
**Comment: Analysis of the Alabama Uniform Residential Landlord
and Tenant Act: the Changes, the Reasons, the Differences, the
Planning, and the Unresolved**

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INTRODUCTION

Alabama enacted its first statewide landlord tenant act in March 2006. Prior to this legislation, Alabama newspapers frequently contained horror stories relating to residential tenants. For example, after a landlord's continuous refusal to repair a leaking roof, the ceiling collapsed, and a tenant and her children were forced to move.¹ Following the move, the tenant was not only homeless, but was also sued by the landlord for the rent owed under her rental agreement.² Other tenants were evicted after being unable to pay their rent; they had spent their rent money to repair a leaking water pipe that had caused holes in the kitchen floor through which gophers entered their home.³ Still another tenant and her young son were forced to live without heat during the winter.⁴

Frequent stories like those above made both Alabama legislators and tenant advocate organizations aware that Alabama's laws on residential landlord-tenant relationships were ineffective and unfair to Alabama tenants. Because Alabama was one of only two states without laws defining the rights and duties of both landlords and tenants, and because Alabama had approximately 500,000 residential renters, interest groups within Alabama began to petition the Alabama Legislature for an act governing the landlord-tenant relationship.⁵

In 1993, Alabama Arise introduced a bill into the legislature entitled Alabama Residential Warranty of Habitability that would require landlords to provide a dwelling that is both livable and safe.⁶ Because of opposition by the Alabama Association of Realtors, the Alabama Legislature took no action on the 1993 Alabama Arise version of a

landlord-tenant act.⁷ However, in 2001 the Alabama legislature asked the Alabama Law Institute (ALI) to compose a residential landlord-tenant law likely to be accepted by both industry realtors and tenant advocates.⁸ ALI composed the Alabama Uniform Residential Landlord and Tenant Act (“Alabama Act”) based on the Uniform Residential Landlord and Tenant Act (“Uniform Act”)⁹ drafted by the National Conference of Commissioners on Uniform State Laws in 1972.¹⁰ The Alabama Act was approved by Alabama Arise, the Alabama Home Builders Association, and other advocacy groups, but was again opposed by the Alabama Association of Realtors.¹¹

When individual Alabama cities passed their own landlord-tenant ordinances, which were more restrictive than the Act proposed by ALI,¹² the Alabama Legislature decided in 2004 to create a uniform landlord-tenant act for the state.¹³ Landlords demanded that the new act preempt city ordinances and that evictions be streamlined, while tenant interest groups such as Alabama Arise insisted on provisions establishing a habitability warranty and permitting tenants to terminate leases without penalty when a landlord failed to promptly make required repairs.¹⁴ Those provisions eventually became part of the law, while each side sacrificed other provisions.¹⁵ The Alabama Legislature adopted a final version of the Alabama Uniform Residential Landlord and Tenant Act in March of 2006, and the majority of the act became effective on January 1, 2007.¹⁶

Before the enactment of the 2006 Alabama Act, the residential landlord-tenant relationship was governed by the common law that viewed a lease for real estate as a conveyance or sale of an estate in land for a term and applied the doctrine of caveat emptor to leases.¹⁷ “That common law did not impose duties on the landlord, nor did it protect the rights of tenants.”¹⁸ At common law, “landlords had few obligations to [their]

tenants, and the tenants had little or no recourse against a landlord who did not deliver physical possession of the leased premises or did not deliver a fit and habitable dwelling.”¹⁹ “Additionally, the law provided few limitations on contracts for lease, and so most lease provisions were written in ways that benefit[ed] landlords.”²⁰ In applying the prevailing common law rule of caveat emptor, courts fully enforced those one-sided provisions.²¹ Thus, as a result of the common law, “there was little protection for tenants” and “little consistency in lease provisions.”²² “Everything depended on contract, and tenants did not have a lot of power to insist on terms to benefit them.”²³

The adoption of the Alabama Act was designed to rectify the unequal treatment of tenants by the common law in the context of landlord-tenant law.²⁴ The Alabama Act was designed to regulate landlord-tenant relationships, including the obligations of both landlords and tenants and to provide remedies for the breach of these obligations.²⁵ The Alabama Act’s stated purposes are to revise and update Alabama laws governing residential landlord-tenant relationships to make the laws simpler and clearer; to encourage maintenance of rental properties by both landlords and tenants; and to create a uniform body of law.²⁶

The purpose of this comment is to provide a comprehensive analysis of the new Alabama Act. The comment is divided into sections that parallel those of the Alabama Act. Each section explains existing Alabama law prior to the enactment of the Alabama Act, describes the basic provisions of the new Alabama Act, and compares the provisions to landlord-tenant law in other states and to the Uniform Residential Landlord and Tenant Act. Additionally, each section contains policy reasons for the difference between the Alabama Act and the Uniform Act. Finally, the conclusion includes suggestions for the

drafting of leases under the Alabama Act and an explanation of issues left unresolved by the Alabama Act.

SCOPE AND JURISDICTION OF THE ALABAMA ACT

To understand the scope of the Alabama Act, we need to first look at what conduct and which territories are excluded. In general, the Alabama Act governs all rental agreements for residential rental property located in Alabama; however, as discussed later, the act contains several exclusions from coverage. Additionally, we must explore where to bring claims arising under the act and how to gain personal jurisdiction over the parties.

A. Territorial Application of the Alabama Act

The Alabama Act applies to all rental agreements for any structure located in Alabama and rented as a residence, place to sleep, or house.²⁷ Additionally, the Alabama Act preempts any conflicting municipality or county ordinance or resolution.²⁸ However, the act does not preempt Health and Safety Codes of local municipalities or counties. This preemption provision is the only difference in territorial application between the Alabama Act and the Uniform Act; the Uniform Act does not contain a preemption provision.²⁹ Alabama included the preemption provision at the request of landlords, because Hoover, Alabama had already adopted a stricter landlord tenant ordinance and other cities in Alabama were in the process of adopting local ordinances.³⁰ Thus, the Alabama Act was a way to loosen some restrictions imposed by proposed or existing local ordinances that had threatened landlords.

B. Exclusions from the Alabama Act's Application

The Uniform Act was designed to regulate landlord-tenant relationships involving residential properties.³¹ Therefore, the act was not intended to apply where the primary purpose of the rental was not residency, but another purpose such as “residence in a prison, hospital, or nursing home, a dormitory owned and operated by a college or school, or residence by a landlord’s employee such as a custodian, janitor, guard or caretaker rendering service in or about the demised premises.”³²

The Alabama Act adopts an exclusion provision similar to that of the Uniform Act.³³ The Alabama Act does not apply to residency at an institution, whether private or public, that provides medical, counseling, religious, educational,³⁴ or other comparable services.³⁵ Also, the Act does not apply to residential property that is under a contract of sale of which the tenant is the purchaser or an individual who will succeed to the purchaser’s interest (i.e. lease sale contracts).³⁶ Additionally, the Act excludes from its coverage residency at a motel, hotel, or other transient lodging.³⁷ The Act also does not apply to residency of an employee of whose residency on the landlord’s premises is a condition of employment; it also does not apply to occupancy pursuant to rental agreements for agricultural purposes.³⁸ Furthermore, “occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative” (i.e. condominiums) is also excluded from the Act’s coverage.³⁹

Finally, the Alabama Act contains an additional provision not found in the Uniform Act concerning occupancy by a seller of residential property the seller sold within the last thirty-six months.⁴⁰ The Alabama Act provides that where the seller or seller’s family member sells residential property but continues to occupy the sold

property, the Act does not apply for a period up to thirty-six months.⁴¹ This provision was included in the Alabama Act because legislators did not want sellers to take advantage of purchasers merely because they were allowed to remain on the property for a short period of time; the legislators did not view these sellers as becoming tenants within the Alabama Act's coverage.⁴²

C. Jurisdiction and Service of Process

Prior to the enactment of the Alabama Act, the only express provision in Alabama law relating to jurisdiction for actions involving landlord-tenant relationships involved actions for unlawful detainer.⁴³ Prior to the enactment of the Alabama Act, a plaintiff was required to serve notice on a tenant within six days before the detainer hearing.⁴⁴ Furthermore, Alabama law permitted a sheriff unable to personally serve a tenant, to perfect service by posting a copy of the writ on the rental property's door and within one business day mailing a copy of the writ "by first-class mail to the [tenant] at the address of the [rental property]."⁴⁵

With the enactment of the Alabama Act, both District and Circuit Courts now have jurisdiction over matters arising within Alabama and subject to the Alabama Act.⁴⁶ Additionally, the Alabama Act provides a method of obtaining personal jurisdiction through compliance with Rule 4 of the Alabama Rules of Civil Procedure over non-residents of the state or business entities not authorized to conduct business within the state, whose conduct is governed by the Alabama Act.⁴⁷

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

While prior Alabama law left the definitions and interpretations of many terms unclear, the Alabama Act has clarified many terms frequently arising in the landlord-

tenant relationship. Because the definitions of the Act's terms will control in residential leases falling within the Alabama Act's coverage, both landlords and attorneys should familiarize themselves with the definitions. In addition, the Alabama Act clarifies implied duties within the landlord-tenant context and establishes principles of interpretations applicable to residential leases.

A. Definitions within the Alabama Act

Prior to the enactment of the Alabama Act, Alabama law defined few terms that frequently arose in the context of landlord-tenant relationships. Of the few definitions provided by Alabama statutes or common law, the definition for rent was "consideration paid for the use of the land."⁴⁸ Without statutory or common law definitions, landlords and tenants had to define terms in the lease. However, Alabama law did provide that where the terms of a rental agreement were ambiguous, the ambiguous terms were "to be construed most strongly against the lessor."⁴⁹

The definition portion of the Alabama Act provides definitions to terms applicable to the entire Alabama Act.⁵⁰ This section of the Alabama Act defines the terms "action," "building and housing codes," "day," "dwelling unit," "good faith," "landlord," "organization," "owner," "person," "premises," "rent," "rental agreement," "roomer," "single family residence," and "tenant."⁵¹ The Alabama Code adopts verbatim nearly all the definitions provided by the Uniform Act.⁵² However, some notable differences between the definitional section of the Alabama Act and the Uniform Act include Alabama's inclusion of a manufactured home⁵³ within the definition of a dwelling unit.⁵⁴ In addition, the Alabama Act defines the term "day," while the Uniform Act does not do so.⁵⁵ The inclusion of a manufactured home within the definition of a

dwelling unit and the defining of the term “day,” were merely attempts by Alabama legislators to clarify the Uniform Act.⁵⁶

B. Duty of Good Faith

Prior to the enactment of the Alabama Act, the mere existence of a landlord tenant relationship by itself was not enough to establish a fiduciary relationship and impose a duty of good faith on landlords and tenants; for a fiduciary duty, the Alabama courts required more than a lease establishing a relationship.⁵⁷ However, the Alabama Act imposes a duty of good faith on all of a landlord’s or tenant’s actions governed or performed pursuant to the Alabama Act.⁵⁸ The obligation of good faith imposed on landlords and tenants in the Alabama Act is consistent with that of the Uniform Act, and good faith is defined in both acts as “honesty in fact.”⁵⁹

C. Unconscionability

Prior to the enactment of the Alabama Act, Alabama courts had refused to enforce lease provisions limiting a landlord’s liability, especially in the context of exculpatory clauses limiting a landlord’s willful or intentional actions; the courts held these provisions to be unconscionable.⁶⁰ The Alabama Supreme Court defined an unconscionable contract “as one ‘such as no man in his sense and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.’”⁶¹

Upon the adoption of the Alabama Act, Alabama’s unconscionability provision became consistent with that of the Uniform Act. The Uniform Act’s unconscionability provision, adopted from the Uniform Commercial Code and the Consumer Credit Code, was “intended to make it possible for the courts to police explicitly against rental

agreements, clauses, settlements, waivers of claim or right which they [found] to be unconscionable.”⁶² The test for unconscionability “is whether, in light of the background and setting of the market, the conditions of the particular parties to the rental or settlement . . . [agreement] are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the agreement.”⁶³ Therefore, the question of unconscionability is a factual determination specific to each situation before the court.⁶⁴

The Alabama Act permits a court to refuse to enforce a rental or settlement agreement, exclude portions of an agreement, or limit the application of provisions within the agreement if the court considers that certain provisions or the agreement as a whole were unconscionable at the time the agreement was made.⁶⁵ Furthermore, consistent with general rules governing contracts, if a rental or settlement agreement contains a waiver of a right under the Alabama Act, and a party to that agreement or any court presiding over a conflict within the scope of the Alabama Act puts unconscionability into issue, the parties have the right to place into evidence “the setting, purpose, and effect of the rental [or settlement] agreement. . . .”⁶⁶

D. Notice

Prior to the Alabama Act, Alabama common law hinted that notice included both actual and constructive notice; however, courts had never expressly said as much in the context of landlord-tenant relationships.⁶⁷ The Alabama Act expressly defines notice in the context of landlord-tenant relationships to include actual knowledge and constructive notice.⁶⁸ Thus, under the Alabama Act, an individual is deemed to have notified or given notice to another person where the individual has taken steps reasonably calculated to

give notice to another, whether or not the individual actually receives knowledge.⁶⁹ For example, under the Alabama Act, notification is presumed when three events occur: when the information has come to the attention of the individual, when the notification is delivered at the landlord's place of business or mailed to the landlord's designated place for receipt of communication, and when the notification is hand delivered to the tenant or "three days after mailing with adequate prepaid postage in the United States mail[ed] to the tenant's last known place of residence."⁷⁰ Also, the Alabama Act provides that notice for an organization is effective for a transaction from the moment the notice is brought to the organization's attention.⁷¹ Although the notice definition applies throughout the Alabama Act, the notice required in terminating a tenancy or evicting a tenant is different.⁷²

The Alabama Act's definition of notice is almost verbatim to that of the Uniform Act, which adopts the notice provision of the Uniform Commercial Code.⁷³ However, where the Alabama Act provides only for a presumption of notice, the Uniform Act actually deems notice to exist.⁷⁴ In other words, under the Uniform Act where notice is deemed to exist, notice is not rebuttable by interested parties, while under the Alabama Act, the presumption of existence permits parties to rebut the existence of notice. This difference was the result of Alabama legislators' desire to make notice a rebuttable presumption, providing parties with the opportunity to attack the existence of notice.⁷⁵

The Uniform Act is less restrictive in its definition of when notice occurs. First, under the Uniform Act a landlord does not have to wait three-days after mailing the notice to the tenant's last known residence before notice is deemed to exist. Also, the Uniform Act extends the scope of notice for an organization not only to the moment

when knowledge is brought to the organization's attention, but also to the moment when knowledge would have been brought to the organization's attention had the organization acted with reasonable diligence.⁷⁶ However, the Uniform Act does specify in its comment to the notice definition that a duty of good faith is imposed regarding notice.⁷⁷ Finally, unlike the Alabama Act's definition of notice, the Uniform Act's notice definition applies to the termination of tenancies or evictions of tenants.⁷⁸

GENERAL PROVISIONS

A. Terms and Conditions of the Rental Agreement

Prior to the enactment of the Alabama Act, Alabama law provided for rules of construction and default rules where the lease was silent or unclear, including a rule for determining the amount of rent due under a lease. Under Alabama law, a court considered surrounding circumstances to determine rent that was not clearly defined within a lease.⁷⁹ Additionally, Alabama common law provided rules where the lease was silent or unclear as to the term of the lease. For example, Alabama courts have held that where the term of a lease was unclear, a court should look to the intent of the parties as evidenced by the instrument as a whole, and, if the language was unclear, the court should look at the circumstances surrounding the execution of the leases and subsequent actions of the parties.⁸⁰ However, where the intent of the parties was to specify no term period, the lease period was deemed to be from December 1 to December 1, except where the lease was a tenancy at will which either party could terminate by giving ten days' written notice.⁸¹

Alabama adopted the Uniform Act's provision relating to terms and conditions, and the law in Alabama now provides that a rental agreement may include any terms and

conditions not prohibited by the Alabama Act or any other law.⁸² However, in the absence of a rental agreement, the Alabama Act sets out default rules.⁸³ First, absent a provision for rent, rent paid by the tenant shall be the fair rental value of the rental property.⁸⁴ Second, unless otherwise agreed, rent is to be paid without notice or demand at the place and time the parties agreed upon.⁸⁵ However, absent an agreement as to time and place for payment of rent, rent is to be paid at the rented premises at the beginning of the month on a month-to-month basis.⁸⁶ Finally, where no term is specified within a lease, the term is week-to-week for a tenant who pays rent weekly and month-to-month for all other situations.⁸⁷ Thus, Alabama courts now have precise guidelines to use in interpreting ambiguous leases, and Alabama landlords and tenants have a further incentive to contract more specifically to avoid having a court incorporate the Alabama Act's default terms into their leases.

B. Effect of Unsigned or Undelivered Rental Agreement

Prior to the enactment of the Alabama Act, Alabama common law provided that a landlord's signature on a lease was necessary to make it effective.⁸⁸ However, a tenant's signature was not necessary for effectiveness when the tenant accepted delivery and took possession of the rental property.⁸⁹ Alabama common law even went so far as to enforce a lease with a ten-year term that had been signed only by the landlord.⁹⁰

The Alabama Act provides that a landlord or tenant is bound by a rental agreement signed by one party and delivered and accepted by the other party, notwithstanding the absence of the other party's signature.⁹¹ A landlord's unconditional acceptance of rent shall be considered acceptance for purposes of binding the landlord to the rental agreement signed and delivered to the landlord by the tenant.⁹² Additionally, a

tenant's unconditional possession of the rented premises and payment of rent shall be considered acceptance for purposes of binding the tenant to the rental agreement signed and delivered to the tenant by the landlord.⁹³ However, where the rental agreement is not signed by one party, but has bound the landlord or tenant because of conduct described above, the rental agreement is binding against the party only for a period not to exceed one year, even if the rental agreement provides for a period greater than one year.⁹⁴

Consistent with the modern contractual view of the landlord-tenant relationship, Comments to the Uniform Act, that the Alabama Act is patterned after, note that the provisions regarding the effect of unsigned or undelivered rental agreements described above apply only in situations where either a landlord or tenant has delivered a signed written rental agreement, the parties have come to an agreement over the terms of the agreement, and the absence of a signature is the only defect.⁹⁵ Additionally, the comment to the Uniform Act notes that delivery is not limited to actual physical delivery but also includes legal delivery; therefore, delivery requires knowledge or notice that the rental agreement has been signed.⁹⁶ The comment to the Uniform Act also notes that the provision involving the effect of unsigned or undelivered rental agreements does not apply to lease applications or writings the parties regarded as preliminary.⁹⁷ Unsigned or undelivered rental agreements described above are effective only in situations where both the landlord and tenant have actually intended to enter into a rental agreement.

C. Prohibited Provisions in Rental Agreements

Prior to the Alabama Act, several types of exculpatory clauses appeared in leases. For example, a waiver that the premises be habitable was often included within a residential lease. These exculpatory clauses that limited a landlord's liability in

residential leases were not prohibited by Alabama common law.⁹⁸ However, exculpatory clauses were not enforceable unless “clearly ‘bargained for.’”⁹⁹ In *Lloyd v. Service Corporation of Alabama*, the Alabama Supreme Court held that “‘enforcement of ‘unbargained for’ exculpatory clauses in residential leases [was] against the best interest of the citizens of Alabama and contrary ‘to public policy’” because of concerns the Court had over consumers with unequal bargaining power.¹⁰⁰ Moreover, because Alabama common law did not imply a warranty of habitability in residential rental agreements, waivers of habitability were permitted in a residential lease.¹⁰¹

In addition, residential leases historically contained attorneys’ fee provisions, requiring tenants to pay any attorneys’ fees incurred by the landlord in relation to enforcing the lease. Prior to the Alabama Act, Alabama common law permitted a provision for the collection of attorney’s fees relating to a landlord’s collection of rent.¹⁰² Alabama common law even went so far as to require an attorneys’ fee provision in order for a landlord to collect any attorney’s fees.¹⁰³ Therefore, under common law the prevailing rule was caveat emptor, imposing few obligations on landlords, while providing a tenant with little or no recourse against a landlord.

The Alabama Act attempted to remedy the lack of recourse and the reliance on caveat emptor. The Alabama Act prohibited landlords from including provisions waiving tenants’ rights and provisions providing for the landlords collection of attorneys’ fees in the event of a conflict. For example, under the Alabama Act, a rental agreement can no longer include a waiver provision requiring a tenant to waive its rights relating to security deposits or the habitability of the rented premises.¹⁰⁴ Additionally, the tenant shall not be required to “authorize any person to confess judgment on a claim arising out of the rental

agreement.”¹⁰⁵ Also, the rental agreement shall not contain a provision requiring the tenant to pay the attorney fees of the landlord or fees involved in the collection of rent and/or attorney fees.¹⁰⁶ However, although the right to attorney fees may not arise by contractual agreements between the parties, a party may claim attorney’s fees statutorily under the Alabama Act. Finally, the Alabama Act prohibits landlords from including any other exculpatory clauses, limiting their liability.¹⁰⁷

These exculpatory provisions are unenforceable.¹⁰⁸ More importantly, landlords are also affirmatively penalized for including them in a lease subject to the Alabama Act. As of January 1, 2008, a tenant may recover actual damages, an amount not exceeding one month’s rent, and attorneys’ fees if a rental agreement deliberately contains any of the above-mentioned provisions prohibited by the Alabama Act.¹⁰⁹

The only notable difference between the Uniform Act’s prohibition provision and the Alabama Act’s prohibition provision is that the Uniform Act provides for damages in amounts up to three months’ rent, while the Alabama Act provides for damages up to only one month’s rent.¹¹⁰ This difference is a result of a compromise between realtors and tenants, with the landlords arguing that going from nothing in prior Alabama law to damages equal to three times one month’s rent was excessive.¹¹¹

D. Payment of Rental Prerequisite to Enforcing Remedies under this Chapter

Prior to the enactment of the Alabama Act, generally a landlord’s failure to make repairs could not serve as a basis for a tenant’s withholding of rent.¹¹² Consistent with prior Alabama law, the Alabama Act expressly provides that a tenant in possession of the residential rental property may not refuse to pay rent in an effort to enforce his or her

rights under the Alabama Act.¹¹³ The Alabama Act's provision regarding the withholding of rent to enforce a tenant's rights contains clearer language than that provided by the Uniform Act, which states that "[a] rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with [the landlord's duty to maintain the premises]."¹¹⁴ Alabama rewrote the Uniform Act's provision relating to a tenant's withholding of rent "to provide that a tenant while in possession may not withhold rent as a way to enforce any of the tenant's rights."¹¹⁵

LANDLORD OBLIGATIONS

As discussed in the introduction, prior to the enactment of the Alabama Act, landlords had few statutorily expressed or common law duties; most of the duties imposed on landlords were contractual. The Alabama Act, in contrast, expressly imposes duties on residential landlords operating within the state of Alabama. Those duties include obligations relating to the collection and return of security deposits, mandatory disclosures in leases, proper delivery of possession of the rental property, and adequate maintenance of the rental property. Furthermore, the Alabama Act restricts a landlord's ability to limit liability when selling the rental property.

A. Security Deposits and Prepaid Rent

Prior to the enactment of the Alabama Act, a landlord in Alabama was permitted to require a security deposit from a tenant.¹¹⁶ The landlord could retain the security deposit until the landlord received required payments or the tenant met specified obligations.¹¹⁷ Upon receipt of payment or the tenant's performance of an obligation, the landlord was required to return the security deposit or account for it.¹¹⁸ However,

Alabama law was silent as to the amount of security deposit a landlord could demand and when the security deposit must be returned or an accounting made.

With the adoption of the Alabama Act, any security deposit collected by a landlord is limited to one month's rent.¹¹⁹ However, demand for an additional deposit is permitted where the tenant has pets, where the tenant is allowed to make changes to the rental property, and where the tenant poses an above-normal risk¹²⁰ to the landlord or rental property.¹²¹ At the termination of the lease, the landlord may deduct from the security deposit any accrued rent and damages caused by the tenant's failure to comply with the Alabama Act's section relating to tenant obligations.¹²²

Additionally, the Alabama Act now requires landlords to return the full security deposit or an accounting itemizing the deductions within 35 days after the lease terminates.¹²³ The landlord must send the security deposit refund and/or the itemized list of deductions to the forwarding address provided by the tenant.¹²⁴ In the event that the tenant does not provide a forwarding address, the landlord must send the security deposit refund or itemized deduction list to the tenant's last known address or to the rental property's address.¹²⁵ Additionally, after a period of 180 days, the tenant forfeits to the landlord any unclaimed security deposit.¹²⁶ The failure of a landlord to send a security deposit refund or itemized deduction list to a tenant within the 35-day period shall result in the landlord being liable to the tenant for an amount equal to double the amount of the security deposit plus any related attorneys' fees.¹²⁷

The provisions in the Alabama Act governing security deposits are similar to those of the Uniform Act; however, the Alabama Act contains some notable differences.¹²⁸ First, where the Alabama Act permits additional fees for a tenant with

pets, for a tenant who changes the rental property, and for a tenant who poses an above-normal risk, the Uniform Act does not allow any additional fees.¹²⁹ Additionally, while the Uniform Act's time period for return of the security deposit or itemized deduction list is 14 days, the Alabama Act's time period is extended to 35 days.¹³⁰ The increased time period for a return in the Alabama Act was the result of concerns expressed by the college community landlords that they would be required to inspect a 400-unit apartment complex and return the security deposits within a 2-week period when all the students moved out in May.¹³¹ Finally, the Alabama Act specifies the place where the refunded security deposit or itemized deduction list is to be mailed, while the Uniform Act is silent on the matter.¹³² Alabama legislators chose to clarify the return procedure for security deposits in order to eliminate any loophole landlords might create involving the duty to return the security deposit within the 35 days.¹³³

B. Disclosure

While prior Alabama law was silent as to a landlord's duty of disclosure,¹³⁴ the new Alabama Act, patterned after the Uniform Act, imposes a duty of disclosure on landlords.¹³⁵ Landlords are now required to inform tenants of the name and business address of the manager and the name and business address of the owner of the rental property.¹³⁶ Furthermore, the landlord is charged with the responsibility for keeping the disclosed information current.¹³⁷ Also, the duty of disclosure is binding on any future landlord, manager, or owner.¹³⁸ If the landlord fails to disclose the required information, the person collecting rent will be deemed to have the authority to accept service of process and notice and to perform the landlord's obligations under the Alabama Act and the rental agreement.¹³⁹

The Uniform Act's comment on disclosure notes that the disclosure requirement is to notify the tenants of those individuals who have the authority to operate the rental properties, including the authority to negotiate and make repairs, and to notify the tenants as to those individuals who are authorized to receive service of process and notice, binding all owners.¹⁴⁰ The policy behind this disclosure provision is to enable "the tenant to proceed with the appropriate legal proceeding, to know to whom the complaints must be addressed and, failing satisfaction, against whom the appropriate legal proceedings may be instituted."¹⁴¹

C. Landlord to Deliver Possession of Dwelling Unit

Prior to the Alabama Act, a landlord's duty to deliver possession of the rental property arose only contractually.¹⁴² The requirements governing the delivery of possession of the rented premises are the same under the Uniform Act and the Alabama Act. Both Acts require that a landlord deliver the rental property to the tenant according to the rental agreement.¹⁴³ Both the Acts also permit the landlord to "bring an action for possession against any person wrongfully in possession and . . . recover the damages provided in" the Act's section relating to remedies for a tenant's possession of the rental property after the termination of the lease.¹⁴⁴ Therefore, the landlord and current tenant may both have claims against individuals wrongfully in possession of the rental property.¹⁴⁵

D. Landlord to Maintain Premises

Before the enactment of the Alabama Act, Alabama law did not imply a warranty of habitability in residential leases.¹⁴⁶ Therefore, unless otherwise provided for in the rental agreement, the landlord had no duty to maintain residential rental property in a

habitable condition.¹⁴⁷ Additionally, no statutory authority required a landlord to repair rental property.¹⁴⁸ Under Alabama common law, a landlord's responsibility to make repairs generally derived from the rental agreement; therefore, unless the rental agreement provided that the landlord was required to repair, no duty existed.¹⁴⁹ Additionally, unless otherwise provided for in the rental agreement, repair costs incurred by a tenant were generally not recoverable from a landlord.¹⁵⁰

Thus, the only duties imposed on a landlord under Alabama common law, were the contractual duty to repair and the duty to repair latent defects known to the landlord at the time the rental agreement was made, but concealed from the tenant.¹⁵¹ However, under Alabama common law, the landlord had no duty to inspect the rental property for latent defects.¹⁵² Furthermore, under Alabama common law, where the rental agreement required repairs to be made by the landlord, no duty arose until the tenant notified the landlord of the need for repairs.¹⁵³ Therefore, unless the landlord had actual knowledge of the need for repairs, a landlord could not be in breach of a rental agreement until the appropriate notification had been provided by the tenant.¹⁵⁴

Unlike prior Alabama law, the Alabama Act imposes a duty on landlords to maintain the premises of the rental property. This duty of maintenance requires that the landlord comply with “applicable building and housing codes materially affecting health and safety;”¹⁵⁵ maintain the rental property in a habitable condition;¹⁵⁶ keep the common areas of the rental property in a safe and clean condition; maintain in good working order “all electrical, plumbing, sanitary, heating, ventilating, and air-conditioning systems;” “provide and maintain appropriate receptacles . . .” for garbage removal;¹⁵⁷ and provide both a heating source and hot and cold running water for the rental property.¹⁵⁸

However, a tenant does not have rights relating to a landlord's maintenance duties under the Alabama Act where the tenant willfully or negligently caused the condition violative of the landlord's maintenance duties under the Alabama Act.¹⁵⁹

Although the Alabama Act imposes the above-mentioned maintenance duties on landlords, the Act also permits the parties to a rental agreement to agree that the tenant will make specified repairs, so long as certain requirements are met.¹⁶⁰ The agreement must be evidenced by a signed writing and supported by consideration.¹⁶¹ Additionally, the work must not be related to compliance with "housing and buildings codes materially affecting health and safety," and the work must not affect the landlord's obligations to other tenants.¹⁶² Although the parties may agree that the tenant will make specified repairs, the landlord is not permitted to "treat performance of the separate agreement as a condition to any obligation or performance of any rental agreement."¹⁶³

Comments to the Uniform Act's section on landlord maintenance duties state that the standard of habitability is "a matter of public police power rather than the contract of the parties or special landlord-tenant legislation."¹⁶⁴ The habitability requirement establishes minimum requirements for landlords that are consistent with public standards.¹⁶⁵ Additionally, "habitability" has been defined as "the extent to which a dwelling is fit to be occupied."¹⁶⁶

The Alabama Act's landlord maintenance duties are consistent with that of the Uniform Act, except that the Uniform Act requires a heating source only between October 1 and May 1, while the Alabama Act requires a heating source all year unless the rental property is not required by law to be equipped for such a purpose, or the availability of the heating source is within the tenant's exclusive control.¹⁶⁷ Alabama

legislators decided not to limit a requirement for a heating source to certain months, because a monthly limitation would permit landlords an excuse for not complying with the provision promptly when all tenants demanded heating on October 1.¹⁶⁸ For example, if the Alabama Act required heating sources only during certain months, a landlord could argue that a requirement for providing heating sources to all 400 of his tenants on a particular date such as October 1 was unreasonable, thereby, providing the landlord with an argument for an extension for complying with the heating source requirement.¹⁶⁹

E. Limitation of Liability

Under both the Alabama Act and the Uniform Act, a landlord who sells the rental property and gives written notice to the tenant of the sale is not liable under the rental agreement and therefore no longer obligated to the tenant except for security deposits and prepaid rent.¹⁷⁰ The drafters believed that the landlord should bear the risk of loss for failing to account properly for security deposits or prepaid rent, because the landlord was in the best position to take precautions to protect the deposits and prepaid rent at the time the rental property was sold.¹⁷¹ In addition, a manager is not liable under the rental agreement once the tenant has received written notice of the manager's termination.¹⁷²

TENANT OBLIGATIONS

Prior to the Alabama Act, Alabama law was silent on the duties of a tenant, except for the duty to pay rent.¹⁷³ Any other duties of a tenant arose contractually from the lease.¹⁷⁴ In contrast, the Alabama Act, "consistent with the notion of 'mutuality of covenants,'"¹⁷⁵ expressly creates duties on the part of tenants, including a duty to maintain the dwelling unit.

A. Tenant to Maintain Dwelling Unit

Under the Alabama Act and Uniform Act, a tenant must maintain the rental property at least according to “public standards of health and safety.”¹⁷⁶ The Alabama Act requires compliance by tenants with housing and buildings codes that materially affect safety and health.¹⁷⁷ The Alabama Act also requires that the tenant keep the rental property in a safe and clean condition and that the tenant dispose of all garbage from the rental property.¹⁷⁸ Under the Alabama Act, the tenant’s use of “electrical, plumbing, sanitary, heating, ventilating, [and] air-conditioning . . .” must be reasonable, and the tenant must keep the rental property’s plumbing system as clear as possible.¹⁷⁹ The tenant is also prohibited from negligently or deliberately causing damage to the rental property.¹⁸⁰ Finally, the actions of the tenant or the tenant’s guest must not interfere with the other tenants’ peaceful enjoyment of the rental property.¹⁸¹

B. Rules and Regulations

Prior to the Alabama Act, a landlord’s ability to change the rules within a lease or adopt new rules was subject only to the contractual agreement within the lease and common law rules of agreements.¹⁸² Under the Alabama Act, a landlord’s adoption of a rule is binding on a tenant only if the rule is adopted “to promote the convenience, safety, or welfare of the tenants . . .” or to protect the rental property from being abused; the rule “is reasonably related to the purpose for which it is adopted;” the rule is fairly applicable to all tenants; the rule is clear as to the tenant’s conduct that is permitted or prohibited by the rule; and the rule is not designed to evade the landlord’s obligations.¹⁸³ A new rule is enforceable only if the tenant has notice of the rule at the time of entering into the rental

agreement or if the tenant agrees in writing to a new rule subsequent to the signing of the rental agreement.¹⁸⁴ Additionally, the Alabama Act provides that the rental agreement prevails over a conflicting rule.¹⁸⁵

Notwithstanding the Uniform Act's absence of a definition for the term "rules," the Alabama Act, for clarity, defines the term "rules" as "policies of the landlord affecting the maintenance, operation, or governance of the common areas of the premises, or concerning the general conduct of tenants in their use and enjoyment of the leased premises."¹⁸⁶ In addition, unlike the Uniform Act, the Alabama Act, for clarity, provides for a rental agreement to prevail in a situation where there is a conflicting rule.¹⁸⁷ This difference was attributable to Alabama legislators' desire to clarify that the rental agreement is the supreme law, superseding any conflicting rule.¹⁸⁸

C. Access

Prior to the Alabama Act, a landlord's right of access to rental property or a tenant's right to refuse such access only arose contractually, as Alabama law was silent on this matter.¹⁸⁹ Under the Alabama Act, the tenant must permit the landlord access to the rental property to make inspections and necessary repairs.¹⁹⁰ However, except in the case of emergencies, the landlord must provide the tenant with at least two days' notice regarding entry into the rental property and the intended entry must be during reasonable hours.¹⁹¹ The requirement of notice shall be deemed to be fulfilled if the landlord posts the notice, stating the intended purpose and time of entrance, on the primary door of entrance to the rental property.¹⁹² In the event of an emergency, a landlord may enter the rental property without the tenant's consent.¹⁹³ However, absent an emergency situation, without obtaining a court order or without a "reasonable cause to believe the tenant has

abandoned or surrendered the premises,” the landlord may not enter the rental property without meeting the requirements of notice and reasonable time.¹⁹⁴

The Alabama Act is consistent with that of the Uniform Act except that the Uniform Act does not provide for notice to be fulfilled by the posting of notice, stating the intended purpose and time of entrance, on the primary door of entrance to the rental property.¹⁹⁵ Alabama included this notice procedure, because legislators wanted to consistently adopt the notice procedures that had previously been established by Alabama courts.¹⁹⁶ In addition, the Alabama Act only requires reasonable cause to believe that the tenant has surrendered or abandoned the rental property, while the Uniform Act requires actual surrender or abandonment of the rental property.¹⁹⁷ Alabama’s version of the Act permits reasonable belief as to abandonment, because Alabama Legislators felt that actual abandonment was difficult to determine.¹⁹⁸

D. Tenant to Use and Occupy

The only reference to a tenant’s use and occupancy of rental property in Alabama law prior to the Alabama Act held that a rental agreement was terminated if the stated use in the lease was deemed unlawful.¹⁹⁹ Under the Alabama Act, absent an agreement stating otherwise, the rental property shall only be used by the tenant as a dwelling.²⁰⁰ In addition, the Alabama Act permits landlords to require under the terms of the rental agreement that the tenant provide the landlord with notice of extended absences exceeding 14 days “no later than the fifth day of the absence.”²⁰¹ While the Alabama Act is consistent with the Uniform Act in most regards, the Alabama Act extends the absence period from seven days under the Uniform Act to 14 days, and requires notice after the fifth day, while the Uniform Act requires notice after the first day.²⁰² The extended time

period in the Alabama Act is attributable to concerns by tenant advocate groups that a seven day period was too short, considering that many vacations last that long or that family emergencies frequently arise preventing a tenant from giving notice on the first day of the absence.²⁰³

TENANT REMEDIES

As discussed previously, prior to the enactment of the Alabama Act landlords had few statutorily imposed or common law duties and obligations; therefore, statutory or common law remedies for tenants during this time period were limited. In the period prior to the Alabama Act, tenants had the right to recover from third parties for damages they caused to the rental property.²⁰⁴ In addition, Alabama law held landlords liable for damages caused to the rental property where the landlord entered the rental property without the tenant's consent.²⁰⁵ Additionally, a tenant was permitted to abandon the lease and excused from paying rent where the landlord constructively evicted the tenant by intentionally "rendering the premises unfit for occupancy or depriving the tenant of the beneficial enjoyment of the premises."²⁰⁶ Under the Alabama Act, tenant remedies have been clarified through sections outlining remedies for a landlord's noncompliance with the Alabama Act and the rental agreement, remedies for a landlord's failure to deliver possession of the rental property, remedies for a landlord's wrongful failure to make available heat, water, hot water, or essential services, remedies for fire or casualty damage to the rental property during the term of the lease, and remedies for a landlord's unlawful ouster, exclusion, or diminution of service.

A. Tenant's Remedies for a Landlord's General Noncompliance

Under the Alabama Act, a landlord's noncompliance with a rental agreement or with his or her statutory duty to maintain the premises must be material in order to qualify for a remedy.²⁰⁷ Faced with material noncompliance with the rental agreement or the landlord's duties under the Alabama Act, the tenant may notify the landlord in writing that the rental agreement will terminate within 14 days if the specified noncompliance is not remedied.²⁰⁸ However, if the landlord remedies the noncompliance within the 14 days, the rental agreement does not terminate on the basis of the noncompliance.²⁰⁹ In addition, the rental agreement shall not terminate for noncompliance deliberately or negligently caused by the tenant, tenant's family member, or the tenant's guest.²¹⁰

Under the Alabama Act, the tenant's remedy for material noncompliance with contractual or statutory duties includes injunctive relief²¹¹ or actual damages.²¹² In addition, when the landlord's contractual or statutory noncompliance is committed in bad faith, the tenant's remedy includes attorneys' fees.²¹³ Also, in the event that the rental agreement is terminated on account of the landlord's noncompliance, the landlord must return the tenant's security deposit and prepaid rent pursuant to the Alabama Act.²¹⁴

The Alabama Act is consistent with that of the Uniform Act relating to noncompliance by the landlord in general.²¹⁵ However, the Alabama Act provides that the rental agreement shall terminate after 14 days if the noncompliance of the landlord is not remedied, while the Uniform Act provides that the noncompliance must be remedied within the 14 days, but that the rental agreement does not terminate until 30 days after receipt of notice of noncompliance by the landlord.²¹⁶ Alabama's shorter termination

period was the result of legislators desiring consistent time periods throughout the Act's "opportunity to cure" provisions.²¹⁷

B. Tenant's Remedies for a Landlord's Failure to Deliver Possession

Under the Alabama Act, the failure of the landlord to deliver possession of the rental property pursuant to the rental agreement results in the abatement of rent until possession of the rental property is delivered to the tenant.²¹⁸ In addition, where the landlord has not delivered possession of the rental property pursuant to the rental agreement, the tenant may terminate the lease with written notice, and the landlord must return the security deposit and prepaid rent within five days after receiving the notice of termination.²¹⁹ Alternatively, the tenant is permitted to demand specific performance of the rental agreement or "bring an action for possession . . . against the person wrongfully in possession and recover . . . actual damages" ²²⁰ A landlord's willful failure to deliver possession in compliance with the rental agreement shall result in the landlord being liable for an amount equal to the greater of three month's rent or three times the actual damages plus attorneys' fees.²²¹

C. Uniform Act Permits Tenant Self-Help for Minor Defects

An important difference between the Alabama Act and the Uniform Act is the omission by Alabama of the Uniform Act's provision dealing with self-help for minor defects, also known as the repair and deduct provision.²²² Alabama's omission of this provision was the result of negotiations between realtors and tenant advocate groups; the realtors adamantly opposed this provision and treated the provision as a deal breaker in reaching a compromise.²²³ The Uniform Act provides that if the landlord's noncompliance with contractual or statutory duties can be remedied at a cost of less than

\$100 or one-half the monthly rent, the tenant may recover actual damages or injunctive relief.²²⁴ Alternatively, under the Uniform Act if the remedy for noncompliance is less than \$100 or one-half the monthly rent, the tenant may notify the landlord of an intention to remedy the noncompliance at the expense of the landlord. If, however, the landlord does not remedy the noncompliance within 14 days after receiving written notification, the tenant may remedy the noncompliance in a workmanlike manner and after submitting an itemized statement of the cost to the landlord, deduct from rent due the actual cost of the remedy up to \$100 or one-half one month's rent.²²⁵ However, the Uniform Act does not permit the tenant to remedy at the expense of the landlord any noncompliance deliberately or negligently caused by the tenant, tenant's family, or tenant's guest.²²⁶

D. Tenant's Remedies for a Landlord's Wrongful Failure to Make Available Heat, Water, Hot Water, or Essential Services

Under Alabama common law a tenant was responsible for paying utilities, but a lease could impose a duty on a landlord to ensure that the utilities would be provided. Thus, prior to the enactment of the Alabama Act, a landlord only had a duty to make available heat, water, hot water, or other essential services if the lease provided for that duty.²²⁷ Under the Alabama Act, unless otherwise agreed, it is the tenant's responsibility to pay utilities.²²⁸ However, the Alabama Act permits a tenant to terminate a lease upon a landlord's willful or negligent failure to make available essential services such as hot water, heat, running water, gas, or electricity in violation of the rental agreement or the Alabama Act section relating to a landlord's duties to maintain the premises.²²⁹ However, the termination is dependent upon the tenant providing the landlord with written notice of the breach and 14 days to remedy the noncompliance, and upon the

tenant vacating the premises.²³⁰ Upon a termination of the lease, the landlord must return all security deposits and prepaid rent pursuant to the Alabama Act.²³¹

Alternatively, instead of terminating the lease, the tenant may “recover damages based upon the diminution in the fair rental value of the [rental property].”²³² Despite the alternative chosen by the tenant, a tenant proceeding under this section may not also proceed under the Alabama Act section relating to a tenant’s remedy for noncompliance of a landlord in general.²³³ Additionally, neither alternative is available to a tenant where the noncompliance is due to negligent or willful conduct of the tenant, tenant’s family, or tenant’s guest.²³⁴

The Uniform Act is different from the Alabama Act relating to a landlord’s failure to make available certain essential services such as hot water, running water, heat, gas, or electric services.²³⁵ For example, the Uniform Act does not include a provision expressly stating that it is not the landlord’s responsibility to pay utilities, unless otherwise agreed.²³⁶ Alabama chose to include this provision “to make clear the landlord is not responsible for the payment of utility services unless agreed in the lease.”²³⁷ In addition, the Uniform Act also contains a provision permitting a tenant to take self-help measures to make available certain essential services and deduct the reasonable cost of making these services available from the tenant’s rent.²³⁸ Alabama omitted this provision, because of the realtors’ adamant rejection of any repair and deduct provision.²³⁹ Additionally, unlike the Alabama Act, the Uniform Act permits a tenant to rent other property during the time period that the landlord is noncompliant and withhold rent for that time period, while also recovering the actual or reasonable cost in excess of one month’s rent of securing other housing plus attorneys’ fees.²⁴⁰ However, the Uniform

Act does not allow for a termination of the lease even after providing written notice and a 14 day opportunity to remedy.²⁴¹

E. Counterclaim for Action for Possession or Rent

The Alabama Act contains a provision consistent with that found in the Uniform Act dealing with the right of a tenant in possession of the rental property to counterclaim for amounts contractually or statutorily owed by the landlord when the landlord files a claim against the tenant for rent.²⁴² If the tenant is in possession of the rental property and files a counterclaim, the tenant must pay accrued rent to the court and let the court decide the amount each party is owed.²⁴³ If the tenant is not in possession of the rental property, the tenant may file a counterclaim for damages owed by the landlord upon the landlord's action for rent, but the tenant is not required to pay accrued rent to the court.²⁴⁴ Additionally, if the tenant's counterclaim is without merit or is brought in bad faith, the landlord is allowed to recover attorneys' fees.²⁴⁵ Under the Alabama Act, the party who is owed a net amount will be paid first from the rent paid into the court, and then any remaining balance will be paid by the other party.²⁴⁶

F. Fire or Casualty Damage

Prior to the enactment of the Alabama Act, Alabama common law did not require a landlord to repair rental property partially destroyed by fire or another casualty, rendering it unusable as a residence.²⁴⁷ Also, unless otherwise stipulated in the rental agreement, a landlord's refusal to repair partially destroyed rental property did not excuse a tenant from paying rent for the remainder of the lease term.²⁴⁸ However, Alabama common law recognized an exception in the context of residential leases of apartments or buildings permitting the termination of the lease and obligation to pay rent where

“without fault or negligence of the tenant . . .,” “the entire subject matter of the lease [was] destroyed, so that nothing remain[ed] capable of being held or enjoyed, rendering use of the premises impossible. . . .”²⁴⁹

The Alabama Act is consistent with the Uniform Act in that it permits the tenant to vacate the rental property and terminate the rental agreement within 14 days if the rental property is entirely destroyed by a fire or casualty that the tenant did not cause.²⁵⁰ Upon providing the landlord with written notification of the termination within 14 days after the fire or casualty, the rental agreement is terminated as of the date that the tenant vacated the rental property.²⁵¹ If the rental agreement is terminated because of a total destruction of the rental property on account of a fire or casualty, the landlord is required to return the tenant’s security deposit and prepaid rent pursuant to the Alabama Act.²⁵² However, if the rental property is only partially destroyed and occupancy is lawfully permitted, the tenant may vacate any unusable portion of the rental property and have the rent prorated for decrease in the rental property’s fair rental value.²⁵³

The only difference between the Alabama Act’s and Uniform Act’s provisions relating to fire or casualty damages is that the Alabama Act expressly states that the fire or casualty must not have been caused by the tenant. The inclusion of this provision was to prevent tenants from benefiting from their own wrongful actions.²⁵⁴

G. Tenant’s Remedies for Landlord’s Unlawful Ouster, Exclusion, or Diminution of Service

Because prior Alabama law did not expressly impose a duty on landlords to make available essential services, a landlord was only liable for the diminishment of services if contractually required to provide them.²⁵⁵ In contrast, under the Alabama Act and

Uniform Act, a landlord's unlawful removal or exclusion of a tenant from the rental property or willful diminishment of essential services such as heat, hot water, running water, gas, or electric service will result in the landlord being liable to the tenant for damages equal to the greater of three month's rent or actual damages plus attorneys' fees.²⁵⁶ In addition, where the landlord unlawfully removes or excludes a tenant from the rental property or willfully diminishes essential services, the tenant is permitted to recover possession of the rental property or terminate the lease.²⁵⁷ Upon the termination of the rental agreement, the landlord is required to return the security deposit and prepaid rent pursuant to the Alabama Act.²⁵⁸

LANDLORD REMEDIES

A. Noncompliance with Rental Agreement; Failure to Pay Rent

Prior to the enactment of the Alabama Act, a tenant's failure to pay rent did not cause a forfeiture of the tenant's right to possession or give the landlord a right of re-entry.²⁵⁹ Thus, a landlord could not terminate a lease merely because a tenant failed to pay rent.²⁶⁰ In addition, merely because the landlord accepted a payment for overdue rent did not mean he or she waived an expressly reserved right to declare default.²⁶¹ However, under prior Alabama law, a landlord was statutorily given a lien on all the tenant's personal property that did not have a third party's perfected security interest and that had been brought onto, and enjoyed the protection of, the rental property.²⁶² Furthermore, the lien was for the rent due on the entire lease.²⁶³

The Alabama Act, consistent with the Uniform Act, abolishes a landlord's security interest or lien in the household goods of a tenant, unless the interest or lien is perfected before the Alabama Act takes effect on January 1, 2007.²⁶⁴ Additionally, the

Alabama Act, consistent with the Uniform Act, abolishes distraint for rent.²⁶⁵ Under the Alabama Act, if a tenant is materially noncompliant with the rental agreement or noncompliant with the tenant's statutory duty to maintain the rental property, the landlord may terminate the rental agreement.²⁶⁶ However, termination of the rental agreement requires the tenant to provide the landlord with written notice containing a listing of the tenant's noncompliance and expressing an intent to terminate.²⁶⁷ If, after providing the appropriate notice, the tenant fails to remedy the noncompliance within 14 days, the rental agreement terminates.²⁶⁸ In addition, the Alabama Act permits a landlord to terminate a rental agreement upon the failure of a tenant to timely pay rent.²⁶⁹ The rental agreement will terminate when the landlord provides the tenant with written notification of intent to terminate the rental agreement and where the tenant fails to pay the rent within seven days.²⁷⁰ The Alabama Act also provides that if the tenant's non-compliance includes both a failure to pay rent and failure to comply with other contractual or statutory duties, the lease will terminate in seven days, as opposed to fourteen days.²⁷¹ In addition, the Alabama Act permits the landlord to "recover actual damages²⁷² and obtain injunctive relief²⁷³ for" the tenant's noncompliance.²⁷⁴ The landlord may also recover attorneys' fees for any willful noncompliance by the tenant.²⁷⁵

The only difference between the Uniform Act and the Alabama Act is the time in which the landlord may terminate the lease when a tenant fails to comply with the terms of the lease. The Alabama Act permits a landlord to terminate the lease within 14 days after the tenant has received written notification of termination and failed to cure the noncompliance within the 14 day period.²⁷⁶ In contrast, the Uniform Act gives the landlord the right to terminate if the tenant does not comply within 14 days after notice,

but the lease will not actually terminate for another 16 days, giving the tenant 30 days before he or she will be dispossessed.²⁷⁷ However, the Uniform Act does permit the landlord to terminate after a 14 day period, if the tenant's noncompliance is a recurrence within six months.²⁷⁸ In addition, the Uniform Act permits a landlord to terminate for a failure to pay rent within 14 days after the tenant receives notice of termination, while the Alabama Act limits the period to 7 days.²⁷⁹ Alabama shortened the notice period to terminate the lease in an effort to create consistent time periods throughout the entire Act's "opportunity to cure" provisions.²⁸⁰

B. Failure to Maintain

Because prior Alabama law did not expressly impose duties on tenants and because any duties arose only contractually, a landlord's remedy for a tenant's failure to maintain the rental property arose only contractually through the lease. Therefore, a landlord seeking a remedy for a tenant's noncompliance with the lease was required to follow the notice to quit provisions set forth in the Alabama Code. The notice to quit provisions provided that where a tenant breached any lease provision, a landlord was only required to provide ten days notice to the tenant to remedy or the lease would terminate, unless the lease specified otherwise.²⁸¹ In addition, the landlord was required to serve the notice to quit on the tenant "by leaving a copy of the demand or notice with someone above eighteen years of age on the premises, or if no one [was] in possession, by posting on the door."²⁸²

Under the Alabama Act, where a tenant's statutory noncompliance with the Alabama Act section relating to a tenant's duty to maintain the rental property is remediable "by repair, replacement of a damaged item, or cleaning," the tenant must

remedy the noncompliance within seven days after receipt of written notification detailing the noncompliance.²⁸³ While the Alabama Act provides for a seven day opportunity to remedy, the Uniform Act allows a fourteen day period for remedy.²⁸⁴ If the tenant does not remedy the noncompliance, both the Alabama Act and Uniform Act permit the landlord to remedy the noncompliance in a workmanlike manner and after submitting an itemized bill for the cost of the remedy, charge the tenant for the cost as rent payable on the next due date for rent.²⁸⁵ If the rental agreement has been terminated, the tenant must pay the charge for the remedy immediately.²⁸⁶

C. Remedies for Absence, Nonuse and Abandonment

Under prior Alabama law, where a tenant abandoned the rental property prior to the agreed upon expiration term, Alabama law permitted a landlord to leave rental property “vacant and recover the rent for the whole term or put an end to the lease by re-entry.”²⁸⁷ However, Alabama law did require both intent and an act on the part of the tenant to constitute abandonment.²⁸⁸

Under the Alabama Act, a tenant’s willful failure to notify the landlord of an expected absence extending more than 14 days as required by the rental agreement will result in the tenant being in breach of the rental agreement and liable for actual damages sustained by the landlord.²⁸⁹ Additionally, the Alabama Act permits a landlord to enter rental property whenever reasonably necessary where the tenant is absent for more than 14 days.²⁹⁰

The Alabama Act also imposes a mitigation duty on the landlord to rent property deemed abandoned for an amount equal to fair rental value.²⁹¹ However, this duty is not to interfere with a landlord’s right to rent other vacant rental properties before renting the

abandoned unit.²⁹² If the landlord rents the abandoned rental property before the expiration of the abandoning tenant's lease, the lease, including the duty to pay rent, terminates on the date of the new rental agreement.²⁹³ If, however, the landlord does not make a reasonable effort to rent the abandoned rental property, the rental agreement with the abandoning tenant is terminated upon the landlord's notification of the abandonment.²⁹⁴ Additionally, under the Alabama Act, a landlord does not have a duty to protect or store property left by the tenant in the rental property for more than 14 days after the termination of the lease.²⁹⁵

A notable difference between the Uniform Act and Alabama Act is that the Uniform Act requires notification for an extended absence of more than seven days, as opposed to the Alabama Act's fourteen day period.²⁹⁶ The extended time period in the Alabama Act is attributable to concerns by tenant advocate groups that a seven day period was too short, considering that many vacations last that long or that family emergencies frequently arise preventing a tenant from giving notice on the first day of the absence.²⁹⁷ In addition, the Uniform Act permits landlord entry into the rental property when reasonably necessary where the tenant is absent for more than seven days, while the Alabama Act only permits the entrance after a period of fourteen days.²⁹⁸ In addition, the Uniform Act does not contain an express provision noting that the landlord's mitigation duty to rent an abandoned rental property shall not interfere with a landlord's right to rent other vacant rental properties.²⁹⁹

D. Waiver of Landlord's Right to Terminate

Under prior Alabama law, acceptance of payment(s) of overdue rent did not automatically waive a landlord's right to declare default on the lease.³⁰⁰ Under both the

Alabama Act and the Uniform Act, unless otherwise agreed, subsequent to the occurrence of a breach, acceptance of past due rent or “acceptance of performance by the tenant that varies from the terms of the rental agreement constitutes a waiver of the landlord’s right to terminate the rental agreement for that breach.”³⁰¹ However, the Comment to the Uniform Act relating to waiver of a landlord’s right to terminate a rental agreement for a breach states that “[i]f [a] breach of a continuing duty is involved, acceptance of rent or performance will not bar the landlord’s remedy for a later breach.”³⁰² Additionally, the Comment states that “[a]cceptance of unpaid rent paid after expiration of a termination notice does not constitute a waiver of the termination.”³⁰³

E. Remedy after Termination

Prior Alabama law required the tenant to deliver possession of the rental property without demand at the termination of the lease.³⁰⁴ Under both the Alabama Act and Uniform Act, upon the termination of the rental agreement, the landlord is permitted to recover possession of the rental property, unpaid rent, and actual damages plus attorneys’ fees.³⁰⁵

F. Recovery of Possession Limited

Under prior Alabama law, a landlord could take possession of the rental property without judicial proceedings when the tenant abandoned the property.³⁰⁶ However, when the tenant unlawfully remained in possession of the rental property, the landlord was required to go through eviction proceedings.³⁰⁷ Consistent with Alabama common law, under both the Alabama Act and Uniform Act, a landlord may only take possession of the rental property or willfully diminish essential services such as running water, heat, hot

water, gas, or electric service if the rental property has been abandoned or surrendered by the tenant or if it is otherwise permitted under the Act.³⁰⁸

PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

A. Periodic Tenancy; Holdover Remedies

Unless the parties contracted for a different arrangement, prior Alabama law permitted termination of a month-to-month lease by orally giving a month's notice.³⁰⁹ Furthermore, where the tenancy was at will, written ten days notice to quit terminated the tenancy.³¹⁰

The Alabama Act now requires written notice generally to be given one time period in advance. Thus, under the Alabama Act, a week-to-week tenancy may be terminated with a written seven day notice and a month-to-month tenancy may be terminated with a written thirty day notice.³¹¹ Additionally, the Alabama Act permits a landlord to bring a possessory action where, after the termination of the lease, the tenant, without the landlord's permission, remains in possession.³¹² Also, if a tenant's holdover is willful, a landlord may recover from the tenant the greater of three month's rent or three times actual damages plus attorneys' fees.³¹³

In contrast, the Uniform Act provides that a week-to-week tenancy is terminated only by a landlord or tenant providing the other party with a written ten day notice of termination.³¹⁴ Additionally, under the Uniform Act, a month-to-month tenancy is only terminated by a written sixty day notice.³¹⁵ Alabama's Act reduced the notice periods for termination to create consistent time periods (i.e. one time period in advance).³¹⁶

B. Landlord and Tenant Remedies for Abuse of Access

Prior to the Alabama Act, a landlord's right of access to rental property or a tenant's right to refuse access only arose contractually, as Alabama law was silent on this matter.³¹⁷ Therefore, remedies for the abuse of access were limited to remedies for the breach of a contractual duty.

Under the Alabama Act, a landlord may seek injunctive relief or termination of the rental agreement for a tenant's wrongful refusal to allow a landlord access to the rental property.³¹⁸ In addition, the landlord may under either alternative seek actual damages.³¹⁹ Similarly, a tenant may seek injunctive relief or termination of the rental agreement for a landlord's wrongful or unreasonable entrance into the rental property.³²⁰ Additionally, under either alternative, the tenant may seek actual damages.³²¹

The only difference between the Uniform Act's provisions for remedies for abuse of access and that of the Alabama Act is that the Uniform Act provides for the recovery of attorneys' fees by either party subject to the abuse of access.³²² The non-availability for the recovery of attorneys' fees under this provision in the Alabama Act was the result of negotiations between the Alabama Realtors Association and tenant advocate groups such as ARISE and Appleseed, with the tenant advocate groups sacrificing the right to attorneys' fees in order to gain other desired provisions.³²³

COURT ACTIONS BY LANDLORD

A. Landlord's Action for Eviction, Rent, Monetary Damages, and/or Other Relief

Prior to the Alabama Act the eviction process depended on which court within the state your claim arose.³²⁴ Some courts used different proceedings depending on the relief

sought by landlords, while other courts used the same proceeding for all types of relief.³²⁵ For example, in some courts within the state of Alabama, parties were required to proceed under the Sanderson Act when only seeking injunctive relief, while in the same courts parties seeking monetary relief were required to proceed under Alabama's Unlawful Detainer Provisions.³²⁶ Because of the variations among courts in eviction proceedings, landlords, in negotiating the Alabama Act, sought to streamline the eviction process in Alabama.³²⁷ A streamlined eviction process was accomplished through the Alabama Act's repeal of the Sanderson Act and amendment of the Unlawful Detainer provision.

The Alabama Act unlike the Uniform Act addresses procedures and time periods for eviction actions, service of process, answer and appeal. Under the Alabama Act, both district and circuit courts have jurisdiction over eviction proceedings.³²⁸ Additionally, the Alabama Act provides for venue in eviction actions to exist "in the county in which the leased property is located."³²⁹ Furthermore, eviction actions are entitled to precedence in scheduling over all other civil cases.³³⁰

Under the Alabama Act, the Unlawful Detainer provision was amended to require a landlord to provide a tenant with seven days' written notification of an intent to proceed with an eviction action for the tenant's failure to pay rent, and fourteen days' written notification of an intent to evict for other reasons.³³¹ The Alabama Act permits a landlord to file an eviction action with the appropriate court, where the tenant has not complied within the specified notification period.³³² A tenant who has received formal notice of the landlord's eviction action is required to file an answer with the court within seven days.³³³

In eviction actions governed by the Alabama Act, the requirements for service of process are met if made pursuant to the Alabama Rules of Civil Procedure, or if personal service is unavailable, if notice is delivered to any individual “who is sui juris residing on the premises. . . .”³³⁴ If, however, after taking reasonable efforts, no person can be found residing at the rental property, the Alabama Act permits service of process “by posting a copy of the notice on the door of the premises” and mailing the notice first class on the same day to the defendant’s mailing address of the rental property or in the absence of a rental property address to the defendant’s “last known address”³³⁵ Service of posting is complete on the date the notice is mailed.³³⁶

Once the court has ruled on an eviction action, appeals must be filed within seven days.³³⁷ In addition, during an appeal by a tenant involving an eviction action, the Alabama Act does not prohibit the issuance of a writ of restitution or possession, unless during the time period prior to the appeal, the tenant pays all accrued rent and continues to timely pay rent according to the rental agreement.³³⁸ Under the Alabama Act, a court is permitted to issue a writ of restitution or possession if a tenant fails to timely pay rent pursuant to the rental agreement during the period prior to the appeal.³³⁹ Furthermore, a tenant’s re-entrance into the rental property gives the court a basis for issuing a writ of possession in the landlord’s favor, holding the tenant in contempt, and issuing successive writs if necessary.³⁴⁰

RETALIATORY CONDUCT

Both the Alabama Act and Uniform Act prohibit a landlord from raising rent, decreasing services, or threatening or bringing an action for possession when “the tenant has complained to a governmental agency . . . ,”³⁴¹ the tenant has complained about a

landlord's failure to maintain the rental property pursuant to the Alabama Act,³⁴² or the tenant has joined an organization for tenants.³⁴³ Any of these actions by the landlord entitles a tenant to the greater of three month's rent or three times actual damages³⁴⁴ plus attorneys' fees³⁴⁵ and to a defense for any action brought by the landlord against the tenant for possession.³⁴⁶ However, a landlord is permitted to bring an action for possession, where the tenant, tenant's family, or tenant's guest caused the violation of building or housing codes, where the tenant has not paid rent pursuant to the rental agreement, where a landlord's compliance requires action that would prevent the tenant from using the rental property, or where the tenant has otherwise materially breached the rental agreement.³⁴⁷

The inclusion of a retaliation provision within the Alabama Act was the subject of a heated debate between the Alabama Realtors Association and tenant advocate groups such as ARISE and Appleseed.³⁴⁸ The Alabama Act's provision involving retaliatory conduct differs from the Uniform Act on two accounts.³⁴⁹ First, the Alabama Act requires a landlord's retaliatory conduct to be discriminatory, while the Uniform Act does not make this requirement.³⁵⁰ Alabama Act's requirement for the retaliatory conduct to be discriminatory was the result of a compromise between the realtors and tenant advocate groups, with the tenant advocate groups allowing the "discriminatory" condition in order to have the realtors agree to the inclusion of a retaliation provision.³⁵¹ Additionally, the Alabama Act does not provide for a presumption of retaliatory conduct, while the Uniform Act provides for a presumption of retaliatory conduct where "evidence of a complaint within [1] year before the alleged act of retaliation [occurs]"³⁵² The Uniform Act, however, does not provide for a presumption where the tenant's complaint

is filed after the tenant was notified of a proposed increase in rent or diminution of provided services.³⁵³ Again, the absence of a presumption provision within the retaliatory conduct section of the Alabama Act was the result of a compromise between the tenant advocate groups and realtors, with the tenant advocate groups agreeing to the omission of a presumption in order to have the realtors agree to the inclusion of a retaliation provision.³⁵⁴

CONCLUSION

A. Drafting Suggestions

As of January 1, 2007, all Alabama residential landlords should re-evaluate any previously used pre-printed leases. Additionally, landlords should change their lease drafting practices to encompass the changes to Alabama landlord-tenant law. Because the Alabama Act has statutorily defined many terms arising in the context of residential leases, landlords and tenants should know how the statute defines and uses terms frequently occurring within leases. Additionally, landlords should take note that there is now a statutory duty of good faith imposed within the landlord-tenant relationship.

With the Alabama Act currently effect, landlords now must be careful to draft leases to include the provisions that the Alabama Act explicitly requires. Some of the most basic considerations are the following: A landlord should now define the term of the lease within the rental agreement, because without a definite term, the tenant will have a week-to-week term if rent is paid weekly and a month-to-month term if rent is paid on any other increment. The landlord should also specify the amount of rent because the parties may find the default fair rental value amount to be different from that which they contemplated at the time they entered into the agreement. Also, from both the landlord's

and tenant's perspectives, fair rental value is subject to change over a period of a lease; therefore, specification of the amount of rent is necessary in order to maintain a consistent rental amount. A landlord should also include in the lease the current name and business address of the manager and the current name and business address of the owner of the rental property. Finally, the landlord should generally not require more than one month's security deposit as rent, unless the previously mentioned exceptions under the Act are applicable.

Landlords should include other provisions within a lease, although the provisions are not explicitly required by the Alabama Act. For example, leases should now define what circumstances will give the landlord reasonable belief that the rental property has been abandoned or surrendered. In addition, the lease should contain a provision requiring the tenant to provide the landlord with notice by the fifth day of any absence that is going to extend more than 14 days. Also for the sake of clarity, a lease should indicate who is responsible for the payment of utility services, even though the default rule is that the tenant is responsible for the payment.

Under the new Alabama Act, landlords, in order to avoid damages, should make sure that all adhesion clauses (exculpatory clauses) are removed from the preprinted leases formerly used as rental agreements and not included in any new leases. Additionally, landlords should take care that the preprinted leases used as rental agreements do not contain authorization for confessions of judgments or waivers of security deposit and habitability requirements. Finally, preprinted leases should be screened to make sure that they do not contain any provision for attorneys' fees.

Alabama residential landlords should also take note of the statutorily defined duties now imposed on them. For example, landlords should ensure that all security deposits or accountings for the security deposits are returned to tenants within 35 days after the termination of the lease. Furthermore, landlords are now required to maintain the rental property in a habitable condition as described in the Alabama Act. Finally, a landlord who sells the rental property should inform tenants in writing of the sale in order to avoid future liability.

B. Potential Issues

Although the adoption of the Alabama Act dramatically changed the relationship between residential landlords and tenants, the potential for ambiguity and conflict still exists over the scope of the Alabama Act's coverage. The following examples are potential issues that may arise under the Alabama Act; however, the examples are not a comprehensive list of potential issues. It is important to note that several of the problems and ambiguities noted below may well be cured by judicial interpretation of the Act's provisions.

First, because the Alabama Act does not apply to certain tenancies, some residential landlords may be tempted to structure leases in a way to avoid falling within the coverage of the Alabama Act. Litigation is likely to arise over whether in substance, the landlord and tenant relationship falls within the Act's coverage. However, landlords should remember that the Act places a duty of good faith on any transactions within the Act's coverage.

Furthermore, the Alabama Act does not address whether landlords must maintain security-deposit funds separate from personal funds, must pay interest on security

deposits, or must place security-deposit funds in interest-bearing accounts. Because these issues concerning security deposits are bound to arise in litigation governed by this Act, Alabama courts must determine the requirements on landlords regarding deposits of amounts taken for security.

Additionally, litigation has arisen under other states' acts modeled after the Uniform Act regarding "whether the tenant must give notice of habitability defects to the landlord in the form of a written 'fix or I leave' statement before he or she can use the defects as a counterclaim to the landlord's action."³⁵⁵ The Oregon Supreme Court has held "that a written 'fix or I leave' notice is not required because this would put tenants who want repairs to be made but also to remain on the premises, particularly monthly tenants of which there are many in the poor sections of town, in an untenable position."³⁵⁶ However, notwithstanding the Oregon decision, the court will need to determine the required notice procedures before a tenant can raise a landlord's noncompliance as a defense to a landlord's claim.

In addition to the Alabama Act's lack of clear notice provisions, the Alabama Act fails to provide clear guidance on attorneys' fees and other statutory damages. Although the Alabama Act provides for the recovery of attorneys' fees under certain sections, it does not specify whether the judge or the jury should determine the amount of attorneys' fees to be awarded in a jury trial. The Tennessee Supreme Court has held that under the Tennessee Uniform Residential Landlord Tenant Act, the amount of attorneys' fee in a jury trial is to be decided by the jury, not the judge.³⁵⁷ In addition, the Alabama Act does not specify whether emotional or punitive damages are recoverable under the Act. The Oregon Supreme Court held that under the Oregon Uniform Residential Landlord Tenant

Act “damages for emotional distress [were recoverable] under certain circumstances.”³⁵⁸

Alabama courts will now have to determine whether they will follow Tennessee’s approach and allow juries to set attorneys’ fees, and whether emotional and/or punitive damages are recoverable under the Act.

In addition, the Alabama Act does not clarify whether arbitration provisions may be included in leases. The Alabama Act permits parties to settle conflicts by agreement but does not specify whether these agreements may be reached through arbitration.³⁵⁹ Therefore, Alabama courts or legislators will have to determine whether arbitration provisions and proceedings may take place under the Alabama Act. However, if the court deems the lease to involve interstate commerce, the Federal Arbitration Act will preempt any Alabama law and permit arbitration on those matters.³⁶⁰

Finally, the Alabama Act contains no indication of the weight that a court may put on economic factors. For example, a question exists over whether a landlord should be required to comply with the act when the cost of compliance exceeds the revenue from rent or the value of the rental property. A New York court has reversed a conviction for noncompliance where the landlord “argued that the expense of installing central heating and water closets in order to comply with the housing ordinances would be more than the value of the building”³⁶¹ However, many courts, including Alabama, have yet to determine the weight that they will give to economic considerations in deciding noncompliance issues.

C. Conclusion

In conclusion, a fundamental question remains as to whether a statute, like the Alabama Act, can adequately address issues arising in “a system that seeks to balance

society's desire for decent housing for large numbers of poor people with an equally strong desire to provide it by private housing in a free market.”³⁶² Studies of the impact of states' adoptions of the Uniform Residential Landlord Tenant Act have shown that the statutes have been only “marginally effective, benefiting primarily middle-income tenants in the suburbs or in the cities' better neighborhoods, while largely failing in the aim of helping the inner-city poor and upgrading the quality of slum housing.”³⁶³ Despite the inability of such statutes so far to reform basic landlord and tenant relationships, the Act does provide tenants with new defenses to landlord actions and clarity for landlords. Although the new requirements imposed by the Alabama Act will increase costs on some landlords throughout the state and may therefore increase the rent that some landlords charge, the Act provides clarity in an area previously filled with ambiguity. While many commentators may argue that government intervention in areas such as landlord-tenant relationships stifle the economy by increasing costs on tenants in the form of higher rents, explicit laws such as this Act provide clear standards for both landlords and tenants to plan and predict.

Alabama's alignment with the rest of the country in defining the rights and responsibilities of landlords and tenants was a solid and important step toward achieving a fair balance between the rights of landlords and tenants and creating a more predictable and consistent residential rental industry. While several issues remain unresolved, the Alabama Act has significantly strengthened the legal position of residential tenants in this state. However, actual changes in the professional practices of landlords require not only a substantive change in the law, but also persistence by individuals who support such changes. They will need to be vigilant in educating both landlords and tenants about the

new law and in assuring that the rules, not the exceptions to them, have the support of all parties and the courts.

¹ David Holtzman, *Alabama Arise Fights For Tenant Protections*, SHELTERFORCE ONLINE, Nov.–Dec. 2004, available at <http://www.nhi.org/online/issues/138/organize.html>.

² *See id.*

³ David White, *Housing Faces Tug-of-War Tenant-Landlord Law Urged to Protect All*, BIRMINGHAM NEWS, Sept. 3, 2000, at News, available at 2000 WL 8973379.

⁴ *See* David White, *Plan Favored by Landlords Goes to House*, BIRMINGHAM NEWS, Mar. 15, 2001, at News2, available at 2001 WL 11243505.

⁵ Karen Brown, *Overview: Alabama Landlord & Tenant Bill* (ARISE, Montgomery, Ala.), Feb. 6, 2003, available at <http://www.alarise.org/landlord%202003.pdf>.

⁶ Ron Gilbert & Jim Carnes, *Alabama's 2006 Landlord-Tenant Law* (ARISE, Montgomery, Ala.), May 19, 2006, available at <http://www.arisecitizens.org/Landlord%20tenant%20law%20fact%20sheet%205-19-06.pdf>.

⁷ *See id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *See Real Estate Law – Landlord Tenant – General Landlord Tenant Law Questions*, http://real-estate-law.freeadvice.com/landlord_tenant/uniform-residential-landlord-tenant-act.htm. Prior to Alabama's adoption of the Alabama Act, the Uniform Residential Landlord and Tenant Act had been adopted by 20 states. *See* http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urlta.asp.

¹¹ Gilbert & Carnes, *supra* note 6.

¹² *Alabama Realtors Commercial Alliance State Legislative Report*, Feb. 27, 2006, (on file with author).

¹³ Gilbert & Carnes, *supra* note 6. Additionally, in 2004, “the Alabama Appleseed Center for Law and Justice released a 50-state survey of landlord-tenant law,” revealing that Alabama's laws on landlord-tenant relationships were the extreme, and that the proposed regulations by ALI were the norm. *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ ALA. CODE § 35-9A-601(1975). Section 35-9A-163(b) of the Alabama Act, relating to prohibited provisions and penalties for the inclusion of such provisions within a residential lease, is not effective until January 1, 2008. *See id.*

¹⁷ E-mail from Marcia L. McCormick, Assistant Professor, Cumberland School of Law (April 6, 2007, 11:43 A.M.) (on file with author); Richard L. Costella & Christopher S. Morris, *West Virginia Landlord and Tenant Law: A Proposal for Legislative Reform*, 110 W. VA. L. REV. 389, 392 (1997) (citations omitted) (discussing the common law of landlord tenant law). Landlord-tenant law has traditionally been governed by a common law system that did not view the landlord-tenant relationship as contractual in nature. *Id.* The common law governing landlord-tenant relationships arose from a feudal system that only permitted the creation of certain types of interests. *Id.* In addition, historically, the leased property was vacant land that involved rules entirely different than those required in a residential context. *Id.* However, over the past fifty years, the landlord-tenant relationship has come to be viewed as contractual in nature. *Id.* The struggle between the historical common law and the modern contractual view has created tension within the area of landlord-tenant law and required the adoption of statutes to provide clarity. *Id.*

¹⁸ Email from Marcia L. McCormick, *supra* note 17.

¹⁹ Richard L. Costella & Christopher S. Morris, *supra* note 17, at 392 (citation omitted). “At common law there were no dependent covenants on the part of the landlord and tenant.” *Id.*

²⁰ Email from Marcia L. McCormick, *supra* note 17.

²¹ *Id.*

²² *Id.* Thus, under common law the prevailing rule was caveat emptor, imposing few obligations on landlords, while providing tenants with little or no recourse against a landlord.

²³ *Id.*; Richard L. Costella & Christopher S. Morris, *supra* note 17, at 392 (citation omitted).

²⁴ The adoption of statutes within the landlord-tenant law area have been designed to resolve the struggle between the historical common law view of limited property interests and the modern contractual view of

landlord-tenant relationships. Unlike the common law, the Alabama Act treats the actions and agreements between tenants as interdependent and its provisions are based on the drafters' assumption that the covenants are more equitably and effectively administered by principles of mutuality drawn from contract law.

²⁵ See § 35-9A.

²⁶ ALA. CODE § 35-9A-102 (1975).

Existing landlord-tenant law in the United States, save as modified by statute or judicial interpretation, is a product of English common law developed within an agricultural society at a time when doctrines of promissory contract were unrecognized. Thus, the landlord-tenant relationship was viewed as conveyance of a lease-hold estate and the covenants of the parties generally independent. These doctrines are inappropriate to modern urban conditions and inexpressive of the vital interests of the parties and the public which the law must protect. This Act recognizes the modern tendency to treat performance of certain obligations of the parties as interdependent.

§ 35-9A-102 cmt. Additionally, the Alabama Act amends Section 6-6-350 of the Alabama Code of 1975 relating to appeals to circuit courts from district courts and Section 35-9-60 of the Alabama Code of 1975 "relating to liens for the rent of buildings." § 35-9A. The Alabama Act also repeals Section 35-9-4 of the Alabama Code of 1975 "relating to the hiring of lodging for an indefinite period term and Article 3, commencing with Section 35-9-80, of Chapter 9 of Title 35, Code of Alabama 1975, relating to possession wrongfully withheld and specifying a prospective effective date." *Id.*

²⁷ See § 35-9A-121 and § 35-9A-141(4). Furthermore, all "rights, obligations, and remedies" under a rental agreements are established by the Act. *Id.* However, this provision "affects only the landlord tenant relationship and does not create any cause of action or deprive anyone of a cause of action in tort" *Id.* cmt.

²⁸ See § 35-9A-121.

²⁹ See ALA. CODE § 35-9A-121 (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.201 (1972) (amended 1974). Local health and safety codes address issues such as hazardous materials, sewage systems, disease control, and public health in general. See Jefferson County, Alabama Department of Health, <http://www.jcdh.org/Default.aspx>.

³⁰ Telephone interview with Robert McCurley, Dir., Ala. Law Inst., in Birmingham, Ala. (Feb. 6, 2007).

³¹ See § 1.202 cmt.

³² *Id.*

³³ See ALA. CODE § 35-9A-122 (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.202 (1972) (amended 1974).

³⁴ The educational category also excludes the Alabama Act's application to residency at social or fraternal organizations, such as at a fraternity or sorority house. § 35-9A-122.

³⁵ See § 35-9A-122(1).

³⁶ See § 35-9A-122(2). "This Act [does] apply to occupancy by the holder of an option to purchase, as distinguished from a contract of sale." *Id.* cmt.

³⁷ See ALA. CODE § 35-9A-122(3) – (4) (1975).

³⁸ See § 35-9A-122(5).

³⁹ See § 35-9A-122(6) - (7).

⁴⁰ See § 35-9A-122(8) (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.202 (1972) (amended 1974).

⁴¹ See ALA. CODE § 35-9A-122(8) (1975).

⁴² Telephone interview with Robert McCurley, *supra* note 30.

⁴³ See VICTORIA C. FERREIRA, ALABAMA LANDLORD AND TENANT BREACH AND REMEDIES § 3-9 (The Harrison Co. 2000) (1981). Sections 6-6-330, 6-6-331, and 35-9-80 of the Alabama Code of 1975 provided that "[t]he jurisdiction for unlawful detainer lies in the district court, and the venue of such actions rests in the district court of the county in which the lands or tenements are situated." *Id.* Additionally, the only express provisions relating to service of process for actions involving landlord-tenant relationships involved actions for unlawful detainer. See *id.*

⁴⁴ ROBERT L. MCCURLEY, JR. & PENNY A. DAVIS, REAL ESTATE HANDBOOK LAND LAWS OF ALABAMA, § 25-7(D)(4) (8th ed. 2006) (2001) (citing ALA. CODE § 6-6-332 (1975); *Krasner v. Gurley*, 29 So. 2d 224, 226 (Ala. 1947)).

⁴⁵ *Id.* (citing § 6-6-332). “The United States Supreme Court in *Greene v. Lindsey*, 456 U.S. 444 (1982), held only ‘posting’ notice of the hearing did not afford adequate notice.” *Id.* (citing *Greene v. Lindsey*, 456 U.S. 444, 454 (1982)). Furthermore, the plaintiff was permitted to have someone other than a sheriff deliver notice to the tenant. *See id.* (citing § 6-6-332).

⁴⁶ *See* ALA. CODE § 35-9A-123(a) (1975).

⁴⁷ *See* § 35-9A-123(b). Residents of Alabama as well as business entities authorized to do business in Alabama whose conduct is governed by the Alabama Act shall also be served pursuant to Rule 4 of the Alabama Rules of Civil Procedure, unless otherwise noted within the Act. *See id.*

⁴⁸ *MCCURLEY & DAVIS*, *supra* note 44, at § 25-6(A) (citing *White Roofing Co. v. Wheeler*, 106 So. 2d 658, 662 (Ala. Civ. App. 1957)).

⁴⁹ *Id.* at § 25-1(C) (citing *Gulf Fishing & Boating Club, Inc. v. Bender*, 370 So. 2d 1026, 1028 (Ala. Civ. App. 1979); (citation omitted)).

⁵⁰ *See* ALA. CODE § 35-9A-141 (1975).

⁵¹ *Id.*

⁵² *See id.* and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.301 (1972) (amended 1974).

⁵³ The inclusion of manufactured home was meant to include the rental of a manufactured home, not the rental of land in a trailer park for a manufactured home. Telephone interview with Robert McCurley, *supra* note 30.

⁵⁴ *See* ALA. CODE § 35-9A-141(4) (1975) and § 1.301(3).

⁵⁵ *See* § 35-9A-141(3) and § 1.301. The term day is defined as “calendar day unless otherwise specified.” § 35-9A-141(3). The term day “was defined to clarify that day means calendar day not business day.” *Id.* cmt.

⁵⁶ Telephone interview with Robert McCurley, *supra* note 30.

⁵⁷ *Morgan Plan Co., Inc. v. Vellianitis*, 116 So. 2d 600, 603 (Ala. 1959) (citing *Risk v. Risher*, 19 So. 2d 484, 486 (Miss. 1944)).

⁵⁸ *See* ALA. CODE § 35-9A-142 (1975).

The obligation of good faith is extended to all “agreements” and “duties” under the Act. This section in the Uniform Act only enumerates “duties.” Good faith as to “agreements” are specifically enumerated elsewhere in the Uniform Act. The Alabama Act places the obligation of good faith for both “agreements and duties” in one section and deletes it in other places.

Id. cmt.

⁵⁹ *See id.*; § 35-9A-141(5); and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.301(4), § 1.302 (1972) (amended 1974). Section 1.302 of the Uniform Residential Landlord Tenant Act “is adapted from Section 1-203 of the Uniform Commercial Code.” *Id.* at § 1.302 cmt.

⁶⁰ *See* *Lloyd v. Serv. Corp. of Ala., Inc.*, 453 So. 2d 735, 741 (Ala. 1984).

⁶¹ *See id.* at 739 (citing *West Point-Pepperrell, Inc. v. Bradshaw*, 377 F. Supp. 154, 157 (M.D. Ala. 1974) (quoting *Hume v. United States*, 132 U.S. 406, 411 (1889)).

⁶² § 1.303 cmt.

⁶³ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.303 cmt. (1972) (amended 1974).

⁶⁴ *Id.*

⁶⁵ *See* ALA. CODE § 35-9A-143(a)(1) (1975).

⁶⁶ § 35-9A-143(b).

⁶⁷ *See* *Wells v. Sheerer*, 78 Ala. 142, 147 (1884) and *Loveman v. Foster*, 150 So. 170, 171 (Ala. 1933).

⁶⁸ *See* § 35-9A-144(a). Notice includes actual knowledge, receipt of notice, and constructive notice, involving a situation where considering the facts and circumstances known by the person, the person should reasonably be deemed to have notice. *Id.*

⁶⁹ *See* ALA. CODE § 35-9A-144(b) (1975).

⁷⁰ *Id.* “The presumption of receipt in subsection (b) merely shifts the burden of proof of non-receipt to the party denying receipt of notice.” *Id.* cmt.

⁷¹ § 35-9A-144(c).

⁷² § 35-9A-144(d).

⁷³ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.304 cmt. (1972) (amended 1974). The notice provision adopted by the Uniform Act is located in Section 1-204(25) of the Uniform Commercial Code.

Id.

⁷⁴ § 1.304(b).

⁷⁵ Telephone interview with Robert McCurley, *supra* note 30.

⁷⁶ § 1.304(c).

⁷⁷ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.304(c) (1972) (amended 1974).

⁷⁸ See § 1.304. The Alabama Act’s notice definition does not apply to the termination of tenancies or evictions of tenants. *Id.*

⁷⁹ MCCURLEY & DAVIS, *supra* note 44, at § 25-6(A) (citing *Interstate Inv. Corp. v. Rose Care, Inc.*, 631 So. 2d 836, 839 (Ala. 1993)).

⁸⁰ *Gulf Coast Realty Co. v. Prof'l Real Estate Partners, Inc.*, 926 So. 2d 992, 1005 (Ala. 2005) (citing *West Town Plaza Assocs.*, 619 So. 2d 1290, 1294 (Ala. 1993) (quoting *Irwin v. Baggett*, 164 So. 745, 746 (Ala. 1935)).

⁸¹ MCCURLEY & DAVIS, *supra* note 44, at §25-4(C). "Where the parties enter into a lease of no stated duration and periodic rent is reserved or paid, a periodic tenancy is presumed." *Gulf Coast Realty Co.*, 926 So. 2d at 1005 (citing RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT §1.5, cmt. d). Furthermore, "[t]he period thus presumed is equal to the interval for which rent is reserved or paid to a maximum periodic tenancy of year to year." *Id.*

⁸² See ALA. CODE § 35-9A-161(a) (1975). The terms and conditions may include the rental value to be paid by the tenant, the term of the rental agreement, and other obligations and rights of the landlord and tenant. *See id.*

⁸³ See § 35-9A-161.

⁸⁴ See § 35-9A-161(b).

⁸⁵ See § 35-9A-161(c)-(d). Absent an agreement, rent shall be uniformly apportioned on a day-to-day basis. *Id.*

⁸⁶ *Id.* Where a tenant pays rent weekly, "the tenancy is week-to-week . . ." § 35-9A-161(d).

⁸⁷ See ALA. CODE § 35-9A-161(d) (1975).

⁸⁸ See MCCURLEY & DAVIS, *supra* note 44, at § 25-1(B).

⁸⁹ See *id.* (citing *Penrod v. Lapere*, 367 So. 2d 1381, 1384 (Ala. 1979)).

⁹⁰ See *id.* (citing *Anselmo Meat Co., Inc. v. Riley*, 533 So. 2d 552, 552-56 (Ala. 1988)).

⁹¹ See § 35-9A-162(a)-(b).

⁹² See *id.*

⁹³ See *id.*

⁹⁴ ALA. CODE §35-9A-162(c) (1975).

⁹⁵ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.402 cmt. (1972) (amended 1974).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ MCCURLEY & DAVIS, *supra* note 44, at § 25-2(E) (citing *Lloyd*, 453 So. 2d at 740).

⁹⁹ *Id.*

¹⁰⁰ *Id.* The *Lloyd* rationale was not followed by the court for arbitration agreements in leases on the basis that such agreements were not "unfair or oppressive." *Id.* (citing *Green Tree Fin. Corp. v. Wampler*, 749 So. 2d 409, 416-17 (Ala. 1999)). In *Green*, the court "determine[d] that the rule in *Lloyd* was that exculpatory clauses are unenforceable if contrary to public policy." *Id.*

¹⁰¹ See MCCURLEY & DAVIS, *supra* note 44, at § 25-2(D).

¹⁰² See FERREIRA, *supra* note 43, at § 5-7.

¹⁰³ See FERREIRA, *supra* note 43, at § 5-7. (citations omitted). The attorneys’ fees must be reasonable and not excessive. MCCURLEY & DAVIS, *supra* note 44, at § 25-3(H).

¹⁰⁴ See ALA. CODE § 35-9A-163(a)(1) (1975).

¹⁰⁵ § 35-9A-163(a)(2). This prohibition is verbatim from the Uniform Act, which adapted the provision from "Section 2.415 of the Uniform Consumer Credit Code provid[ing] [that] ‘a buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease.’" UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.403 cmt. (1972) (amended 1974).

¹⁰⁶ See § 35-9A-163(a)(3). Enacted to prevent "a third party from assessing a collection cost." *Id.* cmt.

¹⁰⁷ § 35-9A-163(a)(4). Although the exculpatory clauses are unenforceable at law in many jurisdictions, the inclusion of such a provision in a rental agreement "may nevertheless prejudice and injure the rights and interests of the uninformed tenant who may, for example, surrender or waive rights in settlement of an enforceable claim against the landlord for damages arising from the landlord’s negligence." § 1.403 cmt.

¹⁰⁸ See ALA. CODE § 35-9A-163(b) (1975).

¹⁰⁹ See § 35-9A-163(b). Section 35-9A-163(b) of the Alabama Act does not go into effect until January 1, 2008. See § 35-9A-601. This was done “to enable the landlord sufficient time to revise the rental agreements before subjecting the landlord to the penalties” *Id.* cmt.

¹¹⁰ See §35-9A-163(b) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.403(b) (1972) (amended 1974).

¹¹¹ Telephone interview with Robert McCurley, *supra* note 30.

¹¹² MCCURLEY & DAVIS, *supra* note 44, at § 25-6(D) (citing *Tyson v. Weil*, 53 So. 912, 914 (Ala. 1910)). Pursuant to common law rules governing landlord-tenant law, leases were viewed as independent covenants. E-mail from Marcia L. McCormick, *supra* note 17. “A lease conferred an interest in land – possession – and at common law, the only duty that the landlord had was to allow the tenant the right to possession and not to actively interfere with that right (quiet enjoyment).” *Id.* “There was no warranty of any kind about the suitability of the land for any particular purpose, any structures on the land, or anything else.” *Id.* “The promises that the tenant made in the lease did not depend on anything but bare possession of the land.” *Id.* “That’s why, if the building burned down, the tenant still had a duty to pay rent – the destruction of the building did not affect the tenant’s ability to possess the land.” *Id.*

¹¹³ See ALA. CODE § 35-9A-164 (1975). “Seventeen states (34%) . . . have . . . enacted specific statutes addressing whether a tenant’s covenant to pay rent is independent of the landlord’s covenant under a lease.” Alabama Appleseed Center for Law & Justice Inc., Residential Landlord and Tenant Law: A Fifty State Survey of Selected Issues (2004) (on file with author), <http://alabama.appleseeds.net/servlet/GetArticleFile?articleFileId=192>. “Fifteen [states] have departed from the common law rule and have adopted statutes providing that a tenant’s obligation to pay rent is not an independent covenant.” *Id.* (emphasis added). “[T]wo states, New York and Washington, have adopted statutes providing that a tenant’s obligation is an independent covenant.” *Id.* (emphasis added).

¹¹⁴ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.404 (1972) (amended 1974).

¹¹⁵ § 35-9A-164 cmt.

¹¹⁶ See MCCURLEY & DAVIS, *supra* note 44, at § 25-6(C) (citing *Maddox v. Hobbie*, 152 So. 222, 225 (Ala. 1934)).

¹¹⁷ See *Maddox*, 152 So. at 225 (citation omitted).

¹¹⁸ See *id.*

¹¹⁹ See ALA. CODE § 35-9A-201(a) (1975). The Comment to the Uniform Act, which the Alabama Act is modeled after, notes that the limit on the security deposit is not a limit on the amount of prepaid rent that a landlord can require. See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.101 cmt. (1972) (amended 1974).

¹²⁰ Above-normal risk has not been defined within the Alabama Act, potentially granting landlords some discretion in setting security deposits for tenants.

¹²¹ See *id.* “Twenty-five states (50%) statutorily limit or cap the amount a landlord may receive as a security deposit.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

¹²² See § 35-9A-201(b).

¹²³ Alabama Law Institute, Recently Enacted Laws, <http://ali.state.al.us/projects.html> (last visited Feb. 10, 2007) (on file with author). See also § 35-9A-201(b)-(c). “Forty-five [other] states (90%) [a]lso limit the time by which the landlord must notify the tenant that the deposit is being withheld or return the deposit.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. The limitations “range from fourteen to sixty days, with the most common period being thirty days.” *Id.*

¹²⁴ See ALA. CODE § 35-9A-201(d) (1975). This section requires the tenant to provide to the landlord in writing a forwarding address to send the refunded security deposit or itemized deduction list. See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.*

¹²⁷ See § 35-9A-201(f). “Forty-four [other] states (88%) also penalize a landlord who fails to notify the tenant of the reason he is withholding the deposit or, if there is no basis for withholding, to return the security deposit in the specified time period.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. “These penalties range from only requiring the return of the deposit (or the amount withheld) plus attorneys’ fees up to requiring the return of the amount withheld plus an additional monetary penalty, which can be as much as three times the amount withheld.” *Id.* “The most consistent penalty . . . is twice the amount of the deposit wrongfully withheld.” *Id.*

¹²⁸ See ALA. CODE § 35-9A-201 (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.101 (1972) (amended 1974).

¹²⁹ See § 35-9A-201(a) and § 2.101(a).

¹³⁰ See § 35-9A-201(b) and § 2.101(b).

¹³¹ Telephone interview with Robert McCurley, *supra* note 30.

¹³² See § 35-9A-201(d)-(e) and § 2.101.

¹³³ Telephone interview with Robert McCurley, *supra* note 30.

¹³⁴ *Id.*

¹³⁵ See ALA. CODE § 35-9A-202(a) (1975).

¹³⁶ See *id.*

¹³⁷ See § 35-9A-202(b).

¹³⁸ See *id.*

¹³⁹ See § 35-9A-202(c).

¹⁴⁰ See ALA. CODE § 35-9A-202 and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.102 cmt. (1972) (amended 1974).

¹⁴¹ See *id.*

¹⁴² Telephone interview with Robert McCurley, *supra* note 30.

¹⁴³ See ALA. CODE § 35-9A-203 (1975).

¹⁴⁴ See *id.*

¹⁴⁵ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.103 cmt. (1972) (amended 1974).

¹⁴⁶ MCCURLEY & DAVIS, *supra* note 44, at § 25-2 (D) (citation omitted).

¹⁴⁷ See *id.*

¹⁴⁸ See FERREIRA, *supra* note 43, at § 2-1.

¹⁴⁹ *Id.* (citations omitted). Under common law, a landlord had no right to enter the rental property to make repairs without the consent of the tenant or a provision in the rental agreement permitting such entrance. *Id.* (citation omitted).

¹⁵⁰ *Id.* (citation omitted).

¹⁵¹ See *id.* (citation omitted).

¹⁵² See *id.* (citation omitted).

¹⁵³ FERREIRA, *supra* note 43, at § 2-1 (citation omitted).

¹⁵⁴ FERREIRA, *supra* note 43, at § 2-3 (citations omitted).

¹⁵⁵ “The generally accepted code is the ‘Standard Housing Code’ by the Southern Building Code Congress International, Inc.” ALA. CODE § 35-9A-204(a)(1) cmt. (1975). In addition, “[t]hirty-nine states (78%) have enacted legislation requiring a landlord to meet certain minimum housing standards with respect to rental property.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. Also, “twenty-nine states require . . . landlord[s] to comply with applicable building and safety codes.” *Id.* These, local building and housing codes set minimum standards for the installation and maintenance of plumbing, electrical wiring, structural material, and fire protective devices within buildings and residences. See Hoover Building Codes, <http://www.hooveral.gov/Default.asp?ID=320&pg=Building+Codes>.

¹⁵⁶ “The obligations imposed on landlords by the warranty of habitability . . . vary from state to state.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. Some states’ warranties of habitability include only general, nonspecific obligations to keep the premises ‘fit and habitable.’” *Id.* (citing Park West Mgmt. Corp. v. Mitchell, 391 N.E.2d 1288, 1294 (N.Y. 1979)). “Other states impose very specific obligations related to utilities, common areas, smoke detectors or other housing standards.” *Id.* “Yet other states require landlords to meet both general, nonspecific standards and very specific criteria of habitability.” *Id.* “[E]ven states . . . recognize an implied warranty of habitability through case law, or hold that the issue is determined by local ordinances.” *Id.* (citing Proffer v. Randall, 755 S.W.2d 655 (Mo. Ct. App. 1988)). Also, “thirty-one states require . . . landlord[s] to maintain the rental property in ‘fit and habitable’ condition.” *Id.* However, whether property is “fit and habitable” is a factual determination, “and, when not expressly addressed by statute, is determined by common law.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

Typically, for a defect to render premises uninhabitable, it must materially affect health and/or safety of the tenants, depriving the tenants of the essential functions that the leased premises are expected to provide. Examples of such defects include insect or rodent

infestation, insufficient heat and plumbing facilities, significantly dangerous electrical outlets or wiring, and inadequate sanitation facilities.

Id. (citing *Park West Mgmt. Corp.*, 391 N.E.2d at 1294-95) (citations omitted)).

¹⁵⁷ “[T]wenty-seven states (54%) . . . require[] landlords to keep all utilities and major systems in good and safe working order.” *Id.* In addition, “[n]ineteen states (38%) mandate that the landlord provide trash storage and removal for tenants.” *Id.*

¹⁵⁸ ALA. CODE § 35-9A-204(a) (1975). “[T]wenty-three states (46%) require the premises to have running water, hot water, and heat.” Alabama Applesseed Center for Law & Justice Inc., *supra* note 113.

¹⁵⁹ See ALA. CODE § 35-9A-204(f) (1975). The Uniform Act does not contain this additional limitation on the rights of tenants. See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.104 (1972) (amended 1974). The Alabama Act added this additional limitation so that tenants could not “benefit from their own willful or negligent act[s].” § 35-9A-204(f) cmt.

¹⁶⁰ See § 35-9A-204(c). “[T]wenty-eight states allow some form of waiver or modification of a limited number of the statutory duties;” however, “[t]o be effective, the modification or waiver generally must be supported by adequate consideration.” Alabama Applesseed Center for Law & Justice Inc., *supra* note 113 (citing MINN. STAT. ANN. § 504B.161 (West 2006); N.C. GEN. STAT. ANN. §42-42(b) (West 2006)). However, where states have permitted modification or waiver of the habitability warranty, they have included other provisions to protect the tenant from attempts by landlords “to completely absolve (themselves) of liability for failing to meet the warranty of habitability.” *Id.* “For instance, sixteen of the twenty-eight states that permit a waiver require the waiver or modification to be in writing.” *Id.* In addition, “eighteen [states] mandate that the waiver not affect any repairs necessary to comply with applicable housing, building, or safety codes.” *Id.*

¹⁶¹ See § 35-9A-204(d)(1).

¹⁶² See § 35-9A-204(d)(2)-(3).

¹⁶³ See § 35-9A-204(e). The Uniform Act imposes a duty of good faith on the agreement for the tenant to perform specified maintenance or repairs, while the Alabama Act is silent on this matter. See § 2.104(c).

¹⁶⁴ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.104 cmt. (1972) (amended 1974).

¹⁶⁵ See *id.*

¹⁶⁶ Gilbert & Carnes, *supra* note 6.

¹⁶⁷ See ALA. CODE § 35-9A-204 (1975) and § 2.104.

¹⁶⁸ Telephone interview with Robert McCurley, *supra* note 30. Legislators were concerned that landlords may use the time period requirement as a loophole when all tenants requested heating on the same day, making it unreasonable for a landlord to make available heating on that same day for all tenants. *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See § 35-9A-205(a). “When the original landlord is released from liability, the bona fide purchaser from the landlord assumes the liability of the original landlord.” *Id.* cmt.

¹⁷¹ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 2.105 cmt. (1972) (amended 1974).

¹⁷² See ALA. CODE § 35-9A-205(b) (1975).

¹⁷³ Telephone interview with Robert McCurley, *supra* note 30.

¹⁷⁴ *Id.*

¹⁷⁵ Samuel Jan Brakel & Donald M. McIntyre, *The Uniform Residential Landlord and Tenant Act (URLTA) in Operation: Two Reports*, 1980 AM. B. FOUND. RES. J. 555, 561 (1980).

¹⁷⁶ See ALA. CODE § 35-9A-301 (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.101 cmt. (1972) (amended 1974).

¹⁷⁷ See § 35-9A-301(1).

¹⁷⁸ See § 35-9A-301(2) – (3).

¹⁷⁹ §35-9A-301 (4) - (5).

¹⁸⁰ See § 35-9A-301(6).

¹⁸¹ See ALA. CODE § 35-9A-301(7) (1975).

¹⁸² Telephone interview with Robert McCurley, *supra* note 30.

¹⁸³ See § 35-9A-302(b).

¹⁸⁴ See § 35-9A-302(c).

¹⁸⁵ See *id.*

¹⁸⁶ ALA. CODE § 35-9A-302(a) (1975).

¹⁸⁷ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.102 (1972) (amended 1974).

¹⁸⁸ Telephone interview with Robert McCurley, *supra* note 30.

¹⁸⁹ *Id.*

¹⁹⁰ *See* § 35-9A-302(a).

¹⁹¹ *See* ALA. CODE § 35-9A-302(b)-(c) (1975).

¹⁹² *See id.*

¹⁹³ *See* § 35-9A-302(b).

¹⁹⁴ § 35-9A-303(d).

¹⁹⁵ *See* UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.103 (1972) (amended 1974).

¹⁹⁶ Telephone interview with Robert McCurley, *supra* note 30. Alabama courts had previously defined notice to include this procedure, and legislators wanted to follow current law. *Id.*

¹⁹⁷ *See id.*

¹⁹⁸ *Id.*

¹⁹⁹ MCCURLEY & DAVIS, *supra* note 44, at § 25-3(D)(4) (citing *Walker v. S. Trucking Corp.*, 219 So. 2d 379, 381 (Ala. 1969)).

²⁰⁰ *See* ALA. CODE § 35-9A-304 (1975).

²⁰¹ *Id.*

²⁰² *See* UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.104 (1972) (amended 1974).

²⁰³ Telephone interview with Robert McCurley, *supra* note 30.

²⁰⁴ FERREIRA, *supra* note 43, at § 2-13 (citations omitted).

²⁰⁵ *See id.* (citations omitted). Damages for a landlord’s trespass included actual damages, emotional damages, and punitive damages where the trespass was malicious or wanton. *See id.*

²⁰⁶ FERREIRA, *supra* note 43, at § 2-15 (citations omitted). A tenant may also recover both actual damages sustained and punitive damages where the constructive eviction was maliciously or wantonly conducted by the landlord. *See id.* (citations omitted).

²⁰⁷ *See* ALA. CODE § 35-9A-401(a) (1975).

²⁰⁸ *See id.* The comment to the Uniform Act provision regarding the landlord’s noncompliance states that issues involving a landlord’s noncompliance, “if disputed in good faith, may be settled by agreement,” but that “a prior settlement will not prevent a termination under Section 4.101(a)(2)” (Section 35-9A-401(a)(2) of the Alabama Act). UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.101 cmt. (1972) (amended 1974).

²⁰⁹ *See* § 35-9A-401(a).

²¹⁰ *See id.*

²¹¹ The comment to the Uniform Act section relating to a landlord’s noncompliance provides that “[t]he availability of injunctive relief is determined by usual principles of equity.” § 4.101 cmt. Studies show that tenants rarely seek injunctive relief for a landlord’s failure to maintain the rental property. Brakel & McIntyre, *supra* note 175, at 570. However, “[t]wenty-seven states (54%) have enacted statutory provisions providing the tenant with the injunctive relief upon the landlord’s breach of the lease.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²¹² *See* ALA. CODE § 35-9A-401(b) (1975). “Forty-five states (90%) have enacted statutes expressly providing for recovery of actual damages by tenants in the event of a landlord’s breach of a lease or the failure of the landlord to comply with a statutory or implied warranty of habitability (or other landlord-tenant statutes).” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. In addition, the available remedies for tenants are limited by the tenant’s responsibility to mitigate damages. *See* § 4.101 cmt.

²¹³ *See* § 35-9A-401(b). “Thirty-three states (66%) have enacted statutory provisions for the award of attorneys’ fees;” however, in most states, the award of attorneys’ fees is only where the landlord’s breach is intentional or willful. Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²¹⁴ *See* § 35-9A-401(d).

²¹⁵ *See* § 35-9A-401 and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.101 (1972) (amended 1974).

²¹⁶ *See id.*

²¹⁷ Telephone interview with Robert McCurley, *supra* note 30.

²¹⁸ *See* ALA. CODE § 35-9A-402(a) (1975).

²¹⁹ *See id.*

²²⁰ *Id.*

²²¹ See § 35-9A-402(b). “[T]hirty-five [other] states (70%) allow a tenant to recover damages in excess of actual damages . . .;” however, these punitive damages are usually “capped at some statutory maximum.” Alabama Applesseed Center for Law & Justice Inc., *supra* note 113.

²²² See § 35-9A (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.103 (1972) (amended 1974). “Twenty-one states (42%) have enacted statutes allowing a tenant to deduct the cost of repairs from rent if his landlord has failed to make repairs required under the lease or by statute.” Alabama Applesseed Center for Law & Justice Inc., *supra* note 113. However, all of the twenty-one states, but five, limit the tenant’s allowable deduction. *Id.* In addition, most of the states limiting the deductible amount condition the deduction “on the damage not having been caused by the tenant or someone under his control.” *Id.* Also, most states with a repair and deduct provision require the tenant to give notice to the landlord and “an opportunity to cure.” *Id.*

²²³ Telephone interview with Robert McCurley, *supra* note 30.

²²⁴ See §4.103.

²²⁵ See *id.*

²²⁶ See *id.*

²²⁷ Telephone interview with Robert McCurley, *supra* note 30.

²²⁸ See ALA. CODE § 35-9A-404(a) (1975).

²²⁹ See § 35-9A-404(b)(1).

²³⁰ See *id.*

²³¹ See *id.*

²³² §35-9A-404(2).

²³³ ALA. CODE §35-9A-404(c) (1975).

²³⁴ See § 35-9A-404(d).

²³⁵ See § 35-9A-404 and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.104 (1972) (amended 1974).

²³⁶ See § 4.104.

²³⁷ § 35-9A-404 cmt.

²³⁸ See § 4.104. The Comment to Section 4.104 of the Uniform Act notes that “collective actions by tenants to secure essential services” are permitted under Section 4.104(a)(1) of the Act. See *id.* cmt.

²³⁹ Telephone interview with Robert McCurley, *supra* note 30.

²⁴⁰ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.104 (1972) (amended 1974).

²⁴¹ See *id.*

²⁴² See ALA. CODE § 35-9A-405(a) (1975). “[T]wenty-two states (44%) have enacted statutory provisions specifically entitling the tenants to bring counterclaims in actions brought by a landlord.” Alabama Applesseed Center for Law & Justice Inc., *supra* note 113. Generally, tenants are “allowed to counterclaim for any claim provided under the lease, including defenses for nonpayment of rent.” *Id.* In addition, the Comment to §4.105 of the Uniform Act states that

[w]hile *Lindsey v. Normet* . . . holds no principle of constitutional law requires the admission of habitability to defense in a summary proceeding maintained by the landlord against the tenant, Section 4.105 is consistent with modern procedure reform in permitting the tenant to file a counterclaim or other appropriate pleading in the summary proceeding to the end that all issues between the parties may be disposed of in one proceeding. It is anticipated that upon filing of the counterclaim the court will enter the order deemed appropriate by him concerning the payment of rent in order to protect the interests of the parties.

§ 4.105 cmt. (citing *Lindsey v. Normet*, 405 U.S. 56 (1972)). According to Legal Aid attorneys in Oregon, another state adopting a version of the Uniform Residential Landlord Tenant Act, the ability to assert habitability as a defense to landlord claims resulted in more successful defenses. Brakel & McIntyre, *supra* note 175, at 568.

²⁴³ See § 35-9A-405(a).

²⁴⁴ See §35-9A-405(b).

²⁴⁵ See § 35-9A-405(a).

²⁴⁶ See *id.*

²⁴⁷ FERREIRA, *supra* note 43, at § 2-2 (citations omitted).

²⁴⁸ *Id.* (citations omitted).

²⁴⁹ *Id.* (citations omitted).

²⁵⁰ ALA. CODE § 35-9A-406(a) (1975). According to the Comment to Section 4.106 of the Uniform Act, relating to fire and casualty damages to rental property, at common law, a tenant was still required to pay rent when rental property was destroyed. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.106 cmt. (1972) (amended 1974).

²⁵¹ *See id.*

²⁵² *See* § 35-9A-406(b).

²⁵³ *See* § 35-9A-406(b)(2).

²⁵⁴ Telephone interview with Robert McCurley, *supra* note 30.

²⁵⁵ *See id.*

²⁵⁶ *See* ALA. CODE § 35-9A-407 (1975). “Forty-five states (90%) have enacted statutes expressly providing for recovery of actual damages by tenants in the event of a landlord’s breach of a lease or the failure of the landlord to comply with a statutory or implied warranty of habitability (or other landlord-tenant statutes).” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. In addition, “thirty-five states (70%) allow a tenant to recover damages in excess of actual damages . . .;” however, these punitive damages are usually “capped at some statutory maximum.” *Id.* Also, “[t]hirty-three states (66%) have enacted statutory provisions for the award of attorneys’ fees;” however, in most states, the award of such fees is only where the landlord’s breach is intentional or willful. *Id.*

²⁵⁷ *Id.*

²⁵⁸ *See id.*

²⁵⁹ MCCURLEY & DAVIS, *supra* note 44, at § 25-7(A) (citing *Hicks v. Longfellow Dev. Co.*, 362 So. 2d 219, 221 (Ala. 1978)).

²⁶⁰ *Id.* at § 25-3(D)(6) (citations omitted).

²⁶¹ *Id.* (citations omitted).

²⁶² FERREIRA, *supra* note 43, at § 4-2 (citations omitted). Personal property included “all the goods, furniture and effects belonging to the tenant . . . [that had] been brought onto and enjoyed the protection of the premises. *Id.* (citations omitted).

²⁶³ *Id.* (citing *Elec. Constr., Inc. v. Azar*, 405 F.2d 475, 477 (5th Cir. 1968)).

²⁶⁴ *See* ALA. CODE § 35-9A-425(a) (1975).

²⁶⁵ *See* § 35-9A-425(b). Distraint for rent was the common law lien landlords had on a tenant’s personal property where the tenant failed to pay rent. FERREIRA, *supra* note 43, at § 4-3.

²⁶⁶ *See* § 35-9A-421(a).

²⁶⁷ *Id.*

²⁶⁸ *See id.* “Thirty-six states (72%) have enacted statutes that give the landlord the right to terminate the lease upon the occurrence of certain breaches or acts by the tenants.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. However, “twenty-three of these states . . . [permit] the tenant . . . to cure the breach.” *Id.*

²⁶⁹ *See* ALA. CODE § 35-9A-421(b) (1975).

²⁷⁰ *See id.*

²⁷¹ *See id.*

²⁷² Thirty-nine states (78%)

have express statutory provisions regarding the right of landlords to recover actual damages incurred as a result of a tenant’s non-monetary breach of a lease or a tenant’s breach of statutory requirements, such as a tenant’s obligation to refrain from deliberately or negligently damaging the premises. These actual damages include property damage resulting from improper acts by the tenant, as well as damage to the landlord resulting from a tenant’s holdover.

Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²⁷³ “An action for injunctive relief must be brought in circuit court.” § 35-9A-421 cmt. Thus, “[i]njunctive relief is not available in district court.” *Id.* “[T]wenty-six states (52%) provide the landlord with the specific right to injunctive relief upon certain breaches by the tenant.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²⁷⁴ ALA. CODE § 35-9A-421(c) (1975). The Comment to Section 4.201 of the Uniform Residential Landlord Tenant Act states that “[t]he availability of injunctive relief is determined by usual principles of equity.” UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.201 cmt. (1972) (amended 1974). The Comment further states that remedies are limited by a tenant’s duty to mitigate. *See id.*

²⁷⁵ See § 35-9A-421(c). “Thirty-five states (70%) have statutory provisions that expressly permit the award of attorneys’ fees to the landlord;” however, significant variations exist among the state statutes authorizing an award of attorneys’ fees. Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²⁷⁶ See § 35-9A-421.

²⁷⁷ See § 35-9A-421 and § 4.201. Dispossessed in this sense means the tenant will no longer have an enforceable right to possession.

²⁷⁸ See *id.*

²⁷⁹ See *id.*

²⁸⁰ Telephone interview with Robert McCurley, *supra* note 30.

²⁸¹ MCCURLEY & DAVIS, *supra* note 44, at § 25-7(B) (citing King v. Hous. Auth., 670 F.2d 952, 953 (11th Cir. Ala. 1982)).

²⁸² *Id.*

²⁸³ ALA. CODE § 35-9A-422 (1975).

²⁸⁴ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.202 (1972) (amended 1974).

²⁸⁵ See *id.* and § 35-9A-422.

²⁸⁶ See *id.* and § 35-9A-422.

²⁸⁷ MCCURLEY & DAVIS, *supra* note 44, at § 25-6(B) (citing Ryals v. Laney, 338 So. 2d 413, 415 (Ala. Civ. App. 1976)).

²⁸⁸ *Id.* (citing Johnson v. Northpointe Apartments, 744 So. 2d 899, 905 (Ala. 1999)).

²⁸⁹ ALA. CODE §35-9A-423(a) (1975). Thirty-nine states (78%)

have express statutory provisions regarding the right of landlords to recover actual damages incurred as a result of a tenant’s non-monetary breach of a lease or a tenant’s breach of statutory requirements, such as a tenant’s obligation to refrain from deliberately or negligently damaging the premises. These actual damages include property damage resulting from improper acts by the tenant, as well as damage to the landlord resulting from a tenant’s holdover.

Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

²⁹⁰ See §35-9A-423(b).

²⁹¹ See § 35-9A-423(c).

²⁹² See *id.*

²⁹³ See *id.*

²⁹⁴ *Id.*

²⁹⁵ ALA. CODE § 35-9A-423(d) (1975).

²⁹⁶ See § 35-9A-423(a) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.203(a) (1972) (amended 1974).

²⁹⁷ Telephone interview with Robert McCurley, *supra* note 30.

²⁹⁸ See § 35-9A-423(b) and § 4.203(b).

²⁹⁹ See § 4.203(c).

³⁰⁰ MCCURLEY & DAVIS, *supra* note 44, at § 25-3(D)(6) (citing Lynaum Funeral Home, Inc. v. Hodge, 576 So. 2d 169, 170 (Ala. 1991)).

³⁰¹ ALA. CODE § 35-9A-424 (1975) and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.204 (1972) (amended 1974).

³⁰² § 4.204 cmt.

³⁰³ See *id.*

³⁰⁴ MCCURLEY & DAVIS, *supra* note 44, at § 25-3(D)(1) (citing Soloman v. Rogers, 98 So. 370, 371 (Ala. 1923)).

³⁰⁵ See § 35-9A-426.

³⁰⁶ FERREIRA, *supra* note 43, at § 3-1 (citing Tornton v. Butler, 728 F. Supp. 679, 683 (M.D. Ala. 1990)).

³⁰⁷ *Id.* See *infra* text accompanying notes 324-40 (explaining the eviction proceedings under the Alabama Act).

³⁰⁸ See ALA. CODE § 35-9A-427 (1975).

³⁰⁹ MCCURLEY & DAVIS, *supra* note 44, at § 25-3(D)(1) (citing Brown v. Williams, 576 So. 2d 195, 197 (Ala. 1991)).

³¹⁰ *Id.* at § 25-4(A) (citations omitted).

³¹¹ ALA. CODE § 35-9A-441(a) –(b) (1975).

³¹² § 35-9A-441(c).

³¹³ *See id.*

Twenty-two states (44%) have statutes allowing a landlord to recover punitive . . . damages in excess of actual damages upon certain non-monetary breaches by a tenant, most often when the tenant acts willfully and refuses to return possession to the landlord following a termination or expiration of the lease or where the tenant refuses access to allow the landlord reasonable access to the property.

Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

³¹⁴ UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.301(a) (1972) (amended 1974).

³¹⁵ § 4.301(b).

³¹⁶ Telephone interview with Robert McCurley, *supra* note 30.

³¹⁷ *Id.*

³¹⁸ *See* ALA. CODE § 35-9A-442(a) (1975).

³¹⁹ *See id.*

³²⁰ *See* § 35-9A-441(b).

³²¹ *See id.*

³²² *See* UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.302 (1972) (amended 1974).

³²³ Telephone interview with Robert McCurley, *supra* note 30.

³²⁴ Gilbert & Carnes, *supra* note 6.

³²⁵ Telephone interview with Robert McCurley, *supra* note 30.

³²⁶ *Id.*

³²⁷ Gilbert & Carnes, *supra* note 6.

³²⁸ § 35-9A-461(b). Under the Alabama Act, unless stated otherwise, eviction proceedings are to be governed by the Alabama Rules of Civil Procedure and the Alabama Rules of Appellate Procedure regardless of the relief sought by the landlord. § 35-9A-461(a).

³²⁹ § 35-9A-461(b).

³³⁰ *Id.*

³³¹ ALA. CODE § 6-6-310 (1975).

³³² § 6-6-310 The Alabama Act, like thirty-four (68%) other states, statutorily “provide[s] a tenant [with] an opportunity to cure a breach for nonpayment of rent.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. “The time period for a tenant to cure a nonpayment breach varies widely . . .,” with the “vast majority of states provid[ing] cure periods of three, five, seven or ten days.” *Id.* “Of these thirty-four states, only Georgia, limits the number of times a tenant can avail himself of the right to cure nonpayment.” *Id.* (citing GA. CODE ANN. § 44-7-52 (West 2006) (limiting the right to once in a twelve month period)). Furthermore, “twenty-six states (52%) . . . provide a tenant an opportunity to cure a breach other than nonpayment of rent.” *Id.* The cure period for breaches other than failure to pay rent is typically longer than that provided for curing nonpayment of rent. *Id.*

³³³ § 6-6-310. “Seventeen states (34%) require an answer to be filed within a statutory number of days from service,” with eight of the states “requiring answers within five days or less” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

³³⁴ § 35-9A-461(c). “All states require some form of service upon the tenant of notice of the eviction action.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

³³⁵ § 35-9A-461(c). “[F]orty-five states (90%) . . . permit some form of substituted service, mailing or posting.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

³³⁶ ALA. CODE § 35-9A-461(c) (1975).

³³⁷ § 6-6-350. “The time period for filing an appeal of a decision in an eviction ranges from one day to sixty days,” with one state prohibiting appeals “at all eviction actions, except for claims that the court lacked jurisdiction over the proceeding.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. “Thirty-one states (62%) require a tenant to pay the rent as it comes due into the registry in order to remain in possession of the premises at issue while the tenant appeals an adverse ruling in an eviction action.” *Id.*

³³⁸ § 35-9A-461(d).

³³⁹ *Id.*

³⁴⁰ ALA. CODE § 35-9A-461(e) (1975).

³⁴¹ “Thirty-five states (70%) have enacted a statutory provision prohibiting a landlord from retaliating against a tenant who has complained to a governmental agency regarding a violation applicable to the leased premises.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. The purpose of “these statutory provisions is to encourage tenants to report housing code violations to the appropriate authorities.” *Id.*

³⁴² “Thirty-five states (70%) . . . have enacted a statutory provision prohibiting a landlord from retaliating against a tenant who has complained to the landlord about the landlord’s failure to perform under the lease.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. “These statutes are designed to protect a tenant who reports health and safety hazards and other breaches of the lease to the landlord.” *Id.*

³⁴³ § 35-9A-501(a). “[T]wenty-nine states have enacted a statutory provision prohibiting a landlord from retaliating against a tenant who has organized or become a member of a tenants’ union or similar organization.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. In addition, attorneys from other states that have adopted a version of the Uniform Residential Landlord Tenant Act have stated that the defense against retaliation was often used as a primary defense to landlord actions against tenants. Brakel & McIntyre, *supra* note 175, at 569.

³⁴⁴ “Twenty-five states have enacted statutory provisions that expressly provide for penalties above and beyond the actual damages incurred.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113.

³⁴⁵ Seventeen states statutorily allow for the recovery of attorneys’ fees. *Id.*

³⁴⁶ ALA. CODE § 35-9A-501(b) (1975).

³⁴⁷ § 35-9A-501(c).

³⁴⁸ Telephone interview with Robert McCurley, *supra* note 30.

³⁴⁹ See § 35-9A-501 and UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101 (1972) (amended 1974).

³⁵⁰ See § 35-9A-501(a) and § 5.101(a).

³⁵¹ Telephone interview with Robert McCurley, *supra* note 30.

³⁵² § 35-9A-501(b) and § 5.101(b). The Uniform Act explains presumption to mean “that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.” § 5.101(b). “[S]eventeen states have created a statutory presumption that action taken by landlord within a specific time period after the tenant’s action is retaliatory.” Alabama Appleseed Center for Law & Justice Inc., *supra* note 113. Such presumptive provisions “transfer the burden of proving retaliation from the tenant to the landlord, who must prove that the conduct in question was not retaliatory.” *Id.*

³⁵³ § 5.101(b).

³⁵⁴ Telephone interview with Robert McCurley, *supra* note 30.

³⁵⁵ Brakel & McIntyre, *supra* note 175, at 570 (citing OR. REV. STAT. ANN. § 91.815 (West 2006)).

³⁵⁶ *Id.* The court noted that “[t]enants must be able to point out to the landlord deficiencies in both ‘essential services’ and other habitability requirements from a position of some bargaining power and without having to threaten to commit, as it were, residential suicide.” *Id.*

³⁵⁷ *McCormic v. Smith*, 668 S.W.2d 304, 306 (Tenn. App. 1984).

³⁵⁸ Brakel & McIntyre, *supra* note 175, at 571 (citing *Brewer v. Erwin*, 600 P.2d 398, 409 (Or. 1979)).

³⁵⁹ ALA. CODE § 35-9A-106 (1975).

³⁶⁰ See generally *Southland Corp. v. Keating*, 465 U.S. 1, 11 (1984) (holding that the Federal Arbitration Act preempts state law where interstate commerce is involved in the transaction underlying the dispute).

³⁶¹ Brakel & McIntyre, *supra* note 175, at 603-04 (citing *People v. Rowen*, 173 N.E.2d 331, 331 (N.Y. 1961)).

³⁶² Brakel & McIntyre, *supra* note 175, at 600. This “system is very complex and involves several competing economic, social, and political considerations.” *Id.*

³⁶³ Brakel & McIntyre, *supra* note 175, at 559.