

# PUBLICATION

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## The Alabama Uniform Residential Landlord and Tenant Act

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**Summary:** The Alabama Uniform Residential Landlord and Tenant Act was recently enacted, and will likely have a dramatic impact on the landlord/tenant relationship in Alabama.

In 2006, the Alabama State Legislature enacted the Alabama Uniform Residential Landlord and Tenant Act (the Act),<sup>1</sup> which is based upon the Uniform Residential Landlord Tenant Act of 1972—a statute that had been adopted in 20 states in some form.<sup>2</sup> Prior to the passage of the Act, Alabama was one of only two states without a landlord-tenant law.<sup>3</sup> The Act applies only to residential rental agreements entered into or renewed after January 1, 2007, and excludes public institutions, lease sale contracts, fraternities, hotels, condominiums, and premises rented primarily for agricultural purposes from its coverage. Since the Act supersedes both previous case law<sup>4</sup> and county or city ordinances, a basic knowledge of its content is critical for landlords and tenants alike. In an attempt to familiarize the reader with the Act, this article provides a general summary of the primary duties and rights of both landlords and tenants under the new law.

The new law requires the landlord to:

- Limit security deposits to no more than one month's rent unless an additional fee is required for pets, changes to the premises, or increased liability risks to the landlord or premises. Upon termination of the lease, money held by the landlord as security may be applied to the payment of accrued rent and the damages that the landlord has suffered by reason of noncompliance with the tenant's obligations under the Act. If the landlord does not refund the entire deposit, the landlord, within 35 days after termination of the tenancy, must provide the tenant with an itemized list of amounts withheld. If the landlord fails to mail a timely refund or accounting within the 35 day period, the landlord must pay the tenant double the amount of the deposit;
- Ensure that the rental dwelling complies with all applicable building and housing codes that materially affect health or safety, keep all common areas in a clean and safe condition, and make all repairs necessary to keep the property in a habitable condition. If the landlord fails to maintain the dwelling in a habitable condition, the tenant may provide written notice of intent to terminate the rental agreement upon a date not less than 14 days after the landlord's receipt of the notice. If the landlord makes the necessary repairs within that time, the rental agreement continues to be enforceable. However, if the landlord fails to make the desired repairs, the rental agreement terminates at the end of 14 days, and the landlord must return the security deposit and any prepaid rent;<sup>5</sup>
- Maintain all electrical, plumbing, sanitary, electrical, heating, ventilating, air conditioning systems and other facilities and appliances in good and safe working order;
- Supply running water and reasonable amounts of hot water, as well as provide a source of heating for the unit;
- Provide and maintain appropriate receptacles for garbage removal;
- Disclose to the tenant the name of both the owner and manager of the premises;
- Provide at least two days' notice of intent to enter the unit, except in the case of an emergency;
- Refrain from increasing rent, decreasing services or threatening eviction due to a tenant's complaints to either the landlord or a governmental agency about the violation of the habitability provisions within the law. Should the landlord attempt to retaliate against a tenant, the tenant may recover an amount

of up to three months' rent or actual damages—whichever is greater—as well as reasonable attorney's fees; and

- Enforce landlord rules and regulations upon the tenant only if the tenant was made aware of the rules at the time of entering into the agreement, and only if the rules apply to all tenants. Any substantial new rule added to the lease is valid only upon the tenant's consent.

The new law requires the tenant to:

- Pay the agreed-upon rent. The new provisions do not allow the tenant to withhold payment of rent in order to enforce any provisions of the law. If the rent is unpaid when due and the tenant fails to pay within seven days after receipt of written notice to terminate the lease for nonpayment, the landlord may terminate the rental agreement after the expiration of the seven days;
- Comply with building and housing codes that govern tenant responsibilities, such as refraining from abandoning automobiles on the lawn;
- Keep the premises as clean and safe as conditions permit. If there is a material noncompliance by the tenant affecting health and safety, the landlord may send a written notice to terminate the lease to the tenant specifying the tenant's acts and omissions constituting the breach. If the breach is not remedied within 14 days after receipt of notice to terminate the lease, the lease will terminate on the date provided in the notice unless the tenant adequately remedies the breach before that date;
- Dispose of ashes, garbage and other rubbish in a clean and safe manner;
- Keep all plumbing fixtures as clear as their conditions permit;
- Use all electrical, plumbing, heating, sanitary, ventilating and air conditioning systems in a reasonable manner;
- Refrain from deliberately or negligently destroying or damaging any part of the dwelling and from knowingly, recklessly or negligently permitting any other person to do so;
- Avoid conduct (by the tenant or others on the premises with the tenant's consent) that would disturb the neighbors;
- Allow reasonable access to the landlord to enter the dwelling to inspect the condition of the dwelling or to make necessary repairs, improvements, or to exhibit the dwelling to prospective purchasers, mortgagees, tenants, workmen or contractors; and
- Occupy the unit only as a dwelling unit, and if the lease so requires, notify the landlord of any anticipated extended absence from the premises in excess of fourteen days no later than the fifth day of the extended absence.

Additionally, the law prohibits the use of certain kinds of provisions in rental agreements. Effective January 1, 2008, a tenant may recover actual damages of up to one month's rent, as well as attorney's fees if the executed agreement contains any of the following:

- Exculpatory clauses that limit the landlord's liability arising under law or that require the tenant to indemnify the landlord for that liability;
- Provisions authorizing any person to confess judgment on a claim arising out of the rental agreement;
- Provisions requiring the tenant to pay attorney's fees or the costs of collecting rent; or
- Provisions requiring or allowing the tenant to waive or forego rights or remedies regarding habitability of the premises or security deposits.

Finally, the new law institutes a streamlined eviction process for all of Alabama. Under the new law, the landlord must provide at least seven days' written notice of an intent to evict for non-payment of rent (14 days' written notice for an eviction for other reasons). If the tenant has not complied within the specified time, the

landlord may then file an action for eviction with the court. Upon formal notice of this filing, the tenant has seven days to file an answer to the court. Once a ruling has been handed down by the court, any appeal must be filed within seven days. Before the passage of the Alabama Uniform Residential Landlord and Tenant Act, the tenant did not have a right to set aside or appeal the writ of eviction.

The Alabama Uniform Residential Landlord and Tenant Act undoubtedly necessitates a revamping of existing leases and a reconsideration of essential landlord protections such as liability insurance. For example, the Act's prohibition of certain exculpatory clauses and waiver of rights provisions will require many landlords to remove these provisions in order to evade damages. Moreover, the landlord's duties under the Act regarding health and safety—specifically the landlord's duty to "keep all common areas in a clean and safe condition"—may necessitate an evaluation of the landlord's liability coverage and the consideration of an umbrella policy due to the simple recognition that the regulation of common areas may prove difficult and costly.

In conclusion, it is important for the reader to recognize that the discussion above is not exhaustive. While this article addresses the most glaring aspects of the changes imposed by the new law, the reader should exercise caution in drafting or signing a new lease (or renewing one) until understanding all of the nuances and subtleties of the Act. Regardless of whether the reader sympathizes with the interests of a landlord or a tenant, a basic understanding of these changes will enable the reader to incorporate the changes of the new law into a new or existing lease, and in turn, avoid litigation that is both expensive and unnecessary.

We have offices in Alabama, Georgia, Louisiana, Mississippi, Tennessee and Washington, D.C. Our lawyers in each of these states are well-versed in the ever-changing status of the landlord/tenant laws in their respective jurisdictions. Again, it is particularly important that landlords and tenants revamp their leases in accordance with the new law, and we would be happy to assist you in the review or preparation of your new or existing lease.

1 Alabama Code § 35-9A-101 et. seq.

2 The twenty states that adopted some form of the Uniform Residential Landlord Tenant Act before Alabama are Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, and Washington. See Alabama Code § 35-9A-101 et. seq.

3 Arkansas was the other state without a landlord tenant law.

4 It is important to note that the Act supersedes previous case law only to the extent that the Act's provisions expressly displace it. See Alabama Code § 35-9A-103.

5 The tenant, however, may not terminate a lease for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, a licensee, or other person on the premises with the tenant's consent.