



Robert L. McCurley, Jr.



Residential Landlord Tenant Act

On January 1, 2007, Alabama will have its first Residential Landlord Tenant Act. This law is basically the Uniform act that has been the law in Mississippi, Florida and Tennessee for many years. The full act with commentary can be found on the law institute's Web site, www.ali.state.al.us/.

The following is an outline of the act:

Uniform Residential Landlord and Tenant Act

Article I – General Provisions

Part I – Title, Construction, Application and Subject Matter

35-9A-101–106

- Maintain and improve the quality of housing
- Injured party must mitigate damages

Part II – Scope and Jurisdiction

35-9A-121 Territorial Application

- Affects only residential landlord-tenant relationships
- Preempts county and city landlord-tenant codes
- Does not create or deprive any tort actions

35-9A-122 Exclusions

- Public institutions
- Lease sale contracts
- Fraternities
- Hotels
- Condominiums
- Primarily agriculture

35-9A-123 Jurisdiction

- District and circuit courts shall have jurisdiction

Part III – General Definitions and Principles of Interpretation

35-9A-141–144 Definitions

- Obligation of “good faith”
- Building and housing codes
- Unconscionable—court may refuse to enforce “notice”

Part IV – General Provisions

35-9A-161 Absent rental agreement:

- Tenant must pay “fair rental value”
- Rent to be paid month to month at the beginning of the month

35-9A-162 Rental agreement binding on landlord/tenant if signed by one party and accepted by the other, even if not signed by both

35-9A-163 Prohibited provisions:

- Waiver of rights
- Confession of judgment
- Payment of attorney’s fees or cost of collection
- (No longer required to be in writing)
- Exculpatory clause
- Damages for willful inclusion of unenforceable provisions by landlord in a lease (effective 1/1/08)

35-9A-164 Payment of rent is a prerequisite for enforcement of remedies under the act

Article II – Landlord Obligations

35-9A-201 Security Deposits

- Landlord may hold one month’s rent plus pet deposit and other exceptions
- Landlord may deduct itemized damages
- Must return the full deposit or an itemized list of deductions within 35 days after termination of lease
- Tenant must provide a valid forwarding address
- Landlord sends refund by mail to the tenant’s forwarding address or last known address will be sufficient if done within 35 days
- Any unclaimed deposit or outstanding check is forfeited by tenant to landlord after 180 days
- Failure to refund, landlord must pay double amount of original deposit

35-9A-202 Disclosure

- Name of manager
- Name of owner

35-9A-203 Delivery of Possession

- Landlord must deliver premises to tenant according to lease

35-9A-204 Landlord to Maintain Premises

- Comply with applicable housing codes which materially affect health and safety
- Maintain house in an habitable condition
- Clean and safe condition
- Electrical, plumbing, garbage removal
- Running water (hot and cold) and heat
- Tenant may not withhold rent to enforce tenant’s rights
- Parties may agree for tenant to make specified repairs

35-9A-205 Limitation of Liability

- Landlord who sells premises is no longer obligated to tenant except for security deposit (new owner assumes remaining obligations)

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Article III – Tenant Obligations

35-9A-301 Tenant to Maintain Dwelling Unit

- Comply with housing codes which materially affect health and safety
- Dispose of garbage
- Keep premises clean and safe
- Keep plumbing clear
- Reasonable use of utilities
- Not commit waste or do damage to the premises

35-9A-302 Rules and Regulations

- Landlord may adopt rules
- Rules must apply to all tenants
- Tenant must know about rules at signing
- Substantial modification of rules not binding unless accepted by tenant

35-9A-303 Landlord Access

- Tenant must permit landlord to inspect and repair premises
- Landlord must give tenant notice of intent to inspect

35-9A-304 Tenant Use and Occupancies

- Use only for dwelling
- Tenant must notify landlord within five days of extended absences in excess of 14 days

Article IV – Remedies

Part I – Tenant Remedies for Landlords

35-9A-401 Noncompliance by Landlord in General

- Noncompliance of rental agreement must be material
- Tenant must give landlord 14 days notice of landlord's non-compliance
- Tenant may terminate lease when material noncompliance is not corrected in a timely manner
- When landlord in bad faith violates lease, tenant may recover actual damages plus attorney's fees

35-9A-402 Failure to Deliver Possession to Tenant

- Rent suspended until possession delivered
- May terminate lease upon written notice
- Willful failure to deliver possession: The tenant may recover three times actual damages plus attorney's fees from person in possession

35-9A-403 Self-Help for Minor Defects *Omitted*

35-9A-404 Failure to Make Available Heat, Water, Hot Water or Essential Services

- Tenant must give 14-day written notice of breach
- Tenant may terminate lease
- Landlord not responsible to pay utilities unless in the lease

35-9A-405 Noncompliance as Defense to Nonpayment of Rent

- Landlord sues for nonpayment of rent
- Tenant may counterclaim for money owed to tenant by landlord
- If tenant remains in possession the tenant must pay rent into court and let court decide who receives the money
- If tenant's counterclaim is without merit and not made in good faith the landlord may recover attorney's fees

35-9A-406 Fire

- Total destruction—tenant may terminate with 14 days' notice
- Partial destruction—prorate rent
- If lease is terminated the landlord must return security deposit

Part II – Landlord Remedies for Tenants

35-9A-421 Noncompliance with Rental Agreement

- Failure to cure breach of lease
- Landlord may terminate lease with 14 days' notice

Failure to Pay Rent

- Non-payment of rent, landlord may terminate lease with seven days' notice
- Willful noncompliance, landlord may recover attorney's fees
- Landlord may recover actual damages and injunctive relief and attorneys fees.

35-9A-422 Failure to Maintain

- Tenant's noncompliance affecting health and safety must be remedied within seven days

35-9A-423 Abandonment

- Tenant's absence in excess of 14 days may constitute abandonment
- Tenant leaves property in unit more than 14 days after lease is terminated, the landlord has no duty to store or protect personal property

35-9A-424 Waiver of Landlord's Right to Terminate

- Acceptance of past unpaid rent is not a waiver

35-9A-425 Landlord's Liens on Residential Property

- Abolished under act (see, Amendment to 35-9-60)

35-9A-426 Remedy after Termination

- Landlord may recover possession of house, rent and attorney's fees

35-9A-427 Recovery of Possession

- Landlord may not interrupt utilities to gain possession

Part III – Periodic Tenancy; Holdover

35-9A-441 Periodic Tenancy; Holdover Remedies

- Week to week—either party may terminate with seven days' notice
- Month to month—either party may terminate with 30 days' notice
- Landlord may recover three months' rent or actual damages plus attorney's fees from tenant, for willful not moving after lease terminates

35-9A-442 Remedies for Abuse of Access to property

- Either party may obtain remedies
- Injunctive relief
- Actual damages

Part IV – Eviction

35-9A-461

- Unlawful Detainer § 6-6-310 *et seq.*
- Court action seven days to answer and seven days to appeal (reduced from 14 days)
- Repealed: Sanderson Act § 35-9-1 *et seq.*

Article V – Retaliatory Conduct

35-9A-501 Prohibited

Landlord may not raise rent or decrease services, when

- Tenant complains to governmental agency
- Tenant complains about failure of landlord to maintain premises
- Joins a tenant organization
- No presumption of retaliatory conduct

Article VI – Effective Date, Savings Clause, Severability

35-9A-601 Effective Date

- January 1, 2007
- Applies only to leases entered into or renewed after effective date
- Penalties for including prohibited provisions in lease effective January 1, 2008

35-9A-602 Savings Clause

35-9A-603 Severability

- Invalidity of a provision does not affect other provisions

6-6-350 Eviction (amended)

- Parties have ~~14~~ seven days to appeal judgments entered against them

35-9-60 Landlord's Lien (amended)

- Removes landlord's lien from residential property

ALI Annual Meeting

The Annual Meeting of the Institute was held Thursday, July 13th during the Alabama State Bar Annual Meeting. The following officers and members of the Executive Committee were elected for the 2006-2007 year.

President: Representative Demetrius C. Newton

Vice-President: Senator Roger Bedford

Secretary: Robert L. McCurley, Jr.

Executive Committee: Representative Marcel Black, David Boyd, James M. Campbell, William N. Clark, Peck Fox, Representative Ken Guin, Richard S. Manley, Oakley W. Melton, Jr.*, Senator Rodger Smitherman, and Yetta Samford*

* *Emeritus Members*

The program for the meeting was "A Review of 2006 Legislation" given by legislators who were instrumental in sponsoring and passing the legislation, with Representative Demetrius Newton presiding

Election Laws

Representative Ken Guin

Business and Tax Laws

Senator Roger Bedford

Criminal Laws, Sentencing Laws and Tort Laws

Representative Marcel Black

Laws Affecting Courts

Representative Paul DeMarco

Residential Landlord/Tenant Act

Representative Jeff McLaughlin

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Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.