

PROPERTY CODE
TITLE 5. EXEMPT PROPERTY AND LIENS
SUBTITLE B. LIENS
CHAPTER 64. ASSIGNMENT OF RENTS TO LIENHOLDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. DEFINITIONS. In this chapter:

(1) "Assignee" means a person entitled to enforce a security instrument.

(2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property from which the rents arise. The term does not include a contract for a charge authorized by Section [306.101](#), Finance Code, or a true sale of rents.

(3) "Assignor" means a person who makes a security instrument that creates an assignment of rents arising from real property or that person's successor in interest with respect to the real property.

(4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(5) "Day" means a calendar day.

(6) "Deposit account" means a demand, time, savings, passbook, escrow, or similar account maintained with a bank, savings bank, savings and loan association, credit union, trust company, or other person.

(7) "Document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(8) "Proceeds" means personal property that is received, collected, or distributed on account of an obligation to pay rents.

(9) "Rents" means consideration payable for the right to possess or occupy, or for possessing or occupying, real property, consideration payable to an assignor under a policy of rental interruption insurance covering real property, claims arising out of a default in the payment of consideration payable for

the right to possess or occupy real property, consideration payable to terminate an agreement to possess or occupy real property, consideration payable to an assignor for payment or reimbursement of expenses incurred in owning, operating, and maintaining, or constructing or installing improvements on, real property, or any other consideration payable under an agreement relating to the real property that constitutes rents under a law of this state other than this chapter. The term does not include consideration payable under an oil and gas lease, mineral lease, or other conveyance of a mineral estate.

(10) "Secured obligation" means an obligation secured by an assignment of rents.

(11) "Security instrument" means:

(A) a security instrument, as that term is defined by Section [51.0001](#); or

(B) an agreement containing an assignment of rents.

(12) "Security interest" means an interest in property that arises by agreement and secures an obligation.

(13) "Sign" includes to sign by an electronic signature, as defined by Section [15.002](#).

(14) "Tenant" means a person who has an obligation to pay for the right to possess or occupy, or for possessing or occupying, real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. [889](#)), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. [848](#)), Sec. 1, eff. June 14, 2013.

Sec. 64.002. MANNER OF GIVING NOTICE. (a) A person may give notice under this chapter:

(1) by transmitting the notice in the manner described by Section [51.002](#)(e);

(2) by depositing the notice with the United States Postal Service or a commercially reasonable delivery service, properly addressed to the intended recipient's address in

accordance with this section, with first class postage or other cost of delivery paid; or

(3) by transmitting the notice to the intended recipient by any means agreed to by the intended recipient.

(b) The following rules determine the address for notices under Subsection (a):

(1) the address for notices to an assignee is the address of the assignee agreed in the security instrument or other document between the parties as the address for notices to the assignee, unless a more recent address for notices has been given by the assignee to the person giving the notice in accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignee;

(2) the address for notices to an assignor is the address of the assignor agreed in the security instrument or other document between the parties as the address for notices to the assignor or as provided in Section 51.002, unless a more recent address for notices has been given by the assignor to the person giving the notice in accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignor; and

(3) for notices to a tenant:

(A) if there is an address for notices to the tenant in a signed document between the tenant and the person giving the notice, the person giving the notice shall use that address unless a more recent address for notices has been given by the tenant in accordance with that document;

(B) if an address for notices described by Paragraph (A) does not exist, but the tenant's agreement with the assignor has an address for notices to the tenant and the person giving the notice has received a copy of that document or has actual knowledge of the address for notices specified in that document, the person giving the notice shall use that address; or

(C) if an address for notices described by Paragraphs (A) and (B) does not exist, the person giving the notice shall use the tenant's address at the real property covered by the security instrument.

(c) Notice given in accordance with this chapter is deemed

received on the earliest of:

(1) the date the notice is received by the person to whom the notice is given;

(2) the fifth day after the date the notice is given in accordance with Subsection (a)(2); or

(3) the date on which notice is deemed received in accordance with an agreement made by the person to whom the notice is given.

(d) A notice under this chapter must be a document.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. ASSIGNMENT OF RENTS

Sec. 64.051. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST. (a) An enforceable security instrument creates an assignment of rents arising from real property described in that security instrument, unless the security instrument provides otherwise or the security instrument is governed by Section 50(a)(6), (7), or (8), Article XVI, Texas Constitution.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the security instrument creating the assignment, regardless of whether the security instrument is in the form of an absolute assignment, an absolute assignment conditioned on default or other event, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property from which the rents arise.

(c) An assignment of rents does not reduce the secured obligation except to the extent the assignee collects rents and applies, or is obligated to apply, the collected rents to payment of the secured obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 3, eff. June 14, 2013.

Sec. 64.052. RECORDATION AND PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF INTERESTS IN RENTS. (a) A security instrument creating an assignment of rents may be recorded in the county in which any part of the real property is located in accordance with this code.

(b) On recordation of a security instrument creating an assignment of rents, the security interest in the rents is perfected. This subsection prevails over a conflicting provision in the security instrument creating the assignment of rents or a law of this state other than this chapter that prohibits or defers enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as provided by Subsection (d), a perfected security interest in rents has priority over the rights of a person who, after the security interest is perfected, acquires:

(1) a lien on or other security interest in the rents or the real property from which the rents arise; or

(2) an interest in the rents or the real property from which the rents arise.

(d) An assignee with a perfected security interest in rents has the same priority over the rights of a person described by Subsection (c) with respect to future advances as the assignee has with respect to the assignee's security interest in the real property from which the rents arise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 4, eff. June 14, 2013.

Sec. 64.053. ENFORCEMENT OF SECURITY INTEREST IN RENTS GENERALLY. (a) An assignee may enforce an assignment of rents using one or more of the methods provided by Section 64.054 or 64.055 or any other method sufficient to enforce an assignment of rents under a law of this state other than this chapter.

(b) On and after the date on which an assignee begins to enforce an assignment of rents, the assignee is entitled to collect all rents that:

(1) have accrued but remain unpaid on that date; and

(2) accrue on or after that date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 5, eff. June 14, 2013.

Sec. 64.054. ENFORCEMENT BY NOTICE TO ASSIGNOR. (a) After default, or as otherwise agreed by the assignor, the assignee may give the assignor a notice demanding that the assignor pay the assignee the proceeds of any rents that the assignee is entitled to collect under Section 64.053.

(b) For the purposes of Section 64.053, the assignee begins enforcement under this section on the date on which the assignee gives notice to the assignor in accordance with Section 64.002.

(c) An assignee may not enforce an assignment of rents under this section if, on the date the security instrument was signed and the date of prospective enforcement, the real property constitutes the assignor's homestead on which is located a one-family to four-family dwelling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 6, eff. June 14, 2013.

Sec. 64.055. ENFORCEMENT BY NOTICE TO TENANT. (a) After

default, or as otherwise agreed by the assignor, the assignee may give to a tenant of real property that is subject to an assignment of rents a notice demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notice to the assignor in accordance with Section 64.002. The notice must substantially comply with the form prescribed by Section 64.056 and be signed by the assignee or the assignee's authorized agent or representative.

(b) For the purposes of Section 64.053(b), the assignee begins enforcement under this section on the date on which the tenant receives a notice complying with Subsection (a).

(c) Subject to Subsection (d) and any other claim or defense that a tenant has under a law of this state other than this chapter, after a tenant receives a notice under Subsection (a):

(1) the tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notice under this section from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notice;

(2) except as otherwise agreed in a document signed by the tenant, the tenant is not obligated to pay to an assignee rent that was prepaid to the assignor before the tenant received the notice under Subsection (a);

(3) unless the tenant occupies the premises as the tenant's primary residence, the tenant is not discharged from the obligation to pay rents to the assignee if the tenant pays rents to the assignor;

(4) the tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(5) the tenant's obligation to pay rents to the assignee continues until the earliest date on which the tenant receives:

(A) a court order directing the tenant to pay the rents in a different manner;

(B) a signed notice that a perfected security instrument that has priority over the assignee's security interest

has been foreclosed; or

(C) a signed document from the assignee canceling the assignee's notice.

(d) Except as otherwise agreed in a document signed by the tenant, a tenant who has received a notice under Subsection (a) is not in default for nonpayment of rents that accrue during the 30 days after the date the tenant receives the notice until the earlier of:

(1) the 10th day after the date the next regularly scheduled rental payment would be due; or

(2) the 30th day after the date the tenant receives the notice.

(e) On receiving a notice from another assignee who has priority under Section 64.052(c) that the assignee with priority has conducted a foreclosure sale of the real property from which the rents arise or is enforcing the interest in rents of the assignee with priority by notice to the tenant, an assignee that has given a notice to a tenant under Subsection (a) shall immediately give another notice to the tenant canceling the earlier notice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 7, eff. June 14, 2013.

Sec. 64.056. FORM OF NOTICE TO TENANT. The following form of notice, when properly completed, satisfies the requirements of Section 64.055(a):

NOTICE TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: [Name of tenant]

Property Occupied by Tenant (the "Premises"): [Address]

Landlord: [Name of landlord]

Assignee: [Name of assignee]

Address of Assignee and Telephone Number of Contact Person: [Address of assignee] [Telephone number of person to contact]

1. Assignee is entitled to collect rents on the Premises

under [Name of Document] (the "Assignment of Rents") dated [Date of Assignment of Rents], and recorded at [Recording Data] of [Name of County] County, Texas. You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address of the Assignee.

2. A default exists under the Assignment of Rents or related documents between the Landlord and the Assignee. The Assignee is entitled to collect rents from the Premises.

3. This notice affects your rights and obligations under the agreement under which you occupy the Premises (your "Lease Agreement"). Unless you have otherwise agreed in a document signed by you, if your next scheduled rental payment is due within 30 days after you receive this notice, you will not be in default under your Lease Agreement for nonpayment of that rental payment until the 10th day after the due date of that payment or the 30th day following the date you receive this notice, whichever occurs first.

4. You may consult a lawyer at your expense concerning your rights and obligations under your Lease Agreement and the effect of this notice.

5. You must pay to the Assignee at the Address of the Assignee all rents under your Lease Agreement that are due and payable on the date you receive this notice and all rents accruing under your Lease Agreement after you receive this notice.

6. If you pay rents to the Assignee after receiving this notice, the payment will satisfy your rental obligation to the extent of that payment.

7. If you pay any rents to the Landlord after receiving this notice, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord unless you occupy the Premises as your primary residence.

8. If you have previously received a notice from another person who also holds an assignment of the rents due under your Lease Agreement, you should continue paying your rents to the person that sent that notice until that person cancels that notice. Once that notice is canceled, you must begin paying rents to the Assignee in accordance with this notice.

Name of assignee: _____

By: [Officer/authorized agent of assignee]

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.057. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by a method provided by Section 64.054 or 64.055, the application of proceeds by the assignee under Section 64.059 after enforcement, the payment of expenses under Section 64.058, or an action under Section 64.060 does not:

- (1) make the assignee a mortgagee in possession of the real property from which the rents arise;
- (2) make the assignee an agent of the assignor;
- (3) constitute an election of remedies that precludes a later action to enforce the secured obligation;
- (4) make the secured obligation unenforceable;
- (5) limit any right available to the assignee with respect to the secured obligation; or
- (6) bar a deficiency judgment under any law of this state governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.058. APPLICATION OF PROCEEDS GENERALLY. Unless otherwise agreed, an assignee who collects rents under this chapter or collects on a judgment in an action under Section 64.060 shall apply the sums collected in the following order to:

- (1) reimbursement of the assignee's expenses of enforcing the assignee's assignment of rents, including, to the extent provided for by agreement by the assignor and not prohibited by a law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;
- (2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property that is subject to the assignment of rents;
- (3) payment of the secured obligation;

(4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignee receives a signed notice from the holder of the interest or lien demanding payment of the proceeds; and

(5) payment of any excess proceeds to the assignor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 8, eff. June 14, 2013.

Sec. 64.059. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT.

(a) Unless otherwise agreed by the assignee, an assignee that collects rents following enforcement under Section 64.054 or 64.055 is not obligated to apply the collected rents to the payment of expenses of protecting or maintaining the real property subject to an assignment of rents.

(b) Unless otherwise agreed by a tenant, the right of the assignee to collect rents from the tenant is subject to the terms of any agreement between the assignor and tenant or any claim or defense of the tenant arising from the assignor's nonperformance of that agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 9, eff. June 14, 2013.

Sec. 64.060. TURNOVER OF RENTS; LIABILITY OF ASSIGNOR.

(a) If an assignor collects rents that the assignee is entitled to collect under this chapter, the assignor shall turn over the proceeds to the assignee not later than the 30th day after the date the assignor receives notice from the assignee under Section 64.054 or within such other period agreed by the assignor and assignee in a security instrument or other document, less any amount representing

payment of expenses agreed in that security instrument or other document.

(b) In addition to any other remedy available to the assignee under a law of this state other than this chapter, if an assignor does not turn over proceeds to the assignee as required by Subsection (a), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under Subsection (a); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by an agreement between the assignor and assignee and not prohibited by a law of this state other than this chapter.

(c) The assignee may maintain an action under Subsection (b) with or without taking action to foreclose any security interest that the assignee has in the real property.

(d) Unless otherwise agreed, if an assignee who has a security interest in rents that is subordinate to the security interest of another assignee under Section 64.052 enforces the subordinate assignee's interest under Section 64.054 or 64.055 before the assignee with priority enforces the interests in rents of the assignee with priority, the subordinate assignee is not obligated to turn over any proceeds that the subordinate assignee collects before the subordinate assignee receives a signed notice from the assignee with priority informing the subordinate assignee that the assignee with priority is enforcing the interest in rents of the assignee with priority. The subordinate assignee shall turn over to the assignee with priority any proceeds that the subordinate assignee collects after the subordinate assignee receives the notice from the assignee with priority that the assignee with priority is enforcing the interest in rents of the assignee with priority not later than the 30th day after the date the subordinate assignee receives the notice or as otherwise agreed between the assignee with priority and the subordinate assignee. Any proceeds subsequently collected by the subordinate assignee shall be turned over to the assignee with priority not

later than the 10th day after the date the proceeds are collected or as otherwise agreed between the assignee with priority and the subordinate assignee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 10, eff. June 14, 2013.

Sec. 64.061. ATTACHMENT, PERFECTION, AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS. (a) An assignee's security interest in rents attaches to identifiable proceeds.

(b) If an assignee's security interest in rents is perfected, the assignee's security interest in identifiable cash proceeds is perfected.

(c) Except as provided by Subsection (b), the provisions of Chapter 9, Business & Commerce Code, or the comparable Uniform Commercial Code provisions of another applicable jurisdiction, determine:

(1) whether an assignee's security interest in proceeds is perfected;

(2) the effect of perfection or nonperfection;

(3) the priority of an interest in proceeds; and

(4) the law governing perfection, the effect of perfection or nonperfection, and the priority of an interest in proceeds.

(d) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated deposit account or, if commingled with other funds, to the extent they can be identified by a method of tracing, including application of equitable principles, that is permitted under a law of this state other than this chapter with respect to commingled funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.062. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement by a person

entitled to priority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. [889](#)), Sec. 2,
eff. June 17, 2011.