memorandum

DATE: November 13, 2025

TO: The Supreme Court Advisory Committee

FROM: Carlos Villa, Chair

Landlord-Tenant Forms Task Force of the Supreme Court of Texas

Trish McAllister  
Staff Attorney

RE: Early Termination, Repair and Remedy, and Security Deposit Form Kits

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### I. Introduction

On May 2, 2017, the Court created the Landlord-Tenant Forms Task Force pursuant to Senate Bill 478 that passed in the 2015 legislative session and amended Government Code Section 22.019 to direct the Court to create forms for use in landlord-tenant matters. The Landlord-Tenant Task Force is comprised of judges, lawyers, court administrators, and court clerks. Since that time, the Task Force has created twelve form kits to address different landlord-tenant issues. Each form kit contains a set of instructions, FAQs, and forms. The kits are intentionally written in plain language because they are intended for use by laypeople. The status of each kit is listed below:

#### A. Form Kits with the Court

1. **Eviction Kit:** Originally sent to the Court in 2018, the Court previously approved it for release in 2020. It was held back due to the advent of COVID-19 because the forms did not contain information on various laws, rules, and rent programs implemented at that time. The SCAC was recently in the process of reviewing it again but paused its review due to legislative changes that required modifications to the kit.
2. **Repair and Remedy Kit:** Sent to the Court in June 2025
3. **Early Lease Termination Kit:** Sent to the Court in August 2025.
4. **Security Deposit Kit:** Sent to the Court in September 2025.
5. **Writ of Re-entry Kit:** Sent to the Court in October 2025, not yet sent to SCAC.
6. **Utility Restoration Kit:** Sent to the Court in October 2025, not yet sent to SCAC.
7. **Writ of Retrieval Kit:** sent to the Court in November 2025, not yet sent to SCAC.

- B. Form Kits Anticipated by Mid-January: The Task Force is conducting its final review of two additional kits. An estimated date of completion is in parentheses below:
  - 1. Security Devices Kit (November or December 2025)
  - 2. Post-Judgment Kit (January 2026)
- C. Form Kits Affected by Recent Legislative Session: Once the Retrieval, Security Devices, and Post-Judgment Kits are finalized and sent to the Court, the Task Force will start revising kits affected by the recent legislative session. These will take some time to revise, and the rule changes also need to happen, so we do not yet have estimates for completion:
  - 1. Eviction Kit
  - 2. Immediate Possession Kit
  - 3. Eviction Appeal Kit
  - 4. Writ of Possession Kit

## II. Kits for Supreme Court Advisory Committee Review on December 5, 2025

Each kit contains at least one form and a document including instructions, FAQs, and directions for completing the form. Some kits contain multiple forms with a separate document for each form while others will have one document for completing the various forms.

Generally, each form includes basic user instructions within the form, has blanks or check boxes, and references applicable statutes.

Generally, each set of instructions begins with a reference to the applicable section of the Texas Property Code or other governing statutes, states when to use and when not to use the form, cautions users that the forms do not provide legal advice and are not a substitute for the advice of a lawyer, and provides a link to the Texas Rules of Civil Procedure. Some instructions may have additional warning language, especially if the area is complex or tricky to navigate. A set of FAQs follows for more detailed information on the issue. The instructions conclude with directions on completing the form itself.

### A. Repair and Remedy Kit

The Repair and Remedy Kit assists tenants whose landlords have failed to repair conditions that materially affect their physical health and safety, as defined by Texas Property Code Section 92.052. The Repair and Remedy Kit contains:

- 1. **Tenant's Request to Fix a Problem form, FAQs, and instructions**: Tenants are required to request that the landlord make repairs before pursuing other

remedies. The FAQs provide information on how to give proper notice, when a landlord can refuse to make repairs, what their remedies are if the request is ignored, and instructions for completing the form.

2. **Tenant's Intent to Repair Notice form, FAQs, and instructions:** When a landlord has failed to repair or remedy a condition that materially affects a tenant's health or safety, a tenant may hire someone to repair the condition and deduct the expenses from rent only if one of four condition exist, such as sewage, and the tenant provides proper notice and follows other components of the statute. It is a complicated process that, when used, is seldom done correctly. The FAQs provide information on when this remedy is available to tenants, how to give proper notice, who can make the repairs, when the problem can be repaired, when a landlord can delay the process, how much can be deducted from rent, and what other options are available in these circumstances.
3. **Landlord's Affidavit for Delay form and instructions:** There are two situations when a landlord can delay a tenant's ability to repair and deduct expenses from rent, which are stated in the instructions to the Landlord's Affidavit for Delay form, along with additional information for landlords.
4. **Tenant's Notice of Lease Termination for Landlord's Failure to Repair form, FAQs, and instructions:** When a landlord fails to repair or remedy a condition that materially affects a tenant's health or safety, the tenant can terminate their lease. The FAQs provide information on when a tenant can appropriately terminate their lease, when notice is required, whether they are entitled to get rent and their security deposit refunded, and clarifies that if they want to terminate their lease, they cannot pursue other remedies in court
5. **Petition to Repair or Remedy a Condition in a Residential Rental Property form and instructions:** When a landlord fails to repair or remedy a condition that materially affects a tenant's health or safety, a tenant can pursue remedies in court if they do not want to terminate their lease. The instructions refer people to the FAQs for Tenant's Request to Fix a Problem, which covers the various remedies available to tenants when a landlord does not remedy the condition, and then provides directions for completing the form.
6. **Defendant's Order for Repairs form:** A draft order finding for the defendant/landlord.

7. **Plaintiff's Order for Repairs form:** A draft order finding for the plaintiff/tenant.

The Court may have promulgated a petition to repair or remedy a condition in a residential rental property in 2009. However, we could not locate it on the Court's website or elsewhere.

B. Early Lease Termination Kit

The Early Lease Termination Kit assists tenants who need to terminate their leases after family violence, sexual assault or stalking, military deployment, or when a sole tenant dies, and includes four mini-kits, one for each category. Early lease termination is governed by Sections 92.014, 92.016, 92.0161, 92.0162 and 92.017 of the Texas Property Code.

1. **Death of a Sole Tenant form, FAQs, and instructions:** Per Texas Property Code Section 92.0162, a representative of a sole tenant's estate, and/or the person whom the tenant designated to contact in the event of the tenant's death, may terminate the decedent tenant's lease and move the decedent's property out of the rental property without obligating the estate to pay future rent, penalties, or other fees (such as reletting fees). This mini-kit provides information on how to obtain the decedent's lease, how to properly terminate the lease, how quickly the lease can be terminated, how to get the decedent's property back, whether past due and future rent can be charged, which fees can be charged, and how to obtain the decedent's security deposit. TPC 92.014 deals with the decedent's personal property and security deposit.
2. **Family Violence form, FAQs, and instructions:** Per Texas Property Code Section 92.016, a tenant may terminate their lease following family violence. This mini-kit provides information to tenants who need to terminate their lease for this reason and provides the definition of family violence and who is covered for early lease termination purposes. It discusses how to properly terminate the lease in situations when the perpetrator is/is not also a co-tenant or household occupant, the documentation needed to show family violence occurred, whether past due and future rent can be charged, which fees can be charged, how to obtain their security deposit, and what to do if the landlord refuses to release them from the lease or charges wrongful fees. It also notifies tenants that additional protections under federal law (e.g. the Violence Against Women's Act) are provided if the tenant lives in public or subsidized housing, or if the tenant has a Section 8 voucher.

3. **Sexual Assault or Stalking form, FAQs, and instructions:** Per Texas Property Code Section 92.0161, a tenant may terminate their lease following sexual abuse, sexual assault, or stalking. This mini-kit provides information to tenants who need to terminate their lease for those reasons and includes a list of qualifying criminal offenses with corresponding cites to the criminal code. The Task Force sought input from Elizabeth Boyce, an attorney at the Texas Association Against Sexual Assault (TAASA), on the various criminal offenses at the time. The kit discusses when a lease can be terminated for a qualifying offense, how to properly terminate the lease, the documentation needed for sexual offenses and for stalking, whether past due and future rent can be charged, which fees can be charged, how to obtain their security deposit, and what to do if the landlord refuses to release them from the lease or charges wrongful fees. It also notifies tenants that additional protections under federal law (e.g. the Violence Against Women's Act) are provided if the tenant lives in public or subsidized housing, or if the tenant has a Section 8 voucher.
4. **Military Service form, FAQs, and instructions:** Per Texas Property Code Section 92.017, a tenant may terminate their lease due to military service. This mini-kit provides information to tenants in this situation, including which service members qualify and what counts as military service. It discusses who can properly terminate the lease, how to properly terminate the lease, when the lease termination is effective, whether past due and future rent can be charged, which fees can be charged, how to obtain the security deposit, when you cannot terminate your lease for military obligations, and what to do if the landlord refuses to release them from the lease or charges wrongful fees.

#### **C. Security Deposit Kit**

The Security Deposit Kit helps tenants correctly request a return of their security deposit and petition the court if it is not properly returned, as governed by Subchapter C of the Texas Property Code. It incorporates recent legislative changes and contains the following:

1. **Tenant's Request for Return of Security Deposit and Statement of Forwarding Address form, FAQs, and instructions:** To obtain a refund of the security deposit, Tenants must notify their landlord of their forwarding address and may need to take other steps. The FAQs provide information on what a security deposit is, whether they can use it to cover the last month's rent, how they can get a refund of the security deposit, when a landlord can withhold money from the security deposit, how long the landlord has to

return it, what to do if the landlord does not timely return it, and instructions for completing the form.

2. **Petition for Return of Security Deposit form and instructions:** The instructions provide directions on completing the Petition for Return of Security Deposit form and refer people to the Security Deposit FAQs for more detailed information.
3. **Judgment on Petition for Return of Security Deposit form:** A draft judgment that provides the court with options for finding in favor of either the plaintiff/tenant or the defendant/landlord, including provisions for acting in bad faith.

D. Request for Addition of an FAQ to All Form Kits

The Landlord Tenant Forms Task Force inadvertently neglected to include an important question in the FAQs of all form kits sent to the Court to date. We ask that the following FAQ be added:

What if I can't afford the filing fee?

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the justice court clerk for a copy of the form. The clerk is required to provide you the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

**To:** Landlord, Manager or Agent \_\_\_\_\_

Landlord, Manager or Agent address:

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**From:** Tenant

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**Property Address:**

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**REPAIRS:** I ask you to repair the following conditions because they materially affect my physical health or safety. (List conditions, *attach pictures or additional sheets if necessary to describe problems*):

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**REQUEST:**

I ask that you complete these repairs within **7** days of receiving this request, unless the emergency nature of the repairs require more immediate attention, in which case I request you make the repairs within \_\_\_\_\_ days of receiving this request. (*Emergency nature may include a serious water leak, gas leak, raw sewage, significant utility problems, dangerous condition, exposed live electrical wiring, dangerous condition that requires immediate repair, etc. If the repair is for an emergency that requires more prompt attention, write the number of days in which the landlord should respond to that repair.*) If the number of days is not filled in, then you should complete these repairs within 7 days.

If you are unable to make any of the requested repairs within the time requested, I ask that you provide me a written explanation for your delay within 5 days of this request.

If these repairs are not made within 7 days (or the number of days indicated above, if less than

7) after you receive this notice, I may exercise my rights to terminate my lease (with no other notice to you other than that I have vacated the unit) and sue for actual damages, civil penalties, and court costs. If I do not terminate my lease, I may go to court to ask for a rent reduction, an order for repairs, actual damages, civil penalties, and court costs. Texas Property Code 92.056(e),(f).

Thank you for your prompt attention to my request.

**Tenant:** Complete this information on how you will deliver this Tenant's Request to Repair or Fix a Problem to the landlord, manager, or agent:

**If you check this box, you do not need to give any other notice.**

I mailed this written Tenant's Request to Repair or Fix a Problem on \_\_\_\_\_ (date mailed), and I sent it by (check applicable)  
 Certified Mail, Return Receipt Requested \_\_\_\_\_ (tracking number)  
 Registered Mail \_\_\_\_\_ (tracking number) or  
 Other form of mail that tracks delivery \_\_\_\_\_ (tracking number) (Example: Fed Ex, UPS.)

OR

**If you check this box, you must give another notice in writing.**

I gave this written Tenant's Request to Repair or Fix a Problem on \_\_\_\_\_ (date notice given), and I sent it by (check applicable):  
 Hand delivery.  
 Regular mail.

►  
\_\_\_\_\_  
*Tenant Signature*

\_\_\_\_\_  
Tenant Phone Number

\_\_\_\_\_  
Date

## TENANT'S REQUEST TO REPAIR OR FIX A PROBLEM

### FAQS AND INSTRUCTIONS

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

#### Use this form to:

- Ask your landlord to repair or remedy a condition that materially affects your physical health or safety.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with Tenant's Request to Fix a Problem.

#### I. Frequently Asked Questions about Repairs

1. What kinds of repairs is my landlord required to make? Texas Property Code § 92.052.

**When you give proper notice, your landlord is required to make a diligent effort to repair conditions that materially affect the physical health or safety of an ordinary tenant.** These could include, but are not limited to, things like roach or rat infestation, sewage leaks, hazardous electrical wiring, or water leaks.

2. How do I ask my landlord for repairs? Texas Property Code § 92.056(b)(3) and 92.052(b).

- There are two ways to make a request for repairs that will stand up in court:
  - 1) Send one written notice by certified mail, return receipt requested, or another form of mail that tracks delivery (highly recommended and often quicker), or
  - 2) Give two notices.
    - Unless your lease says differently, your first notice can be made by email, text, orally, or through an online portal. If you make a request by email, text, orally, or through an online portal, keep records with information about the request, such as the date, time, and to whom it was given.
    - **If your lease requires all notices to be in writing, and most leases do, then your first notice cannot be made by email, text, orally, or through an online portal. It must be a written letter that is hand-delivered or mailed to the landlord.**
    - If the repair has not been made within a reasonable time, you must mail or hand-deliver a written letter to the landlord. If you hand-deliver it, get a receipt from the person that you handed it to, if you can. See Important Information below for details on what is "reasonable."

**Commented [TM1]:** Chapter 322 of the Business and Commerce Code, Uniform Electronic Transactions Act

- Depending on the circumstances, you should also contact the landlord about the repair in the way you believe will be most effective or as stated in the lease. Unless you use one of the two ways listed above to notify the landlord of the repair, this will not be sufficient on its own to hold up in court, but it still may help get the repair completed quicker.
- A landlord is considered to have received a tenant's written request for repairs when the landlord or landlord's agent or employee actually **receives** the notice or when the United States Postal Service has attempted to deliver the notice to the landlord. Texas Property Code Section 92.056(c).
- **Important Information:**
  - The landlord is not required to respond to your request for repairs or remedy if you are behind on your rent when you make the request.
  - Take pictures and document the conditions that need repair.
  - Give the landlord a reasonable time to make repairs - at least 7 days, unless the needed repair is an emergency and requires a quicker response. Emergencies may include a serious water leak, gas leak, raw sewage, significant utility problem, exposed live electrical wiring, dangerous condition that requires immediate repair, etc.
  - Keep a copy of all notices, pictures, and documentation.

3. Can my landlord refuse to make repairs or remedy?

Yes, if:

- **You are behind on your rent when you made the request.** The law treats payment of rent, the right to repairs, and the refund of security deposits separately. Always pay your rent on time. OR
- You, your roommates, family members, or guests caused the condition that needs repair or remedy.

4. Can my landlord evict me for asking for repairs or remedy? Texas Property Code § 92.331-92.333.

No. If you pay rent on time and comply with the lease terms, your landlord can't evict you, terminate your lease, or increase your rent (unless the increase is part of your lease, or it affects all of the units) because you requested repairs or remedy.

If you are behind on your rent and make a request for repairs, your landlord could evict you for non-payment of rent.

5. Can I refuse to pay my rent if my landlord refuses to make repairs?

No. You should never withhold your rent or refuse to pay rent because your landlord refuses or neglects to make repairs. The law treats your obligation to pay rent and the

landlord's duty to make repairs separately. You can be evicted for refusing to pay rent, even if the landlord is unfairly refusing to make repairs.

6. My request has been ignored. What now? Texas Property Code § 92.056(e) and 92.0563.

You may have the following rights if 1) you gave proper written request(s) for repairs or remedy for a condition you did not cause, 2) you didn't owe rent when you gave the request, 3) a reasonable time has passed, and 4) the landlord did not make a diligent effort to make repairs or remedy. *Diligent efforts could include the landlord attempting to repair or remedy the condition.*

- Terminate the lease: You may terminate your lease. CAUTION: If you terminate your lease, the landlord may sue you. Be prepared to prove numbers 1-4 above in court.

While not required, it is a good idea to give written notice that you are terminating your lease and the date you will vacate the property. You have the right to a refund for rent already paid for the days you will not be there. You are also entitled to a refund of your security deposit, minus damages the landlord can deduct according to your lease. Texas Property Code Section 92.056(e)-(f).

If you do vacate the property, make sure to leave the property clean, take pictures of the property as proof, turn in all the keys, and give a written forwarding address to request the return of your security deposit.

If you choose to terminate your lease, you cannot go to court and ask for an order to repair or an order reducing rent.

- Go to court: You may sue your landlord in justice, county, or district court for failure to repair. You must sue in the county where the property is located. The court may award you actual damages, one month's rent plus \$500, court costs, and attorney's fees. If you have not terminated your lease, a court may also order your landlord to make repairs and reduce your rent from the date you asked for repairs. Texas Property Code Section 92.056(e), 92.0563. A justice court can hear cases valued up to \$20,000 and should hear your case quickly, as soon as between ten and twenty-one days from when you file your lawsuit. Rules 509.1-509.9.
- Repair and deduct: In some very limited circumstances, and only by taking certain very specific steps, you may be able to pay for repairs and deduct that from your rent. However, that is a very difficult process with many pitfalls, and it is usually NOT recommended. For more information about that process, see Tenant's Intent to Repair Notice.

**Commented [TM2]:** There's a conflict between TPC 92.0563(d) and TRCP 509. TPC says court must set hearing no earlier than the 6<sup>th</sup> day after the date of service of citation and no later than the 10<sup>th</sup> day after that date. TRCP 509.3(b) says not less 10 days nor more than 21 days after petition is filed. There could be days when the hearing is held between 10-21 days of the filing but not within 10 days of the service of citation.

7. What if I can't afford the filing fee?

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the justice court clerk for a copy of the form. The clerk is required to provide you with the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

II. **Instructions for Filling out Tenant's Request to Fix a Problem form:**

The italicized words below are from the Tenant Request to Fix a Problem form.

• *TO*

- Write the name of the landlord, manager, or agent.
- Write the street address, unit number (if any), city, state, and ZIP of the person you pay rent to or the place where your *rent* is normally paid.

• *FROM*

- Write your name.
- Write the street address, unit number (if any), city, state, and ZIP of the rental property.

• *REPAIRS*

List what you want your landlord to repair. Include as many details as necessary to describe the problem. Add additional sheets or attach pictures if needed.

• *REQUEST*

If the condition needs immediate attention, list the number of days by when the repairs should be done in the blank. If you leave it blank, you are requesting that the repair be completed in 7 days. This section also lists the things you may do if your landlord does not make the repairs, including terminating the lease and going to court to ask for rent reduction, an order for repairs, damages, and court costs.

• *METHOD OF DELIVERY* (for your records, check all that apply)

Check the box that applies to you and fill out the appropriate blanks on the form.

**BELOW IS FOR YOUR RECORD KEEPING PURPOSES ONLY:** You can use this section to document the method of delivery you used and any mail receipt numbers.

**If you checked the first box, you do not need to give any other notice.**

I mailed this written Tenant's Request to Repair or Fix a Problem on \_\_\_\_\_ (date mailed), and I sent it by (check applicable)

- Certified Mail, Return Receipt Requested \_\_\_\_\_ (tracking number)
- Registered Mail \_\_\_\_\_ (tracking number) or
- Other form of mail that tracks delivery \_\_\_\_\_ (tracking number) (Example: Fed Ex, UPS.)

**NOTE:** If your landlord does not make the repairs after you send the written Tenant's Request to Repair or Fix a Problem in one of the three ways above, you can take one (or more) of the actions listed in FAQ 6. **Keep a photocopy of the delivered notice.**

**OR**

**If you checked the second box and your lease requires that you provide notice of repair in writing (most leases do), you must give another notice in writing.**

I did not send my first notice in writing. I gave notice on \_\_\_\_\_ (date) to \_\_\_\_\_ (person) [ ] by email, [ ] by text, [ ] verbally, [ ] through the online portal.

As my second notice, I gave this written Tenant's Request to Repair or Fix a Problem to the [ ] landlord, [ ] manager, or [ ] agent on \_\_\_\_\_ (date), and I gave it by (check one):

- Hand delivery. Get a receipt from the person you handed the Request to, if you can.
- Regular mail.

**NOTE:** If your lease requires that a notice to repair be in writing, as most leases do, and your landlord did not make the repairs after your made your first request by email, text, verbally, or through online portal, and your landlord fails to make the repairs after you send this second Request to Repair or Fix a Problem, you will need to deliver a third request in writing before you can take one (or more) of the actions listed in FAQ 6 above. **Keep a photocopy of the delivered notice.**

**TO:** Landlord, Manager, or Agent \_\_\_\_\_

Landlord, Manager, or Agent address:

\_\_\_\_\_  
*Address, City, State, and Zip Code*

**FROM:** Tenant \_\_\_\_\_

Property Address:

\_\_\_\_\_  
*Address, City, State, and Zip Code*

**RENT STATUS:** I am current on my rent.

**REPAIRS:** Please promptly fix (repair or remedy) the following conditions because they materially affect my physical health or safety. (Check all boxes that apply. Describe the conditions and attach additional sheets if necessary to describe the problems).

Sewage or flooding: Landlord failed to repair the backup or overflow of raw sewage inside my home, or the flooding from broken pipes or natural drainage inside my home.

Describe:

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Potable (drinkable) water: Landlord agreed in the lease to furnish me with potable (drinkable) water, but the water service has stopped.

Describe:

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Heating or cooling reported by official: Landlord agreed in the lease to furnish heating or cooling equipment. That equipment is not working. Landlord has been notified in writing by the local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.

Describe:

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**Health or safety condition reported by official:** Landlord has been notified in writing by the local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

Describe:

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**REQUEST:**

I ask that you fix (repair or remedy) the problem according to the following timelines:

- Sewage or flooding: **immediately**
- Potable (drinkable) water: **within three days**
- Heating or cooling reported by an official **within three days**
- Health or safety condition reported by an official: **within seven days**

If you are unable to make any of the requested repairs within the requested time, please provide me with a Landlord Affidavit for Delay. Texas Property Code § 92.0562.

If these repairs are not made within the number of days indicated above, I may exercise my rights under Texas Property Code 92.056(e),(f), including, among other things, terminating my lease (with no other notice to you other than that I have vacated the unit); and/or going to court to ask for rent reduction, an order for repairs, damages, and court costs.

**NOTICE OF INTENT TO DO REPAIRS:** I am going to hire someone to: (*check applicable*)

- Fix the backup or overflow of raw sewage in my rental property;
- Fix the flooding from broken pipes or natural drainage in my rental property;
- Provide potable water;
- Fix the heating or cooling; or
- Fix any other problem an official says materially affects the health or safety of an ordinary tenant.

Here is a description of the repairs needed: (*You must complete this part.*)

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Thank you for your cooperation with my request.

**Tenant:** Complete the following about how you delivered this letter to Landlord:

**METHOD OF DELIVERY (check applicable boxes)** *Read instructions carefully.*

If you only want to deliver this request one time, use one of these three ways. *Keep a photocopy of the completed notice. Landlord is considered to have received this notice when the landlord actually receives the notice or the US Postal Service has attempted delivery.*

- Certified Mail, Return Receipt (*If you have questions, ask the Post Office; keep tracking number.*)
- Registered Mail (*If you have questions, ask the Post Office; keep the tracking number.*)
- A Form of Mail that Tracks Delivery (*Example: FedEx, UPS; keep the tracking number.*)

If you only deliver the request in either of the following two ways, you will need to deliver another request if Landlord fails to make the repairs after Landlord gets the first request.

- Hand delivered to the Person or Place where the rent is paid
- First Class Mail



**Tenant Signature**

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Tenant Phone Number

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Date

# FAQS AND INSTRUCTIONS FOR TENANT'S NOTICE OF INTENT TO REPAIR AND DEDUCT ALLOWED IN CERTAIN SITUATIONS

Paying For Repairs and Deducting Cost from Rent  
Texas Property Code Section 92.0561

## Use this form If:

You have one of the following problems in your home, and you want to pay for the repairs yourself:

- Sewage or flooding in your home, or
- No drinkable (potable) water, or
- Heating or cooling problem and the landlord has been notified in writing by a local housing, building, health, or other official, or
- Health or safety condition and the landlord has been notified in writing by the local housing, building, health, or other official.

## Do NOT use this form If:

You do not want to pay for repairs yourself.

You do not have one of these problems:

- Sewage or flooding in your home, or
- No drinkable (potable) water, or
- Heating or cooling problem and the landlord has been notified in writing by a local housing, building, health, or other official, or
- Health or safety condition and the landlord has been notified in writing by the local housing, building, health, or other official.

Your problem was caused by a natural disaster or other casualty loss, like lighting, fire, hail, or tornado, and your landlord is waiting for an insurance payout.

**CAUTION:** The right to pay for repairs or remedies and deduct that amount from your rent is available only if you ask your landlord to fix the problem in a specific way, certain conditions are met, and only for certain issues. Also, there are additional steps, explained below, that you must follow. This is a complicated process that can be used in only limited situations and is often done incorrectly.

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. Use these instructions with the Tenant's Intent to Repair Notice form.

## **Frequently Asked Questions:**

1. Does this law allow me, my family members, my employer or employees, or a company I own to make the repairs? Texas Property Code Section 92.0561(f) & (g)

No, you must hire a contractor or repair person unless the landlord says you can make the repairs yourself.

2. What problems can I have repaired or remedied and then deduct the cost from my rent? Texas Property Code Section 92.0561(d)(3)

You can only use the right to repair/remedy and deduct for these four problems:

- Sewage or flooding: Your landlord has failed to repair the backup or overflow of raw sewage inside your home or the flooding from broken pipes or natural drainage inside your home.
- Potable (drinkable) water: Your landlord agreed in the lease to furnish you potable water and the water service has stopped.
- Heating or cooling reported by official: Your landlord agreed in the lease to furnish heating or cooling equipment, that equipment is not working, and the landlord has been notified in writing by the local housing, building, or health, or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.
- Health or safety condition reported by official: The landlord has been notified in writing by the local housing, building, health, or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

**You cannot pay for repairs and deduct those costs from your next month's rent for any other situation, even if it is a serious problem.**

NOTE: In very limited situations you may not have a right to have the problem repaired/remedied and deduct the cost from your rent even if these problems exist. See Texas Property Code § 92.006 (e)-(f). Also, you cannot have repairs made to the foundation or a load-bearing wall if you live in a building with two or more units (duplex, fourplex, apartment, etc.). See Texas Property Code § 92.0561 (f).

3. I have one of the problems listed above. What do I have to do first? See Texas Property Code § 92.056(b)(1), (3); § 92.0561(d)(2)

You must make the request properly in one of the following two ways:

- Give two notices. Your first notice can be oral, by email, by text, or online unless your lease says otherwise. Your second notice must:
  - Be a written letter and mailed or hand-delivered, and

- The letter must state that you intend to have the condition repaired and provide a reasonable description of the intended repair.

**OR**

- **Give one notice.** Send one written notice by certified mail, return receipt requested, or another form of mail that tracks delivery, stating you intend to have the condition repaired and provides a reasonable description of the intended repair. This method is highly recommended because you only need to do it once.

You can't have caused the condition you are requesting to be fixed. You, your roommates, family members, or guests caused the condition that needs repair or remedy.

**IMPORTANT INFORMATION:** The landlord is not required to respond to your request for repairs or remedy if you are behind on your rent when you make the request.

4. Can I withhold rent or refuse to pay rent?

**No.**

5. What if I am behind in rent?

If you are not paid up in rent, you do not have the right to repair/remedy and deduct costs from your rent, but you can still request repairs, and your landlord would likely want to know.

6. Can I delay paying rent to pay for repairs?

**No.**

7. Who can I hire? Texas Property Code § 92.0561(f) and (h)

Repairs must be made by an independent company, contractor, or repair person. You, your immediate family, your employer or employees, or a company you own cannot make the repairs unless you and your landlord agree on it. If the rental unit is located in a municipality requiring the company, contractor, or repair person to be licensed, the person or entity performing the repair must be licensed according to those requirements.

Repairs must comply with building codes and building permits when required. Ask your repair person if the repairs require a permit, and if so, make sure they get the permit. If the repairs don't comply with applicable building codes, you cannot repair or deduct it.

8. When can I hire someone to make the repairs or remedy a problem?

It depends on the type of problem. The timeline starts when you give your landlord the proper notice of intent to have repairs made, including a description of the work to be done. The timelines are as follows:

- Sewage or flooding: You can have the problem repaired **immediately** after you give proper notice of intent to repair/remedy the condition.
- Potable (drinkable) water: You can have this problem repaired if your landlord has failed to repair the condition **within three days** after you give proper notice of intent to repair/remedy the condition.
- Heating or cooling reported by official: If the city inspector or other official has already come out and notified the landlord that the problem must be fixed, you can have this problem repaired if your landlord has failed to repair the condition **within three days** after you give proper notice of intent to repair/remedy the condition.
- Health or safety condition reported by official: If the city inspector or other official has already come out and notified the landlord that the problem must be fixed, you can have this problem repaired if your landlord has failed to repair or remedy the condition **within seven days** after you give proper notice of intent to repair/remedy the condition.

9. Can my landlord delay my efforts to hire someone to make the repair or remedy?

**Yes.** If your landlord gives you a sworn affidavit stating that the reason for their delay is an inability to obtain necessary parts, labor, or material shortages following a disaster, you must delay hiring someone to make the repairs. You must delay by 15 days if the landlord's failure to repair is due to a delay in obtaining necessary parts. You must delay by 30 days if the landlord's failure to repair is due to a labor or material shortage following a disaster. *See Landlord's Affidavit for Delay.*

If you have already hired a repair person, but the work has not begun, and your landlord gives you a sworn affidavit for delay, your landlord is liable for costs incurred by you for the repair person's trip charge. You may deduct that from your rent as if it were a repair cost.

10. I have followed all the steps above. What now?

When your rent becomes due after you have paid for the repairs, give your landlord a copy of the repair bill, a receipt showing what you paid, and then pay what is left on your rent. The repair bill and the receipt may be the same document.

11. Is there a limit to the amount I can deduct for repairs? Texas Property Code § 92.0651(c)

**YES.** The deduction for the cost of a repair is limited to one-month's rent or \$500, whichever is higher. Repairs and deductions may be made often as necessary as long as the

total repairs and deductions in any one month do not exceed one-month's rent or \$500, whichever is greater.

## 12. What other options do I have?

You may have the following rights if 1) you gave proper written request(s) for repairs or remedy for a condition you did not cause, 2) you didn't owe rent when you gave the request, 3) a reasonable time has passed, and 4) the landlord did not make a diligent effort to make repairs or remedy. *Diligent efforts could include the landlord attempting to repair or remedy the condition.*

- Terminate the lease: If you do not repair and deduct, you may terminate your lease. CAUTION: If you terminate your lease, the landlord may sue you. Be prepared to prove 1-4 above in court.

While not required, it is a good idea to give written notice that you are terminating your lease and the date you will vacate the property. You have the right to a refund for rent already paid for the days you won't be there. You are also entitled to a refund of your security deposit, minus damages the landlord can deduct according to your lease. Texas Property Code § 92.056(e)-(f).

If you do vacate the property, make sure to leave the property clean, take pictures of the property as proof, turn in all the keys, and give a written forwarding address to request the return of your security deposit.

If you choose to terminate your lease, you can't go to court and ask for an order to repair or an order reducing rent.

- Go to court: If the landlord did not fix the problem, you decide not to make the repairs and deduct the cost from your rent because the cost is higher than the deduction limit, or you suffered damages, you can sue your landlord. The court may award you actual damages, one month's rent plus \$500, court costs, and attorney's fees. If you have not terminated your lease, a court may also order your landlord to make repairs that you have not made and deducted from your rent, and the court may also reduce your rent from the date you asked for repairs. Texas Property Code § 92.0563. You can sue to enforce the landlord's duty to repairs in the justice court in the county where the property is located. The court should hear your case quickly, as soon as between ten and twenty-one days from when you file your lawsuit. Rules 509.1-509.9.

## 13. What if I can't afford the filing fee?

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking

the justice court clerk for a copy of the form. The clerk is required to provide you with the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

### **Instructions for Filling out Tenant's Intent to Repair Notice**

The italicized words below are from the Tenant's Intent to Repair Notice form.

- *TO*
  - Write the name of the landlord, manager, or agent.
  - Write the street address, unit number (if any), city, state, and ZIP of the person you pay rent to or the place where your rent is normally paid.
- *FROM*
  - Write the tenant's name.
  - Write the street address, unit number (if any), city, state, and ZIP of the rental property.
- *RENT STATUS*
  - You must be current on your rent before you give this notice to your landlord.
- *REPAIRS* – Check applicable box(es) and describe conditions. Include as many details as necessary and add additional sheets or attach pictures if that will help you describe the problems.

NOTE: You can only use this form for the four types of repairs listed: sewage or flooding, potable (drinkable) water, heating or cooling issue reported by an official, and health or safety condition reported by an official.

- *REQUEST* – You do not need to write anything here.
- *NOTICE OF INTENT TO DO REPAIRS* – Check the box of the repair needed and write a description of the repairs you intend to hire someone to do.
- *METHOD OF DELIVERY* (for your records, check all that apply)  
There are several different ways you can deliver the request to your landlord.

- Certified Mail, Return Receipt \_\_\_\_\_ (*If you have questions, ask the Post Office; keep tracking number.*)
- Registered Mail \_\_\_\_\_ (*If you have questions, ask the Post Office; keep the tracking number.*)
- A Form of Mail that Tracks Delivery \_\_\_\_\_ (*Example: FedEx, UPS; keep the tracking number.*)

If your landlord does not make the repairs after you sent the notice in one of the three ways above, you can repair and deduct as described or take one (or more) of the actions listed in Section I.12. above. *Keep a photocopy of the completed notice.*

However, you may also deliver the request in one of these ways below.

- Hand delivered to the Person or Place where the rent is paid
- First Class Mail

If your landlord does not make the repairs after your first request and you sent the notice in one of the two ways above, you will need to deliver another request in order to repair and deduct as described above, or take one (or more) of the actions listed in Section I.12. above. If this is your second request, you can send it by **any** method mentioned above.

A landlord is considered to have received a tenant's written request for repairs when the landlord or landlord's agent or employee actually **receives** the notice or when the United States Postal Service has attempted to deliver the notice to the landlord. Texas Property Code § 92.056(c). NOTE: If you use a form of mail that tracks delivery other than the US Postal Service, Landlord must actually receive the notice. Attempted delivery is not enough.

# LANDLORD'S AFFIDAVIT FOR DELAY OF REPAIRS

## Texas Property Code § 92.0562

I have personal knowledge of the facts stated in this affidavit, and they are true and correct:

**1. Name and address of tenant:**

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2. This tenant requested repairs. These repairs have not been done because:

*Check one (or both):*

- The necessary parts are delayed, and it is not the landlord's fault. **Tenant must delay contracting for repairs for 15 days to allow Landlord extra time to receive the necessary parts;** or
- There is a general shortage of labor or materials following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm. **Tenant must delay contracting for repairs for 30 days to allow Landlord extra time to obtain the labor or materials to make the repairs.**

3. Describe the efforts Landlord has made to make the repairs and why the repairs have not been completed. *(Attach additional sheets if necessary.)*

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4. These contractors, suppliers, and repairmen were contacted about the repairs:

Name	Address	Phone Number	Date(s) Contacted
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**5. Declaration or Notary:** Complete one of the two following sections.

I declare under penalty of perjury that this affidavit is true and correct.

Declaration:

My name is \_\_\_\_\_ . My birthdate is: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ .

My address is

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Street                      City                      State                      ZIP                      Country

Notary:

*Printed Name of Landlord or Landlord's Agent* *Landlord or Landlord Agent's Signature*

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## NOTARY

## 6. Method and Date of Delivery

This document will be delivered to the tenant by:

*(Check applicable boxes.)*

- If allowed by written lease, leaving it in a clearly visible location in the dwelling
- Hand delivery
- Certified mail, return receipt requested number

Delivery or Mailing Date:

## INSTRUCTIONS FOR LANDLORD'S AFFIDAVIT FOR DELAY OF REPAIRS

Texas Property Code § 92.0562

### **Use when:**

- Your tenant has given you proper notice to repair a problem or remedy a condition and wants to make the repairs and deduct it from their rent;
- The condition was a:
  - Sewage or flooding problem in or on the property;
  - Lack of potable (drinking) water;
  - Heating or cooling issue reported by an official; or
  - Health and safety condition reported by an official; and
- You will not be able to make the repairs in the time the tenant asked because the necessary parts are delayed, and it is not your fault, or there is a general shortage of labor or materials for repairs following a natural disaster.

NOTE: This form is not intended to be used with conditions not listed above, but writing down reasons for delaying fixing other conditions is generally a good idea.

### **Important Information for Landlords**

- If your tenant gave you proper notice of any of the conditions listed above and you do not make diligent efforts to repair them, the tenant can contract to have the repairs done.
- The Affidavit for Delay tells your tenant to hold off hiring someone to make the repairs to allow you more time.
- You must continue to make diligent efforts to repair the condition after you give the Affidavit to the tenant. If you do not, a court may order you to pay the tenant a higher penalty.

### **Instructions for Filling Out Landlord's Affidavit of Delay**

#### **1. Name and address of tenant**

Write Tenant's name and the property address.

#### **2. This tenant requested repairs.**

Check the box that explains why the requested repairs have not been made. **NOTICE:** If the reason for the delay is not in one of the checkboxes, this affidavit will not be effective and will not allow you to delay repairs.

The necessary parts are delayed, and it is not your fault. Tenant must delay contracting for repairs for 15 days to allow you extra time to receive the necessary parts.

There is a general shortage of labor or materials following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm. Tenant must delay contracting for repairs for 30 days to allow Landlord extra time to obtain the labor or materials to make the repairs following a natural disaster when there is a shortage of labor or materials.

3. *Reasons You Have Not Made Repairs* – Describe what you have done to try to make the repairs and explain why you have not been able to make the repairs.
4. *These contractors, suppliers, and repairmen were contacted about the repairs.*

List every person or business you contacted about making the repairs. Include the person or business's name, address, phone number, and the date you contacted them.

5. *Declaration or Notary*

By checking ONE of the following boxes, you are declaring under penalty of perjury that everything in the affidavit is true and correct.

CHECK AND COMPLETE ONLY ONE BOX.

- **Declaration** – Check this box if a notary is not available or you choose not to use a notary. If you choose this option, you must write your name, birthdate, and address. Sign your name, and write the date, county, and state in which you signed.
- **Notary** – Check this box if you want to sign this affidavit in front of a notary or if you do not want to disclose your personal information. DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name and sign in front of a notary. Some notaries charge a fee.

6. *Method and Date of Delivery*

Check the box that describes how you gave the tenant this affidavit. Write the date that you sent it.

**TO:** Landlord, Manager, or Agent \_\_\_\_\_

Landlord, Manager, or Agent address:

*Address, City, State, and Zip Code*

**FROM:** Tenant \_\_\_\_\_

**PROPERTY ADDRESS:**

*Address, City, State, and Zip Code*

**NOTICE OF TERMINATION:**

After meeting all requirements, taking all actions, and giving all notices required under the Texas Property Code regarding Tenant's notice to repair or remedy a condition and Landlord's failure to repair or remedy the condition, I am exercising my right under those statutes to terminate my lease.

I am terminating my lease and vacating (or have already vacated) the property on the following month, day, and year: \_\_\_\_\_. See *Tenant's Notice of Lease Termination for Landlord's Failure to Repair FAQs and Section 92.056(e) of the Texas Property Code*.

I am also entitled to obtain a refund of my security deposit according to the law or deduct my security deposit from my rent without filing a lawsuit. By terminating my lease, I understand I am not entitled to other repair and deduct remedies under Section 92.0561 of the Texas Property Code or the judicial remedies of an order directing the landlord to make repairs or an order reducing my rent. Texas Property Code 92.056(f).

**FORWARDING ADDRESS:** Please send my security deposit and a refund of rent I paid for the days I will not occupy the property to the following forwarding address: *(List address, city, state, and zip code)*

**METHOD OF DELIVERY:** Method of Delivery to Landlord, Manager, or Agent Where Rent is Regularly Paid *(Check applicable box. Keep a copy of this notice.)*

- Hand Delivery
- First Class Mail
- Certified Mail, Return Receipt (*If you have questions, ask the Post Office; keep tracking number.*)
- Other Method of Delivery: \_\_\_\_\_.

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***Tenant Signature***

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*Tenant Name*

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*Address*

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*City, State, Zip Code*

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*Phone Number*

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*Email Address, if you check it frequently*

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*Date*

**INSTRUCTIONS FOR  
TENANT'S NOTICE OF LEASE TERMINATION  
FOR LANDLORD'S FAILURE TO REPAIR**  
Texas Property Code Section 92.056(e)

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**Use this Form If:**

- You want to terminate your lease after your landlord has failed to make a diligent effort to repair or remedy a condition that materially affects your physical health or safety, and you have followed the proper process for requesting those repairs.

**Do NOT Use this Form If:**

- You want to continue to live at the property even though your landlord has not made a diligent effort to repair or remedy a condition that materially affects your physical health or safety and you want to file a lawsuit to have a court order your landlord to make the repairs.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with Tenant's Lease Termination Notice.

**I. Frequently Asked Questions about Tenant Lease Termination Notice**

**1. What do I need to do before terminating my lease?**

Before you send your landlord a notice of termination, make sure of the following:

- The condition that you asked your landlord to repair or remedy affected your health or safety.
- The repair issue was not caused by you, your guests, or other occupants.
- You sent your landlord a proper notice requesting repairs by
  - a. Sending one written notice by certified mail, return receipt requested, or another form of mail that tracks delivery (highly recommended), or
  - b. Giving two notices.
    - Unless your lease says differently, your first notice can be made by email, text, orally, or through an online portal. If you make a request by email, text, orally, or through an online portal, keep records with information about the request, such as the date, time, and to whom it was given.
    - **If your lease requires all notices to be in writing, and most leases do, then your first notice cannot be made by email, text, orally, or**

**Commented [TM1]:** Chapter 322 of the Business and Commerce Code, Uniform Electronic Transactions Act

through an online portal. It must be a written letter that is hand-delivered or mailed to the landlord.

- You were not delinquent in rent when you sent the notice or notices.
- You gave the landlord a reasonable time to make repairs - at least 7 days, unless the needed repair is an emergency and requires a quicker response.  
(Emergencies may include a serious water leak, gas leak, significant utility problems, dangerous condition, etc.).
- Your landlord did not make a diligent effort to make the repairs.

If ANY of the previous statements are not correct, you do not have the right to terminate your lease under Texas Property Code 92.056(e).

2. Do I have to terminate my lease in writing?

**No**, unless your lease requires it. Even if notice of termination is not required, it is a good idea to give it to inform your landlord that you have exercised your right to terminate your lease and it provides proof that you have done so.

3. Do I have to deliver this notice in any particular way?

**No**, unless your lease requires it. Under Texas Property Code 92.056, there is no specific way you have to deliver the notice. However, your lease may require notice to be given in a particular way. Because one of the reasons to use this notice is to show that you did so, it is best to keep a copy of the notice. It is recommended that you use a method of delivery where you can prove the landlord received it.

4. Can I get back the rent I paid for the days after I terminated the lease and vacated the property?

**Yes**. You have the right to a refund for rent already paid for the days you will not be there. You are also entitled to a refund of your security deposit, minus damages the landlord can deduct according to your lease. Texas Property Code Section 92.056(e)-(f).

5. If I terminate my lease, can I go to court to ask for a reduction in my rent?

**No**. If you choose to terminate your lease, you cannot go to court and ask the court to order your landlord to repair the condition or an order reducing your rent.

II. Instructions for Filling out Tenant Lease Termination Notice:

The italicized words below are from the Tenant Lease Termination Notice.

- **TO** – List the name of the landlord, manager, or agent. This should be the person to whom or the place where your rent is normally paid.
- **FROM** – Write the tenant's name.

- **PROPERTY ADDRESS** – Write the address of the property.
- **NOTICE OF TERMINATION** – Write the month, day, and year you vacate or will vacate the property.

You are exercising your right under Texas Property Code Section 92.056(e) to terminate your lease and request a refund of rent. Before delivering this to your landlord, make sure that you have:

- Given the required notice(s) for repairs of conditions that affect your physical health or safety, AND
- A reasonable time to repair or remedy the condition has passed, AND
- You were not delinquent in rent at the time the notice(s) was/were given, AND
- Your landlord did not make a diligent effort to repair or remedy the condition(s).

- **FORWARDING ADDRESS** –Write the address where you want your security deposit and rent refund sent. This does not have to be where you will be living, but should be a place where you can reliably receive and check for mail.
- **METHOD OF DELIVERY** (for your records, check all that apply)
  - Hand delivered to the Person or Place where the rent is paid
  - First Class Mail
  - Certified Mail, Return Receipt (*If you have questions, ask Post Office; keep tracking number.*)
  - A Form of Mail that Tracks Delivery (*Example: FedEx, UPS; keep tracking number.*)
- **SIGNATURE** – Sign and write your name and contact information on the appropriate lines.

Court Time: \_\_\_\_\_

Court Date: \_\_\_\_\_

Case Number. \_\_\_\_\_

(The Clerk's office will fill in the Case Number when you file this form)

Name of Plaintiff(s)/Tenant(s) \_\_\_\_\_

VS. \_\_\_\_\_

Name of Defendant/Landlord \_\_\_\_\_

In the Justice Court, Precinct \_\_\_\_\_, Place \_\_\_\_\_

(Precinct and Place Number)

County, Texas \_\_\_\_\_

(County Name)

**Petition to Repair or Remedy a Condition in a Residential Rental Property**

Texas Property Code § 92.052, Texas Rules of Civil Procedure 509

**1. Complaint:** I file this petition because there is a condition in my residential rental property that materially affects the health or safety of an ordinary tenant.

Information Regarding Residential Rental Property:

Street Address \_\_\_\_\_ Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

**2. Service of Citation or Alternative Service:** (Check the box next to each statement that is true.)

Texas Property Code 92.003

I received Owner's name and business street address in writing.  
 I received the name and business street address of the management company in writing.

Complete the following information, if you know it. You MUST complete at least one.

a. The Owner's name and contact information is \_\_\_\_\_  
*Landlord's Name and Phone Number*

Business Address \_\_\_\_\_ Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

b. The management company and contact information is \_\_\_\_\_  
*Management Company Name and Phone Number*

Business Address \_\_\_\_\_ Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

c. The on-premises manager and contact information is \_\_\_\_\_  
*On-Premises Manager Name and Phone Number*

Business Address \_\_\_\_\_ Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

d. The rent collector and contact information is \_\_\_\_\_  
*Rent Collector Name and Phone Number*

Business Address \_\_\_\_\_ Unit No. (if any) \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

**3. Lease:** (Check the box next to one statement.)

My lease is oral.  
 My lease is in writing but does not require written notice for repair and remedy.

My lease is in writing and DOES require written notice for repair and remedy.

#### 4. Notice:

a. If you check this box, you did not need to give any other notice.

I mailed written notice to repair or remedy the condition on \_\_\_\_\_ (date mailed) to \_\_\_\_\_ (person or place), and I sent it by (check applicable)

- Certified Mail, Return Receipt Requested \_\_\_\_\_ (tracking number)
- Registered Mail \_\_\_\_\_ (tracking number) or
- Other form of mail that tracks delivery \_\_\_\_\_ (tracking number)  
(Example: Fed Ex, UPS.)

OR

**b. If you check this box, you must have given another notice, and it must have been in writing.**

My first notice was not sent by certified, registered, or other mail that tracks delivery. My first notice was given in this way \_\_\_\_\_ (examples: orally, in writing, by email, by text, by portal) on \_\_\_\_\_ (date) to \_\_\_\_\_ (person or place).

My second notice to repair or remedy the condition was given in writing on \_\_\_\_\_ (date notice given), and I sent it by (check applicable):

Certified Mail, Return Receipt Requested \_\_\_\_\_ (tracking number)  
 Registered Mail \_\_\_\_\_ (tracking number)  
 Other Form of Mail that Tracks Delivery \_\_\_\_\_ (tracking number)  
*(Example: Fed Ex, UPS)*  
 Hand delivery,  
 Regular mail.

## 5. Rent:

When I gave each required notice to repair or remedy the condition, my rent was (check one):

- Current (paid up to date),
- Not current, or
- Not current, but I tried to timely pay all of the rent that was due, and Landlord did not accept it.

My rent is due on \_\_\_\_\_ (date), each  Month  Week  Other:

Amount of rent I pay: \_\_\_\_\_ \$

Amount government pays (if any and known): \$ \_\_\_\_\_

**TOTAL RENT** **\$** \_\_\_\_\_

## 6. Property Condition:

Describe the condition of the property that is materially affecting your physical health or safety. (Describe what you are asking to be fixed and why.) Attach additional sheets if necessary:

**7. Relief Requested:**

I request the following relief: (Check all that apply)

- A court order directing Landlord to take reasonable action to repair or remedy the condition.
- A court order reducing my rent from the date of the first repair notice, for the reduced rental value resulting from the condition until the condition is repaired or remedied.
  - I want the rent reduced by \$ \_\_\_\_\_ (which would make my rent \$ \_\_\_\_\_) beginning on \_\_\_\_\_ (date of first repair request).
- Actual damages in the amount of \$ \_\_\_\_\_,
- A civil penalty of one month's rent plus \$500,
- Attorney's fees, and
- Court costs.

The total relief requested does not exceed \$20,000, excluding interest and costs of court.

## 8. Email Address Consent:

**By checking this box**, I agree to receive any documents, notices, or pleadings about this case from the Court or Landlord at the following email address that I check daily. (Some courts and parties do not use email.):

**(Note: If you check this box you may not receive copies by mail. You should check email frequently for deadlines.)**

---

***Signature***

---

**Printed name**

### Address

*Date*

---

*Phone Number*

# INSTRUCTIONS FOR PETITION TO REPAIR OR REMEDY A CONDITION IN A RESIDENTIAL RENTAL PROPERTY

Texas Property Code, Chapter 92, Subchapter B

## Use this form if:

- You want to ask the court to order your landlord to repair or remedy a condition that materially affects your physical health or safety.

## Do not use this form if:

- You have not given written notice of a condition that materially affects your physical health or safety that needs repair or remedy. See “Tenant’s Request to Fix a Problem” for more information.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with Petition to Repair or Remedy a Condition in a Residential Rental Property.

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**For more information on what you need to do before filing this lawsuit, see the FAQs for *Tenant’s Request to Fix a Problem*.**

**NOTE:** If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the justice court clerk for a copy of the form. The clerk is required to provide you with the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

## Instructions:

**Heading:** The Clerk’s office will fill in several of these.

- *Court Time AND Court Date* – Leave these blank. The Clerk’s office will fill in this information when you file the form.
- *Case Number* – Leave this blank. The Clerk’s office will fill in the Case Number when you file this form.
- *Name of Plaintiff/Tenant(s)* – Write your name.
- *Name of Defendant(s)/Landlord* – Write the name of Landlord (not Landlord’s authorized agent).
- *Precinct/Place Number* – Write in the precinct and place number of the court in which the Property is located. If you do not know, ask the court clerk or check the court’s website.

- *County, Texas* – Write in the name of the county in which the property is located.

**1. Complaint:**

List the address of the property that needs repairs.

**2. Service of Citation or Alternative Service:**

Check the box of every statement that is true.

The lawsuit must be formally delivered to (served) the property owner or their agent. You need to write the name of the owner, management company, on-site manager, or rent collector in the blanks. When deciding who to list, you must follow this order:

1. If you were given the name and address of the company that manages the rental property in writing, you need to list them as the person to be served with the lawsuit.
2. If the above information was not given to you in writing, but the owner's name and address was given to you in writing, you need to list the owner's name and address.
3. If you were not given the owner's name or the management company name and address in writing, you need to list the address you have for the owner's management company, the on-site manager, or the rent collector.

**3. Lease:**

Check the box of the statement that is true.

**4. Notice:**

You must have notified your landlord that there was a problem that needs to be fixed. There are two ways to make a request for repairs that will stand up in court (*See the FAQs for Tenant's Request to Fix a Problem for more information*):

- a. Send one written notice by certified mail, return receipt requested, or another form of mail that tracks delivery (highly recommended and often quicker), or
- b. Give two notices.
  - 1) Unless your lease says differently, your first notice can be made by email, text, orally, or through an online portal. If you make a request by email, text, orally, or through an online portal, keep records with information about the request, such as the date, time, and to whom it was given.
  - 2) **If your lease requires all notices to be in writing**, and most leases do, then your first notice cannot be made by email, text, orally, or through an

online portal. It must be a written letter that is hand-delivered or mailed to the landlord.

- 3) If the repair has not been made within a reasonable time, you must mail or hand-deliver a written letter to the landlord. If you hand-deliver it, get a receipt from the person that you handed it to, if you can.

You need to include this information on the form:

- How was your notice given? Orally, in writing, by email, by text, by portal, or some other way?
- When did you give the notice? Write the date.
- Who did you give this notice to? Write the person's name or the place you left the notice in the blank.

Check 4.A. if you sent notice by certified mail, return receipt requested, registered mail, or other form of mail that tracks delivery. Provide the information requested.

Check 4.B. if you gave notice in another way and at least one of those notices was in writing. Provide the information requested.

**NOTE:** If you have not given written notice, you cannot use this form. See "Tenant's Request to Fix a Problem" for more information.

**5. Rent:**

Check the statement about your rent status at the time you gave each notice that is most accurate.

Write what date your rent is due on each month (for example, 1<sup>st</sup>, 3<sup>rd</sup>, last) Check whether you pay rent monthly, weekly, or other.

If you get a rent subsidy, write in the amount of the subsidy (for example a Housing Authority or other agency pays for part of your rent). Write in what portion you pay of the rent. Write in the total amount of rent due each week or month.

**6. Property Condition:**

Describe, in detail, what needs to be repaired, or remedied.

**7. Relief Requested:**

Check the box beside what you want the judge to do. You CAN check more than one.

- *A court order directing Landlord to take reasonable action to repair or remedy the condition:* This asks the judge to order Landlord to fix the condition.

- *A court order reducing my rent from the date of the first repair notice, for the reduced rental value resulting from the condition until the condition is repaired or remedied:* This asks the judge to lower your rent until the condition is fixed.
  - *I want the rent reduced by \$\_\_\_\_\_ (which would make my rent \$\_\_\_\_\_) beginning on \_\_\_\_\_ (date of first repair request):* If you want your rent lowered, this is where you tell the judge how much you want to pay. In the first blank, write how much you want for your rent to go down. In the second blank, write how much YOUR total rent would be if your rent is lowered. In the third blank, write the date of your FIRST request to repair.
- *Actual damages in the amount of \$\_\_\_\_:* This asks the judge to order Landlord pay your out-of-pocket costs resulting from the failure to fix the condition.
- *A civil penalty of one month's rent plus \$500:* This asks the judge to order Landlord to pay you one month's rent plus \$500.
- *Attorney's fees, and:* This asks the judge to order Landlord to pay your attorney fees, if any.
- *Court costs.:* This asks the judge to order Landlord to pay the costs for filing this Petition.

#### 8. Email Address Consent:

Check the box in this section if you agree to receive documents from the court or Defendant/Tenant at an email address that you regularly use. The documents or notices you receive may contain short time-sensitive deadlines or hearing dates you may need to act upon quickly. **NOTE:** If you check this box, you may not receive copies by mail. You should check email frequently for deadlines.

Sign, Date, write your address and phone number at the bottom.

Case Number \_\_\_\_\_

\_\_\_\_\_  
Name of Plaintiff(s)/Tenant(s) In the \_\_\_\_\_ Court, Precinct \_\_\_\_\_,  
Place \_\_\_\_\_,

vs.

\_\_\_\_\_  
Name of Defendant/Landlord \_\_\_\_\_ County, Texas

**Judgment Finding for Defendant in Repair or Remedy Case**

Texas Property Code § 92.0563, Texas Rules of Civil Procedure 509.6

On \_\_\_\_\_, Plaintiff  appeared or  did not appear and  
Defendant  appeared or  did not appear.

The address of the property is \_\_\_\_\_

Based on the evidence presented, the Court finds for the Defendant.

**IT IS ORDERED** that (check all that apply):

- Plaintiff must pay Defendant's attorney's fees \$\_\_\_\_\_.
- Plaintiff must pay Defendant's court costs \$\_\_\_\_\_.

You may appeal this judgment by filing a notice of appeal within 21 days after this judgment was signed. See Texas Rules of Civil Procedure 509.8. If you appeal, the case will be transferred to the county court where you must pay a filing fee or file a Statement of Inability to Afford Payment of Court Costs.

**Important Notice:** If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

**Aviso Importante:** Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

**IT IS SO ORDERED.**

Date signed: \_\_\_\_\_  
Time: \_\_\_\_\_

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HON. \_\_\_\_\_, PRESIDING JUDGE

Case Number \_\_\_\_\_

\_\_\_\_\_  
Name of Plaintiff(s)/Tenant(s) In the \_\_\_\_\_ Court, Precinct \_\_\_\_\_,  
Place \_\_\_\_\_,

vs.

\_\_\_\_\_  
Name of Defendant/Landlord \_\_\_\_\_ County, Texas

**Judgment Finding for Plaintiff to Repair or Remedy  
a Condition in a Residential Rental Property**

Texas Property Code § 92.0563, Texas Rules of Civil Procedure 509.6

On \_\_\_\_\_, Plaintiff  appeared or  did not appear and  
Defendant  appeared or  did not appear.

The address of the property is \_\_\_\_\_

Based on the evidence presented, the Court finds for the Plaintiff.

**IT IS ORDERED** that (check all that apply):

Defendant needs to repair the property located at

\_\_\_\_\_ by \_\_\_\_\_ (AM/PM) on \_\_\_\_\_ (month) \_\_\_\_\_  
(day), \_\_\_\_\_ (year). These repairs are needed (include reasonable detail):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Plaintiff's rent is reduced temporarily.

- Rent is reduced because these conditions justify it: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- Starting \_\_\_\_\_ (date), Plaintiff's rent is reduced to \_\_\_\_\_  
(amount), payable each \_\_\_\_\_ (week/month) until repairs are completed.

- If Plaintiff has paid more rent than the reduced amount ordered, Defendant shall reimburse Plaintiff the amount of the overpayment.
- The Defendant must give Plaintiff written notice that the repairs have been completed and that the rent reverts to the rent listed in the lease on the day the repairs are completed as follows: (Texas Rules of Civil Procedure 501.4)
  - in person, by mail, or by courier, or
  - by 5 pm if by fax, or if the parties have previously agreed in writing, by email.
- Once repairs are completed, Plaintiff owes prorated full rent beginning the day after the date the repairs are completed.

Defendant must pay actual damages \$\_\_\_\_\_.

Defendant must pay a civil penalty of one month's rent (\$\_\_\_\_\_) plus \$500.00.

Defendant must pay Plaintiff's attorney's fees \$\_\_\_\_\_.

Defendant must pay Plaintiff's court costs \$\_\_\_\_\_.

Other relief:\_\_\_\_\_.

You may appeal this judgment by filing a notice of appeal within 21 days after this judgment was signed. See Texas Rules of Civil Procedure 509.8. If you appeal, the case will be transferred to the county court where you must pay a filing fee or file a Statement of Inability to Afford Payment of Court Costs.

**Important Notice:** If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

**Aviso Importante:** Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

**IT IS SO ORDERED.**

Date signed: \_\_\_\_\_  
 Time: \_\_\_\_\_

\_\_\_\_\_

HON. \_\_\_\_\_, PRESIDING JUDGE

**WARNING: If Defendant or the person on whom this Order for repairs is served fails to immediately comply with this Order, or later disobeys this Order, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served under Section 21.002, Texas Government Code. If this Court finds, after considering the evidence at a show cause hearing, that the person has directly or indirectly disobeyed this writ, the Court may, pursuant to Section 92.0091(i) of the Texas Property Code, commit that person to jail without bail until the person purges the contempt action or omission in a manner and form as the Court may direct.**

# Tab II- Early Lease Termination Forms

# Notice of Termination of Lease Following Death of Sole Tenant

Texas Property Code 92.0162

## TO: Landlord

---

Name of Landlord/Manager/Agent

---

Address of Landlord/Manager/Agent

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## FROM: Representative of Deceased Sole Tenant's Estate

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Print the full name of the Deceased Sole Tenant

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Print your full name as the representative of the Deceased Sole Tenant's estate

### METHOD OF DELIVERY (Check applicable box. *Keep a photocopy of this notice.*):

- Certified Mail, Return Receipt (*If you have questions, ask Post Office and keep the tracking number.*)
- Mail
- Hand Delivery
- Other method: \_\_\_\_\_

### NOTICE OF TERMINATION:

This is a notice to terminate the lease for the property located at

\_\_\_\_\_ per Texas  
Property Code 92.0162, which allows a deceased sole tenant's estate to avoid liability for future  
rent and other sums landlords normally charge for early termination of the lease.

This lease will terminate:

1. 30 days after this notice has been provided to you, as long as the deceased tenant's property has been properly removed and any required inventory has been signed, or
2. If I have not removed the deceased tenant's property and signed any required inventory by the 30<sup>th</sup> day after this notice has been provided to you, then the lease will terminate on the day that the deceased tenant's property has been properly removed and any required inventory has been signed.

**FORWARDING ADDRESS:**

Please return the deceased sole tenant's security deposit to me at the following forwarding address:

*Print complete forwarding address, including City, State, and Zip Code*

---

*Your Signature*

---

*Printed Name*

---

*Street Address*

---

*City, State, Zip*

---

*Email Address*

---

*Phone Number*

---

*Date*

---

**FAQs AND INSTRUCTIONS FOR**  
**Notice of Termination of Lease Following Death of Sole Tenant**  
See Sections 92.0162 and 92.014, Texas Property Code

**Use This Form If:**

- You are a representative of the tenant's estate, including a person the tenant designated for the landlord to contact in the event of the tenant's death, and
- You want to end the lease early of a tenant who has died and was the sole occupant of the rental premises.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. Use these instructions with the "Notice of Termination of Lease Following Death of Sole Tenant" form.

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**I. Frequently Asked Questions about Early Lease Termination**

1. Can I terminate a tenant's lease early if the tenant has died and was the sole occupant?  
See Sections 92.0162, Texas Property Code

Yes, you can end the deceased tenant's lease and move the tenant's property out of the rental property without the tenant's estate being obligated to pay future rent, penalties, or other fees and amounts if:

- a. You are a representative of the tenant's estate, including a person the tenant designated for the landlord to contact in the event of the tenant's death, and
- b. You follow the steps listed in FAQ 2.

2. How do I properly terminate the lease of a tenant who has died and was the sole occupant of the rental property? See Sections 92.0162 and 92.014 Texas Property Code

You must:

- a. Give the landlord or the landlord's agent written notice of termination of the lease. You can use this "Notice of Termination of Lease Following Death of a Sole Tenant" form to give the landlord written notice;
- b. Properly remove the tenant's property from the rental premises by following the steps in FAQ 5; and
- c. Sign an inventory of the removed property, if required by the landlord or the landlord's agent.

3. How quickly can I terminate the lease after the sole occupant tenant dies? See Sections 92.0162, Texas Property Code.

**Commented [TM1]:** Sec. 92.0162. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING TENANT'S DEATH. (a) A representative of the estate of a tenant who dies before the expiration of the tenant's lease and was, at the time of the tenant's death, the sole occupant of a rental dwelling may terminate the tenant's rights and obligations under the lease and may vacate the leased premises and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the leased premises before the end of the lease term if:

- (1) the representative provides to the landlord or the landlord's agent written notice of the termination of the lease under this section;
- (2) the deceased tenant's property is removed from the leased premises in accordance with Section 92.014(c) or (d); and
- (3) the representative signs an inventory of the removed property, if required by the landlord or the landlord's agent.

(b) Termination of a lease under this section is effective on the later of:

- (1) the 30th day after the date on which the notice under Subsection (a) was provided; or
- (2) the date on which all of the conditions in Subsection (a) have been met.

(c) After receipt of the notice provided under Subsection (a), the

**Commented [TM2R1]:** Sec. 92.014. PERSONAL PROPERTY AND SECURITY DEPOSIT OF DECEASED TENANT. (a) Upon written request of a landlord, the landlord's tenant shall:

- (1) provide the landlord with the name, address, and telephone number of a person to contact in the event of the tenant's death; and
- (2) sign a statement authorizing the landlord in the event of the tenant's death to:

(A) grant to the person designated under Subdivision (1) access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;

(B) allow the person designated under Subdivision (1) to remove any of the

**Commented [TM3]:** When drafting this statute, the legislative intent was that the representative of the estate was to be broadly defined. Although not specifically stated in the statute, we believe that this phrase includes any person that may have been designated to the landlord by the deceased tenant to contact in the event of death.

You can give the landlord or the landlord's agent written notice of the lease termination as soon as the tenant dies, but the termination will not be effective until:

- 30 days after you give the landlord written notice of lease termination, as long as the deceased tenant's property has been properly removed and any required inventory has been signed, or
- If you have not removed the deceased tenant's property and signed any required inventory by the 30<sup>th</sup> day after you give the landlord written notice of lease termination, then the lease will terminate on the day that the deceased tenant's property has been properly removed and any required inventory has been signed.

For example, if you give written notice on May 1 and completed all the steps in FAQ 2 before May 31, the lease will terminate on May 31. But if you don't complete all the steps in FAQ 2 until June 3, the lease will terminate on June 3.

4. How can I get a copy of the deceased tenant's lease? See Section 92.0162(c), Texas Property Code.

After the landlord receives your written notice of termination, you can ask the landlord in writing for a copy of the written lease in effect at the time of the sole tenant's death and the landlord must provide it to you.

5. What happens to the deceased sole tenant's property and how do I get it back? See Section 92.014 Texas Property Code.

- a. **Process Listed in Deceased Tenant's Lease:** Read the tenant's lease. See FAQ 4 if you need a copy. The landlord and the deceased tenant may have agreed to a specific process for removing, storing, or disposing of the tenant's property in the lease. If so, follow the process in the lease.

**Commented [TM4]:** TAA lease says that when a sole tenant dies, the landlord can give the property to charity or throw it away, and 30 days after death, can sell whatever hasn't been given to charity or thrown away.

- b. **No Process Listed in Deceased Tenant's Lease:** Here's the process if the lease doesn't state how the deceased tenant's property will be removed, stored, or disposed of when a tenant dies:

- i. If a person lawfully entitled to the property asks to remove the property (See FAQ 2), the landlord:
  - 1) Must give the person access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;
  - 2) Must allow the person to remove any of the tenant's property found at the leased premises;
  - 3) Must give possession of the property to the person, if the request is made before the property has been discarded; and
  - 4) May require the person to sign an inventory of the property being removed.
- ii. The landlord may also:

- 1) Remove and store all property found in the tenant's premises; and
- 2) May discard the property if:
  - a) The landlord mailed a written request by certified mail, return receipt requested, asking that the property be removed to the person designated by the tenant to be contacted in the event of the tenant's death;
  - b) The person failed to remove the property by the 30th day after the postmark date on the written request; and
  - c) The landlord has not been contacted by anyone claiming the property before discarding it.

6. When does the deceased sole tenant's estate stop owing rent, fees, or other sums? See Texas Property Code 92.0162.

The tenant's estate will still owe rent, fees, or other sums that were due until the lease has been properly terminated, as listed under FAQ 2.

7. Will the deceased sole tenant's estate owe any past due rent, fees, or other sums after the lease terminates? See Texas Property Code 92.0162.

Yes. The deceased tenant's estate will still need to pay any past due rent, fees, or other sums and damages to the property not caused by normal wear and tear that are owed to the landlord before the lease terminates.

8. If I did everything I was supposed to do to terminate the deceased sole tenant's lease, can the landlord charge the tenant's estate reletting fees, penalties, and additional rent for terminating the lease? See Texas Property Code 92.0162.

No. If you properly terminated the lease, the landlord may not charge the deceased tenant's estate future rent, reletting fees (fees for breaking the lease), penalties, or any other future amounts due under the lease.

9. What about the deceased sole tenant's security deposit? See Texas Property Code, Section 92.014(c)(3).

The landlord must refund the deceased tenant's security deposit less lawful deductions, including any cost of removing and storing the property, to a person lawfully entitled to the refund.

10. What if the landlord says the deceased sole tenant's estate is obligated to pay the rest of the lease after the lease has been properly terminated?

The landlord is incorrect. If you're a representative of the estate under FAQ 2, you have a right to terminate the deceased tenant's lease regardless of what the landlord says.

II. **Instructions for Filling out Notice of Termination of Lease Following Death of Sole Tenant:**

- *To* – List the name of the landlord, manager, or agent. This should be the person to whom or the place where the deceased sole tenant's rent is normally paid. Write the street address, unit number (if any), city, state, and ZIP of the landlord, manager, or agent.
- *From* – Write the deceased sole tenant's name.
- *Method of Delivery*: (for your records, check all that apply)
  - Certified Mail, Return Receipt (*If you have questions, ask the Post Office and keep tracking number.*)
  - Mail
  - Hand Delivery
  - Other method: \_\_\_\_\_
- *Notice of Termination*: You don't need to write anything in this section. It tells the landlord that the lease will terminate:
  1. 30 days after you give the landlord written notice of lease termination, as long as the deceased tenant's property has been properly removed and any required inventory has been signed, or
  2. If you have not removed the deceased tenant's property and signed any required inventory by the 30<sup>th</sup> day after you give the landlord written notice of lease termination, then the lease will terminate on the day that the deceased tenant's property has been properly removed and any required inventory has been signed.
- *Forwarding Address*: Print the address where you want the landlord to send the deceased tenant's security deposit. The address does not have to be where you are currently living, but it does have to be an address where you know you can receive mail.
- *Your Signature*: Sign, print requested information, and date it.

# Notice of Termination of Lease

## Following Family Violence

Texas Property Code 92.016

**WARNING: FOR SAFETY PURPOSES, PLEASE KEEP ALL INFORMATION IN THIS NOTICE CONFIDENTIAL, INCLUDING TENANT'S FORWARDING ADDRESS. DO NOT DISCLOSE TO ANYONE OR ANY ENTITY WITHOUT TENANT'S CONSENT.**

### TO: Landlord

Name of Landlord/Manager/Agent

Address of Landlord/Manager/Agent

### FROM: Tenant(s)

Print full name of Tenant(s)

#### METHOD OF DELIVERY (Check applicable box. *Keep a photocopy of this notice.*):

Certified Mail, Return Receipt \_\_\_\_\_ *(If you have questions, ask the Post Office; keep tracking number.)*

Regular Mail

Hand Delivery

Other method: \_\_\_\_\_

#### NOTICE OF TERMINATION:

This is my notice to terminate my lease under Texas Property Code 92.016, which allows me to avoid liability for future rent and other sums you normally charge for early termination of the lease. I am terminating my lease for the property located at \_\_\_\_\_.

I intend to vacate the property on \_\_\_\_\_.  
*(Print month, day, and year you will vacate.)*

*(If the document attached below is against a person who is not a co-tenant or an occupant of the property, the vacate date should be at least 30 days after the date you give this notice to the landlord. Otherwise, it can be immediately.)*

#### FORWARDING ADDRESS:

**For my safety, please keep my forwarding address confidential.** The forwarding address for the return of my security deposit is:

---

*Print complete forwarding address, including City, State, and Zip Code*

You have 30 days from the date I give a forwarding address in writing AND move out of the property to return any security deposit due and/or give me a written description and itemized list of deductions.

**DOCUMENTATION:** ATTACHED IS A COPY OF THE FOLLOWING: (Check applicable box, see instructions):

- A protective order protecting the tenant or occupant from family violence; or
- A Magistrate's Emergency Protection Order
- A temporary restraining order in a divorce case protecting the tenant or occupant from family violence; or
- A copy of documentation of the family violence against the tenant or occupant from:
  - a licensed health care services provider,
  - a licensed mental health services provider,
  - a family violence shelter advocate as defined by Section 93.001, Texas Family Code.
- A temporary ex parte protective order protecting the tenant or occupant from family violence by a person who is not a co-tenant or occupant of the property.

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*Tenant Signature*

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*Printed Name*

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*Date*

**FAQs AND INSTRUCTIONS FOR**  
**Notice of Termination of Lease Following Family Violence**  
See Section 92.016, Texas Property Code

**Use This Form If:**

- You want to end your lease early because of family violence.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. Use these instructions with the "Notice of Termination of Lease Following Family Violence" form.

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**I. Frequently Asked Questions about Early Lease Termination**

**1. Can I terminate my lease and move out early because of family violence?**

Yes. If you follow the steps listed in FAQ 4, you can end your lease and move out of the property without being obligated to pay future rent, penalties, or other fees and amounts for ending your lease early. See FAQ 2 for the definition of family violence, which is very broad.

If you live in public or subsidized housing, or you have a Section 8 voucher, federal laws and rules may give you additional rights to end your lease early. For example, the Violence Against Women Act provides additional protections.

**2. What is family violence for the purpose of early lease termination, and who is covered under these family violence protections? (See Texas Family Code, Sections 71.003, 71.004, and 261.001(1))**

**a. Family violence is:**

**i. When a person:**

1. intentionally harms you or an occupant of your household (including a child) physically or sexually, or
2. threatens to harm you or an occupant of your household (including a child) physically or sexually, and the threat reasonably causes you or an occupant of your household (including a child) to fear that the harm will happen in the near future, **and**

**ii. That person has the following relationship with you or an occupant of your household (including a child) whether or not they are living in your household:**

1. a spouse or former spouse,

**Commented [NM1]:**

Sec. 71.003. FAMILY. "Family" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Sec. 71.0021. DATING VIOLENCE. (a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim or applicant for a protective order:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(1) the length of the relationship;

(2) the nature of the relationship; and

- 2. a current or former occupant of your household,
- 3. someone you, an occupant, or your child is or was dating,
- 4. a biological or adopted child, a parent, a sibling, or other relative,
- 5. a biological or adopted child, a parent, a sibling, or other relative of your spouse or household occupant's spouse,
- 6. a parent of your child or a household occupant's child, whether or not the parents are married,
- 7. a foster child and foster parent.

b. **Family violence includes “abuse” to a child that occurs when a person:**

- i. Physical
  - 1. Substantially harms or threatens to substantially harm a child physically; (See Texas Family Code, Section 71.004)
- ii. Sexual, Trafficking, and Prostitution
  - 1. Engages in sexual conduct that is mentally, emotionally, or physically harmful to a child, including sexual abuse, indecency with a child, sexual assault, or aggravated sexual assault (See Texas Penal Code, Sections 21.02, 21.11, 22.011, 22.021);
  - 2. Encourages or makes a child engage in sexual conduct, including trafficking or prostitution (See Texas Penal Code, Sections 43.01, 20A.02(a)(7) or (8), 43.02(b), and 43.05(a)(2);
  - 3. Encourages, allows, engages or portrays a child in child pornography or in an obscene way (See Texas Penal Code 43.21);
  - 4. Encourages, allows, causes, or engages in sexual performance by a child (Texas Penal Code, Section 43.25); or
  - 5. Forces or pressures a child to marry.
- iii. Controlled Substances (See Chapter 481, Texas Health and Safety Code).
  - 1. Uses a controlled substance in a way that results in physical, mental, or emotional harm to a child, or
  - 2. Causes, allows, or encourages a child to use a controlled substance.

c. **Family violence does not include:**

- i. Self-defense that results in physical harm to an adult or child, or
- ii. Physical harm to a child by a parent, guardian, or managing or possessory conservator caused by an accident or reasonable discipline that would not put a child at substantial risk of harm.

3. How quickly can I terminate my lease following family violence? See Section 92.016(c) and (c-1), Texas Property Code

You can terminate your lease **immediately** if the family violence was committed by a co-tenant or occupant of the household. If the family violence was committed by someone else, you must give your landlord 30 days written notice before you can terminate your lease.

**Commented [TM2]:** The definition of child changes depending on the penal code section. For example, sexual assault, section 22.011 is younger than 17. Section 43.25 and 43.05 and Chapter 481.122 THSC are younger than 18.

**Commented [NM3]:**

Sec. 71.003. FAMILY. "Family" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Sec. 71.0021. DATING VIOLENCE. (a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim or applicant for a protective order:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or ...

4. How do I properly terminate my lease? See Section 92.016(c) and (c-1), Texas Property Code

**When family violence is committed by someone who IS a co-tenant or household occupant, you must:**

1. Give your landlord certain documentation of the family violence (See FAQ 5), and
2. Tell your landlord you are leaving and vacate the property. You do not have to tell your landlord before you leave but it is important that they know you are leaving. You may use this "Notice of Termination of Lease Following Family Violence" to let your landlord know why you are leaving and provide the required documentation of family violence.

**When family violence is committed by someone who is NOT a co-tenant or household occupant, you must:**

1. Give your landlord at least 30 days written notice of the termination of the lease, which you can do by using this "Notice of Termination of Lease Following Family Violence;"
2. Give your landlord certain documentation of family violence (See FAQ 5); and
3. Vacate the property.

5. What kind of documentation do I need to show that there has been family violence against me or a co-tenant or occupant of the household? (See Texas Property Code 92.0016(b-1))

Any of the following can be used as proof of family violence against a tenant or occupant, regardless of who commits the family violence:

- A Protective Order (PO):** A protective order is a court order protecting the tenant or occupant from family violence. It is issued by a county or district court judge after a trial is held on the facts. It normally lasts for two years but can be extended or renewed.
- A Magistrate's Emergency Protection Order (MEPO) –** When a person is arrested for family violence involving serious bodily harm or a deadly weapon and appears before the magistrate, the magistrate must issue emergency protective orders. If the incident did not involve serious bodily injury or a deadly weapon, the magistrate may issue emergency protective orders on the request of the arresting officer, victim or guardian of the victim, or the county or district attorney. (See Article 17.292 of the Texas Code of Criminal Procedure).
- A Temporary Restraining Order (TRO) –** A judge may issue a temporary restraining order to protect a tenant or occupant who is involved in a divorce case while the divorce is pending.

**Commented [TM4]:** (b-1) A tenant may obtain relief under Subsection (b) if the tenant provides the landlord or the landlord's agent:  
(1) a copy of one or more of the following orders protecting the tenant or an occupant from family violence:  
(A) a temporary injunction issued under Subchapter E, Chapter 6, Family Code;  
(B) a temporary ex parte order issued under Chapter 83, Family Code;  
(C) a protective order issued under Chapter 85, Family Code; or  
(D) an order of emergency protection under Article 17.292, Code of Criminal Procedure; or  
(2) a copy of documentation of the family violence against the tenant or an occupant from:  
(A) a licensed health care services provider who examined the victim;  
(B) a licensed mental health services provider who examined or evaluated the victim; or  
(C) an advocate as defined by Section 93.001, Family Code, who assisted the victim.

- Other Documentation of Family Violence:** A tenant or occupant can submit documentation of the family violence from:
  - A licensed health care services provider who examined the victim,
  - A licensed mental health services provider who examined or evaluated the victim, or
  - A family violence shelter advocate (an employee or volunteer with a family violence shelter that has had at least 20 hours of training in assisting victims).

You can also use the following as proof of family violence against a tenant or occupant if the family violence was not committed by a co-tenant or occupant:

- A Temporary Ex Parte Protective Order (TEXPO)** – A temporary ex parte protective order is often issued by the court when a person applies for a protective order based on the person's affidavit or sworn declaration. It is valid for two weeks and can be extended until the court is able to hold a hearing on the matter.

6. Can I stop paying rent, fees, or other sums once the family violence occurs?

No. You can terminate your lease before it ends, but you still owe rent, fees, or other sums that were due for the days you lived at the property. Once you have properly terminated the lease and vacated the property, you do not need to pay rent for any days after you have moved out or fees related to early termination of the lease.

7. Do I owe any past due rent, fees, or other sums when I terminate my lease due to family violence? (See Texas Property Code 92.016(f))

Yes. However, if your lease doesn't say something like "tenants may have special statutory rights to terminate the lease early in certain situations involving family violence," then you are not liable for any delinquent, unpaid rent you owe your landlord when you terminate your lease. This applies to rent only. You will still need to pay any past due sums owed to the landlord before your lease terminates.

8. If I did everything I was supposed to do to terminate my lease following family violence and moved out, can my landlord charge me reletting fees, penalties, and additional rent for terminating my lease? (See Texas Property Code 92.016(b))

No. If you properly terminate your lease, your landlord may not charge you future rent, reletting fees (fees for breaking your lease), penalties, or any other future amounts due under your lease. Your landlord cannot report that you owe these amounts to credit reporting agencies or have a debt collector pursue you for them.

9. What about my security deposit? (See Texas Property Code, Section 92.101-109 and the FAQs in the Supreme Court of Texas Security Deposit Kit for more information.)

Terminating your lease early does not affect your rights to your security deposit. (See FAQ 4 above)

To be entitled to a refund of any portion of your security deposit, you must first give your landlord a forwarding address in writing. Within 30 days from the date you give the forwarding address AND move out, your landlord must:

- return the entire security deposit, or
- provide a written description and itemized list of deductions from the security deposit, such as utilities, rent owed for days you lived at the property, and damages beyond normal wear and tear, along with the return of any remaining amount of the security deposit.

**You do not need to provide the address where you are living. You only need to provide an address where you can get mail. Depending on your situation, it may not be safe to list the address where you live. You can ask your landlord to keep your address confidential, but your landlord does not have a legal obligation to do so.**

10. Can my landlord require me to sign a release of liability or give up any other rights I may have before allowing me to terminate the lease? For example, can a landlord require me to sign a release if the assault happened at their property or was committed by one of their employees? (See Texas Property Code 92.016(g))

No. You have an unconditional right to terminate your lease due to family violence under the law. Your landlord cannot make you give up these rights and cannot require you to do something that is not required under the Texas Property Code before allowing you to terminate your lease.

11. What if my landlord says they don't have to let me out of the lease or my lease doesn't say I can get out of my lease due to family violence?

It does not matter what the landlord says. You have a right to terminate the lease due to family violence, regardless of what the lease or landlord says.

12. What are my rights if my landlord won't release me from the lease or illegally charges me amounts after I properly terminated my lease?

You can sue your landlord for:

- a civil penalty of one month's rent plus \$500,
- your actual damages, and
- attorneys' fees

II. **Instructions for Filling out Notice of Termination of Lease Following Family Violence:**

- *To* – List the name of the landlord, manager, or agent. This should be the person to whom or the place where your rent is normally paid. Write the street address, unit number (if any), city, state, and ZIP of the landlord, manager, or agent.
- *From* – Write the tenant's name.
- *Method of Delivery*: (for your records, check all that apply)
  - Certified Mail, Return Receipt \_\_\_\_\_ (*If you have questions, ask Post Office; keep tracking number.*)
  - Regular Mail
  - Hand Delivery
  - Other method: \_\_\_\_\_

- *Notice of Termination*: Print the location of the leased property and the month, day, and year you will vacate the property.

If the family violence was done by someone who is a **co-tenant or occupant** of property, you can vacate immediately.

If the family violence was done by someone who is **NOT a co-tenant or occupant** of the property, you must give your landlord at least 30 days notice of the termination of the lease.

- *Forwarding Address*: Print the address where you want the landlord to send your security deposit. The address does not have to be where you are currently living, but it does have to be an address where you know you can receive mail. **While this notice form asks for confidentiality, your landlord is under no obligation to keep your forwarding address confidential. Keep that in mind when you provide a forwarding address if you are concerned about your abuser finding you.** You do not have to give a forwarding address, but under the law, your landlord is not required to return your security deposit unless you do so.
- *Documentation*: A copy of one of the following must be included to document the family violence:

1. Any of the following can be used as proof of family violence against a tenant or occupant regardless of who commits the family violence:

- A Protective Order (PO)**: A protective order is a court order protecting the tenant or occupant from family violence. It is issued by a county or district

court judge after a trial is held on the facts. It normally lasts for two years but can be extended or renewed.

- A Magistrate's Emergency Protection Order (MEPO)** – When a person is arrested for family violence involving serious bodily harm or a deadly weapon and appears before the magistrate, the magistrate must issue emergency protective orders. If the incident did not involve serious bodily injury or a deadly weapon, the magistrate may issue emergency protective orders on the request of the arresting officer, victim or guardian of the victim, or the county or district attorney. (See Article 17.292 of the Texas Code of Criminal Procedure).
- A Temporary Restraining Order (TRO)** – A judge may issue a temporary restraining order to protect a tenant or occupant who is involved in a divorce case while the divorce is pending.
- Other Documentation of Family Violence:** A tenant or occupant can submit documentation of the family violence from:
  - A licensed health care services provider who examined the victim
  - A licensed mental health services provider who examined or evaluated the victim
  - A family violence shelter advocate (an employee or volunteer with a family violence shelter that has had at least 20 hours of training in assisting victims).

2. You can also use the following as proof of family violence against a tenant or occupant if the family violence was not committed by a co-tenant or occupant:

- A Temporary Ex Parte Protective Order (TEXPO)** – A temporary ex parte protective order is often issued by the court when a person applies for a protective order based on the person's affidavit or sworn declaration. It is valid for two weeks and can be extended until the court is able to hold a hearing on the matter.

- *Tenant Signature:* Sign, print your name, date it.

**Notice of Termination of Lease  
Following Sexual Abuse, Sexual Assault, or Stalking**  
Texas Property Code 92.0161

**WARNING:** ANY PERSON, INCLUDING A LANDLORD, MANAGER, OR AGENT, MAY NOT DISCLOSE INFORMATION RECEIVED IN A NOTICE OF TERMINATION DUE TO SEXUAL ABUSE, SEXUAL ASSAULT, OR STALKING, EXCEPT FOR A LEGITIMATE OR CUSTOMARY BUSINESS PURPOSE OR AS OTHERWISE REQUIRED BY LAW. Texas Property Code 92.0161(j). DO NOT DISCLOSE TO ANYONE OR ANY ENTITY WITHOUT TENANT'S CONSENT.

**TO: Landlord, Manager, or Agent**

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Name of Landlord/Manager/Agent

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Address of Landlord/Manager/Agent

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**FROM: Tenant(s)**

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Print full name of Tenant(s)

**METHOD OF DELIVERY** (Check applicable box. *Keep a photocopy of this notice.*):

Certified Mail, Return Receipt (*If you have questions, ask the Post Office. Keep tracking number.*)  
 Mail: \_\_\_\_\_  
 Hand Delivery  
 Other method: \_\_\_\_\_

**NOTICE OF TERMINATION:**

This is my notice to terminate my lease under Texas Property Code 92.0161, which allows me to avoid liability for future rent and other sums you normally charge for early termination of the lease. I am terminating my lease and vacating on \_\_\_\_\_.

*(Print month, day, and year you will vacate.)*

*(Note: the vacate date should be at least 30 days after the date you give this notice to the landlord.)*

**FORWARDING ADDRESS:**

**For my safety, please keep my forwarding address confidential.** My forwarding address for the return of my security deposit is:

Print complete forwarding address, including City, State, and Zip Code

You have 30 days from the date I give a forwarding address in writing and move out of the property to give me a written description of any itemized deductions and return any security deposit due.

**DOCUMENTATION:** ATTACHED IS A COPY OF THE FOLLOWING: (Check the box that applies to you. See instructions and FAQs for more information):

For sexual assault, aggravated sexual assault, indecency with a child, sexual performance of a child, sexual abuse of a child, continuous sexual abuse of an individual with a disability as defined by Texas Penal Code 22.021(b)(3), or an attempt to commit these events:

- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim; OR
- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim; OR
- documentation of the assault or abuse, or attempted assault or abuse, of the victim from an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program, or any other individual authorized under Chapter 420, Government Code, who provided services to the victim; OR
- documentation of a protective order for sexual assault or trafficking issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, except a temporary ex parte order is not sufficient evidence under this law.

**Commented [TM1]:** Included cite because definition of indiv w/disability is narrower than general definition used in other statutes (indiv must be 13 or older). Allows someone other than the victim to bring suit on behalf of the indiv w/disability. Continuous means there must have been at least 2 incidents w/in a 30 day period.

For stalking:

- documentation of a protective order for stalking issued under Subchapter A or B, Chapter 7B, Code of Criminal Procedure, except a temporary ex parte order is not sufficient evidence under this law; OR
- documentation of the stalking from a licensed health care services provider, a licensed mental health services provider, or an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program or any other individual authorized under Chapter 420, Government Code; and
  - o a law enforcement incident report or, if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; and

Notice of Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking

- if the report or record does not use the victim's real name and identifies the victim by their initials or a pseudonym as defined by Article 58.001, Code of Criminal Procedure, a copy of the pseudonym form completed by the victim and returned under Article 58.152(a) of that code.

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*Tenant Signature*

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*Printed Name*

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*Date*

**FAQs AND INSTRUCTIONS FOR**  
**Early Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking**  
Texas Property Code, Section 92.0161

**Use This Form If:**

- You want to end your lease early because of a sexual assault, sexual abuse, or stalking.

**Do No Use This Form If:**

- You want to end your lease early for any other reason.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with the "Notice of Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking."

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**I. Frequently Asked Questions about Early Lease Termination**

**1. Can I terminate my lease and move out early because of sexual abuse, sexual assault, or stalking?**

Yes, you can end your lease and move out of the property without being obligated to pay future rent, penalties, or other amounts if:

- a. You are a victim, or you are a parent or guardian of a victim who resides with you, of stalking or one of the sexual offenses listed below, and
- b. The incident happened in the last six months, and
- c. You take the steps listed in **FAQ 2**, including giving 30 days' notice, and
- d. You include the documentation in **FAQ 3**.

The offenses that allow you to terminate your lease include, but are not limited to:

**1) sexual assault or aggravated sexual assault**, which includes but is not limited:

- assaults where you were physically forced or coerced, or threatened with violence or harm;
- situations where you were:
  - unconscious or physically unable to resist,
  - unable to understand or resist due to mental incapacity,
  - unaware the offense was occurring to you, or
  - given substances without your knowledge that impaired your ability to understand;
- An assault becomes aggravated if the offender caused serious bodily injury, attempted to kill someone while committing the

**Commented [TM1]:** On final review of these documents, we removed the old requirement that the assault, etc., had to happen on the rental property. HB47 of the 89<sup>th</sup> regular Legislative session removed that requirement and is effective September 1, 2025.

**Commented [TM2]:** The list is incredibly long. We discussed them with a sexual assault expert and summarized them instead.

assault, used or displayed a deadly weapon during the assault, caused a fear of being trafficked or kidnapped, or administered a substance that impaired your or the child's ability to understand or resist. An assault is also aggravated when the victim is younger than 14, over 65, or disabled.

See Texas Penal Code 22.011 and 22.021 for more information.

- 2) indecency with a child, which includes when a person who:
  - has physical sexual contact with a child who is 16 or younger,
  - for their sexual gratification, exposes their genitals or anus to a child who is 16 or younger, or
  - for their sexual gratification, causes the child to expose their genitals or anus to the person or others.

See Texas Penal Code 21.11 for more information.

- 3) sexual performance by a child who resides with you and you are the parent or guardian of that child, which includes when a person uses, allows, or encourages a child who is 17 or younger to engage in sexual conduct or sexual performance in front of one or more persons.

See Texas Penal Code 43.25 for more information.

- 4) continuous sexual abuse of a child or an individual with a disability (as defined under Texas Penal Code 22.021(b)(3)) who resides with you and you are the parent or guardian of that person. See Texas Penal Code 21.02.
  - "Continuous" means that the individual was sexually abused at least two times during a period that is 30 or more days. This statute was intended to increase the offender's level of punishment to a minimum of 25 years, up to 99 years, or life in prison.
- 5) an attempt to commit one of the offenses in 1) – 4) above; or
- 6) Stalking, which includes repeated harassing conduct that causes you or a member of your household to be afraid that you or your property may be harmed. See Texas Penal Code 42.072.

If you live in public or subsidized housing, or you have a Section 8 voucher, federal laws and rules may give you additional rights to end your lease early. For example, the Violence Against Women Act has additional protections. For more information, see <https://www.hud.gov/vawa#close>.

2. How do I properly terminate my lease? See Texas Property Code 92.0161(d)

**Commented [EB3]:** A sexual offense which includes physical force, violence or coercion, threats of harm, while you were unconscious or physically unable to resist, (mental disease language) and unable to understand or resist, which you were unaware the offense was occurring,

**Commented [TM4]:** Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse (ch 43 TPC), sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

"Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

TPC Ch 43 (1-a) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

"Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

**Commented [TM5]:** includes when a person who is 17 or older commits two or more acts of sexual abuse of a child who is 13 or younger or a person with a disability during a period of 30 days or more and a bunch of other stuff, including defenses, as set forth in TPC 21.02. We decided to go with an abbreviated version because this is mainly an enhancement of the offense statute.

**Commented [TM6]:** We don't go into what this is because it's an enhancement, which is really for the prosecuting attorney to determine, but the reality is that sexual abuse is covered and it doesn't need to be continuous. It's also expansive and would take a lot of explanation that we don't think is necessary other than to list it because it's in the code.

**Commented [TM7]:** We don't go into what this is because it's an enhancement, which is really for the prosecuting attorney to determine, but the reality is that sexual abuse is covered and it doesn't need to be continuous. It's also expansive and would take a lot of explanation that we don't think is necessary other than to list it because it's in the code.

**Commented [TM8]:** Sec. 42.072. STALKING. (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household or for an individual with wh...

To terminate your lease, you must:

- a. Give your landlord or your landlord's agent at least 30 days written notice of the termination of the lease, which you can do by using this "Notice of Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking;"
- b. Give your landlord or your landlord's agent certain documentation of the sexual abuse, sexual assault, or stalking (See **FAQ 3**); and
- c. Vacate the property.

3. What kind of documentation do I need to show that the sexual abuse, sexual assault, or stalking occurred? (See Texas Property Code 92.0161(c), (c-1))

- a. **For events involving sexual assault, aggravated sexual assault, indecency with a child, sexual performance by a child, sexual abuse, continuous sexual abuse of a child or an individual with a disability as defined by Texas Penal Code 22.021(b)(3), or an attempt to commit these events**, you must provide your landlord or your landlord's agent one of the following:
  - 1) documentation of the event by a licensed health care services provider who examined the victim, a licensed mental health services provider who examined or evaluated the victim, or by an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program who provided services to the victim. See Texas Government Code, Sec. 420.051, Government Code; or
  - 2) documentation of a sexual assault, sexual abuse, indecency assault, or trafficking protective order.

NOTE: A temporary ex parte sexual assault, sexual abuse, indecency assault, or trafficking order is not sufficient documentation under this law. A temporary ex parte order is typically issued without the presence of the alleged offender and only lasts a short period of time.

See Subchapter A, Chapter 7B, Code of Criminal Procedure.

**Commented [TM9]:** Sec. 420.051. ADVOCATES FOR SURVIVORS OF SEXUAL ASSAULT. An individual may act as an advocate for survivors of sexual assault for the purposes of Article 56.045, Code of Criminal Procedure, if the individual has completed a sexual assault training program certified by the attorney general and is an employee or volunteer of a sexual assault program.

- b. **For events involving stalking**, you must provide one of the following:

- 1) documentation of a stalking protective order; **OR**
- 2) documentation of the stalking from:
  - a. a licensed health care services provider who examined the victim, a licensed mental health services provider who examined or evaluated the victim, or an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program who provided services to the victim. See Texas Government Code, Sec. 420.051, Government Code, and

**Commented [TM10]:** Don't need to prove likelihood of a future occurrence like you do with a DV PO. Also, the default is that it's a lifetime protective order, unlike DV PO, which is presumptively 2 years.

**Commented [TM11]:** Sec. 420.051. ADVOCATES FOR SURVIVORS OF SEXUAL ASSAULT. An individual may act as an advocate for survivors of sexual assault for the purposes of Article 56.045, Code of Criminal Procedure, if the individual has completed a sexual assault training program certified by the attorney general and is an employee or volunteer of a sexual assault program.

b. law enforcement incident report, or if a law enforcement incident report is not available, other documentation of the incident by a law enforcement agency. If the report or document uses a pseudonym or the victim's initials, or does not use the victim's real name, you must also provide a copy of the pseudonym form. The pseudonym form is the document that the victim would have completed and submitted to the investigating law enforcement agency. To refresh the victim's memory of what this form looks like, visit <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims/pseudonym-forms-crime-victims>.

See Texas Code of Criminal Procedure, Article 58.152.

**Commented [TM12]:** Pseudonym as defined by Article 58.001, Code of Criminal Procedure

NOTE: A temporary ex parte stalking protective order is not sufficient documentation under this law. A temporary ex parte order is typically issued without the presence of the alleged offender and only lasts a short period of time.

See Subchapter A, Chapter 7B, Code of Criminal Procedure.

**Commented [TM13]:** Don't need to prove likelihood of a future occurrence like you do with a DV PO. Also, the default is that it's a lifetime protective order, unlike DV PO, which is presumptively 2 years.

4. Can I stop paying rent, fees, or other sums once the sexual assault, sexual abuse, or stalking has happened?

No. You can terminate your lease before it ends, but you still owe rent, fees, or other sums that were due for all the days you lived at the property. Once you have properly terminated the lease and vacated the property, you do not need to pay rent or fees for any days after you have moved out.

5. Do I owe any past due rent, fees, or other sums when I terminate my lease following a sexual assault, sexual abuse, or stalking? See Texas Property Code 92.0161(g)

Yes. However, if your lease doesn't say something like "Tenants may have special statutory rights to terminate the lease early in certain situations involving certain sexual offenses or stalking," then you are not liable for any delinquent, unpaid rent you owe your landlord when you terminate your lease. This applies to rent only. You will still need to pay any past due sums owed to the landlord before your lease terminates.

6. If I did everything I was supposed to do to terminate my lease following a sexual assault or stalking and moved out, can my landlord charge me reletting fees, penalties, and additional rent for terminating my lease? See Texas Property Code 92.0161(b)

No. If you properly terminate your lease, your landlord may not charge you future rent, reletting fees (fees for breaking the lease), penalties, or any other future amounts due under your lease. Your landlord cannot report that you owe these amounts to credit reporting agencies or have a debt collector pursue you for them.

7. What about my security deposit? See Texas Property Code, Section 92.101-109 and the FAQs in the Supreme Court of Texas Security Deposit Kit for more information.

Terminating your lease early, if done properly, does not affect your rights to your security deposit.

To be entitled to a refund of any portion of your security deposit, you must first give your landlord a forwarding address in writing. Within 30 days from the date you give the forwarding address AND move out, your landlord must:

- return the entire security deposit, or
- provide a written description with an itemized list of deductions from the security deposit and return any remaining amount of the security deposit.

You do not need to provide the address where you are living. You only need to provide an address where you can get mail. Depending on your situation, it may not be safe to list the address where you live. You can ask your landlord to keep your address confidential, but your landlord does not have a legal obligation to do so.

8. Can my landlord require me to sign a release or give up any other rights I may have before allowing me to terminate the lease? For example, can a landlord require me to sign a release because the assault happened at their property or was committed by one of their employees? (See Texas Property Code 92.0161(h))

No. You have an unconditional right to terminate your lease under the law following certain sexual offenses or stalking during the previous six months. Your landlord cannot make you give up these rights and cannot require you to do something that is not required under the Texas Property Code before allowing you to terminate your lease.

9. What are my rights if my landlord won't release me from the lease or illegally charges me amounts after I properly terminated my lease?

You can sue your landlord for:

- a civil penalty of one month's rent plus \$500,
- your actual damages, and
- attorneys' fees.

II. Instructions for Filling out Notice of Termination of Lease Following Sexual Abuse, Sexual Assault, or Stalking:

- *Text in Warning Box:* The warning language is for your landlord, property manager, or their agent. They must keep the information in the notice of termination confidential, unless they have a legitimate or customary business purpose or as otherwise required by law.

**Commented [TM14]:** Double check that the language in the FV early termination kit and the security deposit kit are the same.

**Commented [TM15]:** Include highlighted text if/when SCOTX approves the Security Deposit Kit

- *To* – List the name of the landlord, manager, or agent. This should be the person to whom or the place where your rent is normally paid. Write the street address, unit number (if any), city, state, and ZIP of the landlord, manager, or agent.
- *From* – Write the tenant's name.
- *Method of Delivery*: (for your records, check all that apply)

Certified Mail, Return Receipt (*If you have questions, ask the Post Office. Keep tracking number.*)  
 Mail: \_\_\_\_\_  
 Hand Delivery  
 Other method: \_\_\_\_\_

- *Notice of Termination*: Print the month, day, and year you will vacate the property.

To terminate your lease you must give your landlord at least 30 days notice before the termination of the lease.

- *Forwarding Address*: Print the address where you want the landlord to send your security deposit. The address does not have to be where you are currently living, but it does have to be an address where you know you can receive mail. **While this form asks for confidentiality, your landlord is under no obligation to keep your forwarding address confidential, so keep that in mind when you provide a forwarding address.** You do not have to give a forwarding address, but this is a requirement for your landlord to return your security deposit.

- *Documentation*: (See Texas Property Code 92.0161(c) and (c-1))

For events involving sexual assault, aggravated sexual assault, sexual performance of a child, sexual abuse of a child, or continuous sexual abuse of an individual with a disability as defined by Texas Penal Code 22.021(b)(3), you must provide your landlord or your landlord's agent one of the following:

- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim; OR
- documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim; OR
- documentation of the assault or abuse, or attempted assault or abuse, of the victim from an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program, or any other individual authorized under Chapter 420, Government Code, who provided services to the victim; OR

- documentation of a protective order for sexual assault or trafficking issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, except a temporary ex parte order is not sufficient evidence under this law.

For events involving stalking, you must provide one of the following:

- documentation of a protective order for stalking issued under Subchapter A or B, Chapter 7B, Code of Criminal Procedure, except a temporary ex parte order is not sufficient evidence under this law; OR
- documentation of the stalking from a licensed health care services provider, a licensed mental health services provider, or an employee or volunteer at a rape crisis center or family violence shelter with a sexual assault program, or any other individual authorized under Chapter 420, Government Code; and:
  - a law enforcement incident report or, if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; and
  - if the report or record does not use the victim's real name and identifies the victim by their initials or a pseudonym as defined by Article 58.001, Code of Criminal Procedure, a copy of the pseudonym form completed by the victim and returned under Article 58.152(a) of that code.

*Tenant Signature:* Sign, print your name, date it.

# Notice of Termination of Lease Following Certain Decisions Related to Military Service

Texas Property Code 92.017

## TO: Landlord, Manager, or Agent

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Name of Landlord/Manager/Agent

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Address of Landlord/Manager/Agent

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## FROM: Tenant(s)

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Print the full name of Tenant(s)

---

Print the rental property address where you live

### METHOD OF DELIVERY (Check all that apply. *Keep a photocopy of this notice.*):

- Certified Mail, Return Receipt (*If you have questions, ask the Post Office. Keep tracking number.*)
- Mail: \_\_\_\_\_
- Hand Delivery
- Other method: \_\_\_\_\_

### NOTICE OF TERMINATION:

This is my notice to terminate my lease under Texas Property Code 92.017, which allows me to avoid liability for future rent and other sums normally charged for early termination of the lease.

My lease will terminate on \_\_\_\_\_. (*Read the instructions to determine when your lease will terminate, then print the month, day, and year the lease will terminate in the blank.*)

### FORWARDING ADDRESS:

My forwarding address for the return of my security deposit is:

---

*Print the complete forwarding address, including city, state, and zip code*

You have 30 days from the date I give a forwarding address in writing and move out of the property to give me a written description of any itemized deductions and return any security deposit due.

**DOCUMENTATION:** ATTACHED IS A COPY OF THE FOLLOWING: (*Check the box that applies to you. See instructions and FAQs for more information*):

- For entering military service, a copy of an appropriate government document providing evidence of entrance into military service, or
- For military orders, a copy of the service member's military orders.

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***Tenant Signature***

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*Printed Name*

---

*Date*

**FAQs AND INSTRUCTIONS FOR  
Early Termination of Lease Due to Military Service  
Texas Property Code, Section 92.017**

**Use This Form If:**

- You are a tenant and a military service member or a spouse, child, or dependent of a service member, and want to end the lease early.

**Do No Use This Form If:**

- You want to end your lease early for any other reason.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with the "Notice of Termination of Lease Due to Military Service."

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**I. Frequently Asked Questions about Early Lease Termination**

Definitions: 50 U.S.C. § 3911 Servicemembers Civil Relief Act

1. Who is a service member and what counts as military service? See 50 U.S.C. § 3911 and 10 U.S.C. § 101(a)(5)

A service member is a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, or the commissioned corps of the National Oceanic and Atmospheric Administration or the Public Health Service.

For armed forces members, military service means active duty, including training. For the National Guard, military service means a call to active duty by the President or Secretary of Defense for more than 30 days to respond to a national emergency. For Public Health Service and National Oceanic and Atmospheric Administration, military service means active service. Military service includes medical or other lawful leave.

2. When can a service member terminate a lease and move out early due to military service? See Texas Property Code 92.017(b)(2).

A service member can terminate his or her lease and move out early after entering military service or receiving military orders regarding a permanent change of station or deployment for 90 days or more. A permanent change of station can include a change in a service member's home base, or when a service member retires or separates from the military. For the most up-to-date definition of permanent change of station, which can change frequently, see the most current version of the Joint Travel ~~Regulations~~, Appendix A.

**Commented [TM1]:** There is no standing JTR cite. The proper way to cite it is to put the date at the end of the most current version.

*Instructions for Notice of Termination of Lease Following Certain Decisions Related to Military Service*

Proper termination of a lease due to military service means you are not obligated to pay future rent or penalties, or other sums due for early termination. However, past due rent, fees, or other sums may be due. See FAQ 7.

3. Can anyone else terminate a service member's lease due to military service?

Yes. If the conditions in FAQ 1 are met, the following tenants can terminate the lease early:

- The service member's spouse,
- The service member's child,
- Anyone to whom the service member has provided at least half their support for the past 180 days.

In this situation, a "child" is generally defined as a person who is not married and:

- Is younger than 18 years old,
- Became permanently incapable of self-support before turning 18 years old, or
- Is between 18 and 23 years old and in school.

For a more detailed definition of "child," see 38 U.S.C. § 101(4)(A).

4. How do I properly terminate my lease? See Texas Property Code 92.017

To terminate your lease, you must:

- Give your landlord or your landlord's agent written notice of the termination of the lease, which you can do by using this "Notice of Termination of Lease Following Certain Decisions Related to Military Service;"
- Give your landlord or your landlord's agent the following documentation:
  - If the service member entered military service after the lease was signed, a copy of an appropriate government document providing evidence of entrance into military service, or
  - If the service member received military orders, a copy of the service member's military orders.
- Vacate the property.

5. When is the termination of my lease effective? See Texas Property Code 92.017(d)

a. Termination of your lease is effective:

- If you pay your rent monthly: After you've delivered the written notice of termination to your landlord or your landlord's agent, the lease terminates 30 days after the next rent payment is due. *For example, your rent is due on the first of each month. If you deliver written notice on April 1, your lease terminates 30 days later on May 1. If you deliver the written notice of termination on April 5 and your next rent payment is due May 1, the lease terminates on May 31; or*

*Instructions for Notice of Termination of Lease Following Certain Decisions Related to Military Service*

2. If you do not pay your rent on a monthly basis: After you've delivered the written notice of termination to your landlord or your landlord's agent, the lease terminates on the last day of the next month. *For example, if you pay rent weekly and you deliver the written notice of termination on April 3, the lease terminates on May 31.*
6. Can I stop paying rent, fees, or other sums when I join the military, get my orders, or have been deployed?

No. You can stop paying rent, fees, or other sums only after you have given proper notice of termination, waited the required time until your lease terminates, and vacated the property. *See FAQs 1-3.*

7. Do I still owe any delinquent rent, fees, or other sums when I terminate my lease after joining the military or being deployed? See Texas Property Code 92.017(g)

Yes, you still owe delinquent rent, fees, or other sums. However, if your lease does not say something like "Tenants may have special statutory rights to terminate the lease early in certain situations involving military deployment or transfer," then you are not liable for any delinquent, unpaid rent you owe your landlord when you terminate your lease. This applies to rent only. You will still need to pay any past due fees and sums owed to the landlord before your lease terminates.

8. If I did everything I was supposed to do to terminate my lease and moved out, can my landlord charge me reletting fees, penalties, and additional rent for terminating my lease? (See Texas Property Code 92.017(b))

No. If you properly terminate your lease, your landlord may not charge you future rent, reletting fees (fees for breaking your lease), penalties, or any other future amounts due under your lease. Your landlord cannot report that you owe these amounts to credit reporting agencies or have a debt collector pursue you for them.

9. What about my security deposit? See Texas Property Code, Section 92.101-109 and the FAQs in the Supreme Court of Texas Security Deposit Kit for more information.

**Commented [TM2]:** Include highlighted text if the Court approves the Security Deposit Kit.

Terminating your lease early, if done properly, does not affect your rights to your security deposit.

To be entitled to a refund of any portion of your security deposit, you must first give your landlord a forwarding address in writing. Within 30 days from the date you give the forwarding address AND move out, your landlord must:

- return the entire security deposit, or
- provide a written description with an itemized list of deductions from the security deposit and return any remaining amount of the security deposit.

*Instructions for Notice of Termination of Lease Following Certain Decisions Related to Military Service*

You do not need to provide the address where you are living. You only need to provide an address where you can get mail.

10. Do I always have the right to terminate my lease for other military obligations? See Texas Property Code 92.017(i)-(k))

No. If you and your landlord have signed a document stating that you cannot terminate your lease if you move to base housing or other housing within 30 miles of the rental premises, you have waived (given up) the right to terminate but only for this particular military obligation. This document must be separate from the lease and comply with federal law.

Even if you and your landlord have signed a waiver and you move to base housing or other housing within 30 miles of the rental premises, the waiver does not apply if:

- (1) you, your spouse, or your dependents move into housing owned or occupied by family or relatives; or
- (2) you and your spouse or dependents move in whole or in part because of a significant financial loss of income caused by your military service. A "significant financial loss of income" means your household income has gone down by 10% or more because of your military service. A landlord is entitled to verify the loss of income. A pay stub or other statement of earnings from your employer is sufficient proof.

11. What are my rights if my landlord won't release me from the lease or illegally charges me amounts after I properly terminated my lease?

You can sue your landlord for:

- a civil penalty of one month's rent plus \$500,
- your actual damages, and
- attorneys' fees.

II. Instructions for Filling out Notice of Termination of Lease Following Certain Decisions Related to Military Service:

- *To* – List the name of the landlord, manager, or agent. This should be the person to whom or the place where your rent is normally paid. Write the street address, unit number (if any), city, state, and ZIP of the landlord, manager, or agent.
- *From* – Write the tenant's name and the address of the rental property where you live.
- *Method of Delivery*: (for your records, check all that apply)  
 Certified Mail, Return Receipt (*If you have questions, ask Post Office; keep tracking number.*)

*Instructions for Notice of Termination of Lease Following Certain Decisions Related to Military Service*

- Mail: \_\_\_\_\_
- Hand Delivery
- Other method: \_\_\_\_\_

- *Notice of Termination:* Print the month, day, and year you will vacate the property.

To terminate your lease you must give your landlord the following notice:

- a. If you pay your rent monthly: After you've delivered the written notice of termination to your landlord or your landlord's agent, the lease terminates 30 days after the next rent payment is due. *For example, your rent is due on the first of each month. If you deliver written notice on April 1, your lease terminates 30 days later on May 1. If you deliver the written notice of termination on April 5 and your next rent payment is due May 1, the lease terminates on May 31;* or
- b. If you do not pay your rent on a monthly basis: After you've delivered the written notice of termination to your landlord or your landlord's agent, the lease terminates on the last day of the next month. *For example, if you pay rent weekly and you deliver the written notice of termination on April 3, the lease terminates on May 31.*

- *Forwarding Address:* Print the address where you want the landlord to send your security deposit. The address does not have to be where you are currently living, but it does have to be an address where you know you can receive mail. You do not have to give a forwarding address, but this is a requirement for your landlord to return your security deposit.
- *Documentation:* (See Texas Property Code 92.017(c)(2)):
  - If the service member entered military service after the lease was signed, a copy of an appropriate government document providing evidence of entrance into military service, or
  - If the service member received military orders, a copy of the service member's military orders.
- *Tenant Signature:* Sign, print your name, date it.

*Instructions for Notice of Termination of Lease Following Certain Decisions Related to Military Service*

# Tab III- Security Deposit Forms

# Tenant's Request for Return of Security Deposit and Statement of Forwarding Address

Texas Property Code 92.101-110

## TO: Landlord, Manager, or Agent

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Name of Landlord/Managing Agent, Leasing Agent/Resident Manager

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Address of Landlord/Managing Agent, Leasing Agent/Resident Manager

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## FROM: Tenant(s)

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Print full name of Tenant(s)

### METHOD OF DELIVERY (Check applicable box. *Keep a copy of this request.*):

- Mail \_\_\_\_\_
- Hand Delivery
- Email, if you have previously communicated by email or if allowed by the lease
- Other method if allowed by lease: \_\_\_\_\_

**REQUEST:** This is a request for the return of my security deposit. I was a tenant at:

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*Print name, unit, and/or address of the property you previously rented.*

**FORWARDING ADDRESS:** The forwarding address for the return of my security deposit is as follows:

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*Print the forwarding address, including city, state, and zip code*

You have 30 days from the date I give a forwarding address in writing AND surrender possession (move out) to return any security deposit due and give me a written description and itemized list of deductions.

---

***Tenant Signature***

---

*Printed Name*

---

*Date*

---

*Tenant Phone Number*

Request for Return of Security Deposit

**FAQs and Instructions for  
Tenant's Request for Return of Security Deposit  
and Statement of Forwarding Address**

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**Use This Form to:**

- Use this form to ask Landlord for the return of your security deposit and to give Landlord your forwarding address. Make sure you read the security deposit section of your lease.

**Do Not Use This Form if:**

- You pay a fee with your rent instead of a security deposit to Landlord.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with the Tenant's Request for Return of Security Deposit and Statement of Forwarding Address.

**I. Frequently Asked Questions about Security Deposits**

**1. What is a security deposit? Texas Property Code, Section 92.102**

A security deposit is money paid in advance by the tenant to the landlord to cover matters that might come up during the lease, such as property damages. Rent, application fees, rent paid in advance, and non-refundable fees are NOT considered security deposits.

**2. What if I am paying a monthly fee instead of a security deposit? Texas Property Code 92.111**

If you agreed at the beginning of your lease to pay a fee to your Landlord with your rent instead of a security deposit, those fees are likely not a security deposit, and this process probably does not apply to you.

**Commented [TM1]:** There is a separate section for a fee in lieu of a security deposit in 92.111, however, it is also common for landlords to allow a tenant to pay a security deposit over time and some landlords have been getting around the language of 92.111 by having the tenant pay the insurance company directly.

**3. Can I withhold my last month's rent and apply my security deposit to my rent? Texas Property Code 92.104, 92.108**

No. Security deposits are not last month's rent and are separate from rent payments. Always pay your rent. Not paying any part of the last month's rent could make you liable to the landlord for three times the amount of rent you don't pay and landlord's attorney fees.

**4. When can my landlord withhold all or part of my security deposit for damages to the property? Texas Property Code 92.104**

The deposit can be used to repair damage to property beyond normal wear and tear.

Normal wear and tear means deterioration (damage) from the typical use of a property. It could include breakage due to age or worn condition, like worn carpet or peeling paint. It does not include problems caused by carelessness or abuse by you or your guests, like a large hole in the wall, broken window, or large stains on the carpet.

5. Can my landlord withhold my security deposit for rent or other charges I owe under my lease? Texas Property Code 92.104

Yes. If you owe rent or any other amount under your lease, your landlord can deduct from your security deposit. Read your lease to learn what those charges may be.

6. How can I get a refund of my security deposit? Texas Property Code 92.103, 92.112, and 92.113

**Before moving out:**

- Check your lease to see if you must give advanced written notice of your move-out within a certain time. For example, some leases may require 30 or 60 days advanced written notice. Even if your lease doesn't specify a time, it is good to give your landlord at least 30 days written notice. Keep a copy of the notice.
- Check your lease to see what type of "written" notice you must give. Some leases may allow notice to be given by electronic means, such as email to a specific email address or the tenant portal.
- If your lease says that you must give advanced written notice of moving out before your landlord is required to refund or account for your security deposit, it must be underlined or in **bold print**.

**At move out:**

- If you can, do a walk-through inspection with the landlord. If you don't already have an inventory and condition form, ask the landlord for a written, signed list of damage to the property, and keep a copy. If the landlord won't do a walk-through, inspect the unit with a friend and document any damages.
- Take photos or videotape of the property and its condition. For future reference, it is advisable to document the condition of the property before moving in.
- Follow any move-out requirements in your lease, which may include returning your keys.

**Most importantly:**

- Provide your landlord with a forwarding address in writing by mail, hand delivery, or by any manner allowed in your lease. Your forwarding address may be sent by email if you and the landlord or landlord's agent have previously communicated by email. You can use this Request by Tenant(s) for Return of Security Deposit and Statement of Forwarding Address to do this.

- You can provide your forwarding address to the landlord or the managing agent, leasing agent, or resident manager.
- The forwarding address does not need to be where you live, only a reliable place to receive mail. Keep a copy of the notice.
- The landlord has 30 days from the date you give a written forwarding address AND move out of the property (surrender possession) to return any security deposit due and give you a written description and itemized list of deductions.

7. How long does my landlord have to return my security deposit? Texas Property 92.103

Within 30 days from the date you gave your landlord a written forwarding address AND moved out (surrender the property), your landlord must:

- refund any security deposit due *and/or*
- provide a written description and itemized list of deductions from the security deposit.

If the landlord withholds any portion of the security deposit for repairs or other reasons, you are entitled to a written, itemized list of the damage and cost of repairs, along with the balance of your deposit after the deduction.

8. What can I do if I've moved, given a written forwarding address, and my landlord has not timely refunded my deposit and given a written description and itemized list of deductions? Texas Property Code 92.109

If you believe your deposit should have been refunded, disagree with the deductions, or the landlord doesn't give you a written description and itemized list of deductions, you can file a lawsuit. See Plaintiff/Tenant's Petition for Return of Security Deposit.

A court may find that a landlord acted in bad faith if the landlord failed to return a security deposit or provide a written description and itemized list of deductions on or before the 30th day after the date the tenant gives a written forwarding address AND surrenders possession (moves out).

A landlord, who in bad faith keeps a security deposit, is liable for \$100, three times the portion of the security deposit withheld, and attorney's fees.

A landlord, who in bad faith doesn't provide the written description and itemized list of deductions, loses the right to withhold any portion of the security deposit, sue the tenant for damage to the property, and is liable for tenant's reasonable attorney's fees.

9. What if I can't afford the filing fee?

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of

Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the justice court clerk for a copy of the form. The clerk is required to provide you with the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

II. **Instructions for Filling out Request to Request Return of Security Deposit:**

The italicized words below are from the Tenant's Request for Return of Security Deposit and Statement of Forwarding Address form.

- *To* – List the name of the landlord, managing agent, leasing agent, or resident manager. Write the street address, unit number (if any), city, state, and zip code of the landlord, manager, or agent.
- *From* – Write the tenant's name.
- *Method of Delivery*: (for your records, check all that apply)
  - Mail \_\_\_\_\_
  - Hand Delivery
  - Email, if you have previously communicated by email or if allowed by the lease
  - Other method if allowed by lease: \_\_\_\_\_
- *Request*: Print the name, unit, and/or address of the property you previously rented.
- *Forwarding Address*: Print the address where you want the landlord to send your security deposit. The address does not have to be where you are currently living, but it does have to be an address where you know you can receive mail.
- *Tenant Signature*: Sign, print your name, date it, and put your telephone number if you'd like for your landlord to be able to reach you by telephone.

Case Number \_\_\_\_\_

**Name of Plaintiff**

**Name of Plaintiff**

vs.

**Name of Defendant(s)**

Name of Defendant(s)

In the *(Check one)*

**Plaintiff/Tenant's Petition for Return of Security Deposit**  
*(Texas Property Code, Section 92.109)*

## 1. Complaint

I file this petition against the Defendant/Landlord because the Defendant/Landlord failed to return my security deposit, **and/or** made improper deductions from my security deposit, **and/or** failed to provide a written description and itemized list of damages and charges. Section 92.109 of the Texas Property Code.

## 2. Parties in the Case

My name is: \_\_\_\_\_  
*(Print full name of Plaintiff/Tenant(s))*

The Defendant/Landlord in this case is: \_\_\_\_\_.  
*(Print full name of Defendant/ Landlord)*

3. Service of Citation (*where the lawsuit will be served*):

**The Defendant/Landlord's address:**

*Address*      *City*      *County*      *State*      *Zip Code*

*Phone (if known)*

If necessary, I request alternative service

## 4. Facts

I rented the property at \_\_\_\_\_.  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

I gave Defendant/Landlord a security deposit in the amount of \$ \_\_\_\_\_.

I gave my forwarding address in writing to Defendant/Landlord by: (Check applicable box.)

Mail \_\_\_\_\_

Hand Delivery

Email, if you have previously communicated by email or if allowed by the lease

Other method if allowed by lease: \_\_\_\_\_

It has been more than thirty (30) days since I moved out of the property (*surrendered possession*) AND gave Defendant/Landlord my forwarding address in writing.

The Defendant/Landlord (*check and complete all that apply*):

did not return the security deposit in the amount of \$\_\_\_\_\_.

improperly withheld a portion of the security deposit in the amount of \$\_\_\_\_\_.

did not provide a written description and itemized list of damages and charges within 30 days after I:

- 1) moved out of the property AND
- 2) provided a forwarding address in writing to Landlord.

I believe that Defendant/Landlord acted in bad faith. Texas Property Code 92.109(d) states if Landlord has not returned my security deposit or given me a written description and itemization of deductions within 30 days, the Landlord is presumed to have acted in bad faith.

## 5. Other Facts

The Court should also be aware of the following:

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## 6. Email Address Consent

**By checking this box**, I agree to receive any documents, notices, or pleadings about this case from the Court or the Defendant/Landlord at the following email address that I check daily. (*Some courts and parties do not use email*.): \_\_\_\_\_.

**(Note: If you check this box, you may not receive copies by mail. You should check your email frequently for deadlines.)**

## 7. Request for Relief

I respectfully request that this Court grant me the following (*Texas Property Code Section 92.109*):

- A civil penalty of \$100;
- Three times the amount of the security deposit wrongfully withheld;
- Court costs and reasonable attorney's fees; and
- Any other relief to which I am entitled.

---

*Plaintiff/Tenant Signature*

---

*Plaintiff/Tenant Name*

---

*Address*

---

*City, State, Zip Code*

---

*Phone Number*

---

*Email Address (if you check it frequently)*

## Instructions for Return of Security Deposit Petition

### Use this form if:

- You gave your Landlord your forwarding address in writing more than 30 days ago.
- You moved out more than 30 days ago.
- Your Landlord has not returned your security deposit to you, or did not give you a written description of what was deducted from your security deposit.
- You want the court to order your Landlord to return all or part of your security deposit.

Read these instructions carefully. References to Rules are to the Texas Rules of Civil Procedure, available at <http://www.txcourts.gov/rules-forms/rules-standards/>. These instructions are to be used with the Plaintiff/Tenant's Petition for Return of Security Deposit.

*These instructions do not give legal advice and are not a substitute for the advice of a lawyer.*

**For more information on what you need to do before filing this lawsuit, read the FAQs and Instructions for Tenant's Request For Return of Security Deposit and Statement of Forwarding Address. Also, make sure you read the security deposit section of your lease.**

**NOTE:** If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the justice court clerk for a copy of the form. The clerk is required to provide you with the form at no cost. See Texas Rule of Civil Procedure 502.3(b).

### Instructions:

1. *Complaint* – You do not need to complete or do anything here. It tells the judge what the Landlord did not do.
2. *Parties* – Write the name of the tenant(s) in the first line. Write the Landlord's name in the second line.
3. *Service of Citation* – Write Landlord's business address and phone number, if known.

Texas Rule of Civil Procedure 501.2(e) and Texas Rules of Civil Procedure 106.

4. *Facts* – Write the complete address of the rental property. Write the amount you paid as your security deposit.

You MUST have given Landlord your forwarding address in writing. Write where and how you gave the written notice. Email is only allowed if your lease says so.

Check what Landlord did or did not do

- Did not return the security deposit – write the amount of the security deposit.
- Kept some of the security deposit – write the amount Landlord kept.
- Did not give me a written description and list of damages and charges.

The Landlord may present evidence to the judge to show their actions were not in bad faith and that keeping any portion of your security deposit was reasonable.

5. *Other Facts* – If there are any other facts you want the judge to know, list them.
6. *Email Address Consent* – Check the box in this section if you agree to receive documents from the court or Defendant/Tenant at an e-mail address that you regularly use. If you check this box, it is important that you check the e-mail that you provide daily. The documents or notices you receive may contain short time-sensitive deadlines or hearing dates you may need to act upon quickly.  
If you check this box, you may not receive copies by mail. You should check the email frequently for deadlines.
7. *Request for Relief*  
You do not need to do anything here. It tells the judge what you want. These are the things you can get if Defendant acted illegally with your security deposit

Sign and print your name and write in all your contact information.

Case Number \_\_\_\_\_  
(The Clerk's office will fill in the Case Number when you file this form)

Name of Plaintiff \_\_\_\_\_  
vs.  
Name of Defendant(s) \_\_\_\_\_

In the (Check one)  
 Justice Court, Precinct \_\_\_\_\_  
 County Court, Number \_\_\_\_\_  
County, Texas  
(County Name)

**JUDGMENT**

On this day, came on to be heard Plaintiff/Tenant's Petition for Return of Security Deposit.

Based on all related documentation, pleadings, and evidence before the Court, pursuant to Section 92.109 of the Texas Property Code,

the Court finds for Defendant/Landlord. Plaintiff/Tenant takes nothing.

**IT IS ORDERED:** Judgment for Defendant. Plaintiff takes nothing. (Check all that apply.)

Plaintiff must pay Defendant's court costs in the amount of \$ \_\_\_\_\_.  
 Plaintiff must pay Defendant's reasonable attorney's fees in the amount of \$ \_\_\_\_\_ (if allowed by lease).

the Court finds for Plaintiff/Tenant. Defendant/Landlord did NOT act in bad faith.

**IT IS ORDERED:** (Check all that apply.)

Defendant is to pay Plaintiff \$ \_\_\_\_\_.  
 Defendant must pay Plaintiff's court costs in the amount of \$ \_\_\_\_\_.  
 Defendant must pay Plaintiff's reasonable attorney's fees in the amount of \$ \_\_\_\_\_.

the Court finds for Plaintiff/Tenant. Defendant/Landlord did act in bad faith.

**IT IS ORDERED:** (Check all that apply.)

- Defendant is to pay Plaintiff a civil penalty of \$100.
- Defendant must pay Plaintiff three times the security deposit of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_.
- Defendant must pay Plaintiff's court costs in the amount of \$\_\_\_\_\_.
- Defendant must pay Plaintiff's reasonable attorney's fees in the amount of \$\_\_\_\_\_.

Date signed: \_\_\_\_\_

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HONORABLE JUDGE PRESIDING

# Tab IV- Summary Judgment

January 23, 2026

To: Chief Justice Tracy Christopher, Chair of the Supreme Court Advisory Committee  
From: The Ad Hoc Subcommittee on TRCP 166a  
Memorandum on proposed changes to TRCP 166a

1. Since the Preliminary Approval of Amendments to Rule 166a was announced by the Supreme Court on December 30, 2025, the Ad Hoc Subcommittee has reviewed comments from the Bar that the Supreme Court forwarded to the Supreme Court Advisory Committee, engaged in vigorous discussion through emails, and conducted two Zoom sessions. With the coordinated efforts of many contributors, the Subcommittee has formulated proposed changes to the preliminary rule for consideration by the Advisory Committee at its January 30, 2026 meeting.
2. Attached to this Memorandum is a redlined draft reflecting changes to the preliminary amended Rule 166a that are suggested by the Subcommittee. The attached redlined draft represents a synthesis of proposed language submitted by participants. Generally speaking, this draft represents a consensus view of Subcommittee participants. However, different participants in the Subcommittee's discussions have individual views on certain aspects of the redlined draft that will be presented during the Advisory Committee meeting.
3. Special thanks go to Justice Emily Miskel who generated the redlined draft in real time during the two Zoom sessions, and afterward.
4. Thanks also go to everyone who participated in the process of developing this Subcommittee proposal, by proposing language and contributing their thoughts about issues of concern.

Respectfully submitted,

Richard R. Orsinger  
Acting Chair, Ad Hoc Subcommittee

## RULE 166a. SUMMARY JUDGMENT

(a) *Definitions.*

- (1) A “traditional motion” for summary judgment is a motion claiming there is no genuine issue as to any material fact of a claim or defense ~~on which the movant would have the burden of proof at trial and establishing each element of the movant’s own claim or defense as a matter of law or negating an element of the nonmovant’s claim or defense as a matter of law.~~
- (2) A “no-evidence motion” for summary judgment is a motion claiming there is no evidence of one or more essential elements of a claim or defense on which ~~an adverse party~~~~the nonmovant~~ would have the burden of proof at trial.
- (3) ~~A “declaration” is an unsworn declaration that complies with the requirements of Texas Civil Practice and Remedies Code § 132.001.~~

(b) *Motion.*

- (1) In General. A party may move for summary judgment on any claim or defense. ~~The A~~ motion may combine both traditional and no-evidence motions. ~~Any cross-motion may not be contained within a summary judgment response, but must be filed in a standalone motion.~~
- (2) Contents.
  - (A) Title. A motion for summary judgment must be titled “Traditional Motion for Summary Judgment,” “No-Evidence Motion for Summary Judgment,” or “Combined Motion for Traditional and No-Evidence Summary Judgment.” An absent or incorrect title is not grounds for denying the motion.
  - (B) Hearing Request. If a movant requests an oral hearing on the motion, the request must appear ~~on-in~~ the ~~ever~~ title of the motion.
  - (C) Traditional Motion. A traditional motion must state the specific grounds in support of the motion ~~and include any evidence required to support the motion.~~
  - (D) No-Evidence Motion. A no-evidence motion must state the elements ~~of the claim or defense~~ as to which there is no evidence.

(3) Time to File.

- (A) Traditional Motion. Unless a deadline for filing is set by court order, a party may file a traditional motion at any time after the adverse party has appeared or answered.
- (B) No-Evidence Motion. A party may file a no-evidence motion after adequate time for discovery.

(c) *Clerk and Court Duties Upon Filing.* Upon the motion's filing, the clerk must immediately call the motion to the court's attention. The court must promptly set the motion for written submission or a hearing according to the deadlines in this rule and the clerk must send notice to the parties as provided in Rule 21(f)(10).

(d) *Response.*

- (1) Time to File. ~~Except on leave of court, t~~The nonmovant must file any response within 21 days after the motion is filed.
- (2) Contents. The response must include any evidence in support of the response and objections to the evidence supporting the motion. If the non~~movant~~ requests an oral hearing on the motion, the request must appear on the cover in the title of the response. ~~The court may reset the motion for a hearing if no hearing has been set.~~
- (3) When Evidence Unavailable. If the nonmovant needs additional time to secure evidence in support of the response, the nonmovant must file a verified motion, n-affidavit, or declaration specifying the reasons why the nonmovant cannot present facts essential to justify its opposition. The court may extend the time to file the response, deny the motion without prejudice to permit additional discovery, or issue any other appropriate order.

(e) *Reply.*

- (1) Time to File. The movant may file a reply. ~~Except on leave of court, t~~The movant must file the reply within 7 days after the response is filed.
- (2) Contents. A reply may contain legal arguments responsive to the nonmovant's response and evidence but must not raise new summary judgment grounds. A reply must include any objections to the evidence supporting the response.

(3) Amended Pleadings. A reply must not raise new or independent summary judgment grounds, other than to address an amended pleading filed in response to the motion for summary judgment. New claims or defenses asserted in a nonmovant's amended or supplemental pleading filed after a motion for summary judgment has been filed may be challenged only by a new motion for summary judgment. However, a reply may show that the grounds in the motion also apply to claims or defenses raised in an amended pleading.

(f) Withdrawal. Any withdrawal of the A movant may withdraw a motion for summary judgment must be filed by filing a Notice of Withdrawal and must identify the date the motion was filed. The trial court must not rule on a motion that has been withdrawn.

(g) Hearing or Written Submission.

(1) Timing. A hearing or submission date must not be set within The motion must be heard or submitted no sooner than 35 days after the motion's filing. Unless the motion is withdrawn, the court must set the motion for a hearing or written submission motion must be heard or submitted within:

(A) 60 days after the motion's filing; or

(B) 90 days after the motion's filing:

(i) if the court's docket so requires;

(ii) on a showing of good cause; or

(iii) if the movant agreesconsents.

(2) Reset Permitted. The court may reset a hearing or written submission date within the time frames specified in this rule.

(3) Proposed Order. The parties must each submit a proposed order before the hearing or written submission date.

(4) No Oral Testimony. No oral testimony will be received at a hearing on a summary judgment motion.

(5) Docket. The court must record in the docket the date the motion was heard or submitted.

(h) *Standards.*

- (1) **Grounds.** No judgment will be granted except on the grounds stated under (b)(2)(C) and (b)(2)(D).
- (2) **Traditional Motion.** The court must grant a traditional motion for summary judgment if the movant shows that, except as to the amount of damages, there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law on the issues expressly set out in the motion.
- (3) **No-Evidence Motion.** The court must grant a no-evidence motion unless the respondent nonmovant produces summary judgment evidence raising a genuine issue of material fact.
- (4) **All Requested Relief Not Granted.** If the court does not grant all the relief requested by the motion, the court may ascertain what material fact issues exist, issue an order specifying the facts that are established as a matter of law, and direct any other appropriate proceedings.

(i) **Ruling.** The court must sign issue a written ruling on the motion, file it with the clerk, and the clerk must provide the ruling to the parties as provided in Rule 21(f)(10) within 90 days after the hearing or written submission date.

(j) **Evidence Included with the Motion or Response.**

- (1) **Evidence Filed with Motion or Response.** Evidence may be attached to the motion or response or filed in an appendix to the motion or response. Evidence may consist of:
  - (A) deposition transcripts;
  - (B) an opposing party's pleadings, interrogatory answers, admissions and other discovery responses;
  - (C) authenticated or certified public records;
  - (D) affidavits and declarations;
  - (E) stipulations;
  - (F) and other authenticated evidence.
- (2) **Evidence Included by Reference.** Evidence may be included by making a specific reference in the motion or response to the evidence and where it

may be found in the court's file. A general reference to a pleading or record is not sufficient.

Use of Discovery Not Otherwise on File. Discovery not on file may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments are filed with a statement of intent to use the specified discovery as summary judgment evidence:

- (1) at the time the motion is filed, if the evidence to be used to support the summary judgment; or
- (2) at the time the response is filed, if the evidence is to be used to oppose the summary judgment.

(4) All Requested Relief Not Granted. If the court does not grant all the relief requested by the motion, the court may ascertain what material fact issues exist, issue an order specifying the facts that are established as a matter of law, and direct any other appropriate proceedings.

(13) Form of Affidavit or Declaration; Further Testimony. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify to the matters stated. A document referred to in an affidavit or declaration must be attached and either sworn or certified. The court may permit an affidavit or declaration to be supplemented or opposed by deposition or by another affidavit or declaration. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(4) Interested Witness. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(m5) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the

submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subject to other appropriate sanctions.

(6) Late Filed Evidence. Late filed evidence may be considered with written permission of the court.

## Notes and Comments

~~Comment to 1990 change: This amendment provides a mechanism for using previously non filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).~~

~~Comment to 1997 change: This comment is intended to inform the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period but not before. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (Tex Civ. Prae. & Rem. Code §§ 9.001-10.006) and rule (Tex R. Civ. P. 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (e).~~

Comment to 2026 change: Rule 166a is rewritten to implement section 23.303 of the Texas Government Code and to modernize the rule. Rule 166a does not apply to motions to reconsider summary-judgment motions that have been previously granted. Other than the deadline changes, Rule 166a's rewrite is not intended to substantively change the law.



# Tab V- Expedited Actions

## MEMORANDUM

TO: Supreme Court Advisory Committee  
FROM: Rules 167-206 Subcommittee  
DATE: November 18, 2025  
RE: Expedited Actions

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1. Justice Bland's letter of September 26, 2025, referred to the Supreme Court Advisory Committee the following item:

**Expedited Actions.** Rule of Civil Procedure 169 implements Government Code §§ 22.004(h) ad (h-1). HB 16 amends §22.04(h-1) to call for rules, “[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$325,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions.” The Committee should draft any recommended amendments to Rule 169 and the discovery rules.

2. On that same day, Committee Chair Chief Justice Tracy Christopher referred the matter to the Rules 167 to 206 Subcommittee.

### Background

3. In 2019, the legislature passed S.B. 2342 which added subsection h-1 to Section 22.0004 of the Texas Government Code and read as follows:

(h-1) In addition to the rules adopted under Subsection (h), the supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

4. Soon thereafter, the Supreme Court Advisory Committee was asked to recommend rules to implement the new law, and Rule 169 was amended in 2021.

5. House Bill 16 of the 89th Legislature First Special Session of Texas increased the jurisdictional limits of statutory county courts at law and county clerks to \$325,000. It also increased the amount in controversy to \$325,000 for “prompt, efficient, and cost-effective resolution of civil actions” filed in statutory county courts at law. Specifically, Article 2, Section 2.01 provides:

(h-1) In addition to the rules adopted under Subsection (h), the supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$325,000 [\$250,000]. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

### **Recommendation**

6. Our subcommittee met via zoom to discuss whether we recommend any other amendments to Rule 169 and the discovery rules other than increasing the amount in controversy to \$325,000. Everyone who attended the zoom meeting agreed that Rule 169 does not need any additional amendments other than increasing the amount in controversy to \$325,000. Significantly, the increase in value appears to only be a change due to inflation as the \$250,000 limit that was enacted in 2019 (January 2019) is equivalent to \$322,590.00 in present value (September 2025) (See [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)).

### **Specific Rules to Change**

#### **Rule 47**

c (1) only monetary relief of \$250,000 \$325,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs;

- (2) monetary relief of \$250,000 \$325,000 or less and non-monetary relief;
- (3) monetary relief over \$250,000 \$325,000 but not more than \$1,000,000;

Comment (not necessarily needed) – “Comment to 2025 change: Rule 47 is amended to implement the increase in amount in controversy in section 22.004(h-1) of the Texas Government Code.”

## **Rule 169**

(a) Application. The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating ~~\$250,000~~ \$325,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

(b) Recovery. In no event may a party who prosecutes a suit under this rule recover a judgment in excess of ~~\$250,000~~ \$325,000, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

Comment (not necessarily needed) – “Comment to 2025 change: Rule 169 is amended to implement the increase in amount in controversy in section 22.004(h-1) of the Texas Government Code.”

# Tab VI- Jury Composition

## **MEMORANDUM**

To: Supreme Court Advisory Committee  
From: Rules 216-299a Subcommittee  
Date: January 22, 2026  
Re: Assignment re modification of jury rules

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By letter of September 26, 2025, Justice Bland requested the Committee study whether updates are needed to Rules of Civil Procedure 224, 225, 232, 233, and 234 and to draft any recommended amendments. The referral was prompted by HB 16 which amends Government Code § 25.0007(c) to increase the amount of controversy needed to trigger the empaneling the 12-person jury, rather than the standard 6-person jury, in a county court at law. The matter was referred to our Subcommittee.

Our Subcommittee recommends that the proposed language in the attachment. While the reference did not mention Rule 231, the Subcommittee believes it should be amended as well.

## **RULE 224. SUMMONING TALESMAN**

In counties not governed as to juries by the laws providing for interchangeable juries, when the parties have announced ready for trial the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court if the case requires a twelve-person jury, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court the case requires a six-person jury, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney.

## **RULE 225. SUMMONING TALESMAN**

When there are not as many as twenty-four names drawn from the box, if in the district court the case requires a twelve-person jury, or as many as twelve, if in the county court the case requires a six-person jury, the court shall direct the sheriff or clerk to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.

## **RULE 231. NUMBER REDUCED BY CHALLENGES**

If the challenges reduce the number of jurors to less than twenty-four, if in the district court the case requires a twelve-person jury, or to less than twelve, if in the county court the case requires a six-person jury, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.

## **RULE 232. MAKING PEREMPTORY CHALLENGES**

If there remain on such lists not subject to challenge for cause, twenty-four names, if in the district court the case requires a twelve-person jury, or twelve names, if in the county court the case requires a six-person jury, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor.

## **RULE 233. NUMBER OF PEREMPTORY CHALLENGES**

Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case tried in the district court that requires a twelve-person jury, and to three in the county court a case that requires a six-person jury.

**Alignment of the Parties.** In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges.

**Definition of Side.** The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned.

**Motion to Equalize.** In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.

#### COMMENT

See Tex. Gov't Code Ann. § 62020 regarding additional peremptory challenges if the court decides to seat alternate jurors.

#### **RULE 234. LISTS RETURNED TO THE CLERK**

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court requires a twelve-person jury, call off the first twelve names on the lists that have not been erased; and if the case be in the county court requires a six-person jury, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury.

## **RULE 224. SUMMONING TALESMAN**

In counties not governed as to juries by the laws providing for interchangeable juries, when the parties have announced ready for trial the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if the case requires a twelve-person jury, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if the case requires a six-person jury, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney.

## **RULE 225. SUMMONING TALESMAN**

When there are not as many as twenty-four names drawn from the box, if the case requires a twelve-person jury, or as many as twelve, if the case requires a six-person jury, the court shall direct the sheriff or clerk to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.

## **RULE 231. NUMBER REDUCED BY CHALLENGES**

If the challenges reduce the number of jurors to less than twenty-four, if the case requires a twelve-person jury, or to less than twelve, if the case requires a six-person jury, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.

## **RULE 232. MAKING PEREMPTORY CHALLENGES**

If there remain on such lists not subject to challenge for cause, twenty-four names, if the case requires a twelve-person jury, or twelve names, if the case requires a six-person jury, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor.

## **RULE 233. NUMBER OF PEREMPTORY CHALLENGES**

Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case that requires a twelve-person jury, and to three in a case that requires a six-person jury.

**Alignment of the Parties.** In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges.

**Definition of Side.** The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned.

**Motion to Equalize.** In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.

#### COMMENT

*See Tex. Gov't Code Ann. § 62020 regarding additional peremptory challenges if the court decides to seat alternate jurors.*

#### RULE 234. LISTS RETURNED TO THE CLERK

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case requires a twelve-person jury, call off the first twelve names on the lists that have not been erased; and if the case requires a six-person jury, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury.

# Tab VII- Hallucinated Citations

## MEMORANDUM

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**TO:** **Texas Supreme Court Advisory Committee**

**FROM:** **Rules1-14c Subcommittee (J. Miskel sitting by designation)**

**RE:** **Proposed Rules on AI-Generated (“Hallucinated”) Citations**

**DATE:** **January 23, 2026**

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### **I. Executive Summary**

#### **A. Purpose**

In response to the Texas Supreme Court’s September 26, 2025, referral, this memorandum proposes narrow, targeted amendments to the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure to address the recurring problem of inaccurate or fictitious (“hallucinated”) legal and record citations appearing in court filings as a result of reliance on artificial intelligence (“AI”) tools.

#### **B. Key Recommendations**

**TRCP 13 Amendment.** Amend Rule 13 to (1) expressly certify that legal citations and record references are accurate and substantiate the asserted contentions; (2) clarify that “groundless” conduct includes the failure to verify citations generated by AI tools; and (3) adopt accompanying comment language explaining the rule’s application in the AI-assisted drafting context.

**TRAP 9.1 Amendment (Signing).** Add a new subsection governing the effect of signing appellate filings, establishing a parallel certification requirement, expressly authorizing sanctions in appellate courts for violations, and including explanatory comment language.

**Ethical Alignment.** Anchor the amendments in existing professional duties of competence, candor, and fairness under the Texas Disciplinary Rules of Professional Conduct (Rules 1.01, 3.01, 3.03, 3.04, and 5.03), as well as the objective “reasonable inquiry” standard of Texas Civil Practice & Remedies Code § 10.001.

**Sanctions Framework.** Preserve existing damages authorities (TRAP 45, 62) and clarify sanction authority (TRAP 52.11 for original proceedings) while expressly empowering courts of appeals, via TRAP 9.1, to sanction filing violations related to unverified citations.

#### **C. Rationale**

AI tools are increasingly embedded in legal research and drafting workflows. While these tools can enhance efficiency, they may also generate citations and quotations that are inaccurate, incomplete, or entirely fabricated. The repeated appearance of hallucinated authorities in court filings—by counsel, self-represented litigants, and, in limited instances, judicial chambers—poses a direct risk to the integrity of adjudicative proceedings.

Requiring verification of authorities before filing protects the integrity of the judicial process, maintains public confidence in the courts, and reinforces long-settled ethical and

statutory duties. The amendments do not impose new substantive duties; rather, they clarify and reinforce obligations that already exist.

## **II. Texas Supreme Court Referral and Prior Committee Work**

On September 26, 2025, the Texas Supreme Court referred to SCAC the study and drafting of proposed rules addressing hallucinated citations, directing consideration of:

- amendments to TRCP 13 to require verification of legal citations;
- a comparable appellate rule; and
- trial and appellate rules expressly allowing sanctions for misstating legal authority.

Previously, on July 17, 2024, the Court asked SCAC to examine AI's implications for legal submissions, referencing the State Bar of Texas's Taskforce for Responsible AI's interim recommendations concerning TRCP 13 and TRE 901. On August 8, 2024, the Rules 1-14c Subcommittee advised against amending TRCP 13 to address the Taskforce's concern regarding unrepresented litigant's use of AI. The Subcommittee included alternative language should changes be deemed necessary. (Tab A). *See Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355 (Tex. 2014) (interpreting Rule 13's groundlessness/bad faith standards).

The Chair assigned the Court's September 26, 2025 referral to the Rules 1-14c Subcommittee (with Justice Emily Miskel sitting by designation). This is the Subcommittee's report to the SCAC.

## **III. Problem Statement: AI-Generated (“Hallucinated”) Citations**

Courts have increasingly encountered filings containing inaccurate, fabricated, or misquoted authorities, as well as mischaracterized record citations. These errors have appeared in filings prepared by attorneys and self-represented litigants alike, and—on select occasions—in judicial orders when chambers relied on unchecked AI outputs.

While established legal research platforms (e.g., Westlaw, Lexis, Bloomberg Law) are generally reliable, general generative AI tools (such as ChatGPT/CoPilot, Claude and Perplexity) may produce content that appears authoritative yet is not. The professional obligation remains: verify that any cited authorities are valid, are accurately quoted, and are still good law.

## **IV. Legal and Ethical Framework**

- **Texas Civil Practice & Remedies Code § 10.001.** By signing a pleading or motion, the attorney (or self-represented litigant) certifies that, after reasonable inquiry, claims and legal contentions are warranted by existing law or nonfrivolous arguments for change; factual allegations have or will have evidentiary support; and denials are warranted or reasonably based on lack of information. The standard is objective and asks whether counsel made a reasonable inquiry. *See Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 348 (Tex. App.—San Antonio 2006, pet. denied). See also Tex. Civ. Prac. & Rem. Code § 9.001 et seq. that deals with frivolous pleadings in cases involving damages for death, personal injury, or property damage, on any theory, or for other damages arising from tortious conduct.

- **TRCP 13.** Sanctions require a showing that a filing is groundless and brought in bad faith, for harassment, or that factual statements were false when made. *Nath*, 446 S.W.3d at 362–63.
- **TRCP 91a.** This rule permits the dismissal of causes of action that have no basis in law or in fact and the trial court may award costs to the prevailing party.
- **Inherent Powers**
  - “Texas courts have the inherent power to sanction litigants or attorneys whose abusive conduct affects the core functions of the judiciary, which are: hearing evidence, deciding issues of fact and law, and entering and enforcing judgments. This authority exists even when the conduct is not specifically proscribed by rule or statute.” 1 Dorsaneo, Texas Litigation Guide § 14.01.2 (2026). The court’s authority is limited by due process and sanctions may not be excessive. See *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 718 (Tex. 2020) (Errors in judgment, lack of diligence, unreasonableness, negligence, or even gross negligence—without more—do not equate to bad faith. Improper motive, not perfection, is the touchstone. Bad faith can be established with direct or circumstantial evidence, but absent direct evidence, the record must reasonably give rise to an inference of intent or willfulness.)
  - Tex. Gov’t Code § 21.001 provides as follows: **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.
- **Texas Disciplinary Rules of Professional Conduct (TDRPC).** Verification duties implicate:
  - **Rule 1.01 (Competence & Diligence);**
  - **Rule 3.01 (Meritorious Claims & Contentions);**
  - **Rule 3.03 (Candor to Tribunal);**
  - **Rule 3.04 (Fairness in Adjudicatory Proceedings);** and
  - **Rule 5.03 (Responsibilities Regarding Nonlawyer Assistants)**—by analogy for AI tools.
- **Texas Ethics Opinion. Tex. Comm. on Prof'l Ethics, Op. 705 (2025):** lawyers must verify AI-generated outputs; cannot blindly rely on AI; and remain responsible for the work product submitted.
- **Appellate Rules.**
  - **TRAP 38.1(i)** requires arguments with appropriate citations to authorities and the record; enforcement commonly results in briefing waiver rather than sanctions. See *Reule v. M&T Mortg.*, 483 S.W.3d 600 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).
  - **TRAP 45** authorizes damages for frivolous appeals in courts of appeals;

- **TRAP 62** authorizes damages for frivolous direct appeals or petitions for review in the Supreme Court;
- **TRAP 52.11** empowers the Supreme Court to impose just sanctions in original proceedings.

## V. Proposed Amendments

### A. Texas Rules of Civil Procedure (TRCP 13)

Goal: Require verification of citations and record references; clarify sanctionable conduct when citations are not verified, including AI-generated outputs, including not requiring a finding of bad faith or harassment.

#### Proposed Amended Rule

#### RULE 13. EFFECT OF SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; the legal citations and references to the record are correct and substantiate the asserted contentions; and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who bring a fictitious suit as an experiment to obtain an opinion of the court, or who file any fictitious pleading in a cause for such a purpose, or who make statements in pleading that they know to be groundless and false for the purpose of securing delay, shall be held guilty of contempt. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or on its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2(b) upon the person who signed it, a represented party, or both. Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless," for purposes of this rule, means no basis in law or fact and not warranted by a good-faith argument for the extension, modification, or reversal of existing law, including the failure to verify the accuracy of citations generated by artificial intelligence tools. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

#### Notes and Comments

Comment to 2026 Change: This amendment reinforces the professional obligation of counsel and unrepresented parties to verify the authenticity and accuracy of all cited authorities and record references in pleadings and other filings. The increasing use of artificial intelligence tools in legal research and drafting heightens the risk of inaccurate or fictitious citations. To preserve the integrity of judicial proceedings and public confidence in the courts, parties must verify cited authorities, regardless of source. Courts are authorized to impose sanctions for failures to verify AI-generated citations without a separate finding of bad faith or harassment.

Side-by-Side Comparison (Key Portions)

Current TRCP 13 (selected sentences)	Proposed TRCP 13
“The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; ...”	No change to opening clause.
(No express clause on citation/record verification).	Add: “the legal citations and references to the record are correct and substantiate the asserted contentions;”
“Groundless” defined as “no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law.”	Clarify: “Groundless ... means no basis in law or fact and not warranted by a good-faith argument for the extension, modification, or reversal of existing law, including the failure to verify the accuracy of citations generated by artificial intelligence tools.”
Notes and Comments—no AI reference.	Add Comment to 2026 change (below).

B. Texas Rules of Appellate Procedure (TRAP 9.1 – Signing)

Goal: Provide an appellate-specific certification requirement and explicit sanction authority in courts of appeals and the Supreme Court for verification failures.

Proposed New Rule 9.1

**9.1 Signing**

**(d) *Effect of Signing.***

- (1)** The signatures of attorneys or parties constitute a certificate that they have read the brief, motion, or other paper; that the legal citations and references to the record are correct and substantiate the asserted contentions; and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.
- (2)** If a brief, motion, or other paper is signed in violation of this rule, the appellate court, upon motion or on its own initiative, after notice and hearing, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. Courts shall presume filings are made in good faith. No sanctions may be imposed except for good cause, the particulars of which must be stated in the sanction order. “Groundless,” for purposes of this rule, means no basis in law or fact

and not warranted by a good-faith argument for the extension, modification, or reversal of existing law, including the failure to verify the accuracy of citations generated by artificial intelligence tools.

### Notes and Comments

Comment to 2026 change: This amendment reinforces the professional obligation of appellate counsel and unrepresented parties to ensure the accuracy of all case citations, authorities, and record references in briefs and other filings. Given the heightened risk of inaccurate or fictitious citations produced by AI tools, parties must verify the authenticity and accuracy of cited authorities. Courts of Appeals and the Supreme Court are expressly authorized to impose sanctions on counsel or parties who fail to meet this obligation.

#### Side-by-Side Comparison (Key Additions)

Current TRAP 9.1 (Selected)	Proposed TRAP 9.1(d) (New Subsection)
Requires signatures by counsel or party; no explicit certification content; sanctions authority limited or scattered.	(d) Effect of Signing. (1) The signatures of attorneys or parties constitute a certificate that they have read the brief, motion, or other paper; that the legal citations and references to the record are correct and substantiate the asserted contentions; and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. (2) If a brief, motion, or other paper is signed in violation of this rule, the appellate court, upon motion or on its own initiative, after notice and hearing, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. Courts shall presume filings are made in good faith. No sanctions may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless," for purposes of this rule, means no basis in law or fact and not warranted by a good-faith argument for the extension, modification, or reversal of existing law, including the failure to verify the accuracy of citations generated by artificial intelligence tools.

## VI. A Word of Caution

The Subcommittee considered the risk that expanded sanction authority could encourage the weaponization of sanctions motions. Arguably, existing Texas law already authorizes sanctions for filing pleadings unsupported by law after reasonable inquiry. See Tex. Civ. Prac. & Rem. Code § 10.001(2); *Dinkins v. Calhoun*, 2018 WL 2223024, at \*12 (Tex. App.—Fort Worth May 17, 2018, pet. denied).

The proposed amendments seek clarity, not expansion. They do not create a strict-liability regime for clerical mistakes or citation errors, nor are they intended to penalize good-faith mistakes. Courts retain discretion, due-process safeguards, and proportionality requirements. Improper motive—not perfection—remains the touchstone.

## Appendix A

### Illustrative Incidents (Publicly Reported)

The appendix summarizes incidents to highlight the prevalence and nature of AI-related citation problems. It is not intended to catalog every case.

Examples of the misuse of AI tools in Texas courts (trial and appellate) include the following incidents:

- A Texas lawyer filed an appellant's brief, citing 4 cases for a certain proposition of Texas law. Appellee noted that (1) those cases don't exist and (2) the purported legal theory is not recognized in Texas law. Appellant filed a reply brief but did not respond at all about the missing cases or the fact that the legal theory does not exist in Texas.
- An indigent *pro se* Texas litigant used AI to prepare a brief, citing hallucinated cases.
- A Texas attorney filed a mandamus petition in the court of appeals. The petition referred to a trial court hearing, quoting witness testimony, and citing to page/line portions of the reporter's record. A review of the actual reporter's record does not support the citations: those topics never came up, the referenced witness did not testify as referenced and the citations to the reporter's record are not on point/relevant.

The following chart of publicly reported incidents highlights the continuing nature of the problem and the widespread involvement by parties, lawyers and judges:

Case Name	Court/Year	Issue	Sanction/Outcome
<i>Mata v. Avianca, Inc.</i>	S.D.N.Y., 2023	Lawyers cited 6 fake cases generated by AI	\$5,000 fine, ethics training, letters to client
<i>Morgan &amp; Morgan Sanctions</i>	D. Wyoming, 2025	8 fabricated cases in motions in limine	\$3,000 lead counsel, \$1,000 supervising attorneys
Minnesota Housing Case	Minnesota, 2025	Attorney cited 3 fake cases	\$5,000 fine, judicial warning
<i>In re Perkins</i>	Bankr. D. Or., 2025	Pro se litigant used AI-generated citations	No monetary sanction, stern warning
<i>Scott v. Federal Nat'l Mortgage Ass'n</i>	Maine, 2023	Pro se cited fake case law and exhibits	Complaint dismissed, fees and costs imposed
<i>June Order by Judge Julien Neals</i>	D.N.J. 2025	Per the ct: Intern used ChatGPT for research; order contained fake quotes and case outcomes.	Order withdrawn and substituted
<i>July TRO by Judge Henry Wingate</i>	S.D. Miss. 2025	Clerk used Perplexity; July 20 TRO cited non-existent parties and declarations.	Order withdrawn and substituted
<i>Shahid v. Esaam</i> (June 2025)	Georgia Court of Appeals	Trial Ct relied on 2 fictitious cases in denying mtn to reopen divorce / Appellee's brief = 11 of 15 cited cases were bogus	Sanctions issued

*See also [4 Legal Ethics Matters That Rocked 2025 - Law360](#)* December 22, 2025 highlighting the misuse of AI. The article noted how AI plagues both litigants and the courts themselves:

As for the courts themselves, there is even less formalized regulation over AI use.

That could change, after Sen. Chuck Grassley, R-Iowa, chair of the Senate Judiciary Committee, issued a call to the judiciary in October, asking the Administrative Office of the U.S. Courts and the Judicial Conference to "quickly develop decisive and meaningful guidance on the use of AI" in judges' chambers.

Grassley's call came after two federal judges admitted staffers had used AI programs to include errors in orders they later had to fix.

# **TAB A**

Memo

To: Texas Supreme Court Advisory Committee

From: Subcommittee on Rules 1-14c

Date: August 8, 2024

Subject: Review of Potential Rule Amendments to Address Artificial Intelligence

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On July 17, 2024, the Texas Supreme Court referred the following topic to the Texas Supreme Court Advisory Committee:

**Artificial Intelligence.** The State Bar of Texas's Taskforce for Responsible AI in the Law has issued the attached interim report recommending potential changes to the Texas Rule of Civil Procedure 13 and Texas Rule of Evidence 901. The Committee should review, advise whether such amendments are necessary or desirable to account for artificial intelligence, and draft any recommended amendments.

This referral was assigned to the Rules 1-14c Subcommittee Chaired by Judge Harvey Brown. The following is the Report of the Subcommittee.

## I. Introduction and Summary of Recommendations

In this Memo,<sup>1</sup> the Subcommittee describes some of the unique risks and concerns for our courts and legal system sparked by the rapid development of AI. The Subcommittee also reviews how other states and federal courts have responded through standing orders, rulemaking and ethics opinions. The Subcommittee discusses the Interim Report of the Texas State Bar Taskforce for Responsible AI in the Law (Taskforce) and its 2023-24 Year-End Report and recommendations that pertain to potential rulemaking. Appendix A is a brief overview of AI and the transformative impacts of Generative AI and Large Language Models and resources on AI and federal and state court rules addressing AI.

### A. Recommendation on Amending TRCP 13

The Subcommittee reviewed the Taskforce's recommendations (both in its Interim Report and 2023-24 Year-End Report) suggesting that the Advisory Committee should consider amending Rule 13 to highlight the duty of both attorneys and self-represented litigants regarding the use of AI in connection with pleadings, motions and other papers. Notwithstanding the Taskforce's suggestions, the Subcommittee concludes that amending Rule 13 is unnecessary because self-represented litigants are unlikely to focus on revised language in Rule 13 and attorneys practicing in Texas understand their duty to be competent in the use of technology (and the Subcommittee anticipates that the Texas Committee

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<sup>1</sup> Note that this memo was prepared with the assistance of Generative AI (CoPilot).

on Professional Ethics will follow the Taskforce's recommendation to issue a more specific Ethics Opinion on the ethical considerations related to attorneys' use of AI).

To the extent the Committee concludes an amendment to Rule 13 is advised, the Subcommittee recommends the following language:

**RULE 13. EFFECT OF SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS**

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. The use of generative Artificial Intelligence in connection with any signed pleading, motion, or other paper must comply with this Rule. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both. Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or act and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

**Notes and Comments**

**Comment to 1990 change:** To require notice and hearing before a court determines to impose sanctions, to specify that any sanction imposed be appropriate, and to eliminate the 90-day "grace" period provided in the former version of the rule.

**Comment to 2024 change:** Attorneys and parties (including self-represented parties) should understand that pleadings, motions or other papers that include content from generative Artificial Intelligence tools are subject to the certification obligation of this rule.

The Subcommittee suggests that if there is a consensus to amend Rule 13, the reference to AI should be included in a new Comment to the Rule (in the format above), instead of amending the text of the Rule.

## B. Recommendation on Amending the Rules of Evidence

The Subcommittee recommends that the Advisory Committee review and consider amending Rules of Evidence 901 and 902 on authentication of evidence created or altered by generative AI tools.<sup>2</sup> Potential changes to Rule 901(b)(9) would include additional authentication steps if a party seeks to introduce AI created records into evidence. The Subcommittee also recommends evaluation of inserting a new Rule 901(c) to set out a procedure for a party to challenge the authenticity of computer-generated or other electronic evidence. This change is due to the risk of falsification or modification of photographs, videos and recordings using AI tools without any indication that the item is not genuine.

The Subcommittee also recommends that the Advisory Committee consider amending Rule 902(10) which details the language required for a Business Records Affidavit used for Self-Authenticating evidence under TRE 902.

## C. Recommendation on Amending TRCP 226a

Although not referenced in the Supreme Court's Referral, the Subcommittee also suggests that the Advisory Committee consider and refer to the Rules 216-299a Subcommittee whether to amend the TRCP 226a Instructions to Jury Panel and Jury to direct that potential jurors and empaneled jurors should not access AI tools to investigate information or other resources regarding the case before them. It also recommends updating the language to reflect changes in technology.

# II. AI use in the Legal Profession

Chief Justice John Roberts in his 2023 Year-End Report on the Federal Judiciary commented on the potential that technology and particularly AI will have on the practice of law. "As 2023 draws to a close with breathless predictions about the future of Artificial Intelligence, some may wonder whether judges are about to become obsolete. I am sure we are not—but equally confident that technological changes will continue to transform our work."<sup>3</sup> The legal community has long relied on computer applications that incorporate some forms of artificial intelligence, including writing tools such as Grammarly® and legal research tools Westlaw® and Lexis®.

Attorneys were very quick to realize the potential of Generative AI in the legal profession and Generative AI will transform the practice of law. Examples include using AI to review and assess contract terms and potentially suggesting additional clauses, analyzing large volumes of data, streamlining the discovery process, automating due diligence reviews, quickly summarizing depositions and recording transcripts and suggesting well-crafted arguments. "Attorneys could spend more time on client relations than contract drafting. Courts could identify better ways to help individuals through the legal system and resolve disputes. Self-represented litigants could navigate some legal problems without

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<sup>2</sup> The Subcommittee anticipates that the input of the Texas State Bar Evidence Committee will be requested prior to any final recommendation by the Committee.

<sup>3</sup> <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>

having to pay for an attorney. However, along with the extraordinary potential of generative AI, we should not lose sight of the extraordinary risks it poses.”<sup>4</sup>

The risks of AI in the legal profession were manifested quite quickly when a litigation attorney used ChatGPT to research supportive case precedent when drafting a brief in support of the plaintiff’s opposition to a motion to dismiss in a case pending in the U.S. District Court for the Southern District of New York, *Mata v. Avianca*; (1:22-cv-01461). The attorney did not realize that ChatGPT’s suggested cases and holdings were completely fabricated to resemble actual decisions. Unfortunately, the attorney did not check whether the citations were real before filing his response. The fake cases were soon discovered and the lawyer filing the motion was sanctioned by the court. He also endured public humiliation.<sup>5</sup>

An interesting and thoughtful initiative on AI and the legal system was formed at Duke University Law School called Responsible AI in Legal Services, or [RAILS](#). The initiative describes its mission as follows: “[To] [b]ring together a cross-industry group of leaders (judiciary, corporations, law firms, tech providers, access to justice orgs, etc.) to support the responsible, ethical, and safe use of AI to advance the practice of law and delivery of legal services to all.”<sup>6</sup> The Steering Committee includes Paul Grimm, former U.S. District Judge and Director of Duke’s Bolch Judicial Institute. The National Center for State Courts (NCSC) also has initiated the exploration of judicial and legal ethics issues involved with AI and the Courts.<sup>7</sup>

### A. Impact of AI in Litigation

The risks and concerns triggered by AI, particularly those impacting the legal profession and the justice system, quickly became apparent and will take time to work through courts and rulemaking bodies. A December article in the Duke Law School’s Law & Technology Review described some of the issues and challenges to law and the legal system because of Generative AI:

Generative AI (“GenAI”) systems such as ChatGPT recently have developed to the point where they are capable of producing computer-generated text and images that are difficult to differentiate from human-generated text and images. Similarly, evidentiary materials such as documents, videos and audio recordings that are AI-generated are becoming increasingly difficult to differentiate from those that are not AI-generated. These technological advancements present significant challenges to parties, their counsel, and the courts in determining whether evidence is authentic or fake. Moreover, the explosive proliferation and use of GenAI applications raises concerns about whether litigation costs will dramatically increase as parties are forced to hire forensic experts to address AI generated evidence, the

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<sup>4</sup> Griffin, Laskowski and Thumma, [How to Harness AI for Justice | Judicature \(duke.edu\)](#) 108 *Judicature* 1, 2024

<sup>5</sup> [Lawyer cited 6 fake cases made up by ChatGPT; judge calls it “unprecedented” | Ars Technica.](#) (“Adding insult to injury’, the plaintiff’s case was dismissed by the trial court.)

<sup>6</sup> [About RAILS | Responsible AI in Legal Services](#)

<sup>7</sup> [AI and the Courts: Judicial and Legal Ethics Issues \(ncsc.org\)](#)

ability of juries to discern authentic from fake evidence, and whether GenAI will overwhelm the courts with AI-generated lawsuits, whether vexatious or otherwise. GenAI systems have the potential to challenge existing substantive intellectual property (“IP”) law by producing content that is machine, not human, generated, but that also relies on human-generated content in potentially infringing ways. Finally, GenAI threatens to alter the way in which lawyers litigate and judges decide cases.<sup>8</sup>

In the preparation of this report, CoPilot was asked the following: What are potential risks to our court system because of AI? This was CoPilot’s response:

The integration of AI into our court system brings several potential risks:

1. **Over-reliance on AI:** There’s a risk of over-reliance on AI without assessing its quality and reliability. AI systems are not infallible and their outputs should be scrutinized for accuracy.
2. **Inaccurate or biased information:** AI systems can provide inaccurate or biased information. Biased data sets can lead to skewed outcomes or prejudice against improperly represented groups.
3. **Potential for fraudulent practices:** The use of AI opens up new avenues for fraudulent practices.
4. **Influence of commercial actors:** There’s a risk of commercial actors influencing public interest.
5. **Lack of empathy or human support:** AI systems lack the ability to provide empathy or human support, which is often crucial in legal proceedings.
6. **Reinforcing existing biases:** AI systems can reinforce existing biases if they’re trained on biased data.
7. **Unequal access to AI tools:** Not everyone has equal access to AI tools, which could lead to inequality in the legal system.
8. **Security risks:** AI systems in the judiciary can become a weak point for criminals, terrorist groups, and governments with malicious intent to take advantage of.
9. **Decrease in the number of civil servants:** The digitalization of legal services could cause a decrease in the number of civil servants.
10. **Threats to personal privacy:** The accumulation of massive amounts of personal information in the hands of a few, unregulated big-tech companies with unabashedly selfish commercial interests.

These risks highlight the need for careful consideration and regulation as we integrate AI into our legal systems. It’s important to ensure that the use of AI in the court system is transparent, fair, and doesn’t compromise the rights of individuals.<sup>9</sup>

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<sup>8</sup> Grossman, Grimm, Brown and Zu, [The ChatGPT Judge: Justice in a Generative AI World](#), 23 Duke Law & Technology Review, 1 (October 2023)

<sup>9</sup> CoPilot query August 1, 2024 (Ironically, the Bluebook has not yet issued guidance on how to cite to AI generated content, underscoring one of the many challenges with the use of AI in legal proceedings.)

## B. AI Issues that Will Need to Be Addressed by Courts

Generative AI and its impact on courts and litigants include the following considerations:

- Accuracy, reliability and authenticity of AI Generated information, including whether the output can be repeated
- The potential that uses of AI could compromise proprietary information as well as personal health and personally identifying information
- Does the attorney client privilege/work product doctrine apply to AI prompts from counsel and the Tool's responses?
- Are prompts (questions posed in AI) and output subject to legal holds?
- What is the 'chain of custody' with respect to AI output?
- Who owns output generated by AI tools and is an AI inquiry or answer a declarative statement (that could be held against interest)?
- Jurors independently asking Generative AI tools for information related to the case they are adjudicating.
- Confidentiality of Information inputted into LLMs
- Is an AI generated response hearsay and if so, can it be considered a business record?
- How is AI output authenticated?
- Can AI output be considered as 'expert' testimony?

## III. AI Rulemaking by State and Federal Courts

Court systems around the U.S. have quickly responded to the AI revolution by implementing local rules, standing orders, and ethics rules to address perceived risks triggered by the technology.<sup>10</sup> As noted below, some of the early orders requiring disclosure of the use of AI have proven to be ineffective.

### A. Standing Orders Requiring Disclosure of the Use of AI

Following the press stories on the *Mata v. Avianca* pleading debacle described above, many courts (state and federal) adopted local standing rules requiring disclosure of the use of AI in pleadings. An example of a standing order is the version adopted by Federal Judge Michael Baylson of the U.S. District Court for the Eastern District of Pennsylvania. His standing order requires:

If any attorney for a party, or a pro se party, has used Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court and assigned to Judge Michael M. Baylson, they MUST, in a clear and plain factual statement,

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<sup>10</sup> Two very useful tools to track AI rulemaking in state and federal courts includes [Generative Artificial Intelligence \(AI\) Federal and State Court Rules Tracker \(lexis.com\)](#) and RAILS dynamic list of over 58 [State and Federal Court Orders and Ethical Rules related to AI](#).

disclose that AI has been used in any way in the preparation of the filing and CERTIFY that each and every citation to the law, or the record in the paper, has been verified as accurate.

U.S.D.J. Araceli Martinez-Olguin of the N.D. of California requires a similar duty of disclosure for lawyers and pro se parties practicing in her court: "Any submission containing AI-generated content must include a certification that you have personally verified the content's accuracy. You are responsible for maintaining records of all prompts or inquiries submitted to any generative AI tools in the event those records become relevant at any point.<sup>11</sup>"

U.S.D.J. S. Kato Crews, (D. Colorado) requires a statement on whether AI was used for every paper filing:

[E]very motion filed pursuant to Fed. R. Civ. P. 12, Fed. R. Civ. P. 56, and any opposed motion (to include the corresponding response and reply), shall contain a Certification regarding the use, or non-use, of generative artificial intelligence (AI) (such as ChatGPT, Harvey.AI, Google Bard, etc.) in preparing the filing. The preparer of the filing must certify either that (a) no portion of the filing was drafted by AI, or that (b) any language drafted by AI (even if later edited by a human being) was personally reviewed by the filer or another human being for accuracy using print reporters or traditional legal databases and attesting that the legal citations are to actual existing cases or cited authority. The Court will strike any filing from a party who fails to include this certification in the above-mentioned motions. The AI Certification does not count against any page limitations.<sup>12</sup>

In an interesting development on the trend of local rules mandating disclosure of the use of Generative AI, on November 22, 2023, the Fifth Circuit Court of Appeals proposed the amendment of its Rule 32.3 and Form 6 which would require the following certification:

Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human.<sup>13</sup>

On June 12, 2024, the Fifth Circuit announced that it would not implement the proposed rule, announcing:

The court, having considered the proposed rule, the accompanying comments, and the use of artificial intelligence in the legal practice, has decided not to adopt a special rule regarding the use of artificial intelligence in drafting briefs at this time. Parties and counsel are reminded of their duties regarding their filings before the court under Federal Rule of Appellate Procedure 6(b)(1)(B). Parties and counsel are responsible for ensuring that their filings with the court, including briefs, shall be carefully checked for truthfulness and accuracy as the rules already require. "I used AI" will not be an excuse for an otherwise sanctionable offense.<sup>14</sup>

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<sup>11</sup> <https://www.cand.uscourts.gov/wp-content/uploads/2023/03/AMO-Civil-Standing-Order-11.22.2023-FINAL.pdf>

<sup>12</sup> [SKC Standing Order Civil Cases.pdf \(uscourts.gov\)](https://www.uscourts.gov/sites/default/files/2023-11/AMO-Civil-Standing-Order-Civil-Cases.pdf) at 5.

<sup>13</sup> See [5th Circuit Notice of Proposed Amendment to 5th Circ. R. 32.2, Nov. 22, 2023](https://www.uscourts.gov/sites/default/files/2023-11/5th-Circuit-Notice-of-Proposed-Amendment-to-5th-Circ-R-32.2-Nov-22-2023.pdf)

<sup>14</sup> [5th Circuit Notice of Decision on Proposed Rule, June 12, 2024](https://www.uscourts.gov/sites/default/files/2023-11/5th-Circuit-Notice-of-Decision-on-Proposed-Rule-June-12-2024.pdf)

Notwithstanding the early trend of Courts to adopt rules on mandatory disclosure of the use of AI tools in court pleadings, the recent trend suggests that these rules are not practical and not particularly helpful to courts.

## B. Local Rules Prohibiting the Use of AI

The Eastern District of Missouri has expressly prohibited Self-Represented Litigants (SRL) from using any form of generative AI in preparing any pleading: “No portion of any pleading, written motion, or other paper may be drafted by any form of generative artificial intelligence. By presenting to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, self-represented parties and attorneys acknowledge they will be held responsible for its contents. See Fed. R. Civ. P. 11(b).<sup>15</sup>” U.S.D.J. Donald W. Molloy of the D. Mont. also has entered case specific orders prohibiting the use of generative AI in connection with the case.<sup>16</sup>

## C. Standing Orders on AI that Do Not Require Disclosure of AI

Commentators have suggested that mandatory AI disclosure rules are fraught with problems and are counterproductive. An article in Judicature Magazine noted: “[w]hile the impulse underlying the imposition of these standing orders is understandable – even commendable – real disadvantages can result.” The authors instead propose that the better alternative is consistent, court-wide rules that are enacted following publication and public comment.<sup>17</sup>”

The United States District Court for the Northern District of Illinois adopted a local rule for all matters in the District that explains its methodology and implements the Judicature article’s recommendation:

Some of the Court's standing orders address the Court's idiosyncrasies, such as its procedures for filing summary judgment motions. But other standing orders—which are unfortunately necessary—are often terse reminders that *all filers* need to follow statutes, the Federal Rules of Civil Procedure, and the Local Rules for the U.S. District Court for the Northern District of Illinois. The Court believes that a reasonable standing order on the use of artificial intelligence (AI) would fall into the latter category. So here's this Court's standing order on AI: Anyone—counsel and unrepresented parties alike—using AI in connection with the filing of a pleading, motion, or paper in this Court or the serving/delivering of a request, response, or objection to discovery must comply with Rule 11(b) and Rule 26(g) of the Federal Rules of Civil Procedure, and any other relevant rule, including any applicable ethical rule.<sup>18</sup>

U.S. District Court Judge Rita Lin (also of the N.D. California) follows a somewhat similar approach to the N.D. Illinois; It does not require certification but counsel have an ethical duty in connection with any filing:

Counsel is responsible for providing the Court with complete and accurate representations of the record, procedural history, and cited legal authorities. Use of ChatGPT or other such generative artificial intelligence tools is not prohibited, but counsel must personally confirm for

<sup>15</sup> [Self-Represented Litigants \(SRL\) | Eastern District of Missouri | United States District Court \(uscourts.gov\)](https://www.uscourts.gov/judicature/article/standards-practices-self-represented-litigants)

<sup>16</sup> See e.g. [Belenzon v. Paws Up Ranch, LLC, Case No. 9:23-CV-69, Dkt. No. 8](https://www.uscourts.gov/judicature/article/standards-practices-self-represented-litigants)

<sup>17</sup> Maura R. Grossman, Paul W. Grimm & Daniel G. Brown, [Is Disclosure and Certification of the Use of Generative AI Really Necessary?](https://www.uscourts.gov/judicature/article/standards-practices-self-represented-litigants), 107 Judicature 68 (2023)

<sup>18</sup> <https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=1409> (emphasis added)

themselves the accuracy of any research conducted by these means, and counsel alone bears ethical responsibility for all statements made in filings.<sup>19</sup>

Other Federal Court Judges, including District Judge James Soto (U.S. Dist. Ct., Arizona) reminded the parties and their counsel in a specific case regarding the risks of the use of AI:

If any portion of a pleading or other document filed on this Court's docket has been drafted (in whole or in part) using generative artificial intelligence, including, but not limited to ChatGPT, Harvey.AI, or Google Bard, all attorneys and pro se litigants filing such pleadings or other documents shall verify that any language that was generated in any form by AI was checked for accuracy by using print reporters, traditional legal databases, or other reliable means by a human being.<sup>20</sup>

#### D. Adoption of Ethical Rules related to the Use of AI

Bar organizations also have raised numerous ethical issues arising out of the use of AI. On July 29, 2024, the ABA issued [Formal Opinion 512](#)<sup>21</sup> that describes the ethical duties under Model Rule 1.1, including the expectation that attorneys are knowledgeable of AI technology and how it can be used and abused:

Under Model Rule 1.1 (Competent Representation), you have an ethical obligation to understand the benefits and risks of any generative AI you use. Using generative AI might also implicate other duties under the Rules of Professional Conduct, like communicating with the client or charging reasonable fees.

As generative AI tools continue to develop, you may need to use them to provide competent legal services to your clients. However, you must evaluate the risks of client confidential information being disclosed or accessed by others when using generative AI tools. If your client specifically asks about your generative AI practices, you should disclose how you are using the technology in your representation.

The amount of review or verification you must do to meet your ethical obligation depends on the generative AI tool and the task being performed. Consider doing the following:

- Reading about generative AI targeted at the legal profession
- Attending relevant continuing legal education programs –and–
- Consulting others who are proficient in generative AI technology

The Washington DC Bar Association also issued an Ethics Opinion on AI<sup>22</sup> that includes the following guidance:

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<sup>19</sup> [2024-05-17-Civil-Standing-Order.pdf \(uscourts.gov\)](#)

<sup>20</sup> [Cowan v. Bd. Of Immigration Appeals, Case No. 4:23-cv-00327-JAS, Dkt. No. 15.](#)

<sup>21</sup> [Formal Opinion 512 \(americanbar.org\)](#), July 29, 2024.

<sup>22</sup> [DC Bar - Ethics Opinion 388](#)

- You should have a reasonable and current understanding of generative AI works and what it does, including (a) its potential dangers such as risk of "hallucinations", misuse, or exposure of client confidential information; (b) its limitations, including whether it uses a narrow dataset that could generate incomplete, out-of-date, or inaccurate results; and (c) its cost
- You must review and validate AI generated content before incorporating it in your work product for clients or relying on it in support of a legal proceeding
- You must ensure the confidentiality of the information provided to the generative AI tool
- You should take appropriate steps to ensure that any use of generative AI is consistent with the Rules of Professional Conduct
- In litigation or arbitration, you must confirm that any generative AI outputs do not contain misrepresentations of facts or law, or provide fake citations
- If you intend to bill your client for your use of generative AI for which there is an out-of-pocket cost, you should communicate that expected expense to your client
- You can only bill for the time you actually spent on a matter, not the time you would have spent absent using generative AI
- Consider whether specific interactions with generative AI in connection with a client matter should be retained as part of the client file

The California State Bar Committee on Professional Responsibility and Conduct (COPRAC) made a similar recommendation to adopt an ethical standard for the use of AI: "When using generative AI tools, lawyers must ensure, among other things, client confidentiality, competent use of AI tools, supervision of lawyers and non-lawyers when using generative AI, and candor with the court and clients.<sup>23</sup>"

The New York State Bar Association Taskforce on AI recommended NY adopt ethical rules on AI, including the recommendation that attorneys should alert their clients when using AI tools: "When using AI tools in your case, you should advise clients of this usage and ensure legal staff, including paralegals, are properly trained and handling AI tools properly. Also consider responsibly using AI tools to aid in effectiveness in representing clients. However, you should periodically monitor the AI tool provider to learn about any changes that might compromise client confidentiality."<sup>24</sup>

The Michigan Bar issued an ethics opinion focused on judges rather than litigants.

Judges have an ethical obligation to understand technology, including AI, "and take reasonable steps to ensure AI tools on which their judgment will be based are used properly." Further, judges "have an ethical duty to maintain technological competence and understand AI's ethical implications to ensure efficiency and quality of justice."<sup>25</sup>

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<sup>23</sup> <https://s3.documentcloud.org/documents/24166448/recommendations-from-committee-on-professional-responsibility-and-conduct-on-regulation-of-use-of-generative-ai-by-licensees-1.pdf>

<sup>24</sup> [NYSBA Task Force on AI Recommendations \(nysba.org\)](https://nysba.org/TaskForceOnAI)

<sup>25</sup> State Bar of Michigan's Standing Committee on Judicial Ethics: [Ethics Opinion JI-155](https://www.michbar.org/~/media/Files/Committees/SCAC/EthicsOpinions/EthicsOpinionJI-155.pdf)

## IV. Texas Taskforce on AI and the Courts

On August 25, 2023, then Texas State Bar President Cindy Tisdale created The Texas Bar Taskforce for Responsible AI in the Law (TRAIL or Taskforce). The Taskforce issued an [Interim Report<sup>26</sup>](#) on January 26, 2024 and followed up in June 2024 with its [2023-24 Year-End Report<sup>27</sup>](#) with more detailed recommendations. (The Taskforce also met on February 26, 2024, in a Summit and issued a Report [Summit Report](#)).<sup>28</sup>

The Taskforce in its Year-End Report described its work as follows: "This report represents an initial step in understanding the integration of AI within the legal profession. This report identifies the areas in which AI is already changing the practice of law and outlines recommended steps as this technology evolves. These recommendations are broad, reflecting the way that AI has touched nearly every area of legal practice."<sup>29</sup>

The 2023-24 Year-End Report set out 15 Substantive Recommendations, including the following two related to potential amendments to rules:

**5. Review of Texas Rule of Civil Procedure 13.** The Supreme Court of Texas Rules Advisory Committee and the State Bar of Texas Court Rules Committee should explore Texas Rules of Civil Procedure 13, "Effect of Signing Pleadings, Motions and Other Papers; Sanctions," and evaluate whether additional language or guidance is necessary for Texas lawyers and self-represented litigants regarding the need to verify the accuracy of all filings and an obligation to avoid AI-generated misinformation or hallucinations, as well as to provide Texas judges with adequate remedies regarding the same.

**6. Rules of Evidence.** The Rules Advisory Committee and Court Rules Committee should also address whether changes to the Texas Rules of Evidence are needed to address deep fakes and AI-manipulated evidence.<sup>30</sup>

These recommendations were also discussed in the Taskforce's Interim Report at page 5 (recommended review of changes to Rule 13) and page 7 (discussion of evidentiary issues involving deepfakes).<sup>31</sup>

The Summit Report's section on AI in the Courtroom is particularly instructive to the Advisory Committee and is set out below in full (emphasis added):

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<sup>26</sup>[Interim Report to the Board -- Taskforce for Responsible AI in the Law \(texasbar.com\)](#)

<sup>27</sup>[TRAIL 2023-24 Year-End Report](#)

<sup>28</sup>[Taskforce for Responsible AI in the Law, Summit Report February 26, 2024](#)

<sup>29</sup>TRAIL 2023-24 Year-End Report at 4

<sup>30</sup>*Id.* at 7.

<sup>31</sup>Interim Report at 5 and 7.

## AI in the Courtroom

Discussion by the AI Summit attendees about the role of AI and generative AI tools in the courtroom focused on three areas: the use of AI by pro se litigants, the use of AI by attorneys, and the use of AI by court staff.

Pro se litigants will likely use any available AI tools, especially if they are free and accessible. Courts may want to warn pro se litigants about the risks of AI and legal research, potentially through clerks, standing orders, or pro se and self-help centers. Concerns exist about pro se litigants becoming overconfident in their case due to AI-generated content.<sup>32</sup>

For attorneys using AI, Rule 13 places the burden of proof on the filer to ensure they understand what they are doing, while Chapters 9 and 10 of the CPRC require reasonable diligence from the filer. The Supreme Court's Rules Committee could clarify the rules without being specific to AI and generative AI. In addition to the risks inherent in using AI, there are potential benefits for attorneys. For instance, a free AI tool that checks citations for hallucinations could benefit good actors.

Nearly a quarter of judges use AI, and while responsible use in drafting opinions is permissible, requiring disclosure of AI use is not recommended. Standing orders educating about AI are encouraged, but those requiring disclosure are not.<sup>33</sup>

Deep fakes and the authenticity of evidence are concerns, and Texas Rule of Evidence 901 should be reexamined in this context.

Recommendations include reviewing educational materials for judges, considering pretrial hearings for evidentiary challenges, and providing training on metadata. Education efforts could

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<sup>32</sup> The Interim Report elaborated on this point: "While there has already been substantial publicity about inaccurate ChatGPT outputs and why attorneys must always verify any draft generated by any AI platform, the bench must also consider the impact of the technology on pro se litigants who use the technology to draft and file motions and briefs. No doubt pro se litigants have turned to forms and unreliable internet material for their past filings, but ChatGPT and other such platforms may give pro se litigants unmerited confidence in the strength of their filings and cases, create an increased drain on system resources related to false information and nonexistent citations, and result in an increased volume of litigation filings that courts may be unprepared to handle." Interim Report at 7.

<sup>33</sup> The Interim Report explained this conclusion in more detail: "Because many legal research tools will (or already do) incorporate generative AI into their product, these standing orders may result in litigants disclosing their use of Westlaw, Lexis, Grammarly, etc. This is likely an unhelpful feature, and courts already have the ability to appropriately sanction an attorney for filing a motion or brief that contains false statements. It may also discourage the development and adoption of tools that, used properly, could enhance legal services." Interim Report at 6.

involve the ATJ, State Bar, Pro Bono Law Group, and other organizations, with resources provided on the State Bar website.<sup>34</sup>

Following up its discussion in the Summit Report suggesting the issuance of a Texas ethics opinion on the responsible use of AI to bolster the 2018 Ethics Opinion 680 on lawyers' obligation to understand technology, the Taskforce formally submitted a request to the Texas Professional Ethics Committee, seeking "guidance on applying Texas Disciplinary Rules of Professional Conduct to the use of AI, including the lawyer's:

- duty to provide competent representation (tech competence),
- duty of confidentiality,
- duty to safeguard client communications and property,
- duty of supervision (both to other lawyers and to nonlawyer or virtual assistants),
- duty of candor to the tribunal, and
- duty to charge a reasonable fee."<sup>35</sup>

(Notably, the Summit Report included a recommendation that the ethics committee should "define due diligence for electronic services, as the level of risk varies among AI applications.")<sup>36</sup>

## V. Proposed Amendment of TRCP 13

### A. Discussions on Whether to amend FRCP 11

In evaluating whether to amend TRCP 13, it is initially instructive to explore the equivalent provision(s) in the Federal Rules of Civil Procedure and whether commentators believe Rule 11 is sufficient to empower judges deal with abuses arising out of the use of Generative AI.<sup>37</sup> Judge Grimm, Professors Grossman and Brown suggest that Federal Rules of Civil Procedure 11 (pleadings) and 26(g) (Discovery), together with attorneys' ethical obligations, sufficiently empower Federal Judges to address misuse of AI:

Accordingly, lawyers or parties who violate Rules 11 and 26(g) in connection with their use of GenAI in civil litigation are already subject to sanctions that can be strong medicine — depending on the extent of the violation — regardless of whether the presiding judge has issued their own standing order concerning the use of GenAI. Moreover, if widespread public humiliation over being sanctioned by a court for committing this kind of error is insufficient disincentive, the Rules of Professional Conduct also impose independent ethical obligations to

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<sup>34</sup> [Summit Report](#) at 3-4.

<sup>35</sup> TRAIL 2023-24 Year-End Report at 5.

<sup>36</sup> Summit Report at 3. Notably, the Taskforce made the following observation: "The AI Summit attendees also noted that ethical and effective representation of a client might require not using AI in some situations and using it judiciously in other situations. The possibility exists that as AI, particularly generative AI, becomes more pervasive, failing to utilize this technology might be unethical in that the attorney is not adequately using the tools available."

<sup>37</sup> See e.g. [Is Disclosure and Certification of the Use of Generative AI Really Necessary? | Judicature \(duke.edu\)](#)

refrain from the types of misconduct that have led courts to adopt standing orders prohibiting or regulating the use of GenAI applications.<sup>38</sup>

## B. TRCP 13 – No Amendment Needed

Texas Rule 13 includes a requirement that attorneys or parties sign pleadings, motions and other papers and by doing are certifying that “they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.” (Federal Rule of Civil Procedure 11 which has a similar certification consequence only applies to filed pleadings and motions.)

Sanctions for violations of Rule 13 as well as violations of discovery and disclosure rules are available under Texas Rule of Civil Procedure 215.2b. Additionally, Texas Rule of Civil Procedure 191.3(b) (effect of signature on disclosures) and 191.3(c) (effect of signature on discovery request notice response or objection) also provide for sanctions for violations.

The Taskforce’s suggestion that this Committee “evaluate whether additional language or guidance is necessary for Texas lawyers and self- represented litigants regarding the need to verify the accuracy of all filings and an obligation to avoid AI-generated misinformation or hallucinations, as well as to provide Texas judges with adequate remedies regarding the same.” This suggestion was prompted by the fact that while Texas attorneys likely have an ethical duty regarding the use of AI, self-represented parties do not have any ethical duties. Thus, the duties of pro see litigants could be articulated in Rule 13. “The current version of Rule 13, however, requires that the pro se litigant arguably know, in advance of the filing of a motion, that the pleading is groundless and false. The Texas Supreme Court Rules Advisory Committee may wish to consider whether Rule 13 should be modified.”<sup>39</sup> The Taskforce did not propose specific language amending Texas Rule of Civil Procedure 13.

The Subcommittee recommends that the Advisory Committee decline to amend Rule 13 to add a reference to AI. As reflected in the discussion above regarding courts’ rush to add local rules requiring the disclosure of the use of AI which quickly proved to be impractical, amending Rule 13 will not ensure that self-represented litigants understand their duties to the court – importantly because self-represented litigants often do not review the Rules of Civil Procedure.

The Subcommittee proposes that the Advisory Committee recommend that a form be prepared for Self-Represented litigants in Texas that will be provided to the parties when filing their action or answer. This form should include general guidance and in addition information on the potential hazards related to AI technology. This will alert litigants of their duties and other important considerations in bringing civil litigation.

If the Advisory Committee disagrees and determines that Rule 13 should be amended, the following is a proposed approach to address AI:

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<sup>38</sup> *Id.*

<sup>39</sup> Interim Report at 7.

## Proposed Amendment to Texas Rule of Civil Procedure 13

### RULE 13. EFFECT OF SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. The use of generative Artificial Intelligence in connection with any signed pleading, motion, or other paper must comply with this Rule. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both. Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or act and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

#### Notes and Comments

Comment to 1990 change: To require notice and hearing before a court determines to impose sanctions, to specify that any sanction imposed be appropriate, and to eliminate the 90-day "grace" period provided in the former version of the rule.

Comment to 2024 change: To highlight to attorneys and parties (including self-represented parties) that pleadings, motions or other papers that include content from generative Artificial Intelligence tools are subject to the certification obligation of this rule.

Alternatively, the proposed language could instead be added into the Notes and Comments section to advise attorneys and self-represented litigants that they are responsible for information obtained from Generative AI tools.

### C. Is AI Subject to Disclosure under Texas Discovery Rules?

Although not the subject of the Supreme Court's referral, the Subcommittee notes that an open and interesting question is raised as to whether the existence of AI tools that were used to generate evidence in the dispute must be disclosed in response to Requests for Disclosure under TRCP 194.2. A similar question is prompted regarding whether AI tools themselves must be made available for inspection if these tools were used in connection with the expert's anticipated testimony or report.

Currently, TRCP 194.2(f)(4) reads as follows: “all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony.” TRCP 194.2(f)(4) (emphasis added). Although this issue is likely to be the subject of future case law, it is not within the ambit of the Supreme Court's referral to this Committee and the Subcommittee does not believe that the Texas Rules should be amended at this time to resolve the issue.

## VI. Amending the Rules of Evidence

The current Texas Rules of Evidence, particularly rules related to authentication of evidence, do not account for unique aspects of information produced or influenced by AI tools. These considerations include determining the accuracy and reliability of AI generated content, authentication and chain of custody questions of AI as well the significant risks related to deepfakes and manipulation of data using AI. The Texas Rules of Evidence fail to consider these unprecedented factors and therefore the Subcommittee recommends that potential amendments to Rules 901 and 902 should be provided to the Texas State Bar Evidence Committee for comment before final consideration by the Advisory Committee.

### A. Rule 901 Authentication and AI

The Federal Rules of Evidence Advisory Committee recently initiated discussions on whether the Federal Rules of Evidence should be amended to reflect the unique impact of AI.<sup>40</sup> Because key Texas Rules of Evidence mirror the Federal Rules of Evidence (or have similar provisions), a review of these discussions is instructive.

A helpful overview of how Artificial Intelligence as evidence is complex and challenging is described in a 2021 article by Judge Paul Grimm and Professors Maura Grossman and Gordon Cormack, *Artificial Intelligence as Evidence*.<sup>41</sup>

Under FRE 901(a), “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” A proponent of this evidence can satisfy the low burden of authenticating by providing evidence to show that the item is what the proponent claims it is. The Federal Rules of Evidence Advisory Committee discussions include consideration of how this low burden might not be sufficient to address admission of AI.

Rule 901(b) sets out a non-exhaustive list of examples of how a proponent can demonstrate that the 901(a) showing is met. “The examples that most readily lend themselves to authenticating AI evidence are: Rule 901(b)(1) (testimony of a witness with knowledge that an item is what it is claimed to be); and Rule 901(b)(9) (evidence describing a process or system and showing that it produces an accurate result).”<sup>42</sup>

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<sup>40</sup> See, [Federal Rules of Evidence Advisory Committee October 10, 2023 Agenda Book\(Agenda Book\)](#) at 84

<sup>41</sup> Grimm, Grossman and Cormack, [Artificial Intelligence as Evidence](#), 19 Nw. J. Tech. & Intellectual Property 9 (December, 2021)

<sup>42</sup> *Id* at26.

A witness called to authenticate AI evidence under Rule 901(b)(1) must also comply with other applicable rules, including Rule 602 that requires the authenticating witness to have personal knowledge of how the AI technology functions.<sup>43</sup> Due to the often-opaque nature of AI tools deployed in a business setting, it could be quite difficult for a witness to demonstrate personal knowledge.

... AI applications seldom are the product of a single person possessing personal knowledge of all the facts that are needed to demonstrate that the technology and its output are what its proponent claims them to be. Data scientists may be required to describe the data used to train the AI system. Developers may be required to explain the features and weights that were chosen for the machine-learning algorithm. Technicians knowledgeable about how to operate the AI system may be needed to explain what they did when they used the tool, and the results that they obtained. These technicians, however, may be entirely at sea when asked to explain how the data was collected or cleansed, how the algorithm that underlies the AI system was programmed, or how the system was tested to show that it produces valid and reliable results.<sup>44</sup>

AI evidence could also be authenticated under Rule 901(b)(1) through the testimony of an expert qualified under Rules 702 and 703.

Authentication under Rule 901(b)(9) faces the same challenges as Rule 901(b)(1) regarding a witness who can testify either through personal knowledge or expert credentials to satisfy the requirement of Rule subsection (9).<sup>45</sup>

The Grimm, Grossman and Cormack article accurately describes the unique challenges with admitting AI evidence:

An important feature of authentication needs careful consideration in connection with admitting AI evidence. Normally, a party has fulfilled its obligation to authenticate non-testimonial evidence by producing facts that are sufficient for a reasonable factfinder to conclude that the evidence more likely than not is what the proponent claims it is. In other words, by a mere preponderance. This is a relatively low threshold--51%, or slightly better than a coin toss. However, as we have shown in this paper, not all AI evidence is created equal. Some AI systems have been tested and shown to be valid and reliable. Others have not, when, for

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<sup>43</sup> *Id* at 26-27.

<sup>44</sup> *Id* at 27.

<sup>45</sup> "There are two additional rules of evidence that may be used to authenticate AI evidence that are closely related to Rules 901(b)(1) and 901(b)(9). They are Fed. R. Evid. 902(13), which allows authentication of "[a] record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person"; and Fed. R. Evid. 902(14), which allows authentication of "[d]ata copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person." Rules 902(13) and (14) would allow the proponent of AI evidence to authenticate it by substituting the certificate of a qualified witness for their live testimony. But it must be stressed that the qualifications of the certifying witness and the details of the certification that the evidence produces an accurate and reliable result must be the same as would be required by the in-court testimony of a similarly qualified witness. Rules 902(13) and (14) are not invitations for boilerplate or conclusory assertions of validity and reliability and should not be allowed to circumvent the need to demonstrate, not simply proclaim, the accuracy and reliability of the system or process." *Id.* at Footnote 362. Texas does not have an analogous version of FRE 901(13) and (14), but Texas does have a similar method to self-authenticate business records (which conceptually include Gen AI output) through a Business Records Affidavit.

example, efforts to determine their validity and reliability have been blocked by claims of proprietary information or trade secret. Furthermore, some of the tasks for which AI technology has been put to use can have serious adverse consequences if it does not perform as promised--such as arresting and criminally charging a person based on flawed facial recognition technology or sentencing a defendant to a long term of imprisonment based on an AI system that has been trained using biased or incomplete data that inaccurately or differentially predicts the likelihood that the defendant will reoffend.<sup>46</sup>

## B. Deep-Fakes

In addition to the Federal Evidence Advisory Committee's focus on the relatively low burden of authentication of evidence is their concern that AI tools can be used to alter photographs, videos and other forms of evidence – often referred to as “Deep-Fakes”.<sup>47</sup> The Reporter for the Evidence Advisory Committee, Professor Dan Capra, laid-out the challenges of Deep-Fakes and the potential gap in the Federal Rules of Evidence to enable trial court judges to determine whether certain offered evidence is authentic, particularly because “AI make deepfakes much more difficult to detect.”<sup>48</sup>

Professor Capra further described the limitations of authentication of photos that might be altered under Rule 901(a):

Under Rule 901(a), the standards of authenticity are low. The proponent must only “produce evidence sufficient to support a finding that the item is what the proponent claims it is. . . . The drafters of the rule believed that authenticity should generally be a jury question because, if a juror finds the item to be inauthentic, it just drops from the case, so no real damage is done; Rule 901 basically operates to prevent the jury from wasting its time evaluating an item of evidence that clearly is not what the proponent claims it to be<sup>49</sup>

Professor Capra explained the process of authentication of evidence under the Rule:

The structure of the Rule is as follows: 1) subdivision (a) sets the general standard for authenticity—enough admissible evidence for a juror to believe that the proffered item is what the proponent says it is; 2) subdivision (b) provides examples of sufficient authentication; if the standard set forth in any of the illustrations is met, then the authenticity objection is overruled and any further question of authenticity is for the jury; and 3) the illustrations are not intended to be independent of each other, so a proponent can establish authenticity through a single factor or combination of factors in any particular case. Finally, it should be noted that Rule 902 provides certain situations in which the proffered item will be considered self-authenticating—no reference to any Rule 901(b) illustration need be made or satisfied if the item is self-authenticating.<sup>50</sup>

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<sup>46</sup> *Id* at 28.

<sup>47</sup> See Dixon, Judge Herbert B. Jr., *The “Deepfake Defense”: An Evidentiary Conundrum*, [ABA Journal](#), June 11, 2024. [The “Deepfake Defense”: An Evidentiary Conundrum \(americanbar.org\)](#)

<sup>48</sup> [2023-10\\_evidence\\_rules\\_agenda\\_book\\_final\\_10-5.pdf \(uscourts.gov\)](#) at 85

<sup>49</sup> *Id* at 87.

<sup>50</sup> *Id* at 87.

He noted the unique problem raised by the potential for deepfakes: “Applying the current authentication rules to deepfakes raises at least two concerns: 1. Because deepfakes are hard to detect, many deepfakes will probably satisfy the low standards of authenticity; and 2. On the other hand, the prevalence of deep fakes will lead to blanket claims of forgery, requiring courts to have an authenticity hearing for virtually every proffered video.”

In its May 15, 2024 [Report to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States \(the Standing Committee\)](#)<sup>51</sup>, the Advisory Committee on Evidence offered the following takeaways from its Panel Discussion on AI and Machine Learning:

1. Consideration should be given to a rule covering machine-learning output when it is not accompanied by an expert witness. One possibility is a new rule applying the Rule 702 reliability standards to such machine-learning data. The problems posed by machine learning data are not ones of authenticity but rather of reliability. One challenge, however, is to draft a rule on machine-learning evidence that will not cover basic, well-established machine-based data such as thermometers, radar guns, etc.
2. The problem of deepfakes is really one of forgery --- a problem that courts have dealt with under the existing rules for many years. This cautions against a special rule on deepfakes --- with the proviso that traditional means of authentication such as familiarity with a voice, and personal knowledge, might need to be tweaked because the authenticating witness may not be able to detect a deepfake.
3. An opponent should not have the right to an inquiry into whether an item is a deepfake merely by claiming that it is a deepfake. Some initial showing of a reason to think the item is a deepfake should be required. The question is whether a rule is necessary to establish the requirement of an initial showing of fakery. Courts currently require some kind of showing before inquiring into whether digital and social media evidence have been subject to hacking; it is not enough for an opponent to contend that the item is inauthentic because, you never know, it might have been hacked. And courts have imposed that initial requirement on the opponent without relying on a specific rule. The question for the Committee is whether a procedural rule to impose a burden of going forward on the opponent is necessary when it comes to deepfakes. Such a rule might be added to Rule 901 as a new Rule 901(c). Former Judge Paul Grimm and Dr. Maura Grossman proposed a Rule 901(c) that the Committee considered at the meeting. The Committee agreed that the proposal could not be adopted in its present form, because it required the opponent to show that it was more likely than not a fake, which seems too high for an initial burden. The Committee remains open to considering a rule that would impose on the opponent a burden of going forward when an item is challenged as a deepfake.
4. It may be that the admissibility of machine-learning evidence could be dependent on validation studies, without the necessity of courts and litigants inquiring into source codes, algorithms, etc. Thought must be given, however, to how such validation studies

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<sup>51</sup> [Standing Committee June 21, 2024 Agenda Book](#) at 96

can be conducted, and how they are to be reviewed by courts.

### C. Potential Amendments to T.R.E. 901 to Address AI

The Subcommittee suggests that the Texas State Bar Evidence Committee should discuss whether the current Texas Rules of Evidence on authentication appropriately account for AI generated information, particularly the risk that deep-fake evidence could be offered as evidence without any inquiry as to whether the information is what it appears to be. As described above, the structure of Rule 901 sets a relatively low hurdle for the proponent of evidence to meet authenticity requirements and does not clearly enable another party to challenge whether the evidence could have been altered by means of AI technology. Amending Rule 901(b)(9) as well as adding a new 901(c) arguably will impose a minor but important additional step to prove-up evidence that was generated by AI and further will enable litigants to bring challenges to the authenticity of any electronic evidence that could have been fabricated or altered.

The Subcommittee recommends that the Advisory Committee consider the Grimm and Grossman proposals to amend Rule 901(b)(9) and add Rule 901(c) enabling a challenge to authenticity of electronic evidence.<sup>52</sup>

#### Rule 901

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

...

(9) Evidence About a Process or System.

(A) Evidence describing a process or system and showing that it produces an accurate and reliable result and

(B) if the proponent concedes that the item was generated by artificial intelligence, additional evidence that:

(i) describes the software or program that was used; and

(ii) shows that it produced valid and reliable results in this instance.

...

901(c): Potentially Fabricated or altered electronic evidence.

If a party challenging the authenticity of computer-generated or other electronic evidence demonstrates to the court that a jury reasonably could find that it is more likely than not either fabricated, or altered in whole or in part, the evidence is admissible only if the proponent

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<sup>52</sup> See Appendix B, Judge Paul Grimm and Professor Maura Grossman: Proposed Modification of Current Rule 901(b)(9) for AI evidence and Proposed New Rule 901(c) for “Deepfake” Evidence (attached) and referenced in the Evidence Advisory Committee takeaways described above.

demonstrates that its probative value outweighs its prejudicial effect on the party challenging the evidence.

#### D. Rule 902(10) Business Records Affidavit and AI

Although not within the subject matter of the Court's Referral, the Subcommittee suggests that the State Bar Evidence Committee should consider whether Texas Rule of Evidence 902(10), Business Records Accompanied by Affidavit should be amended to reflect AI generated records because Business Records Affidavits could be used to authenticate AI generated records that generally would not meet the requirements for authenticity and reliability. As noted above in the discussion pertaining to Rule 901, AI generated records could be unreliable or falsified and otherwise might not be subject to authentication under Rule 901. However, use of a Business Records Affidavit to self-prove admissibility, by-passing evidence of authenticity could result in admission into evidence of AI generated content that is neither reliable nor authentic.

The Subcommittee recommends that the State Bar's Evidence Committee discuss amending Rule 902(10) to either exclude AI generated content from a Business Records Affidavit and instead follow the amended procedures for authentication of evidence under 901(b)(9).

### VII. TRCP 226a Should be Amended and Updated

Texas Rule of Civil Procedure 226a sets out the instructions to be given to potential jurors when assigned to a jury venire as well as additional instructions given to jurors when they are seated on a jury. The Instructions were last updated in 2005 and include references to defunct technology. The Subcommittee suggests that the Rules 216-299a Subcommittee consider updating the instructions to reflect current technology as well as reference Generative AI.

Paragraph 3 of the Venire instructions and Paragraph 4 of the instructions to empaneled jurors are the same and could be updated as follows:

Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by but not limited to phone, text message, email, ~~message, chat room, , blog, or social networking~~ electronic platforms and websites including apps such as Facebook, X (Twitter), Instagram, WhatsApp, Tik-Tok, or Slack ~~or Myspace~~]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

Paragraph 1 of the instructions for seated jurors should also be revised as follows:

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email, ~~message, chat room, , blog, or social networking~~ websites such as Facebook, Instagram, WhatsApp, Tik-Tok, or Slack X (Twitter), Instagram, WhatsApp, Tik-Tok, or Slack ~~or Myspace~~][I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on

the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

Additionally, Paragraph 6 of the instructions for seated jurors should be revised

6. Do not investigate this case on your own. For example, do not:
  - a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
  - b. go to places mentioned in the case to inspect the places;
  - c. inspect items mentioned in this case unless they are presented as evidence in court;
  - d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
  - e. look anything up on the Internet or by using generative artificial intelligence tools to try to learn more about the case; or
  - f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet or generative artificial intelligence tools, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

## Appendix A

### Backgrounder on AI and Resources

AI is a broad term that includes different elements of computer technology that is used to simulate or create intelligent behavior or thought in a computer. Definitions vary, but the definition from the Organization for Economic Co-operation and Development (OECD) has gained traction: “An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.”<sup>53</sup> Recent rapid-fire developments in the AI landscape, particularly tools such as ChatGPT, have materially changed the potential uses and opportunities to abuse AI tools. AI is now becoming a tool used by businesses to improve efficiency and assist in decision-making. AI supported tools perform detailed analytics and even create computer programming. The ostensible purpose of AI technologies is to enhance our collective efficiency. Just as the Industrial Revolution heralded the replacement of human labor with automation, an AI-led transformation using powerful algorithms could save millions of hours of cognitive processing time.<sup>54</sup>

Many forms of AI have been in use for over 35 years, including the IBM Watson computer that played chess against masters. The AI landscape materially changed however on November 30, 2022, when ChatGPT was released to the public. Over 1 million users used the tool within the first 5 days and within the first three months, over 100,000,000 users across the globe were actively using the tool.

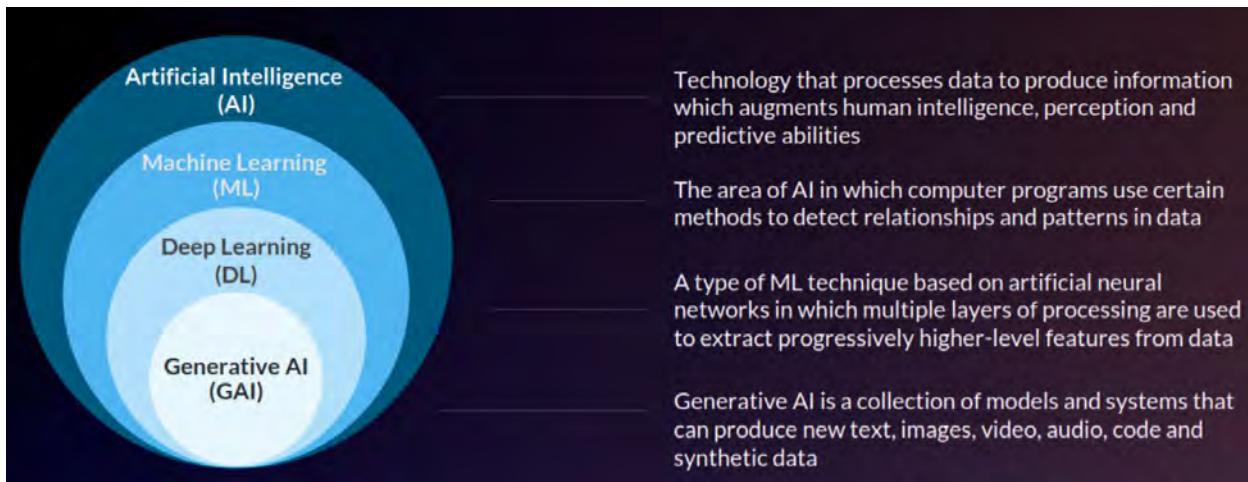
To understand the landscape of potential uses of AI, it is important to describe the different types of AI tools and their use cases. This chart<sup>55</sup> describes the progression of AI toolsets.

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<sup>53</sup> [What is AI? Can you make a clear distinction between AI and non-AI systems? - OECD.AI](#)

<sup>54</sup> [AI-and-Access-to-Justice-Final-White-Paper.pdf \(nacmnet.org\)](#) at 1.

<sup>55</sup> Courtesy of Christy Hawkins, akerman



Generative AI tools are often powered by Large Language Models (called LLMs) which are composed of huge volumes of data resources that are used by the engine to learn and respond to inputs. ChatGPT reportedly was trained on a dataset of over 300 billion words with a total data size of approximately 570 gigabytes of information. Another measure of the power of a LLM is the number of parameters created in the tool from learned information in the data set. ChatGPT is estimated to currently have hundreds of billions of parameters and growing.

Generative AI raises particularly unique concerns as it creates context, including text and images, without any human interaction. A Large Language Model is reliable only to the extent of the validity of the sourced data set; LLMs do not have the inherent ability to discern whether its source data is reliable or factually accurate. If the LLM does not have full access to all available information (for example if certain news sites are not included in the LLM), the output could be incomplete. Additionally, LLMs are also subject to the biases of the feedback provided by the developers who provide training data; some LLMs can be more prone to offer output consistent with the views (including subconscious biases) of its programmers. A more pernicious problem is that Generative AI is subject to 'hallucinations' which are inaccurate sentences or phrases contained in AI responses to queries.<sup>56</sup> "[G]enerative A.I. . . . relies on a complex algorithm that analyzes the way humans put words together on the internet. It does not decide what is true and what is not. . . . The tech industry often refers to the inaccuracies as 'hallucinations.'"<sup>57</sup> There is no technology currently available that can eliminate this risk.<sup>58</sup>

<sup>56</sup> See Karen Weise & Cade Metz, When A.I. Chatbots Hallucinate, N.Y. Times (last updated May 9, 2023) <https://www.nytimes.com/2023/05/01/business/ai-chatbots-hallucination.html>

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

## Appendix B

Proposed Modification of Current Rule 901(b)(9) for AI evidence and Proposed New Rule 901(c) for  
“Deepfake” Evidence

By Paul W. Grimm & Maura R. Grossman

[901](b) **Examples.** The following are examples only—not a complete list—of evidence that satisfies the requirement [of Rule 901(a)]:

(9) *Evidence about a Process or System.* For an item generated by a process or system:

- (A) evidence describing it and showing that it produces ~~an accurate~~ **a reliable** result; and
- (B) if the proponent concedes that the item was generated by artificial intelligence, additional evidence that:**
  - (i) describes the software or program that was used; and**
  - (ii) shows that it produced valid and reliable results in this instance.**

Proposed New Rule 901(c) to address “Deepfakes”

### **901(c): Potentially Fabricated or altered electronic evidence.**

**If a party challenging the authenticity of computer-generated or other electronic evidence demonstrates to the court that a jury reasonably could find that it is more likely than not either fabricated, or altered in whole or in part, the evidence is admissible only if the proponent demonstrates that its probative value outweighs its prejudicial effect on the party challenging the evidence.**

### **Rationale:**

Given the complexities and challenges presented by artificial intelligence generated evidence, a new rule that sets a standard for what is sufficient to authenticate such evidence would be extremely helpful. Because AI generated evidence is, by definition, evidence produced by a system or process, the proposal is to add a subsection (B) to existing 901(b)(9) to set a standard for authenticating evidence that the proponent acknowledges is AI generated. The proposed revision substitutes the word “reliable” for “accurate” in existing rule 901(b)(9), because evidence can be “accurate” in some instances but inaccurate in others (such as a broken watch, which “accurately” tells the time twice a day but is not a reliable means of checking the time otherwise).

For acknowledged AI generated evidence, the proposed new rule would identify a sufficient means for authentication of AI generated evidence. It requires the proponent to (i) describe the software or program that was used to create the evidence, and (ii) show that it produced *valid* and *reliable* results in the particular case in which it is being offered. Valid evidence is evidence that produces accurate

results, reliable evidence is that which produces consistently accurate results when applied to similar facts and circumstances. Both are required to ensure authenticity of AI generated evidence.

A separate rule is required to address the relatively recent phenomenon of AI generated “deepfakes”, which, due to rapidly improving generative AI software applications, are capable of producing fabricated (or altering existing) photographs, audio recordings, and audio-visual recordings that are so realistic that it is becoming very difficult to differentiate between authentic evidence and fabricated/ altered evidence. A separate rule is needed for such fake evidence, because when it is offered the parties disagree about the nature of the evidence. The opposing party challenges the authenticity of the evidence and claims that it is AI generated fakery, while the proponent insists that it is not AI generated, but instead that it is simply an electronic photograph (for example, one taken on a “smart phone”), or a voice recording (such as one left on voice mail) or audio-visual recording (such as one taken with a “smart phone” or digital camera). Because the parties fundamentally disagree about the very nature of the evidence, the proposed rule for authenticating acknowledged AI generated evidence will not work. A separate rule is required.

The proposed new rule creates a new rule 901(c). That is because the proponent of evidence challenged as AI generated fakery may be authenticated by many means other than Rule 901(b)(9), which focuses on evidence generated by a “system or process”. The proponent might choose to authenticate an audio recording under Rule 901(b)(5) (opinion as to voice) or Rule 901(b)(3) (comparison of evidence known to be authentic with other evidence the authenticity of which is questioned).

The proposed rule does not use the word “deepfake”, because it is not a technical term, but instead describes the evidence as being either computer-generated (which encompasses AI-generated evidence) or electronic evidence, which encompasses other forms of electronic evidence that may not be AI generated (such as digital photographs, or digital recordings).

The proposed rule puts the initial burden on the party challenging the authenticity of computer generated/electronic evidence as AI generated fakery to make a showing to the court that a jury reasonably could find (but is not required to find) that it is more likely than not either fabricated or altered in whole or part. This approach recognizes that the facts underlying whether the evidence is authentic or fake may be challenged, in which case the judge’s role under Rule 104(a) is limited to preliminarily evaluating the evidence supporting and challenging authenticity, and determining whether a reasonable jury could find more likely than not that the challenged evidence is fake. If the answer is “yes” then, pursuant to Rule 104(b), the judge ordinarily would be required to submit the evidence to the jury under the doctrine of relevance conditioned upon a finding of fact, Rule 104(b).

But deepfakes increasingly are getting so hard to detect, and often can be so graphic or have such impact that the jury may be unable to “ignore” the content of generative AI (GAI) shown to be fake once they have seen it. See generally Taurus Myhand, *Once The Jury Sees It, The Jury Can’t Unsee It: The Challenge Trial Judges Face When Authenticating Video Evidence in The Age of Deepfakes*, 29 Widener L. Rev. 171, 174-5, 2023 (“The dangerousness of deepfake videos lie in the incomparable impact these videos have on human perception. Videos are not merely illustrative of a witnesses’ testimony, but often serve as independent sources of substantive information for the trier of fact. Since people tend to believe what they see, ‘images and other forms of digital media are often accepted at face value.’ ‘Regardless of what a person says, the ability to visualize something is uniquely believable’. Video evidence is more cognitively and emotionally arousing to the trier of fact, giving the impression that they are observing activity or events more directly.” Internal citations omitted).

If the judge is required by Rule 104(b) to let the jury decide if audio, visual, audiovisual, or pictorial evidence is genuine or fake when there is evidence supporting each outcome, they are then in danger of being exposed to evidence that they cannot “unremember” even if they doubt that it is fake. This presents an issue of potential prejudice that ordinarily would be addressed under Rule 403. But Rule 403 assumes that the evidence is “relevant” in the first instance, and only then can the judge weigh its probative value against the danger of unfair prejudice. But when the very question of relevance turns on resolving disputed evidence, the current rules of evidence create an evidentiary “Catch 22”—the judge must let the jury see the disputed evidence on authenticity for their resolution of the authenticity challenge, but that exposes them to a new type of evidence that may irrevocably alter their perception of the case even if they find it to be inauthentic.

The proposed new rule 901(c) solves the “Catch 22” problem. It requires the party challenging the evidence as fake to demonstrate to the judge that a reasonable jury could find that the challenged evidence more likely than not is fake. The judge is not required to make the finding that it is, only that a reasonable jury could so find by a preponderance of evidence. This is similar to the approach that the Supreme Court approved regarding Rule 404(b) evidence in *Huddleston v. U.S.*, [cite], and the Third Circuit approved regarding Rule 415 evidence in *Johnson v. Elk Lake School District*. [cite].

Under the proposed new rule, if the judge makes this preliminary finding, it then they would be permitted to exclude it (without sending it to the jury) if the proponent of the evidence cannot show that its probative value exceeds its prejudicial impact. This is a fairer balancing test than Rule 403, which leans strongly towards admissibility. Further, the proposed new balancing test already is recognized as an appropriate in other circumstances. See, e.g. Rule 609(a)(1)(B).

The proposed new rule has other advantages as well. While it requires the party challenging the evidence as a deepfake to demonstrate facts (not conclusory or speculative arguments) from which the judge could find that a reasonable jury *could* more likely than not find it to be fake, this does not require them to persuade the judge that it actually is fake, which lessens the burden on the challenging party to make a sufficient initial challenge. Under an approach already recognized in *Huddleston* and *Johnson*, the proposed new rule only requires the judge to determine whether a jury reasonably could find it to be fake, at which time the proponent would be required to show that the probative value of the evidence was greater than its prejudicial impact. This determination would be made by the judge, as Rule 609(a)(1)(B) already permits.

The proposed rule also has the benefit of not imposing any initial obligation on the proponent of the evidence to authenticate it in any particular way. The proponent can choose from any authentication methods illustrated by Rules 901(b) and 902, or any other means of showing that it is what it purports to be. If, under the proposed rule, the party challenging the evidence as a deepfake then succeeds in showing the judge that a jury reasonably could find the challenged evidence to be fake, the proponent would have the opportunity to bolster the authenticating evidence, and the judge would then apply the new balancing test. This fairly allocates the initial burden on the challenging party, the responding burden of the proponent, and the role of the judge in screening for unfair prejudice without the need to send the disputed facts to the jury.

## Appendix C Artificial Intelligence Resources

### **State Court Orders, Rules, and AI Rules Trackers**

[Texas House Bill 2060 \(88R\)](#) that created the [Artificial Intelligence Advisory Council](#) which is co-chaired by Senator Tan Parker and Representative Gio Capriglione.

[Texas - TX R BEXAR CTY LOC RULES DIST CT Rule 3 - Nonjury Docket](#)

[Connecticut Judicial Branch -The Judicial Branch's Policies and Procedures Concerning Artificial Intelligence](#)

[Statement of Principles for the New Jersey Judiciary's Ongoing Use of Artificial Intelligence, Including Generative Artificial Intelligence](#)

[Notice – Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers](#)

[Utah, Interim Rules on the Use of Generative AI, October 25, 2023](#)

[Kansas Office of Information Technology Services, Generative Artificial Intelligence Policy](#)

[National Conference of State Legislatures - Artificial Intelligence 2023 Legislation](#)

Eastern District of Texas [GO 23-11 Amending Local Rules Effective December 1, 2023.pdf \(uscourts.gov\)](#)

### **Legal Research**

[Artificial Intelligence Court Rules | Westlaw Edge](#)

[ARTICLE: Rule 11 Is No Match for Generative AI, 27 Stan. Tech. L. Rev. P308](#)

[Resource: AI Orders | Responsible AI in Legal Services \(rails.legal\) Court Rules Tracker - Federal and State Courts](#)