

A REVIEW OF THE UNIFORM RESIDENTIAL LANDLORD TENANT ACT FIFTEEN YEARS LATER

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On April 6, 2006, Governor Riley signed into law Alabama’s version of the Uniform Residential Landlord and Tenant Act¹ (“Act”). It is hard to believe that 15 years have passed since the Act became law. After its passage there was a fairly steep learning curve for those that were faced with changing their operations to comply with the Act. Landlords, Attorneys and Judges were all tasked with understanding the Act and how it would impact leases, operations of multi-family complexes, enforcement of leases and evictions. After the years went by, various industry groups were able to convince the legislature to modify several provisions of the Act to make them less burdensome to Landlords. However, the basic framework of the Act remains and the Act remains a relatively tenant friendly set of statutes. There have been only a handful of cases that have been decided under the Act. Thus, District courts across the state are still implementing their own procedures and interpretations of the Act to some degree. This Article will hopefully illuminate the key provisions of the Act and provide some clarity over the various amendments that have been made over the years.

As a result of the passage of the Act the legal relationship between residential tenants and landlords was dramatically changed. Prior to the adoption of the Act, the relationship between a residential tenant and a landlord was governed by principles of common law and somewhat antiquated views of the contractual relationship between the parties. This left the residential tenant with little or no bargaining power with regard to the terms and conditions of the lease.

¹ H.B. 287, 2006-316, Reg. Sess. (Ala. 2006) (to be codified at ALA. CODE §§ 35-9A-101 to -602).

This new legislation represents an attempt to balance the bargaining power between the parties and impose affirmative duties upon the landlord that did not arise in common law. The result of the Act's passage is a dramatic shift in the law governing residential leases.

For example, the landlord now has an affirmative duty to maintain the premises in a habitable condition.² Under the common law the landlord had no such duty.³ Prior to the Act, the amount of security deposit required by landlords and the ability of the landlord to keep the deposit for unspecified "damages" to the property caused by the tenant was unregulated. Now the amount of security required, and the terms of its repayment to the tenant, are clearly delineated in the statute.⁴ In virtually all existing residential leases, the tenant must pay the landlord's costs of enforcing the lease agreement and collecting past due rents. Under the new law, the landlord is no longer *automatically* entitled to recover the cost of collection and attorney's fees in the event of a default by the tenant.⁵ In fact the mere presence of such a clause in the lease is a violation of the Act which will give rise to statutory penalties against the landlord who knowingly uses such language in a rental agreement.⁶ Also, the landlord's lien on the personal property of the tenant is abolished by the Act.⁷ These are just a few of the dramatic changes which you and your residential landlord clients and tenants need to be aware.

The history of the Act is quite interesting. The move toward a uniform Act among the states originally arose during the civil rights movement of the late 60's and early 70's.⁸ During

² ALA. CODE § 35-9A-204(a)(2) (effective Jan. 1, 2007).(Act 2011-700; Act 2014-279)

³ See Johnson v. Passmore, 581 So. 2d 830, 832 (Ala. 1991) (observing that the landlord has no affirmative duty to make repairs apart from the contract between the parties).

⁴ ALA. CODE § 35-9A-201 (effective Jan. 1, 2007).

⁵ ALA. CODE § 35-9A-163(a)(3) (effective Jan. 1, 2007).

⁶ ALA. CODE § 35-9A-163(b) (effective Jan. 1, 2007).

⁷ Compare ALA. CODE § 35-9-60 (1975) (allowing a lien "on the goods, furniture and effects belonging to the tenant"), with ALA. CODE § 35-9A-425 (effective Jan. 1, 2007) ("A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before January 1, 2007.").

⁸ Brian J. Strum et al., *Proposed Uniform Residential Landlord and Tenant Act, Report of Subcommittee on the Model Landlord-Tenant Act of Committee on Leases*, 8 REAL PROP. PROB. & TR. J. 104, 106 (1973).

this period it was estimated that the concentration of poor urban populations gave rise to a disproportionate number of “non-whites” living in substandard housing.⁹ The original uniform committee proposed a model for the current Act in 1973. *Id.* Given that the history of the Act finds its origins in the era of the civil rights movement, it is not surprising that many of the Act’s provisions are aimed at shifting the balance of power away from the landlord and in favor of the tenant. When the original model of the Act was adopted by the uniform committee, tenants were widely abused by landlords who took advantage of their economic power at the expense of their tenant’s rights. These landlords made no warranties and assumed no duties to repair or maintain the premises during the tenancy. This left the tenant in a “take it or leave it” negotiating position.¹⁰ Further compounding the economic disparities between the landlord and the tenant was an antiquated common law system which provided that the doctrine of caveat emptor applied to the rental of residential property. The following statement from the Uniform Committee Report in 1973 summarizes the purpose of the Act well:

Some extremely inequitable situations have resulted from the lease being used as an adhesion contract by the landlord offering the burdensome lease agreement to the tenant on a “take it or leave it” basis. The Commissioners have attempted to remedy this particular aspect of imbalance in the relative bargaining powers of landlord and tenant¹¹

In Alabama, the common law principals of caveat emptor also applied to the rental of residential property; thus, the landlord had no duty to repair or maintain the premises, absent an agreement between the parties.¹² Consequently, most standard leases provided that the tenant would be responsible for repairs and maintenance of the property. The landlord would simply

⁹ Bruce N. Bagni, *The Uniform Residential Landlord and Tenant Act: Reconciling Landlord-Tenant Law with Modern Realities*, 6 IND. L. REV. 741, 745 (1973).

¹⁰ Brian J. Strum et al., *Proposed Uniform Residential Landlord and Tenant Act, Report of Subcommittee on the Model Landlord-Tenant Act of Committee on Leases*, 8 REAL PROP. PROB. & TR. J. 104, 108 (1973).

¹¹ *Id.*

¹² *Johnson v. Passmore*, 581 So. 2d 830, 832 (Ala. 1991) (observing that the landlord has no affirmative duty to make repairs apart from the contract between the parties); *Murphy v. Hendrix*, 500 So. 2d 8, 8 (Ala. 1986) (reaffirming that Alabama does not recognize an implied warranty of habitability in residential real property).

disclaim his or her responsibility for repairing or maintaining the premises, leaving the tenant very few rights under the lease other than the obligation to pay rent. The new Act changes the relationship between the parties in numerous ways.

I will attempt to simplify the various provisions of the Act and their implications below:

WHICH PROPERTIES ARE COVERED BY THE ACT?

Section 35-9A-102(c) provides that the chapter shall apply only to the residential landlord and tenant relationship.¹³ However, certain dwelling units are not covered by the Act, including:

- Institutional residences for medical geriatrics, educational, counseling, religious or other services.¹⁴
- Properties under a contract for sale.¹⁵
- Property occupied by fraternal or social organizations.¹⁶
- Transient occupancies such as hotels and motels.¹⁷
- Occupancy by residential managers of rental property.¹⁸
- Agricultural leases.¹⁹
- Occupancy by the seller of residential property for no longer than thirty-six (36) months after the sale.²⁰

HOW DOES THE ACT DICTATE THE TERMS OF THE RENTAL AGREEMENT ITSELF?

The general provisions of the Act provide that the rental agreement comes with an implied obligation of good faith on the part of both parties.²¹

¹³ ALA. CODE § 35-9A-102(c)

¹⁴ ALA. CODE § 35-9A-122(1)

¹⁵ ALA. CODE § 35-9A-122(2)

¹⁶ ALA. CODE § 35-9A-122(3)

¹⁷ ALA. CODE § 35-9A-122(4)

¹⁸ ALA. CODE § 35-9A-122(5)

¹⁹ ALA. CODE § 35-9A-122(7)

²⁰ ALA. CODE § 35-9A-122(8)

²¹ ALA. CODE § 35-9A-142

The Act also provides that the mere presence of certain terms in the lease itself are unconscionable and unenforceable.²² For example, the court may find as a matter of law that a rental agreement or any provision thereof that was unconscionable when made is unenforceable.²³ The court can also enforce the remainder of the agreement without the unconscionable provision, and limit the application of any unconscionable provision to avoid an unconscionable result.²⁴ Likewise, when a settlement is reached in which a party waives or agrees to forego a claim of right under the Act or under an unconscionable agreement, the court may refuse to enforce the settlement between the parties, or enforce all but the unconscionable provisions of the settlement agreement.²⁵

THERE ARE SEVERAL ITEMS THAT ARE NOW SPECIFIED BY THE TERMS OF THE ACT ITSELF.

- The Act provides that a landlord and tenant may include any provisions in a rental agreement that are not prohibited by the Act.²⁶
- In the absence of an agreement, the tenant is required to pay the fair rental value for the use and occupancy of the premises.²⁷ Further, rent is payable without demand or notice and, unless otherwise agreed, is payable at the premises itself at the beginning of the term of the lease.²⁸
- Unless specified in the rental agreement, a residential tenancy shall be construed to be week-to-week in case of a tenant who pays weekly rent, and in all other cases month-to-month.²⁹

²² ALA. CODE § 35-9A-143

²³ ALA. CODE § 35-9A-143(a)(1)

²⁴ *Id.*

²⁵ ALA. CODE § 35-9A-143(a)(2)

²⁶ ALA. CODE § 35-9A-161(a)

²⁷ ALA. CODE § 35-9A-161(b)

²⁸ ALA. CODE § 35-9A-161(c)

²⁹ ALA. CODE § 35-9A-161(d)

- There is no requirement that the lease be signed or delivered by the landlord or the tenant.³⁰ Acceptance of rent without reservation by the landlord gives a rental agreement the same effect as if it had actually been signed and delivered by the landlord.³¹
- Likewise, if the tenant fails to sign and deliver the written rental agreement to the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been fully executed by the tenant.³²
- If the written agreement of the parties provides for a lease term longer than one year, but is not properly executed by the parties, the Act provides that the rental agreement shall only be effective without execution for one year.³³

WHAT PROVISIONS IN A RENTAL AGREEMENT ARE PROHIBITED BY THE NEW ACT?

First, the Act prohibits the rental agreement from waiving any rights the tenant might have under the Act.³⁴ Additionally, the rental agreement may not authorize any person to confess a judgment or claim arising out of the rental agreement.³⁵ The rental agreement also may not require the tenant to automatically pay the landlord's attorney's fees or costs of collection.³⁶ Most importantly, any provision that provides for a limitation of liability on the part of the landlord arising under the law, or provides that the tenant must indemnify the landlord for any liability or the costs associated with the landlord's potential liability arising from the rental agreement is prohibited.³⁷

³⁰ ALA. CODE § 35-9A-162(a)

³¹ *Id.*

³² ALA. CODE § 35-9A-162(b)

³³ ALA. CODE § 35-9A-162(c)

³⁴ ALA. CODE § 35-9A-163(a)(1)

³⁵ ALA. CODE § 35-9A-163(a)(2)

³⁶ ALA. CODE § 35-9A-163(a)(3)

³⁷ ALA. CODE § 35-9A-163(a)(4)

Any provision of the lease which is prohibited by the Act is unenforceable.³⁸ Furthermore, if a landlord attempts to enforce a provision known to be prohibited, the tenant may recover, in addition to actual damages related to the prohibited provision, an amount of up to one month's periodic rent and reasonable attorney's fees. Originally this provision called for an automatic penalty for even having a prohibited provision in the agreement. However, this punitive provision was removed from the Act and only the attempted enforcement of a prohibited provision is penalized. This can still be a potential trap for the unwary landlord. Thus a careful review of the lease, and the Act should be done before taking any actions against a tenant to avoid this penalty.

WHAT ARE THE LANDLORD'S OBLIGATIONS UNDER THE NEW ACT?

- Security deposits.

The landlord is now limited to the sum equal to *one month's periodic rent* as the maximum security he or she can require for a residential lease (except in the case of pets where additional security may be required).³⁹ Further, the landlord must itemize any deductions taken from the security deposit and return any balance remaining in the security deposit, if any, within sixty (60) days after the termination of the lease.⁴⁰ If the tenant does not provide a forwarding address to the landlord, the landlord may mail the security deposit to the last known address of the tenant, or to the leased unit.⁴¹ Any deposit not claimed within ninety (90) days is forfeited.⁴² If the landlord fails to comply with the sixty (60) day deadline, he or she may be liable to the tenant for an amount double the original deposit.⁴³

³⁸ ALA. CODE § 35-9A-163(b)

³⁹ ALA. CODE § 35-9A-201(a)

⁴⁰ ALA. CODE § 35-9A-201(b)

⁴¹ ALA. CODE § 35-9A-201(d) (Act 2014-279)

⁴² *Id.*

⁴³ ALA. CODE § 35-9A-201(f)

- Disclosure of agents.

A landlord is required to provide the tenant, in writing, the name and business address of any person authorized to manage the premises on the landlord's behalf, and the owner or person authorized to act on behalf of the owner for the purpose of receiving notices and demands by the tenant.⁴⁴ Any person who fails to provide such written notice to the tenant shall become the agent of the landlord for the purposes of receiving notices and demand and, more importantly, performing the obligations of the landlord under this chapter.⁴⁵ Therefore, it is important that the landlord correctly identify his or her agents for service. Otherwise, a property manager failing to provide such notice may become responsible for complying with the landlord's obligations to the tenant.

- Landlord must maintain the habitability of the dwelling.

The Act imposes upon the landlord a duty to make all repairs and to do whatever is necessary to maintain the premises in a habitable condition.⁴⁶ This includes an obligation for the landlord to comply with the requirements of all applicable building and housing codes,⁴⁷ and to maintain in a good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other appliances.⁴⁸ The landlord must also provide for the removal of garbage and other waste incidental to the occupancy of the unit.⁴⁹ If the property is located within a municipality that has adopted the Uniform Property Maintenance Code as promulgated by the International Code Committee, the Landlord needs to be familiar with those provisions.

⁴⁴ ALA. CODE § 35-9A-202(a)

⁴⁵ ALA. CODE § 35-9A-202(c)

⁴⁶ ALA. CODE § 35-9A-204(a)(2)

⁴⁷ ALA. CODE § 35-9A-204(a)(1)

⁴⁸ ALA. CODE § 35-9A-204(a)(4)

⁴⁹ ALA. CODE 5-9A-204(a)(5)

There may be items within this Code that impose more duties upon the landlord than the landlord is accustomed to providing.

The landlord and a tenant of a single-family residence may agree in writing that the tenant will perform the landlord's duties of supplying running water and heat to the property, and making certain specified repairs, maintenance, tasks, alterations, and remodeling.⁵⁰ Landlords and tenants of multifamily housing may also agree that the tenant perform repairs and maintenance. However, this agreement must be contained in a separate writing signed by the parties and supported by separate adequate consideration.⁵¹ However, it is important to note that the agreement may not provide that the tenant is responsible for the compliance with applicable building codes,⁵² and the landlord may not treat performance of the separate agreement as a condition to any other obligation or performance contained in the rental agreement.⁵³

WHAT IF THE LANDLORD CONVEYS PROPERTY SUBJECT TO A LEASE?

The landlord who conveys rental property to another party when that property is subject to a rental agreement at the time of the transaction is relieved of liability under the rental agreement for events occurring after written notice to the tenant that the property has been conveyed.⁵⁴ However, the landlord remains liable to the tenant for all security deposits recoverable by the tenant, and for all prepaid rent.⁵⁵ Therefore, it is critical for attorneys to be familiar with this provision so that they may adequately protect the parties in a transaction involving residential rental property from the implications of this provision. Further, the manager of the premises is relieved of liability under the rental agreement for those events

⁵⁰ ALA. CODE § 35-9A-204(c)

⁵¹ ALA. CODE § 35-9A-204(d)(1)

⁵² ALA. CODE § 35-9A-204(d)(2)

⁵³ ALA. CODE § 35-9A-204(e)

⁵⁴ ALA. CODE § 35-9A-205(a)

⁵⁵ *Id.*

occurring after written notice to the tenant of the termination of the management by the manager.⁵⁶ It is clear that the intent of this section is to transfer the burden for complying with the landlord's responsibilities under a rental agreement to those persons in privity with the tenant at the time of the occurrence giving rise to the landlord's obligations, or the manager's obligations, to remedy a defective condition on the premises.⁵⁷

WHAT ARE THE TENANT'S OBLIGATIONS TO THE LANDLORD?

The tenant has relatively few obligations under the lease other than to pay the rent when due. However, the tenant does have a statutory obligation to comply with applicable building codes where possible, maintain the premises in a clean and safe manner, keep all plumbing fixtures clear, and use the property and its fixtures and appliances in a reasonable manner.⁵⁸ The tenant may not deliberately or negligently destroy, deface, damage, or remove any part of the premises.⁵⁹ Furthermore, the tenant may not knowingly, recklessly, or negligently permit any other person to destroy, damage or remove any part of the premises.⁶⁰ The tenant is also required to conduct himself or herself in a manner that will allow other tenants "quiet enjoyment" of their property as well.⁶¹

THE LANDLORD MAY ADOPT CERTAIN RULES FOR THE TENANTS TO FOLLOW.

The landlord may adopt rules or regulations as long as their purpose is to promote the convenience, safety and welfare of other tenants along the property.⁶² These rules may be imposed upon the tenant as long as they are reasonably related to the purpose for which they are intended, apply to all tenants in a fair and reasonable manner, and are sufficiently drafted to

⁵⁶ ALA. CODE § 35-9A-205(b)

⁵⁷ *Id.*

⁵⁸ ALA. CODE § 35-9A-301(1)-(5)

⁵⁹ ALA. CODE § 35-9A-301(6)

⁶⁰ *Id.*

⁶¹ ALA. CODE § 35-9A-301(7)

⁶² ALA. CODE § 35-9A-302(b)(1)

inform the tenant of what the tenant must do or not do in order to comply with these rules.⁶³ These rules may not be enacted by the landlord for the purpose of evading the obligations of the landlord,⁶⁴ and the tenant must have notice of the rules at the time the tenant enters into the rental agreement.⁶⁵ Any rule or regulation adopted after the tenant enters into the rental agreement that substantially modifies the tenant's use of the leased premises is not valid unless the tenant consents to the new rule in writing.⁶⁶

THE TENANT MUST ALLOW REASONABLE ACCESS TO THE PREMISES.

The tenant must provide reasonable access to the premises for the landlord to make repairs, alterations, or improvements to the property.⁶⁷ The tenant must also make the property available for the landlord's inspection, or to allow the landlord to exhibit the property to purchasers, mortgagees, prospective tenants, workmen, or contractors.⁶⁸ The landlord may not abuse the right of access or use the right of access to harass a tenant.⁶⁹ Except in the case of an emergency, or unless impractical to do so, the landlord must provide the tenant with at least two (2) days' notice of the landlord's intent to enter, and the landlord may only enter at reasonable times.⁷⁰ Such notice should be posted on the primary entrance of the residence of the tenant and should provide the intended time and purpose of the entry.⁷¹ The landlord also maintains the right of access when acting pursuant to a court order,⁷² and when the landlord has reasonable cause to believe the tenant has abandoned or surrendered the premises.⁷³ The Landlord may also

⁶³ ALA. CODE § 35-9A-302(b)(2)-(4)

⁶⁴ ALA. CODE § 35-9A-203(5)

⁶⁵ ALA. CODE § 35-9A-302(6)

⁶⁶ ALA. CODE § 35-9A-302(c)

⁶⁷ ALA. CODE § 35-9A-303(a)

⁶⁸ *Id.*

⁶⁹ ALA. CODE § 35-9A-303(c)

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² ALA. CODE § 35-9A-303(d)(1)

⁷³ ALA. CODE § 35-9A-303(d)(3)

give a general notice well in advance of when routine maintenance or pest control may occur as long as they designate a specific time period that those services may be provided. Other than complying with these rules, the tenant need only maintain the unit as a dwelling unit.⁷⁴ If the tenant expects to be absent for more than fourteen (14) days, the lease may require the tenant to provide the landlord written notice.⁷⁵

WHAT ARE THE TENANT’S REMEDIES IN THE EVENT OF A BREACH BY THE LANDLORD?

- Tenant may terminate the lease.

The tenant may terminate the lease if the landlord is not in compliance with the rental agreement or with the Act if such non-compliance materially affects health and safety.⁷⁶ The tenant may exercise his or her rights to terminate the lease by delivering written notice to the landlord specifying that the lease will terminate within fourteen (14) days unless the breach is cured within these fourteen (14) days.⁷⁷ If the breach is remedied by the landlord within the date specified in the notice, the breach will not result in a termination of the lease.⁷⁸ The tenant does not have the right to withhold rental payments from the landlord. They must continue to pay rent.

- Landlord’s failure to provide utilities may trigger termination of lease.

If the landlord fails to provide heat, running water, hot water, electrical, gas, or other essential services, the tenant may provide notice to the landlord that the lease will terminate within fourteen (14) days if the service is not provided.⁷⁹ However, the tenant may not terminate the lease for a condition caused by the deliberate or negligent acts of the tenant, the tenant’s family, the tenant’s licensee or other person on the premises with the tenant’s consent.⁸⁰

⁷⁴ ALA. CODE § 35-9A-304

⁷⁵ *Id.*

⁷⁶ ALA. CODE § 35-9A-401(a)

⁷⁷ *Id.*

⁷⁸ ALA. CODE § 35-9A-401(a)(1)

⁷⁹ ALA. CODE § 35-9A-404(b)(1)

⁸⁰ ALA. CODE § 35-9A-401(a)(2)

The tenant is also entitled to recover damages based upon the diminution of the fair market rental value of the dwelling unit.⁸¹ The tenant may also recover actual damages and/or obtain injunctive relief for non-compliance by the landlord with the rental agreement, or for the landlord's responsibility to maintain the premises.⁸² Further, if the landlord's non-compliance is in bad faith, the tenant may recover reasonable attorney's fees.⁸³ If the lease is terminated due to the landlord's failure to maintain, the landlord must return all security deposits recoverable by the tenant, and all unearned prepaid rent.⁸⁴

- Landlord's failure to deliver.

If the landlord fails to deliver possession of the property at the commencement of the lease period, rent shall abate until possession is delivered.⁸⁵ In addition to the rent abatement, the tenant may also terminate the rental agreement upon written notice to the landlord.⁸⁶ Within five (5) days thereafter, the landlord must return all prepaid rent and security.⁸⁷ If the landlord's failure to deliver possession is willful and not in good faith, the aggrieved party may recover an amount of not more than three (3) months' rent, or the actual damages sustained, whichever is greater, as well as reasonable attorney's fees.⁸⁸ Here again, the provisions for attorney's fees are to protect the tenant from abuse by the landlord, which is another obvious attempt to balance the power between the landlord and the tenant.

⁸¹ ALA. CODE § 35-9A-404(b)(2)

⁸² ALA. CODE § 35-9A-401(b)

⁸³ *Id.*

⁸⁴ ALA. CODE § 35-9A-401(d)

⁸⁵ ALA. CODE § 35-9A-402(a)

⁸⁶ ALA. CODE § 35-9A-402(a)(1)

⁸⁷ *Id.*

⁸⁸ ALA. CODE § 35-9A-402(b)

- Tenant has right of set-off.

The Act provides for a recovery by the tenant of a set-off against any rent owed while the premises are not made available for the tenant's use.⁸⁹ Likewise, if the premises are damaged or destroyed by fire not caused by the tenant to the extent that the use of the dwelling is substantially impaired, the tenant may either vacate the premises and notify the landlord that within fourteen (14) days thereafter the rental agreement shall be terminated,⁹⁰ or vacate any portion of the dwelling rendered unusable by the fire and reduce the rent in proportion to the diminution of the fair market value for the dwelling unit.⁹¹

- Tenant protected from retaliation by landlord.

The landlord may not retaliate in any way against the tenant for complaining to any governmental agency charged with enforcing building or housing codes, complaining to the landlord of a violation under § 35-9A-204, or organizing or becoming a member of a tenant's union.⁹² If the landlord does retaliate against a tenant, the tenant may pursue remedies including terminating the rental agreement; recovering damages of not more than three (3) months periodic rent, or actual damages, whichever is greater; and recovering reasonable attorney's fees.⁹³ The tenant is also entitled to a return of all the security deposit and all unearned prepaid rent.⁹⁴

- Exclusion from premises and intentional interruption of services.

Lastly, the Act provides that if the landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to the tenant by interrupting or causing interruption of services, the tenant may recover possession or terminate the rental agreement at

⁸⁹ ALA. CODE § 35-9A-405

⁹⁰ ALA. CODE § 35-9A-406(a)(1)

⁹¹ ALA. CODE § 35-9A-406(a)(2)

⁹² ALA. CODE § 35-9A-501(a)

⁹³ ALA. CODE § 35-9A-407

⁹⁴ ALA. CODE § 35-9A-201

his or her option.⁹⁵ In either event, the tenant may recover an equal amount of no more than three (3) months' rent or actual damages sustained by the tenant together with attorney's fees.⁹⁶ This provision is clearly designed to prevent the landlord from willfully withholding services from the tenant in an effort to constructively evict the tenant, or from otherwise removing the tenant from the premises. The imposition of three (3) months' rent as liquidated damages, and the payment of attorney's fees, will serve as at least some deterrent from such conduct.

WHAT ARE THE LANDLORD'S REMEDIES UNDER THE ACT?

- Landlord's right to terminate lease.

If the tenant breaches the rental agreement, or if he or she acts so as to affect the health and safety of the premises, the landlord may deliver written notice to terminate the lease to the tenant specifying the acts and omissions which constitute the breach, and the rental agreement will terminate after seven (7) **business** days from receipt of the notice if the breach is not remedied.⁹⁷

If a tenant fails to pay rent when due, the landlord may deliver written notice to the tenant to terminate the lease for non-payment of rent, and if the rent is not paid within the seven (7) business day period as specified in the notice, the landlord may terminate the rental agreement at the end of the seven (7) business day period.⁹⁸ This section modifies existing law wherein the landlord had to provide a ten (10) day notice of termination of the lease to a tenant in the event of breach.⁹⁹ This section has also been amended to provide clarity that the tenant has seven (7) business days to cure, not seven (7) calendar days. Landlords should be careful not to use the

⁹⁵ ALA. CODE § 35-9A-407

⁹⁶ *Id.*

⁹⁷ ALA. CODE § 35-9A-421(a) (Act 2009-633; Act 2011-700, Act 2014-279, Act 2018-473)

⁹⁸ ALA. CODE § 35-9A-421(b) (Act 2009-633; Act 2011-700, Act 2014-279, Act 2018-473)

⁹⁹ ALA. CODE § 35-9-5 (1975)

incorrect date on the notices or they may lose their eviction action due to defective notice and have to start the eviction process all over again.

- Landlord may obtain injunctive relief.

The landlord is entitled to recover actual damages and obtain injunctive relief if the tenant is in breach of the rental agreement pursuant to his or her obligations under § 35-9A-301, including the obligation to maintain the premises in a clean and safe manner.¹⁰⁰ If the tenant's non-compliance is willful, the landlord may recover reasonable attorney's fees for the breach as a result of the enforcement of the lease.¹⁰¹

- Landlord may increase rent for repairs arising from tenant's failure to maintain premises.

If the tenant fails to maintain the premises as outlined in § 35-9A-301, the landlord may enter the dwelling unit and perform the necessary work to remedy the breach, and may submit an itemized bill for the actual costs of the repairs as additional rent due on the next date that the ordinary rental payments are due.¹⁰²

- Landlord may reenter premises in the case of abandonment by the tenant.

If the lease requires a tenant to provide notice to the landlord for an absence of fourteen (14) or more days, and if the tenant abandons the premises for more than fourteen (14) days without giving notice, the landlord may recover actual damages from the tenant.¹⁰³ Also, during such an absence the landlord may enter the dwelling at any reasonable time necessary.¹⁰⁴ If the tenant abandons the dwelling unit, the landlord has a duty to make reasonable efforts to rent the property at a fair rental value.¹⁰⁵ This implies the landlord's duty to mitigate his/her damages in

¹⁰⁰ ALA. CODE § 35-9A-421(c)

¹⁰¹ *Id.*

¹⁰² ALA. CODE § 35-9A-422

¹⁰³ ALA. CODE § 35-9A-423(a)

¹⁰⁴ ALA. CODE § 35-9A-423(b)

¹⁰⁵ ALA. CODE § 35-9A-423(c)

case of the tenant's abandonment of the premises. The landlord has no duty to store or protect the tenant's property in the unit, and may dispose of it without obligation.¹⁰⁶ This provides additional statutory protection for the landlord from claims of conversion by the tenant in case of such an abandonment.

- List of Non-Curable Breaches Expanded

The Legislature has also expanded the list of non-curable breaches found in § 35-9A-421 (d) to include the following:

- 1) Manufacture, cultivation, importation, transportation, possession, furnishing, administering, or use of illegal drugs in the dwelling unit or in the common areas.
- (2) Illegal use, manufacture, importation, possession, furnishing, or discharging of a firearm or firearm ammunition on the premises of the rental property, except for the use or discharge of a firearm or firearm ammunition in cases of self-defense, defense of a third party, or as permissible in Section 13A-3-23.
- (3) Criminal assault of a tenant or guest on the premises of the rental property, except in cases of self-defense, defense of a third party, or as permissible in Section 13A-3-23.
- (4) Any breach involving substantially the same acts or omissions as a breach for which a notice to terminate has previously been provided for by the landlord and cured by the tenant, if the second breach occurs within six months of the first breach.

For these non-curable violations, you may terminate the lease after giving seven (7) *calendar* days' notice of the acts which constitute the non-curable violation. *Id.* (See attached form notice for non-curable default.)

- Landlord's acceptance of rent may serve as a waiver of default.

One should be aware that if a landlord accepts rent during a period of default on the part of the tenant, the acceptance of such rent shall constitute a waiver of the landlord's right to terminate the rental agreement for that breach.¹⁰⁷ Furthermore, the Act has abolished landlord liens found in former law.¹⁰⁸

¹⁰⁶ ALA. CODE § 35-9A-423

¹⁰⁷ ALA. CODE § 35-9A-424

¹⁰⁸ ALA. CODE § 35-9A-425(a)

- Landlord's right to recover attorney's fees for damages to premises and in the event of holdover.

There are circumstances that will give rise to the landlord recovering his or her attorney's fees from the tenant. Those instances include willful breach on the part of the tenant¹⁰⁹ of his or her duty to maintain the unit in a clean and safe manner, deliberately or negligently destroying or damaging the property,¹¹⁰ and in the case of a holdover tenant.¹¹¹ The simple breach of the tenant's obligation to pay rent will not give rise to a claim by the landlord for attorney's fees. This is a departure from what most residential leases currently provide and places the financial burden upon the landlord in enforcing the rental agreement. If a tenant remains in possession without the landlord's consent after the term of the lease or rental agreement, the landlord may bring an action for possession, and if the holdover is willful and not in good faith, the landlord may recover three (3) months periodic rent or actual damages, whichever is greater, together with a reasonable attorney's fee.¹¹²

HOW WILL LANDLORDS ENFORCE THEIR RIGHTS TO EVICTION AND DAMAGES?

The landlord may bring an action for eviction, rent, monetary damages, or other relief either in District Court or Circuit Court.¹¹³

- Venue.

Venue shall lie in the county in which the leased property is located.¹¹⁴ Additionally, eviction actions are entitled to precedence in scheduling over all other civil cases.¹¹⁵ This provides the landlord with a more appropriate venue than is currently available. For example, in an action to collect unpaid rent, the current venue statutes provide that the tenant may only be

¹⁰⁹ ALA. CODE § 35-9A-421(c)

¹¹⁰ ALA. CODE § 35-9A-301

¹¹¹ ALA. CODE § 35-9A-441(c)

¹¹² ALA. CODE § 35-9A-441(c)

¹¹³ ALA. CODE § 35-9A-461(b)

¹¹⁴ *Id.*

¹¹⁵ *Id.*

sued where he or she resides at the time of the filing of the action.¹¹⁶ Therefore, transient tenants may avoid collection efforts by moving to an unfavorable or inconvenient venue. This section of the new Act, on the other hand, provides that venue shall lie where the premises are located, and also provides that the landlord's action have priority over other civil cases.¹¹⁷

- Service of process.

The Act also provides for a new method of service of process. If service is unable to be made under the ordinary service Rule 4 of the Alabama Rules of Civil Procedure, service may be had by delivering the notice to any person who is residing on the premises, or if after reasonable effort no one is found residing on the premises, by posting a copy of the notice on the door of the premises and on the same day mailing a notice of the filing of the unlawful detainer action to the tenant at the mailing address of the premises.¹¹⁸ The Alabama Supreme Court held Ex parte Trinity Prop. Consultants, LLC, 308 So. 3d 36, 2019 Ala. LEXIS 81, 2019 WL 4126403 that a process server's attempt to serve the tenant only one time in the middle of the day when no one was likely to be home was considered a 'reasonable attempt to serve'. Id. If there is no mailing address for the premises, notice shall be mailed to the last known address of the tenant by first class mail.¹¹⁹ This again provides for a simplified method of service to the tenant who seeks to avoid service of process.

- Appeal to circuit or appellate courts.

In case of eviction, the tenant's appeal to the Circuit Court or any appellate court will not prevent the issuance of a writ of restitution unless the tenant continues to pay the Clerk of the

¹¹⁶ ALA. CODE § 6-3-2(a)(2) (1975)

¹¹⁷ ALA. CODE § 35-9A-461(b)

¹¹⁸ ALA. CODE § 35-9A-461(c)

¹¹⁹ ALA. CODE § 35-9A-441(c)

Circuit Court all rents payable under the lease.¹²⁰ Furthermore, the tenant has the obligation to continue to pay all rent as it becomes due under the terms of the lease during the pendency of appeal.¹²¹ If there is a dispute as to the appropriate amount to be paid, that dispute shall be ascertained by the court.¹²²

CONCLUSION.

As one can see, there are new affirmative duties imposed upon the landlords of residential rental property. The tenant also has new responsibilities as well. There have been very few cases decided under the new Act. Given that this Act is a departure from the common law, one will need to look to the laws of other states that have adopted similar statutes for guidance.¹²³ Landlords and tenants alike need to become familiar with the Act so that they may avoid the unfortunate consequences of violating any provision of the Act. Landlords also need to carefully modify their leases to make certain that they are in compliance with the Act.

¹²⁰ ALA. CODE § 35-9A-461(d)

¹²¹ *Id.*

¹²² *Id.*

¹²³ The following states have enacted similar statutes, and their case law may provide persuasive authority in interpreting the Alabama Act: Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, and Washington.

**NOTICE TO TENANT
OF TERMINATION OF TENANCY FOR NONPAYMENT OF RENT**

To: _____
(Tenant) (Date)

Re: _____
(Address of rental unit)

(City, State, Zip)

You are notified that you owe rent in the amount of \$_____. If you do not pay this rent within **SEVEN BUSINESS DAYS** of the day you receive this notice, your tenancy is terminated and you must move.

If you have not paid your rent or moved out of the dwelling by the _____ day of _____, 20____, at _____ o'clock, a lawsuit will be filed to evict you.

If you deliver your rent to me, in full, on or before the end of the SEVEN-DAY period, you may stay and the tenancy will not be terminated. Partial payments will not be accepted without a written agreement between you and your Landlord.

Signed: _____
(Landlord/Property Manager)

Landlord's Record of Service

Instructions: Serve a copy of this notice on the tenant. Immediately fill out this section to describe how service was accomplished. Complete all statements that apply. Keep the completed original.

Tenant acknowledges receipt of this notice on the _____ day of _____, 20____. _____
(Tenant's Signature)

This notice was personally served on _____ by the undersigned on _____
(Name) (Date)

I attempted to make personal service on the tenant. I knocked on the door, but no one answered. I believed the tenant was absent, so I securely affixed the notice to the entry door of the premises.

This was done on the _____ day of _____, 20____ at _____ a.m./p.m.

Tenant was served by registered or certified mail, or I have mailed today a copy via first class mail to the Tenant at the address of the premises.

Date: _____ Signature: _____ Print Name: _____

Keep a copy of this notice.

**NOTICE TO TENANT
OF TERMINATION OF TENANCY FOR NONCURABLE VIOLATION**

To: _____
(Tenant) (Date)

Re: _____
(Address of rental unit)

(City, State, Zip)

You are notified that you have seriously violated your rental agreement or your duties under the law. The violation(s) is/are specifically as follows which are non-curable:

- Manufacture, cultivation, importation, transportation, possession, furnishing, administering, or use of illegal drugs in the dwelling unit or in the common areas.
- Illegal use, manufacture, importation, possession, furnish, or discharge of a firearm or firearm ammunition on the premises of the rental property, except for the use of discharge of a firearm or firearm ammunition in cases of self-defense, defense of a third party, or as permissible in § 13-A-3-23.
- Criminal assault of a tenant or guest on the premises of the rental property, except in cases of self-defense, defense of a third party, or as permissible in § 13A-3-23.
- A breach involving substantially the same acts or omissions as a breach for which a notice to terminate has previously been provided for by the landlord and cured by the tenant, if the second breach occurs within six months of the first breach. You previously were provided notice of _____ on _____. You have committed the same violation on _____. Thus, your lease will be terminated on _____.

SEVEN CALENDAR DAYS from the date you receive this notice, your tenancy will terminate, and you must move. You must move out by the _____ day of _____, 20____, at _____ o'clock a.m./p.m.

Signed: _____
(Landlord/Property Manager)

Landlord's Record of Service

Instructions: Serve a copy of this notice on the tenant. Immediately fill out this section to describe how service was accomplished. Complete all statements that apply. Keep the completed original.

Tenant acknowledges receipt of this notice on the _____ day of _____. _____
(Tenant's Signature)

This notice was personally served on _____ by the undersigned on _____.
(Name) (Date)

I attempted to make personal service on the tenant. I knocked on the door, but no one answered. I believed the tenant was absent, so I securely affixed the notice to the entry door of the premises.

This was done on the _____ day of _____, 20____ at _____ a.m./p.m.

Tenant was served by registered or certified mail. (I have retained the receipt.)

Date: _____ Signature: _____ Print Name: _____

Keep a copy of this notice.