

Editor's Note:

The purpose of this column is to provide information with respect to current legal developments and topics of general interest. An attempt is made to offer solutions to specific problems. An Attorney of your choice should be consulted for advice on particular questions relating to your situation.

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Your comments about this column and our suggestions are welcomed. Have a question you need answered? Address your questions to Briefcase, Apartment Association of Greater Dallas, 4230 LBJ Freeway, Suite 140 Dallas, TX 75244.

The following is a general summary of Texas law and may be inappropriate for a specific situation. Inevitably, changing circumstances and fact-sensitive questions lead to legal conclusions and results are not discussed here.

Security devices required by Texas law for residential tenancies

Here's a little test. See if you can correctly answer the following questions:

1. On apartment units with sliding glass doors, is it sufficient to provide residents with a sliding door handle latch and a sliding door security bar (often called a "charlie bar")?
2. In apartment units with an exterior front door and a back door going into the garage (see you required to place a peep-hole on both the front and back door)?

As property managers, most of you probably believe you know the answers to these questions. However, in practicing law and giving seminars over the years, I have found the more often than not managers do not know the answers to these questions. This can prove to be dangerous and costly to the management company in the event that a criminal incident occurs on the property and the management company has not complied with Texas Law.

Question:

Where are the rules regarding the use of these security devices in residential tenancies?

Answer:

Section 92.151 through Section 92.170 of the Texas Property Code outline the devices required for residential tenancies. These are also replicated in the TAA Red Book for your convenience. Specifically Section 92.153 sets out those security devices required without necessity of a tenant request. That section states as follows:

92.153

Security Devices Required Without Necessity of Tenant Request

(a) Except as provided by Subsections (b), (c), (f), (g) and (h) and without necessity of request by the tenant, a dwelling must be equipped with:

- (1) a window latch on each exterior window of the dwelling;
 - (2) a doorknob lock or keyed deadbolt on each exterior door;
 - (3) a sliding door pin lock on each exterior sliding glass door of the dwelling;
 - (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and
 - (5) a keyless bolting device and a door viewer on each exterior door of the dwelling
- (b) If the dwelling has French doors, one door of each pair of French doors must meet the requirements of Subsection (a) and the other door must have:

- (1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door and a keyless bolting device capable of insertion into the floor or threshold, each with a bolt having a throw of one inch or more; or
- (2) a bolt installed inside the door and operated from the edge of the door, capable of insertion into the doorjamb above the door, and another bolt installed inside the door and operated from the edge of the door capable of insertion into the floor or threshold, each bolt having a throw of three-fourths inch or more.

(c) A security device required by Subsection (a) or (b) must be installed at the landlord's expense.

Further, the Property Code also has requirements regarding the height of security devices in Sections 92.154 and 92.155. They are as follows:

92.154

Height, Strike Plate, and Throw Requirements - Keyed Deadbolt or Keyless Bolting Device

(a) A keyed dead bolt or a keyless bolting device required by this subchapter must be installed at a height:

- (1) not lower than 36 inches from the floor; and

- (2) not higher than:

- (A) 54 inches from the floor, if installed before September 1, 1993; or
- (B) 48 inches from the floor, if installed on or after September 1, 1993.

(b) A keyed dead bolt or a keyless bolting device described in Section 92.151(6)(A) or (B) in a dwelling must:

- (1) have a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed; or
- (2) be installed in a door with a metal doorjamb that serves as the strike plate.

(c) A keyed dead bolt or keyless deadbolt, as described by Section 92.151(6)(A), installed in a dwelling on or after September 1, 1993, must have a bolt with a throw of not less than one inch.

(d) The requirements of this section do not apply to a keyed dead bolt or a keyless bolting device in one door of a pair of French doors that is installed in accordance with the requirements of Section 92.153(b)(1) or (2).

92.155 Height Requirements - Sliding Door Security Devices.

A sliding door pin lock or sliding door security bar required by this subchapter must be installed at a height not higher than:

- (a) 54 inches from the floor, if installed before September 1, 1993; or
- (b) 48 inches from the floor, if installed on or after September 1, 1993.

Why are these requirements important to property managers?

A thorough knowledge of the requirements for the Property Code with respect to security devices is essential for property managers. Failure to follow these requirements can result in significant liability should a lawsuit arise. The examples come from actual cases that I have defended:

Example 1:

Resident is attacked by 2 intruders while sleeping in her bed. She was stabbed over 60 times. The intruders entered through the sliding glass door. The sliding glass door had a door latch and a charlie bar but did not have a working pin lock. The resident, who survived the attack, later sued the management company for failure to have the proper security devices required as a matter of law.

Example 2:

Resident who lived in a unit with a front door and rear door going into the garage, answered a knock at the rear door. An intruder pushed his way in and raped the resident. The resident sued the management company claiming that the rear door did not have peep-hole or other door viewer as required by the Property Code.

Negligence Per Se

Typically, when a property management is sued for injury to a resident, the issue is - was the management company negligent? In most suits, negligence is defined as "failure to do what a property management company of ordinary prudence would have done in the same or similar circumstances." In these cases, the defense lawyer will argue that the property management company's acts were reasonably prudent. Thus, it will be up to a jury to determine whether or not the property management company acted in a prudent manner.

Unlike a typical negligence case, if there is a statute that defines what is required by the property management company, and the property management company fails to follow the requirements of the statute, then the property management company is "negligent per se." What this means is that a jury will

not consider whether the management company's conduct was prudent or imprudent. Instead, the property management company will be automatically negligent and cannot mount a defense that its conduct was reasonable. In these types of cases, the defense becomes more difficult. Usually the issue comes down to whether or not the property management's failure to follow the statute actually caused injuries to the resident. In some cases the best you can do is to try to limit the money damages as low as possible.

Most property managers are unaware of the exact requirements regarding security devices, and will often comment that they simply did not know. Not knowing what the law requires is not a defense in Texas. Thus, it is imperative that property managers are aware of statutes which set forth requirements which must be followed.

The following is an overview of the most common security devices required broken down by category:

Windows:

Pursuant to Section 92.153 of the Property Code, each exterior window of the dwelling is required to have a window latch.

"Window latch" means a device on a window that prevents the window from being opened and that is operated without a key and only from the interior.

Exterior Doors:

Exterior doors must have either a door knob lock or a keyed deadbolt as well as a keyless bolting device and a door viewer on each exterior door of the dwelling. What this means is a door knob lock and a keyed dead bolt alone are not enough. Each exterior door is also required to have a keyless bolting device as well as a door viewer. The question of what is an exterior door is often raised. For example a door going between the living area and the garage but not going directly outside is still considered an exterior door. While most people believe the terms "keyed dead bolt" and "keyless bolting device" are self explanatory, the Property Code defines each of these terms in Section 92.151.

The height of security devices has been defined as well by statute. For example, keyed dead bolt or keyless bolting devices must be installed at a height not lower than 36 inches from the floor and not higher than 48 inches from the floor. In addition, a keyed dead bolt or keyless dead bolt must have a bolt with a throw of not less than one inch.

Sliding Glass Doors:

Sliding glass doors, in my experience, are often the most dangerous of all exterior accesses, and are usually the most misunderstood in terms of what is required. A sliding door requires a sliding door pin lock as well as either a handle latch or a security bar. Thus, if the sliding glass door has a handle latch and a security bar, but no pin lock, it is in violation of the statute.

"Sliding door pin lock" means a lock on a sliding glass door that consists of a pin or nail inserted from the interior side of the door at the side opposite the door's handle and is designed to prevent the door from being opened or lifted.

"Sliding door handle latch" means a latch or lock located near the handle on a sliding glass door operated with or without a key, and designed to prevent the door from being opened.

"Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and it is designed to prevent the door from being opened. Sliding door security devices are required to be installed at a height not higher than 48 inches from the floor.

Conclusion:

Chances are, most property managers do not know if the security devices in each of its unit comply with the Texas Property Code. However, because of the severe consequences of increased liability for the property management company, it is strongly recommended that the company design a plan to determine if each of its units complies with the Property Code. Some suggestions include holding training seminars for all management person-



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nel on the specific requirements of the Property Code regarding security devices. Additionally, every time a unit is vacant and is being "made ready" for a new tenant, the manager should ensure that all of the security devices are in compliance. A list in chart form of the requirements should be created, and the manager should check off each security device noting that it is in compliance. Then, when a new resident moves in, a walk through of the property should be done with the resident noting each security device and asking the resident to initial or check that they acknowledge the existence of the security device. This will also eliminate future debates about whether the resident understood how the security device operated.

If all security devices are in compliance with the Property Code at the time the resident moves in, the management company has protected itself. At this point, if one of the security devices breaks, it is incumbent on the tenant to notify the property management company that a security device needs to be replaced. If the tenant does not make such request, it is presumed that the security device is still in compliance. This underscores the importance of having the tenant acknowledge at the time they move in that the security devices exist and that they know how to use them.

Finally, it would also be prudent to create a check-list to be used by maintenance personnel any time they enter a resident's unit. For example if the resident has a broken oven, and the maintenance worker goes in to repair the oven, it would be extremely beneficial for him to take a quick glance at each of the security devices and make sure they are still operable (then note the compliance of each on the check-list to be made a part of the resident's file. This eliminates claims by the residents in a future lawsuit that "that peep-hole never worked." It becomes increasingly easier to defend the property management company if there are multiple check-lists showing that the security devices did exist and were operable over the course of the tenant's occupancy.

While it is impossible to prevent all lawsuits property management companies can limit their exposure and liability by familiarizing themselves with the laws that apply to them. It is better to know in advance what the requirements are, and make the best effort to comply as opposed to finding out after a lawsuit has been brought that there are state statutes which apply that have not been followed. ▲

1 For those devices installed before September 1, 1993, if there is a peep-hole installed before September 1, 1993 they must not be any higher than 54 inches from the floor.

2 Again, the height requirements for sliding doors are 36 inches to 48 inches if there is a peep-hole installed before September 1, 1993. If there is a peep-hole installed before September 1, 1993 it is required to be at least 36 inches high and 48 inches from the floor.

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