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ARTICLES

COMMENTS & INFOGRAPHICS

THE TEXAS SUPREME COURT'S REJECTION OF A *STONEWATERED-DOWN* VERSION OF THE INSURANCE CODE PROTECTS PROPERTY INSUREDS

*Shannon W. Conway**

Since 2003, the Texas Insurance Code has included Chapter 4102, titled *Public Insurance Adjusters*, a comprehensive licensing statute regulating public insurance adjusters.[1] Chapter 4102 was enacted to require such licensing to protect the public from unlicensed individuals and companies performing public adjusting services without being properly licensed as a public insurance adjuster.[2]

In June 2020, Stonewater Roofing, Ltd. Co. sued the Texas Department of Insurance (TDI) to declare these licensing requirements invalid so as "to protect and preserve its rights to free speech and due process" and allow Stonewater to continue to advertise and engage in unlicensed public insurance adjusting services on behalf of its roofing business customers.[3] Stonewater's claims were dismissed by the Travis County District Court;[4] the Amarillo Court of Appeals reversed the dismissal;[5] and in June 2024, the Texas Supreme Court reversed again, agreeing with the trial court that Stonewater's petition did not "state cognizable speech and due process claims under the First and Fourteenth Amendments."[6]

This article briefly discusses the problem that sections 4102.163(a) and 4102.051(a) of the Texas Insurance Code are intended to solve, the constitutional pleas made by Stonewater and rejected by the Texas

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[1] TEX. INS. CODE ANN. § 4102.

[2] Lon Smith & Assocs. v. Key, 527 S.W.3d 604, 618 (Tex. App.—Fort Worth 2017, pet. denied).

[3] Plaintiff's Original Petition, Tex. Dep't of Ins. v. Stonewater Roofing, Ltd., 696 S.W.3d 646 (Tex. 2024) (No. D-1-GN-20-003172), 2020 WL 13490214.

[4] Stonewater Roofing, Ltd. v. Tex. Dep't of Ins., No. D-1-GN-20-003172 (201st Dist. Ct., Travis County, Tex. Dec. 20, 2020).

[5] Stonewater Roofing, Ltd. v. Tex. Dep't of Ins., 641 S.W.3d 794 (Tex. App.—Amarillo 2022), *rev'd*, 696 S.W.3d 646 (Tex. 2024), *and reh'g denied*, 2024 Tex. LEXIS 440 (Sep. 27, 2024).

[6] *Stonewater Roofing*, 696 S.W.3d at 653.

Supreme Court, and the reasons why such statutory provisions are necessary for the protection of Texas insureds.

A. The Problem Solved by Chapter 4102 of the Texas Insurance Code

Most Texas homeowners and commercial property owners are insured under various forms of Homeowners Insurance policies, Property Insurance policies, or other forms of insurance intended to protect the insureds' property. Such insurance is generally required of property owners whose homes or commercial buildings are encumbered by a mortgage held by a lending institution.[7] When a weather event or other damage-causing event affects insured property, these property insurance policies kick in to help absorb the costs of, for example, replacing a damaged roof. Weather-related disasters breed potential for insurance and repair scams, often with the property owners as the sole victims.

Imagine, for example, a homeowner who experiences roof damage from a hailstorm. Within a day or two, a roofing contractor approaches the homeowner and promises to "handle the claims process" with the homeowner's insurance company and make the necessary repairs to the homeowner's roof or replace it altogether. The homeowner—stressed by the prospect of a damaged roof and associated additional problems—readily agrees and contracts with the roofer to handle the claim by communicating and negotiating with the insurance company on the insured homeowner's behalf.

This situation is rife with risk. When an insured homeowner lets a contractor handle his claim, the insurance company pays the contractor directly for the repairs rather than the homeowner. Thus, if the contractor performs inadequate repairs, fails to replace the roof with a roof of similar quality, or inflates the costs of repairs, the insured homeowner is left without recourse because the insurance company has already paid the contractor the amount negotiated. Even

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[7] *See, e.g., What is homeowner's insurance? Why is homeowner's insurance required?*, CONSUMER FIN. PROT. BUREAU (Aug. 8, 2024), https://www.consumerfinance.gov/ask-cfpb/what-is-homeowners-insurance-why-is-homeowners-insurance-required-en-162/ ("Homeowner's insurance pays for losses and damage to your property if something unexpected happens … lenders generally require proof that you have homeowner's insurance."); *see also* James E. Branigan & Joshua Stein, *Benchmark Insurance Requirements for Commercial Real Estate Loans, And Why They Say What They Say*, 19 THE REAL ESTATE FINANCE JOURNAL 10, 10 (2004) https://www.joshuastein.com/PDF/Benchmark_Insurance_Requirements_1414.pdf.

good-intentioned contractors may not have the requisite expertise to interpret insurance policy provisions and may negotiate a bad claim settlement on behalf of the insured homeowner. Often, this process leaves insured homeowners uninformed, uncompensated, and unhappy if the insurance company has paid the contractor the negotiated settlement, then the insured homeowner is not only stuck with that negotiated settlement but rendered nearly helpless if the roof repair or replacement is not completed properly.[8]

In 2003, the Texas legislature set out to remove the above-described situation from legal possibility by adopting laws to "close a gap in the regulatory scheme and address concerns that unscrupulous contractors were preying on unwary Texans in the aftermath of catastrophic weather events."[9] The Public Adjusters Act, codified as Chapter 4102 of the Texas Insurance Code, defines a "Public insurance adjuster" as:

> (A) a person who, for direct, indirect, or any other compensation:
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> > (i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or
> >
> > (ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or
>
> (B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of

[8] The problem of unlicensed individuals or companies performing public insurance adjusting services "has become pervasive throughout the United States, particularly in times immediately following a catastrophe" and is "known as the Unauthorized Practice of Public Adjusting (UPAA)." Brian S. Goodman & Justin A. Redd, *The unauthorized practice of public adjusting*, ALM PROPERTY CASUALTY 360 (Jan. 16, 2020. 12:00 AM), https://www.propertycasualty360.com/2020/01/16/the-unauthorized-practice-of-public-insurance-adjusting/?slreturn=20241102838 27.

[9] *Stonewater Roofing*, 696 S.W.3d at 653 (citing Act of June 1, 2004, Tex. S.B. 78th Leg., R.S., ch. 207, § 3.02, 2003 Tex. Gen. Laws 962, 964-76 (regulating "public insurance adjusters" effective June 11, 2003)); S. Comm. on Bus. & Com., Bill Analysis, Tex. S.B. 127, 78th Leg., R.S. (2003); H. Rsch. Org., Bill Analysis, Tex. S.B. 127, 78th Leg., R.S. (2003).

> claims for loss or damage under any policy of insurance covering real or personal property.[10]

The Public Adjusters Act, at sections 4102.051(a) and 4102.163, also provides:

> 4102.051. LICENSE REQUIRED . . . (a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license issued by the commissioner . . .[11]
>
> 4102.163. CERTAIN CONTRACTOR BUSINESS PROHIBITED. (a) A contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide contracting services, regardless of whether the contractor:
>
> > (1) holds a license under this chapter; or
> > (2) is authorized to act on behalf of the insured under a power of attorney or other agreement.[12]

The Public Adjusters Act allows for administrative penalties, criminal penalties, and gives an insured the option to void their contract for the unauthorized provision of unlicensed public adjuster services.[13] Texas is not the only state to enact prohibitions against persons assuming the role of a public insurance adjuster without the requisite license. At last count, forty-five of the fifty United States have similar provisions.[14]

After the Public Adjusters Act's enactment, many contractors were undeterred by—or perhaps unaware of—the illegality of their business practices. Areas hit by particularly intense rainstorms, windstorms, and/or hail were still sprinkled with roofing contractors'

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[10] TEX. INS. CODE ANN. § 4102.001(3).

[11] To secure a license as a public insurance adjuster one must, among other requirements, have sufficient experience or training in the assessment of property values and losses; be sufficiently informed about the terms and effects of typical insurance contracts; and successfully pass an examination of the applicant's technical competence, basic knowledge of relevant topics, and understanding of governing law and ethical standards. TEX. INS. CODE ANN. §§ 4102.053, 412.057.

[12] Section 4102.163 was not added to the Public Adjusters Act until 2013.

[13] TEX. INS. CODE §§ 4102.204, 4102.206, 4102.207.

[14] *See Stonewater Roofing*, 696 S.W.3d at 652 n.17 (listing citations to 45 state statutes with similar language to §§ 4102.051(a) and .163).

advertisements touting themselves as "insurance specialists", or "leader[s] in insurance claim approval." Contractors still required their customers to execute contracts authorizing the contractors to negotiate on behalf of the customers with their insurance companies and to accept payment for the work directly from the insurance companies.[15]

However, insured homeowners, commercial property owners, and their counsel began fighting back. In one case of note—a class action by homeowners against a large roofing contractor, Lon Smith Roofing and Construction—the class was certified by the Fort Worth District Court, which was affirmed by the Fort Worth Court of Appeals.[16] In *Lon Smith*, the class plaintiffs sought a declaratory judgment[17] to declare their agreements with Lon Smith "illegal, void, and unenforceable" and a judgment "restoring all monies paid to [Lon Smith] under the illegal contract[s]."[18] The class also sought damages based on, among other things, violations of the Deceptive Trade Practices Act, the Texas Debt Collection Practices Act, and fraud.[19]

After another case involving "a dissatisfied commercial customer" was instituted against Stonewater Roofing for alleged violations of Chapter 4102,"[20] Stonewater Roofing launched an unsuccessful workaround to the provisions and their enforcement. In a collateral lawsuit, Stonewater sought, to have sections 4102.051(a) and 4102.163

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[15] *See id.* at 653 ("The roofer also touts itself as 'highly experienced with the insurance claims process,' having 'done thousands of roof restorations due to insurance claims over the years'" and "the company's customer contracts specifically 'authorize' Stonewater 'to negotiate on [the customer's] behalf with [the] insurance company and upon insurance approval to do the work specified.'"); Lon Smith & Assocs., Inc. v. Key, 527 S.W.3d 604, 615 (Tex. App.—Fort Worth 2017) (quoting language from a roofer's agreement with its customer: "This Agreement is for FULL SCOPE OF INSURANCE ESTIMATE AND UPGRADES and is subject to insurance company approval. By signing this agreement homeowner authorizes Lon Smith Roofing and Construction ('LSRC') to pursue homeowner[s'] best interest for all repairs, at a price agreeable to the insurance company and LSRC. The final price agreed to between the insurance company and LSRC shall be the final contract price.").

[16] *Lon Smith & Assocs.*, 527 S.W.3d at 640.

[17] A declaratory judgment is court ruling that defines the legal relationship between parties and clarifies their rights. It resolves uncertainty about legal obligation or rights between parties by providing an enforceable decision. *declaratory judgment*, CORNELL LEGAL INFO. INST. https://www.law.cornell.edu/wex/declaratory_judgment#:~:text=A%20declaratory%20judgment%20is%20a,means%20to%20resolve%20this%20uncertainty (Sept. 2022).

[18] *Lon Smith & Assocs.*, 527 S.W.3d at 611.

[19] *Id.*

[20] *Stonewater Roofing*, 696 S.W.3d at 652.

of the Public Adjusters Act declared unconstitutional as an invasion of Stonewater's First Amendment right to free speech.

B. No Constitutional Impediments to Enforcing the Public Adjusters Act Provisions

Stonewater Roofing initiated its lawsuit against the Texas Department of Insurance (TDI) under the First and Fourteenth Amendments to the United States Constitution and Article I of the Texas Constitution.[21] Characterizing its communications with its customers as truthful commercial speech, Stonewater complained that sections 4102.051(a) and 4102.163 "both facially and as applied to [Stonewater's] alleged conduct, infringe speech protected by the First Amendment and are void for vagueness under the Fourteenth Amendment's due process clause."[22]

TDI moved to dismiss Stoneware's claims, arguing that the laws regulate professional conduct, which is not protected by the First Amendment, and clearly prohibit Stonewater's alleged actions.[23] The TDI contended this invalidated Stoneware's vagueness challenges under the Fourteenth Amendment. The district court agreed with TDI and dismissed the suit.[24] The Amarillo Court of Appeals reversed, finding that the First Amendment could apply because "the business of public insurance adjusting necessarily and inextricably involves speech."[25] The Court of Appeals further concluded that the provisions were subject to strict scrutiny as both content- and speaker-based speech restrictions and that, in the alternative, they required intermediate scrutiny "even if these prohibitions restrict speech only incidentally in the regulation of non-expressive professional conduct."[26]

The Texas Supreme Court agreed with the district court, holding that sections 4102.051(a) and 4102.163:

> are conventional licensing regulations that are triggered by the role a person plays in a nonexpressive commercial transaction, not what any person may or may not say. The statutes are also clear enough in

[21] *Id.* at 649.
[22] *Id.*
[23] *Stonewater Roofing*, 696 S.W.3d at 652.
[24] *Id.*
[25] *Stonewater Roofing*, 641 S.W.3d at 803.
[26] *Id.* at 805.

> proscribing the roofer's alleged conduct to preclude both its as-applied and facial vagueness challenges.

With respect to the First Amendment, whether it applied at all depended on "whether the challenged statutes are directed at protected speech (as Stonewater contend[ed]) or not (as TDI maintain[ed])."[27] Section 4102.051(a)'s licensing requirement does not regulate protected expression because it only prescribes what a person *must do* to serve the role of a public adjuster—get a license, which only "pertains to status or capacity, neither of which is speech."[28] That this statutory provision also prohibits holding oneself out as a public insurance adjuster if unlicensed did not matter because, according to the *Stonewater* court, "there is no question that if the State may permissibly require a license to engage in the profession, it may permissibly prohibit false commercial speech about the same."[29]

And the same holds true for the dual-capacity prohibition in section 4102.163. Prohibiting a contractor from acting "as a public adjuster or advertising to adjust claims for any property for which the contractor is providing or may provide contracting services" does not constrain speech. Rather, it "dictates what a contractor *may not do*: undertake a business engagement giving rise to a conflict of interest."[30]

The Court was similarly dismissive of Stonewater's as-applied and vagueness claims, refusing to "consider whether the statutes might be vague as applied to hypothetical situations not before us."[31] The Court focused primarily on what the statute *does not* prohibit Stonewater from doing, citing the TDI's formal guidance that allows contractors to freely "discuss" and "answer questions about" issues such as the "amount of damage to the consumer's home," appropriate repair or replacement costs, and scope of work and repair estimates.[32]

C. The Necessary Protections Afforded by the Public Adjusters Act to Texas Insureds

The circumstances described in the hypothetical at the beginning of this article are not all that hypothetical. Rather, they describe the

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[27] *Stonewater Roofing*, 696 S.W.3d at 655.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 663.
[32] *Id.* at 664–65 (quoting Tex. Dep't of Ins., *Frequently Asked Questions: Unlicensed Individuals and Entities Adjusting Claims* (2014), https://www.tdi.texas.gov/bulletins/2014/documents/unlicensedfaq.pdf)

unfortunate situations in which far too many insured homeowners and commercial property owners have unwittingly found themselves: in a state of emergency or duress, blindly authorizing a contractor to negotiate on the insured's behalf with an insurer, arranging for payment to be made by the insurer directly to the contractor, and risking that the work is never completed or is defective.

Indeed, in 2012, the TDI issued a bulletin prior to the 2013 effective date of the dual-capacity prohibition of section 4102.163.[33] In it, the TDI warned all insurance agents, public insurance adjusters, and insurance companies that contractors, roofing companies, and others not licensed by TDI "have been advertising or performing acts that would require them to hold a public insurance adjuster license" and "that the tactics used by these unlicensed individuals include visiting neighborhoods and areas of the state where languages other than English are commonly spoken. These unlicensed individuals often prey on unknowing consumers by promising to 'work' insurance claims to achieve a higher settlement."[34] The notice cautioned the agents, licensed adjusters, and insurance companies that working with such unlicensed individuals or entities also subjects them to penalties under the Public Adjuster Act. The *Lon Smith* class action evidences that the unlicensed public adjuster actions of *just one* roofing contractor affects "approximately 3,000 persons."[35]

While the Public Adjusters Act's existence alone may not dissuade contractors unaware of its provisions and prohibitions from continuing to provide unauthorized and illegal public adjuster services to their customers, it certainly serves as an incentive for the insurance companies, insurance agents, licensed public adjusters, and others to refrain from working with those unlicensed individuals and entities. Moreover, with the Texas Supreme Court now confirming the constitutionality of the prohibitions contained in the Public Adjusters Act, the certification of a class action against a roofer for such prohibited conduct, and the ability for insured homeowners and commercial property owners to void their illegal contracts with contractors engaging g in such conduct, the protections provided to insureds against opportunistic contractors are more robust than ever.

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[33] TEX. DEP'T OF INS., *Commissioner's Bulletin #B-0017-12* (June 26, 2012), https://www.tdi.texas.gov/bulletins/2012/cc16.html

[34] *Id.*

[35] Lon Smith & Assocs., Inc. v. Key, 527 S.W.3d 604, 625 (Tex. App.—Fort Worth 2017).

The following is a supplementary infographic for *The Texas Supreme Court's Rejection of a Stonewatered-Down Version of the Insurance Code Protects Property Insureds* created to promote legal comprehension.

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The Procedural History of Stonewater Roofing

2005

The Texas Insurance Code

Section 4102 of the Texas Insurance Code was enacted to protect property insureds by requiring insurance adjusters to meet certain minimum requirements to be licensed.[1] These requirements ensure that individuals involved in the claims process are properly vetted, trained, and regulated, maintaining the integrity of the insurance system and protecting consumers from fraud.[2]

2020

Stonewater Roofing, Ltd. Co. v. Tex. Dept. of Ins.

- In 2020, Stonewater Roofing sued the Texas Department of Insurance (TDI).[3]
- TDI, pursuant to section 4102 of the Texas Insurance Code, issued penalties to Stonewater, alleging they were in violation of the insurance code.[4]
- In Stonewater's original petition to the court, they claimed section 4102 should be held void under the First and Fourteenth Amendment because it was too vague in its description of what was to be considered a public insurance adjuster and that it limited free speech under the First Amendment.[5]
- TDI successfully asked the court to dismiss Stonewater's claim.[6]

2022

Appeal and Reversal in the Court of Appeals

- In 2022, the Amarillo Court of Appeals reviewed and reversed the dismissal of the trial court.[7]
- In the opinion, the court agreed with Stonewater that both its First and Fourteenth Amendment claims were sufficient to survive a motion to dismiss.[8]
- This court deemed that section 4102 violated Stonewater's right to free speech and that the language in the code was too vague to give people or companies fair notice over what was punishable.[9]

2024

Texas Supreme Court overrules Court of Appeals

- In the end, the Supreme Court of Texas agreed with the trial court's opinion and overruled the decision of the Court of Appeals.[10]
- Both claims made by Stonewater were not strong enough to survive a motion to dismiss because they did not "state cognizable speech and due process claims under the First and Fourteenth Amendments."[11]
- The First Amendment claim was found invalid because the Insurance Code did not regulate speech, but rather what a public insurance adjuster must do.[12]
- The Fourteenth Amendment claim for vagueness was also found invalid by the court because the situations put forth by Stonewater were hypothetical.[13]

FUTURE

Outcome

The Supreme Court's decision allows for section 4102 to continue protecting property insureds from a plethora of issues that can arise when working with a public insurance adjuster who is not licensed.

Source • *The Texas Supreme Court's Rejection of a Stonewatered-Down Version of the Insurance Code Protects Property Insureds* by Shannon W. Conway. Infographic created by Nicole Hinson, Staff Reporter (2023-2024).

References

1 *Lon Smith & Assocs. v. Key*, 527 S.W.3d 604, 618 (Tex. App.—Fort Worth 2017, pet. denied).
2 *Id.*
3 Plaintiff's Original Petition at ¶ 1, Tex. Dep't of Ins. v. Stonewater Roofing, Ltd., 696 S.W.3d 646 (Tex. 2024) (No. D-1-GN-20-003172), 2020 WL 13490214.
4 *Id.* at ¶ 8.
5 *Id.* at ¶ 21.
6 Stonewater Roofing, Ltd. v. Tex. Dep't of Ins., No. D-1-GN-20-003172 (201st Dist. Ct., Travis County, Tex. Dec. 20, 2020).
7 Stonewater Roofing, Ltd. v. Tex. Dep't of Ins., 641 S.W.3d 794, 797 (Tex. App.—Amarillo 2022), *rev'd, dis'd*, 696 S.W.3d 646 (Tex. 2024).
8 *Id.* at 805.
9 *Id.*
10 Tex. Dep't of Ins. v. Stonewater Roofing Co., 696 S.W.3d 646, 653 (Tex. 2024).
11 *Id.*
12 *Id.* at 655.
13 *Id.* at 663.

LAW REVIEW
UNT DALLAS COLLEGE of LAW
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FROM NOTICE TO AUCTION: DEMYSTIFYING THE TEXAS FORECLOSURE FAST TRACK

*Julie Pettit**

Foreclosure is a term that can strike fear into the hearts of homeowners, but understanding this process is crucial for anyone involved in the Texas real estate market. In essence, foreclosure is a legal procedure that allows a lender to recover the amount owed on a defaulted loan by taking ownership of and selling the mortgaged property.[1] In the Lone Star State, where homeownership is a cornerstone of the American Dream for many, grasping the nuances of foreclosure is more than just a legal necessity—it is a practical safeguard for your financial future.

The concept of foreclosure might seem daunting, but knowledge truly is power in this situation. Texas, home to over 30 million people,[2] has a unique foreclosure process shaped by state laws and regulations.[3] A notable aspect of foreclosure in Texas is the relatively fast timeline, which can be a benefit or a challenge. For homeowners, this underscores the critical importance of acting quickly when facing financial hardship. For potential buyers, this may present opportunities in the real estate market that are not available in other states.

The Foreclosure Process in Texas

When it comes to foreclosure, Texas allows for both judicial and non-judicial processes,[4] with non-judicial foreclosures being far more

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[1] Foreclosure is defined as "a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property." *Foreclosure*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[2] Kristie Wilder, *Texas Joins California as State with 30-Million-Plus Population*, CENSUS (Mar. 30, 2023), https://www.census.gov/library/stories/2023/03/texas-population-passes-the-30-million-mark-in-2022.html#:~:text=Texas's%20population%20in%202022%20was,growing%2C%20largest%2Dgaining%20states.

[3] TEX. PROP. CODE ANN. § 51.002 (governing sales of real property under contracts for deed).

[4] *See* Bonilla v. Roberson, 918 S.W.2d 17, 21 (Tex. App.—Corpus Christi 1996, no writ) (explaining that Texas law allows for both judicial and non-judicial foreclosures).

common due to their speed and lower cost.[5] In a non-judicial foreclosure, lenders can foreclose on a property without going through the court system, provided that the mortgage or deed of trust includes a power of sale clause.[6] This is the most frequently used method in Texas.[7] Judicial foreclosures, which involve the lender filing a lawsuit to obtain a court order to foreclose, are less common and typically used only when the mortgage or deed of trust does not contain a power of sale clause.[8]

The foreclosure process in Texas typically begins when a borrower defaults on their mortgage payments. While missing just one payment can technically trigger a default, most lenders wait until multiple payments are missed before initiating foreclosure proceedings. Once a default occurs, Texas law requires the lender to send a notice of default to the borrower.[9] This notice must be sent by certified mail, give the borrower at least twenty days to cure the default, and inform them that failure to cure will result in acceleration of the loan and potential foreclosure.[10]

During this twenty-day period, known as the *right to cure*, the borrower has the opportunity to resolve the default by paying all past-due amounts plus any allowed fees.[11] This is a critical window for homeowners facing financial difficulties, as it provides a last chance to avoid foreclosure proceedings.

If the borrower does not cure the default within the given timeframe, the lender can proceed with foreclosure.[12] The next step involves sending a notice of sale to the borrower by certified mail, filing it with the county clerk, and posting it at the county courthouse.[13] This must be done at least twenty-one days before the foreclosure sale.[14] The notice of sale must include specific information, such as the date, time,

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[5] *The Foreclosure Process*, TEXAS STATE LAW LIBRARY, https://guides.sll.texas.gov/foreclosure/the-foreclosure-process (Dec. 13, 2024, 2:51 P.M.).

[6] A power of sale clause is "a provision in a mortgage or deed of trust that gives the mortgagee or trustee the right and power to sell the property without court proceedings if the mortgagor defaults." *Power of Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[7] *The Foreclosure Process*, *supra* note 5.

[8] *See* TEX. PROP. CODE ANN. §§ 51.004, 51.002(a).

[9] TEX. PROP. CODE ANN. § 51.002(d).

[10] *Id.*

[11] *Id.* § 5.065.

[12] *Id.* § 51.002(d).

[13] *Id.* § 51.002(b).

[14] *Id.*

and location of the sale, a statement that the property will be sold to the highest bidder for cash, and a description of the property to be sold.[15]

In Texas, foreclosure sales are held on the first Tuesday of each month between 10 a.m. and 4 p.m. at the county courthouse.[16] The entire non-judicial foreclosure process can be completed in as little as forty-one days from the date of the first notice, making Texas one of the fastest foreclosure states in the nation.[17] At the sale, the property is auctioned to the highest bidder, with the lender usually making an initial bid often based on the amount owed on the mortgage plus foreclosure costs.

After the foreclosure sale, there are a few important points to note. Unlike some states, Texas does not provide a *right of redemption* after a non-judicial foreclosure sale.[18] This means that once the sale is complete, the former homeowner has no further right to reclaim the property. Additionally, if the foreclosure sale does not cover the full amount owed, the lender can seek a deficiency judgment[19] against the borrower for the difference.

Warning Signs of Potential Foreclosure

For homeowners in Texas, recognizing the early warning signs of potential foreclosure is crucial. Being able to identify these indicators can provide valuable time to take corrective action and potentially avoid the foreclosure process altogether. While missing a mortgage payment is an obvious red flag, there are several other, less apparent signs that you may be heading toward financial trouble.

One of the most common warning signs is consistently making late payments on your mortgage. Even if you eventually pay the full amount, a pattern of late payments can signal to your lender that you are struggling financially. In Texas, where the foreclosure process can

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[15] *Id.* § 51.002(b)(1)–(3).
[16] *Id.* § 51.002(a).
[17] *2012 State of Texas Low Income Housing Plan & Annual Report*, Tex. Dep't of Hous. & Cmty. Affs. 1, 311 (2012) https://www.tdhca.texas.gov/sites/default/files/housing-center/docs/12-SLIHP.pdf.
[18] *After The Sale*, TEXAS STATE LAW LIBRARY, https://guides.sll.texas.gov/foreclosure/after-the-sale#:~:text=The%20%22right%20of%20redemption%22%20refers,property%20owners%20association%20assessment%20liens (Dec. 13, 2024, 2:51 P.M.).
[19] A deficiency judgment is a judgment for "[t]he amount still owed when the property secured by a mortgage is sold at a foreclosure sale for less than the outstanding debt." *Deficiency*, BLACK'S LAW DICTIONARY (12th ed. 2024).

move quickly, falling behind on payments can rapidly escalate into a more serious situation.

Receiving notices from your lender is another clear warning sign. In Texas, lenders are required to send specific notices before initiating foreclosure proceedings.[20] If you receive a notice of default or a notice of intent to accelerate your loan, it is a serious indication that foreclosure may be imminent. These notices typically give you a specific timeframe (usually twenty days in Texas) to cure the default by paying the overdue amount.[21]

You should also stay alert to communication from your lender. If you are receiving more frequent calls or letters from your mortgage company, especially regarding missed or late payments, this could be a sign that they are concerned about your ability to meet your mortgage obligations.

It is also worth noting that sometimes, homeowners may try to ignore these warning signs out of fear or anxiety. You might find yourself avoiding opening mail from your lender or screening their calls. While this behavior is understandable, it is important to face the situation head-on as avoiding communication with your lender can limit your options for resolving the situation.

Remember, the earlier you recognize and address these warning signs, the more options you will have available to avoid foreclosure. In Texas, where homeownership is highly valued, there are resources and professionals available to help you navigate financial difficulties and work toward keeping your home.

Options for Struggling Texas Homeowners

When Texas homeowners find themselves struggling to meet their mortgage obligations, it is crucial to understand that foreclosure is not the only option. There are several alternatives available that can help you retain your home or at least mitigate the financial impact of losing it.

Loan modification is often the first avenue that struggling homeowners should consider. This process involves working with your lender to change the terms of your mortgage to make it more manageable. In a loan modification, your lender might agree to lower

[20] TEX. PROP. CODE ANN. § 51.002(b), (d).
[21] *Id.* § 51.002(d) (requiring at least 20 days of notice to cure default).

your interest rate, extend the loan term, or even forgive a portion of the principal.[22] In Texas, where home values have been generally increasing, lenders may be more willing to modify loans rather than foreclose, especially if you can demonstrate that the modification will allow you to stay current on your payments moving forward.

Another option is refinancing your mortgage. This involves taking out a new loan with better terms to pay off your existing mortgage.[23] Refinancing can be particularly beneficial if interest rates have dropped since you originally took out your mortgage, or if your credit score has improved. However, it is important to note that refinancing typically requires good credit and some equity in your home, which might be challenging if you are already struggling financially.

For homeowners facing a temporary financial setback, forbearance could be a viable option. In a forbearance agreement, your lender agrees to reduce or suspend your mortgage payments for a specified period.[24] This can provide you with some breathing room to get back on your feet financially. However, it is crucial to understand that forbearance does not erase what you owe. You will need to repay the missed amounts, often through a repayment plan, once the forbearance period ends.

If retaining your home is not feasible, a short sale might be an alternative to foreclosure. In a short sale, your lender agrees to let you sell your home for less than what you owe on the mortgage.[25] While this still results in the loss of your home, it generally has less of a negative impact on your credit score than a foreclosure. Additionally, in Texas, if your lender agrees to a short sale, they may waive their right to pursue a deficiency judgment against you for the remaining balance.[26]

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[22] *Loan Modification Meaning*, POWER FINANCE TEXAS, https://powerfinancetexas.com/glossary/loan-modification-meaning/ (last visited Dec. 18, 2024).

[23] 2 MICHAEL T. MADISON ET AL., THE LAW OF REAL ESTATE FINANCING § 8:3 (2024).

[24] *Forbearance Agreement*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[25] A short sale is "a sale for a price that is lower than the outstanding balance on the mortgage, occurring usually when the property owner faces a financial crisis." *Short Sale*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[26] *Short Sales and Deeds in Lieu of Foreclosure Under the Law*, JUSTIA, https://www.justia.com/foreclosure/alternatives-to-foreclosure/short-sales-and-deeds-in-lieu-of-foreclosure/ (Oct. 2024).

Another option that involves voluntarily giving up your home is a deed in lieu of foreclosure.[27] In this scenario, you transfer the deed of your house to the lender in exchange for being released from your mortgage obligations.[28] Like a short sale, this option can be less damaging to your credit than a foreclosure. However, it is important to get a written agreement from your lender that they will not pursue a deficiency judgment against you.

For some homeowners, bankruptcy might be a consideration, particularly Chapter 13 bankruptcy. Unlike Chapter 7 bankruptcy, which typically does not help you keep your home,[29] Chapter 13 involves a repayment plan that can allow you to catch up on missed mortgage payments over time.[30] Notably, Texas has some of the most generous homestead exemption laws in the country, which can provide significant protection for your home equity in bankruptcy proceedings.[31]

It is crucial to remember that each of these options has its own set of pros and cons, and the best choice depends on your specific financial situation, the amount of equity you have in your home, and your long-term financial goals. Additionally, some of these options, particularly loan modifications and short sales, can be complex and time-consuming processes that require careful navigation.

Consumer Rights in Texas Foreclosures

Understanding your rights as a homeowner is crucial when facing the possibility of foreclosure. While the Lone Star State is known for its relatively fast foreclosure process, there are still important protections in place for consumers. These rights are primarily governed by the Texas Property Code and various federal laws.

One of the most fundamental rights for Texas homeowners is the right to receive proper notice before foreclosure proceedings begin. Under Texas law, your lender must provide you with two essential notices. First, you must receive a notice of default, which gives you at least

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[27] TEX. PROP. CODE ANN. § 51.006 (addressing deed in lieu of foreclosure).
[28] *Deed in Lieu of Foreclosure*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[29] Legal Aid of Northwest Texas, *What is Chapter 7 Bankruptcy?*, TEXAS LAW HELP, https://texaslawhelp.org/article/what-is-chapter-7-bankruptcy (Jan. 15, 2023).
[30] Legal Aid of Northwest Texas, *What is Chapter 13 Bankruptcy?*, TEXAS LAW HELP, https://texaslawhelp.org/article/what-is-chapter-13-bankruptcy (Jan. 14, 2023).
[31] TEX. CONST. art. XVI, § 50(a); Tex. Prop. Code Ann. § 41.001 (establishing Texas homestead protections).

twenty days to cure the default by paying the past-due amount.[32] If you are unable to cure the default, the lender must then provide a notice of sale at least twenty-one days before the foreclosure sale.[33] This notice must be sent by certified mail, posted at the courthouse, and filed with the county clerk.[34] These notice requirements give homeowners time to explore alternatives or prepare for the potential loss of their home.

Texas law also provides homeowners with the right to reinstate their mortgage. This means that, at any time before your loan has been accelerated, you have the right to bring your loan current by paying all past-due amounts, plus any allowable fees and costs incurred by the lender.[35]

Protections also extend to the foreclosure sale itself. Foreclosure sales in Texas must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month, at the location designated by the county commissioner court.[36] This standardization helps ensure that interested buyers can attend, potentially resulting in a higher sale price.

It is important to note that Texas is primarily a non-judicial foreclosure state, meaning most foreclosures occur without court supervision.[37] However, you always have the right to challenge an improper foreclosure in court. If you believe your lender has not followed proper procedures or violated your rights, you can file a lawsuit to attempt to stop or invalidate the foreclosure.

It is crucial to remember that while these rights provide important protections, they also come with responsibilities. As a homeowner, you have the responsibility to stay informed about your mortgage, respond to communications from your lender, and take action if you are struggling to make payments.

Lastly, Texas law recognizes the importance of homeownership through its homestead protections. While these protections do not prevent foreclosure on a mortgaged home, they do protect a portion

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[32] TEX. PROP. CODE ANN. § 51.002(d).
[33] *Id.* § 51.002(b).
[34] *Id.*
[35] *Id.* § 51.002(d).
[36] *Id.* § 51.002(a).
[37] *The Foreclosure Process*, TEXAS STATE LAW LIBRARY, https://guides.sll.texas.gov/foreclosure/the-foreclosure-process (Dec. 13, 2024, 2:51 P.M.).

of your home's value from other creditors, which can be crucial if you are facing financial difficulties.[38]

Understanding these rights can empower you to navigate the foreclosure process more effectively. However, foreclosure laws can be complex, and the specific application of these rights can vary depending on your individual circumstances. If you are facing foreclosure, it is advisable to consult with a qualified attorney who specializes in Texas foreclosure law. They can provide personalized advice and help ensure that your rights are fully protected throughout the process.

Conclusion

Navigating the foreclosure process in Texas can be a challenging and emotionally taxing experience, but armed with the right knowledge and resources, homeowners can face this challenge head-on.

For homeowners facing financial difficulties, it is essential to remember that foreclosure is not the only option. The key to successfully navigating potential foreclosure is to act early. If you are struggling to make your mortgage payments or seeing warning signs of financial distress, do not wait to act. Reach out to your lender as soon as possible to discuss your options. Many lenders have programs in place to help homeowners avoid foreclosure and are often more willing to work with you if you are proactive about addressing the issue. Additionally, do not hesitate to seek professional help. An attorney specializing in Texas foreclosure law can help ensure your rights are protected throughout the process and a financial advisor can assist in developing a plan to address your overall financial situation.

While facing foreclosure can be daunting, it is important to remember that you are not alone. Texas has a robust network of resources available to homeowners in distress. By understanding the foreclosure process, knowing your rights, and exploring all available options, you can work toward the best possible outcome for your situation.

[38] TEX. CONST. art. XVI, § 50(a); TEX. PROP. CODE ANN. § 41.001.

The following is a supplementary infographic for *From Notice to Auction: Demystifying the Texas Foreclosure Fast Track* created to promote legal comprehension.

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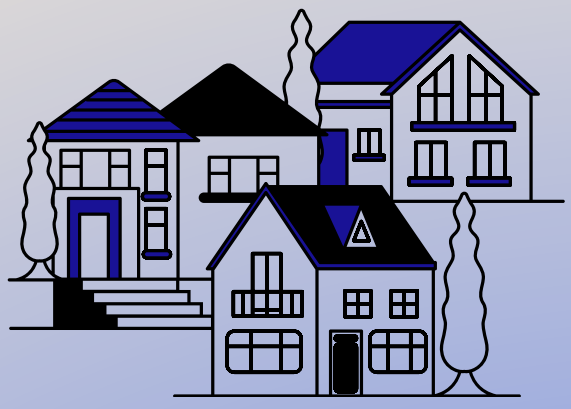

DEMYSTIFYING TEXAS FORECLOSURE

What is the foreclosure process in Texas?

- When you miss multiple mortgage payments, the lender may initiate foreclosure proceedings by sending a Notice of Default.[1]
- You then have 20 days to pay all past due amounts and any fees.[2]
- Otherwise, the lender can proceed with foreclosure and send you a Notice of Sale.[3] This allows the lender to recover the amount that you owe by taking ownership of and selling your mortgaged property.[4]

Judicial Foreclosure
The lender files a lawsuit to obtain a court order to foreclose.[5]

Non-Judicial Foreclosure
The lender can foreclose on your home without going through the court system. This is faster and more common than judicial foreclosures.[6]

What rights do you have as a homeowner?

- Right to receive proper notice[7]
- Right to challenge improper foreclosure procedures[8]
- Right to reinstate mortgage[9]

Instead of foreclosure, what options do you have when struggling to meet mortgage obligations?

1. LOAN MODIFICATION: The lender may agree to lower your interest rate, extend your loan term, or even forgive a portion of the principal.[10]

2. REFINANCING YOUR MORTGAGE: This allows you to take a new loan with better terms to pay your existing mortgage, although refinancing requires good credit.[11]

3. SHORT SALE: The lender agrees to sell your house for less than what you owe on the mortgage.[12] This has less of a negative impact on your credit score than foreclosure.

4. DEED IN LIEU OF FORECLOSURE: This allows you to transfer the deed to your house to the lender in exchange for being released from your mortgage obligations.[13]

5. CHAPTER 13 BANKRUPTCY: A repayment plan that allows you to catch up on missed mortgage payments over time.[14]

Source • ***From Notice to Auction: Demystifying the Texas Foreclosure Fast Track*** **by Julie Pettit. Infographic created by Twinkle Tharwala, Staff Reporter (2024–2025).**

References
[1] TEX. PROP. CODE ANN. § 51.002(a).
[2] TEX. PROP. CODE ANN. § 51.002(d).
[3] TEX. PROP. CODE ANN. § 51.002(c).
[4] *Foreclosure,* BLACK'S LAW DICTIONARY (12th ed. 2024).
[5] *See* TEX. PROP. CODE ANN. § 51.002(a)
[6] *See* Bonilla v. Roberson, 918 S.W.2d 17, 21 (Tex. App.—Corpus Christi 1996, no writ).
[7] TEX. PROP. CODE ANN. § 51.002(b), (d).
[8] *Id.*
[9] Any time before you loan has been accelerated, you have the right to bring your loan current by paying all past due amounts and any fees incurred by the lender. TEX. PROP. CODE ANN. § 51.002(d).
[10] *Loan Modification Meaning*, POWER FINANCE TEXAS, https://powerfinancetexas.com/glossary/loan-modification-meaning/ (last visited Dec. 18, 2024).
[11] *Refinancing*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[12] *Short sale*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[13] *Deed in lieu of foreclosure*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[14] Legal Aid of Northwest Texas, *What is Chapter 13 Bankruptcy?*, TEXAS LAW HELP (Jan. 15, 2023), https://texaslawhelp.org/article/what-is-chapter-13-bankruptcy

LAW REVIEW
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A GUIDE TO YOUR REPAIR RIGHTS AS A RESIDENTIAL TENANT

*Kevin Robinowich**

I. Introduction

Tenants frequently need to ask their landlords to repair property conditions. Often, this process works smoothly: you inform your landlord about the needed repairs, and the landlord completes them promptly. However, some landlords fail to respond to proper repair notices in a timely manner––or at all. You need to understand your rights as a tenant and how to exercise them in these situations.

This article will explain some of your options as a tenant. While you may have several options available, the law requires you to take specific steps before using them. If you skip these steps, you might face increased costs, eviction, or other legal detriment. The Texas Property Code establishes these requirements to promote fair dealings between landlords and tenants and prevent retaliatory actions.[1]

This article covers residential leases under the Texas Property Code and explains how the law handles some property repairs. Your lease may modify some responsibilities between you and your landlord. For example, your lease might specify who must pay for certain repairs.[2] While this article will help you understand your legal rights, you should consult with a lawyer before taking any action.

When you read this article, when you see the word "you," it is used to indicate that you are the tenant.

Before asking your landlord to make a repair, ask yourself these key questions:

1. Does the law require your landlord to make this repair?

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[1] Moreno v. Brittany Square Assocs., L.P., 899 S.W.2d 261, 263 (Tex. App.—Houston [14th Dist.] 1995, writ denied) ("The purpose of Subchapter B, and its predecessor, art. 5236f, is to set forth the procedures tenants and landlords are to follow regarding conditions that need to be repaired on leased premises. Subchapter B imposes duties on both landlords and tenants and protects both from retaliatory acts of the other arising from the duty to repair.").

[2] TEX. PROP. CODE ANN. § 92.006.

2. Have you stayed current with your rent and followed all lease terms?
3. What steps must you take to enforce your repair rights?
4. If your landlord refuses to make legally required repairs, what options can you pursue without finding yourself in legal trouble?

The following sections will help you understand your rights and prepare for discussions with your legal counsel before taking action.

II. What conditions must a landlord repair?

For a landlord to be legally required to act, you must (1) provide notice to the landlord (the person or organization to whom rent is normally paid, or to the location where you pay rent) of the specified condition in need of repair and (2) be current on rent at the time the notice is given.[3]

If both of those requirements are satisfied, then a landlord must make a "diligent effort" to repair conditions that (1) "materially affect the physical health or safety of an ordinary tenant"[4] or (2) were created by the landlord's failure to provide a device—in good working order—for hot water of a minimum temperature of 120 degrees Fahrenheit.[5]

Generally, the law only requires the landlord to fix conditions caused by normal wear and tear. Your landlord does not have to repair issues caused by the tenant, a lawful occupant of the dwelling, a tenant's family member, or a "guest or invitee" of the tenant.[6]

Despite what you may think, a landlord is *not* required to provide utilities if utility lines are not reasonably available.[7] Additionally, a landlord need not provide security guards.[8]

Thus, before taking legal action against your landlord for failing to make a repair, ask yourself these questions:

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[3] *Id.* § 92.052(a)(1)–(2).
[4] *Id.* § 92.052(a)(3)(A); Materially means the condition would have a significant impact on the tenant's health or safety. *See Material*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[5] TEX. PROP. CODE ANN. § 92.052(a)(3)(B).
[6] *Id.* § 92.052(b).
[7] *Id.* § 92.052(c)(1).
[8] *Id.* § 92.052(c)(2).

1. Did you tell the landlord about the need for repair?
2. Were you current on your rent when you told the landlord about the need of the repair?
3. Does the condition of the property materially affect the physical health or safety of an ordinary tenant?
4. Did you, your family, or your guest cause the damage?

III. What steps must a tenant take to request repairs?

Remember, if you fail to take the proper steps under the law, then you may open yourself up to legal liability. First, make sure you are current on rent at the time all notices are made. Second, be sure to follow your lease's requirements for repair notices. You will see in this section that either one or two notices may be required from the tenant to the landlord notifying the landlord of the need to repair a condition meeting the standards detailed above.

To guide yourself through your obligations as a tenant, ask yourself:

1. Does your lease require you to make the first notice in writing?
2. Should you send your first notice in writing anyway, following the legal requirements for the second notice below? This might prevent you from needing to send a second notice.
3. How long does your landlord have to make the repair?
4. Did your landlord provide an affidavit of delay that legally extends the time allowed for the landlord to make the repair?
5. If your landlord does not make the repair in time, what remedies might you want to seek, and which of these should you list as potential next steps in your notice to your landlord?

A. First Notice

First, make sure that at the time you provide this notice to the landlord, you are current on your rent. If you are not, the landlord does not have to make the repair.[9]

[9] *Id.* § 92.056(b)(6).

Second, provide notice to the landlord of the specified condition you believe the landlord is legally required to repair as discussed above. If the lease is in writing and requires written notice, then the notice of repair must be in writing. However, it is recommended to always request repairs in writing to make sure that you can prove that the request was made, that it was delivered to the landlord, and when it was delivered to the landlord. You should keep a copy of this letter as well. Sending this notice via certified mail, return receipt requested, by registered mail, or by another form of mail that allows tracking of delivery can prevent you from having to send the second notice discussed below. However, you may still need to send the second notice if the remedy you seek requires the notice to include specific elements not included in the first notice.[10] You can send the notices to your landlord or their management agent, leasing agent, or residential manager.[11]

B. Allowing the Landlord Reasonable Time to Repair the Condition

The landlord is considered to have received the notice of repair when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.[12]

Under Texas law, a landlord has a "reasonable" amount of time from when they receive the first notice to make the repair.[13] A "reasonable" time is usually considered to be seven days, but that time may be extended depending on the date the landlord received the notice, the problem's severity, and the availability of materials, labor, and utilities needed to make the repair.[14]

C. Second Notice (If Necessary)

If the landlord does not repair the condition within a reasonable time, a second notice is required unless the first notice was in writing and sent using a trackable method (e.g., certified mail, return receipt requested).[15] Under this law, a managing agent, leasing agent, or resident manager can receive notices and other communications on

[10] *Id.* § 92.056(b)(3).
[11] *Id.* § 92.060.
[12] *Id.* § 92.056(c).
[13] *Id.* § 92.056(d).
[14] *Id.*
[15] *Id.* § 92.056(b)(3).

behalf of the landlord.[16] You can send the notices to your landlord or their management agent, leasing agent, or residential manager.[17] Remember, you must be current on your rent when you provide this notice or the landlord does not have to make this repair.[18]

This notice should state that it is the second notice, reference the date of the first notice, explain what needs to be repaired, and state what options you might choose should the landlord fail to make the repair within a reasonable time. Such options include termination of the lease, having the condition repaired and deducting the amount of the repair from your rent, or filing a lawsuit asking the court to make the landlord make the repairs and/or pay damages. NOTE: The remedies mentioned in this paragraph are only available in limited circumstances as described in section IV below.[19]

It is recommended to also include a request for an explanation of the delay. If the tenant makes such a request and the landlord fails to respond in writing within five days, a court will require the landlord—instead of the tenant—to prove that repairs were made in a reasonable time.[20]

You must now allow your landlord a reasonable time after receipt of the second notice to make the repairs.

IV. What remedies can a tenant seek against a landlord who refused to make a repair as required under the law?

As a general rule, if the landlord has failed to repair the condition in accordance with the first and if necessary, the second notice, you may: (1) terminate the lease; (2) have the condition repaired or remedied, deducting the cost of the repair from the tenant's rent without involving the court; and (3) obtain certain judicial remedies[21] such as an order requiring the repairs to be completed and compensation for losses. If you elect to terminate the lease you are not entitled to

[16] *Id.* § 92.060.
[17] *Id.*
[18] *Id.* § 92.056(b)(6).
[19] *Id.* § 92.0561(d)(2).
[20] *Id.* § 92.053(b).
[21] A judicial remedy is a court-ordered solution given to someone who wins a civil lawsuit. The purpose is to address the harm they experienced because of another person's wrongful action or failure to act. *See* Legal Information Institute, *Remedy*, CORNELL, https://www.law.cornell.edu/wex/remedy (last visited Dec. 27, 2024).

remedies for repair and deduction or the other judicial remedies mentioned above.

When seeking a remedy, ask yourself:

1. Did you state in your notice to the landlord that if the landlord failed to repair the condition, you would seek this particular remedy?
2. Did you otherwise meet the requirements to place yourself in a good legal position to seek this particular remedy without opening yourself to liability as the tenant?

A. Terminating the Lease

If the landlord has failed to repair the condition in accordance with the first and, if necessary, the second notice, you may terminate the lease.[22] In doing so, you are "entitled to a pro rata refund from the date of termination or the date you move out, whichever is later."[23] You are also "entitled to deduct your security deposit from the rent without filing a lawsuit, or instead obtain a refund of the security deposit according to law."[24]

However, if you pursue termination of the lease, you are not entitled to the other remedies discussed below.[25]

B. The Remedy of Tenant's Repair and Deduction of Costs from Rent

Before seeking these remedies, ask yourself these questions:

1. Have you taken all of the proper steps necessary under the law to be able to refuse to pay some or all of your rent? Remember that failure to pay rent may not only prevent the landlord from being required to make the repairs, but it may subject you to monetary detriment and perhaps eviction, as discussed below.
2. Is the condition in need of repair one of the specific bases for this remedy as explained below?
3. Has the landlord failed to complete the repair and has the deadline now expired?

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[22] TEX. PROP. CODE ANN. § 92.056(e).
[23] *Id.* § 92.056(f)(1).
[24] *Id.* § 92.056(f)(2).
[25] *Id.* § 92.056(f)(3).

If the landlord fails to make repairs after receiving proper notice, you may have the condition repaired or remedied and you may deduct the cost from your next rent payment.[26]

The repair costs cannot exceed one month's rent or $500, whichever is greater.[27] For example, if your monthly rent is $800, you could deduct up to $800 for repairs.[28] If your rent is $400, you could still deduct up to $500. The tenant can make multiple repairs in a month, but the total deductions cannot exceed the monthly limit.[29]

It is important to be cautious of what is considered the reasonable time period for a landlord to repair for each of the specific circumstances. The times range from immediate repair upon proper notice to the landlord, to the presumptive seven days.[30]

The repair and deduct remedy is only available in specific circumstances:

1. The landlord has not fixed raw sewage backups or flooding caused by broken pipes or natural drainage inside the tenant's dwelling.
2. The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.
3. The landlord agreed, either explicitly or implicitly, to provide heating or cooling equipment, but it is not working properly, and a local official has confirmed in writing that this issue poses a health or safety risk to an ordinary tenant.
4. The landlord has been notified in writing by the appropriate official that the condition materially affects the health or safety of an ordinary tenant.[31]

You must hire professional repair services.[32] You cannot do the work yourself nor can you hire family members.[33] Check your lease carefully

[26] *Id.* § 92.0561(a).
[27] *Id.* § 92.0561(b).
[28] For tenants with subsidized rent, the fair market rent determines the "one month's rent" limit. *Id.*
[29] *Id.* § 92.0561(c).
[30] *Id.* § 92.0561(e).
[31] *Id.* § 92.0561(d)(3).
[32] *Id.* § 92.0561(f).
[33] *Id.*

as there are some limited ways in which a landlord and tenant may mutually agree to repair, at the landlord's expense, certain conditions. You must furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment.[34] It is strongly advised that you do not enter a contract requiring you to pay for repair services prior to the expiration of the landlord's deadline to repair. The landlord might surprise you and make the repair just before the deadline, leaving you contractually required to pay for the contract you entered on your own.[35]

C. Judicial Remedies Available to Tenants

If the landlord has failed to repair the condition in accordance with the first and, if necessary, the second notice, you may seek the following judicial remedies:

1. A court order directing the landlord to take reasonable action to repair or remedy the condition;
2. A court order reducing your rent, starting from when the first repair notice was given, based on how much the condition has lowered the value of the property, until the problem is fixed;
3. A judgment against the landlord for a fine of one month's rent plus $500;
4. A monetary judgment against the landlord for your actual loss; and
5. Court costs and attorney's fees, excluding any attorney's fees for personal injury claims.[36]

V. Conclusion

As mentioned, this article describes some of the legal rights between a tenant and a landlord with regard to the landlord's duty to repair. This article is meant to help you prepare for a conversation with your attorney about your rights and provide you with an overview of the steps a tenant must take in order to seek particular remedies both with and without court intervention.

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[34] *Id.* § 92.0561(j).
[35] *See id.* § 92.0562(a)–(f) (discussing a landlord's right to delay repairs by delivering a good-faith affidavit summarizing diligent efforts to complete the repairs and continuing such efforts).
[36] *Id.* § 92.0563.

Through this article, you have learned to first look to your lease and to the law to determine what conditions a landlord is required to repair or remedy. If the repair sought is one for which the landlord is responsible, there are very specific notice requirements under the law, and possibly under the lease language. Be sure that your notice(s) comply with the law and the lease and recognize that requirements may change depending on the remedy sought.

You may find that your situation differs factually from those discussed in this article. Examples of other common situations include, but are not limited to: (1) the total destruction of the leased premises for reasons other than the fault of the tenant,[37] (2) the premises become unlivable due to natural disaster,[38] or (3) the landlord's failure to provide security devices such as adequate locks on external doors.[39] These situations are handled differently under the law.

Once you decide to seek repairs, the law provides protection to tenants against retaliation by the landlord where the tenant acts in good faith under the lease or the law.[40] However, these protections against retaliation are not guaranteed. The tenant must be able to prove the retaliatory basis for the eviction, and the landlord may try to prove the eviction was for otherwise lawful reasons.[41] For example, if you refuse to pay your rent in full and have not taken the proper legal steps to make such a refusal, the landlord will argue that you violated the lease and may successfully seek to evict you.

The law changes frequently, and the Texas Property Code is no exception to this trend. In fact, at the time of the writing of this article, new language has been proposed to the Texas Legislature for the 2025 term which might alter the rights and processes provided in this article.[42] For this reason, and all the reasons mentioned above, it is important to speak with an attorney to make sure that you understand your rights at the time your particular matter arises.

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[37] *Id.* § 92.054.
[38] *Id.* § 92.062.
[39] *Id.* § 92.153.
[40] *Id.* § 92.331.
[41] *Id.*
[42] *See* Tex. H.B. 1100, 89th Leg., R.S. (2024) (proposing tenant's notice may be provided through an online apartment portal if it is maintained by the landlord and rent is paid through the portal).

The following is a supplementary infographic for *A Guide to Your Repair Rights as a Residential Tenant* created to promote legal comprehension.

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A GUIDE TO YOUR *Repair Rights* AS A RESIDENTIAL TENANT

Most repair requests go smoothly, but sometimes landlords fail to respond. As a tenant in Texas, you have rights—but the law requires you to take specific steps to enforce them. Skipping these steps could lead to eviction, extra costs, or other legal issues.

What Conditions Must Your Landlord Repair?

Your Landlord Must Repair

- Conditions that have a **significant impact** on the physical health or safety of an ordinary tenant.[1]

  OR

- Conditions that were created by your landlord's failure to provide a device for **hot water** at a minimum of 120°F.[2]

Keep in Mind

- Repairs are limited to issues from **normal wear and tear.**
- Your landlord is not required to repair issues **caused by you**, your **family members**, or your **guests**.[3]
- Your landlord is not required to provide utilities if utility lines are not reasonably available.[4]

For Your Landlord to Legally Act, You Must

(1) **Provide notice** of what needs to be repaired.

(2) Be **current on rent** at the time notice is given.

(3) Review your **lease agreement** for additional requirements.

What Steps do You Need to Take to Request a Repair?

01 FIRST NOTICE

Include key details.
State the issue clearly, reference relevant lease terms, and keep a copy for your records.

Submit a notice in writing.
Even if your lease does not require it, always send a written notice. This provides proof of your request.

Use trackable delivery.
Send the notice via certified mail, return receipt requested, or a similar trackable method to ensure documentation.

02 ALLOW REASONABLE TIME TO REPAIR

Delivery of notice.
Your landlord is considered to have received the notice when the landlord has actually received the notice or when the United States Postal Service has attempted to deliver the notice.[5] You can send the notices to your landlord or their management agent, leasing agent, or residential manager.[6]

"Reasonable time."
Under Texas law, landlords typically have seven days to address the issue.[7] This may vary based on factors like severity and availability of repair materials.[8]

03 SECOND NOTICE (IF NECESSARY)

When is a second notice necessary?
If your landlord does not respond within a reasonable time and the first notice was not sent using a trackable method, a second notice may be required.

What to include in a second notice?
You should mention this is the second notice, reference the first notice date, describe the issue, and what remedies you may seek (listed below).

Request an explanation.
Ask for a written explanation of any delay. If your landlord does not respond within five days, they must prove timely repairs in court.[9]

What Options do You Have After Your Landlord has Received Notice?

Option #1: Terminate the Lease[10]

You are entitled to your security deposit and a pro rata refund from the date of termination or the date you move out, whichever is later.[11]

You cannot pursue the other remedies if you terminate the lease.[12]

Option #2: Repair and Deduct

You may hire a professional to repair the condition and deduct the costs from your rent.[13] ***The deduction is limited to 1 month's rent or $500, whichever is greater.[14]*** You can make multiple repairs in a month, but they cannot exceed the monthly limit.[15]

This remedy is limited to cases like raw sewage backups, flooding, loss of potable water, unsafe heating or cooling, or other hazards confirmed in writing by a local official.[16]

Option #3: Judicial Remedies

You may seek court orders for repairs, rent reduction, fines, or damages.[17]

Reminders

Make sure that you are **current on your rent**. If you are not, the landlord does not have to make the repair.[18]

Review your **lease agreement** for additional requirements.

You should **consult a lawyer** before taking any action.

Source • *A Guide to Your Repair Rights as a Residential Tenant* by Kevin Robinowich. Infographic created by Ashley Juárez, Staff Reporter (2024-2025).

References

[1] TEX. PROP. CODE ANN. § 92.052(a)(3)(A).
[2] *Id.* § 92.052(a)(3)(B).
[3] *Id.* § 92.052(b).
[4] *Id.* § 92.052(c)(1).
[5] *Id.* § 92.056(c).
[6] *Id.* § 92.060.
[7] *Id.* § 92.056(d).
[8] *Id.*
[9] *Id.* § 92.053(b).
[10] *Id.* § 92.056(e).
[11] *Id.* § 92.056(f).
[12] *Id.*
[13] *Id.* § 92.0561(a).
[14] *Id.* § 92.0561(b).
[15] *Id.* § 92.0561(c).
[16] *Id.* § 92.0561(d)(3).
[17] *Id.* § 92.0563.
[18] *Id.* § 92.056(b)(6).

LAW REVIEW
UNT DALLAS COLLEGE of LAW
ACCESSIBLE LAW

PRESCRIPTION DRUGS: WHY ARE PRICES SO HIGH AND WHAT WILL REDUCE THEM?

Twinkle Tharwala
Accessible Law Student Comment

In 2022, a vial of insulin cost $95.17 in the United States, over five times the cost in the next most expensive country.[1] Americans are struggling to afford prescription drugs and are often forced to choose between paying for their medications or other essential needs.[2] In fact, over nine million adults in 2021 reported not taking prescription drugs, delaying refills, or reducing doses due to cost.[3] Skipping or rationing needed medication is dangerous for patients, as it can worsen health conditions, increase hospitalizations, or even cause death.[4]

Why is Life-Saving Medicine in the United States Priced Far Higher Than Other Developed Countries?

Several factors affect the rising price of prescription drugs in the United States, including (1) improper Orange Book patent listings and (2) pharmacy benefit manager conduct.[5]

1. Improper Patent Listings in the Orange Book

In 1984, Congress enacted the Hatch-Waxman Act[6] to strike a balance between protecting intellectual property rights[7] of the branded drug

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[1] Andrew W. Mulcahy & Daniel Schwam, *Comparing Insulin Prices in the United States to Other Countries*, RAND 1, 38 (2024), https://www.rand.org/pubs/research_reports/RRA788-2.html.

[2] Laryssa Mykyta & Robin A. Cohen, *Characteristics of Adults Aged 18–64 Who Did Not Take Medication as Prescribed to Reduce Costs: United States, 2021*, CDC: NCHS DATA BRIEF 1, 1 (2023), https://stacks.cdc.gov/view/cdc/127680.

[3] *Id.*

[4] Sherri Gordon, *CDC Report: 9 Million Americans Not Taking Medications as Prescribed Due to Cost*, HEALTH (May 18, 2024), https://www.health.com/drug-costs-united-states-cdc-7509659#citation-4.

[5] KEVIN C. ADAM ET AL., *Three Drug Pricing Litigation Issues to Watch in the Second Half of 2024*, WHITE & CASE (Aug. 6, 2024), https://www.whitecase.com/insight-alert/three-drug-pricing-litigation-issues-watch-second-half-2024.

[6] Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585 (1984).

[7] Intellectual property rights of the branded drug industry include patents covering drug formulations (e.g., compositions), drug manufacturing processes, or medical uses of compounds. Chandra N. Saha & Sanjib Bhattacharya, *Intellectual property rights: An overview and implications in pharmaceutical industry*, PUBMED CENTRAL 88, 92 (Apr. 2011), https://pmc.ncbi.nlm.nih.gov/articles/PMC3217699/.

industry and increasing generic drug availability.[8] Under the Act, brand manufacturers need to submit patent information to the Food and Drug Administration (FDA).[9] The FDA lists approved prescription drugs and corresponding patents in the Orange Book.[10] To be eligible for listing in the Orange Book, a patent must claim a drug substance (e.g., active ingredient), a drug product (e.g., formulation), or a method of using a drug for which a patent infringement claim could reasonably be asserted.[11]

Listing a patent in the Orange Book notifies a generic manufacturer that a brand manufacturer has patent rights for a drug.[12] To market a cheaper generic version of the branded drug, the generic manufacturer can file an application certifying that the patent has expired, is invalid, or will not be infringed by the generic version.[13] In response to the generic drug application, the brand manufacturer can sue for patent infringement, automatically triggering a 30-month stay that prevents the FDA from approving the generic drug application.[14] The stay is meant to allow both manufacturers to resolve patent litigation disputes, but brand manufacturers often take advantage of it by improperly listing ineligible patents in the Orange Book[15] to block competing generic drugs.[16]

The FDA does not regulate Orange Book listings, relying on brand manufacturers to ensure accuracy.[17] With limited oversight and accountability, brand manufacturers list patents improperly and rely on the 30-month stay to block generic drugs, regardless of patent validity or the Orange Book's criteria.[18] This delay in generic drug availability forces consumers needing immediate medication to pay inflated prices for a branded drug.[19]

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[8] *Federal Trade Commission Statement Concerning Brand Drug Manufacturers' Improper Listing of Patents in the Orange Book*, FED. TRADE COMM'N 1, 2 (Sept. 14, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p239900orangebookpolicystatement092023.pdf.

[9] *Id.*

[10] *Id.*

[11] 21 U.S.C. § 355(b)(1)(A)(viii).

[12] *In re* Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig., 333 F. Supp. 3d 135, 149 (E.D.N.Y. 2018).

[13] FEDERAL TRADE COMMISSION, *supra* note 7, at 3.

[14] *Id.* at 4.

[15] *Id.*; ADAM ET AL., *supra* note 5.

[16] FEDERAL TRADE COMMISSION, *supra* note 7, at 3.

[17] *Id.*

[18] *Id.*

[19] ADAM ET AL., *supra* note 5.

2. Conduct of Pharmacy Benefit Managers (PBMs)

PBMs are intermediaries between drug manufacturers and consumers that negotiate drug prices and profit by artificially increasing prices.[20] Through complex and opaque business practices, PBMs update prices of drugs covered under insurance, which influence what patients pay out of pocket.[21] Further, PBMs provide discounts to brand manufacturers, which prevent the entry of generic drugs into the market.[22] The six largest PBMs, which manage 94% of prescription drug claims, are vertically integrated with players of the pharmaceutical supply chain.[23] Vertical integration means the same entity owns multiple stages of the same pharmaceutical supply chain, including PBMs, pharmacies, health insurers, health care providers, and drug private labelers.[24] The non-transparent conduct of PBMs and the system of vertical integration results in inflated drug prices.[25]

What Will Help Reduce Prescription Drug Prices for Consumers?

1. Legal Action for Improper Patent Listings in the Orange Book

In September 2023, the Federal Trade Commission (FTC) issued a warning that pharmaceutical companies would face legal consequences for continued improper listings in the Orange Book.[26] Between November 2023 and April 2024, the FTC targeted 400 patents for being improperly listed in the Orange Book and sent warning letters to brand manufacturers.[27] The FTC's continued crack down of improper listings may encourage generic manufacturers to challenge patents in court and force brand manufacturers to comply with the listing requirements.[28]

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[20] Nicole Rapfogel, *5 Things To Know About Pharmacy Benefit Managers*, AM. PROGRESS (Mar. 13, 2024), https://www.americanprogress.org/article/5-things-to-know-about-pharmacy-benefit-managers/.
[21] *Id.*
[22] *Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies*, FED. TRADE COMM'N 1, 38 (July 2024), https://www.ftc.gov/reports/pharmacy-benefit-managers-report.
[23] *Id.* at 5.
[24] Vincent Rajkumar, *Why are prescription drug prices far higher in the US than other developed countries*, ONCODAILY (Aug. 26, 2024, 9:22 PM), https://oncodaily.com/blog/130999.
[25] *Id.*
[26] FEDERAL TRADE COMMISSION, *supra* note 7, at 3.
[27] ADAM ET AL., *supra* note 5.
[28] *Id.*

2. Challenging PBM Conduct

The FTC intends to revive the Robinson-Patman Act (RPA), which serves to prevent price discrimination, to challenge PBM conduct.[29] The FTC plans to leverage the RPA to challenge conglomerates by potentially suing PBMs over insulin prices.[30] At a minimum, PBMs will likely be wary of the FTC's heightened scrutiny of their conduct.[31]

3. Medicare Negotiating Drug Prices

President Biden's Inflation Reduction Act of 2022 (IRA) authorizes the Department of Health and Human Services (HHS) to negotiate a "maximum fair price" with manufacturers for certain drugs under Medicare.[32] If manufactures fail to comply with the government's negotiation program, manufacturers risk losing substantial business due to government fines or being withdrawn from Medicare and Medicaid programs.[33] Rather than intermediaries (e.g., PBMs) negotiating drug prices, Medicare (administered by HHS) directly negotiating with manufacturers will help lower the price of certain drugs.[34] In response to the drug pricing provisions of the IRA, brand manufacturers are challenging the constitutionality of the government's negotiation program.[35] So far, many courts have held in favor of the government.[36]

Courts have rejected lawsuits challenging the constitutionality of the government's negotiation program. In *AstraZeneca Pharmaceuticals LP v. Becerra*, the court rejected a pharmaceutical company's argument that it had a right to sell drugs at prices above the "maximum fair price" under the Fifth Amendment's Due Process Clause, which protects property interests.[37] The court reasoned that there is no "protected property interest" in selling drugs at prices that the government will not accept, as participation in Medicare and the

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[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Nat'l Infusion Ctr. Ass'n v. Becerra, 716 F. Supp. 3d 478, 478 (W.D. Tex. 2024), *rev'd and remanded*, 116 F.4th 488 (5th Cir. 2024).
[33] *Id.*
[34] Vincent Rajkumar, *Predictably Big Pharma has gone to court to fight the limited ability of Medicare to negotiate prices*, ONCODAILY (Nov. 29, 2023, 5:40 PM), https://oncodaily.com/drugs/23082.
[35] ADAM ET AL., *supra* note 5.
[36] *Id.*
[37] AstraZeneca Pharm. LP v. Becerra, No. CV 23-931-CFC, 2024 WL 895036, at *14–15 (D. Del. Mar. 1, 2024).

negotiation program is voluntary.[38] However, the pharmaceutical company has appealed the court's decision to the Third Circuit.[39]

Further, in *National Infusion Center Association v. Becerra*, the court in the Western District of Texas dismissed a pharmaceutical lobbying group's claims against the government.[40] In that case, the lobbying group asserted the negotiation program violated the nondelegation doctrine[41] (because Congress giving authority to HHS to negotiate drug prices is invalid), the Due Process Clause of the Fifth Amendment, and the Excessive Fines Clause of the Eight Amendment.[42] The merits of the claims were not evaluated because the district court dismissed the case[43] for lack of subject matter jurisdiction[44] and lack of venue.[45] Since the case was dismissed without prejudice,[46] the lobbying group appealed to the U.S. Court of Appeals for the Fifth Circuit.[47] The Fifth Circuit found that the district court has subject matter jurisdiction over the lobbying group's claims.[48] Accordingly, the court reversed the dismissal and remanded[49] the case, directing the district court to evaluate the claims based on their merits.[50]

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[38] *Id.* at *15.
[39] ADAM ET AL., *supra* note 5.
[40] *Becerra*, 716 F. Supp 3d at 478.
[41] The nondelegation doctrine is a principle that limits Congress's ability to delegate its legislative powers or lawmaking abilities to other entities, such as executive agencies, and delegation of legislative authority to an agency is valid as long as Congress provides an "intelligible principle." *Nondelegation doctrine*, BLACK'S LAW DICTIONARY (12th ed. 2024). Courts have not found any delegation to an agency invalid since the 1930s. *ArtI.S1.5.3 Origin of Intelligible Principle Standard*, CONSTITUTION ANNOTATED (June 23, 2023), https://constitution.congress.gov/browse/essay/artI-S1-5-3/ALDE_00001317/.
[42] *Becerra*, 716 F. Supp 3d at 478.
[43] *Id.*
[44] Lack of subject matter jurisdiction means that the court has no legal authority to hear this case. *Jurisdiction*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[45] Here, lack of venue means that the Western District of Texas is not related to the case or the parties involved, and thus is not a proper location for hearing this case. *Venue*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[46] When a court dismisses a case without prejudice, a plaintiff can refile the case later in a new lawsuit. *Dismissed without prejudice*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[47] Nat'l Infusion Ctr. Ass'n v. Becerra, 116 F.4th 488, 488 (5th Cir. 2024).
[48] *Id.* at 509.
[49] When a court remands a case, the court sends the case back to a lower court for reconsideration or further action. *Remand*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[50] *Becerra*, 116 F.4th at 509.

Appellate decisions will be crucial in determining the legality of the negotiation program, and these cases may appear before the U.S. Supreme Court if Circuit Courts rule inconsistently. Regardless, Medicare negotiating drug prices is a step toward protecting consumers from inflated drug prices. Since January 2023, with the enactment of the IRA, insulin under Medicare has been capped at $35 per monthly prescription.[51] Supporting pharmaceutical innovation and ensuring the availability of generic options should not be mutually exclusive. While many disputes have arisen over these recent policy changes, they could lead to more affordable prescription drug prices.

[51] BISMA A. SAYED ET AL., *Insulin Affordability and the Inflation Reduction Act: Medicare Beneficiary Savings by State and Demographics*, ASPE 1, 2 (Jan. 24, 2023), https://aspe.hhs.gov/reports/insulin-affordability-ira-data-point.

SYMBOLIC EXPRESSION AS PROTECTED SPEECH AT PUBLIC COLLEGES AND UNIVERSITIES

Lindsay Lindeman
Accessible Law Student Comment

The following is an infographic created to promote legal comprehension.

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Symbolic Expression as Protected Speech at Public Colleges and Universities

What guarantees your freedom of speech on public college campuses?

The **First Amendment** of the U.S. Constitution **prohibits the government from taking away your freedom of speech**.[1] Through the **Fourteenth Amendment**, this right also protects against actions by states and state actors, such as **public universities**.[2]

What kinds of demonstrations are protected speech?

Freedom of speech extends **beyond the words we say**. It also includes types of **symbolic expression** that answer ***yes*** to these two questions:

(1) Are you trying to convey a **particular message**?[3]

(2) Is it likely that **the message will be understood** by those who view it?[4]

How can public universities place restrictions on your demonstrations?

Public universities may put **restrictions** on **when, where, and how** you can conduct on-campus demonstrations.[5] Those restrictions must:

(1) not be based on the **subject matter** of the protest;[6]

A school may restrict a protest based on the location of the protest, but not the stance the protest takes, such as being anti-war.

(2) be specifically made to support an **important interest**, not including the suppression of free speech;[7] AND

A school could place restrictions on a protest for safety reasons, for example, but not to prevent protestors from sharing their message.

(3) not eliminate *all* available means of communicating the message.[8]

A school may prohibit one type of demonstration while allowing signs to remain, access to bulletin boards, or allocated time and space.

According to the Supreme Court, these restrictions "normally have the **purpose** and direct **effect** of **limiting expression** but are **nonetheless valid**."[9]

What types of challenges have people faced while exercising their freedom of speech on campus?

Schools typically rely on a combination of **school policies** and **local trespassing laws** to **punish protestors** for their participation in demonstrations on campus that **do not comply with the restrictions** the school has set.[10]

disciplinary processes

Some universities have punished **students and faculty** who have **allegedly violated school policy** by:

- **withholding** degrees and transcripts;[11]
- **banning** protestors' participation in university events;[12] or
- **forbidding** graduating students from attending their graduations.[13]

police brutality and arrest

Some universities have punished **students, faculty, and other participating community members** with **arrests** on the grounds of **criminal trespassing**.[14] Along with these arrests, some schools, recently and throughout history, have been criticized for allowing police to use **excessive force** in removing the protestors from campus.[15]

Infographic created by Lindsay Lindeman, Staff Reporter (2024–2025)

References

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2. U.S. CONST. amend. XIV.
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4. *Spence*, 418 U.S. at 409–11.
5. Students Against Apartheid Coal. v. O'Neil, 671 F.Supp. 1105, 1106 (W.D. Va. 1987), *aff'd*, 838 F.2d 735 (4th Cir. 1988).
6. Clark v. Cmty. For Creative Non-Violence, 468 U.S. 288, 293 (1984).
7. *Id.*
8. *Id.*
9. *Id.* at 294 (emphasis added).
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12. *Id.*
13. *Id.*
14. April Rubin et al., *Mapped: Where pro-Palestinian student protesters have been arrested*, AXIOS, https://www.axios.com/2024/04/27/palestinian-college-protest-arrest-encampment (May 10, 2024).
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