

Rep(s). By Representatives McLaughlin, Coleman (M), Coleman (L), Newton (D),  
Hinshaw and Hall (L)

HB287

ENROLLED. An Act,

Adopting the Uniform Residential Landlord and Tenant Act; regulating landlord-tenant relationships under residential rental agreements; providing for general provisions and definitions; landlord obligations; tenant obligations; remedies; and prohibitions against retaliatory conduct; amending Section 6-6-350 of the Code of Alabama 1975, relating to appeals from district court to circuit court and Section 35-9-60 of the Code of Alabama 1975, relating to liens for the rent of buildings, to remove references to dwelling houses; repealing Section 35-9-4, Code of Alabama 1975, relating to the hiring of lodging for an indefinite 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.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 9A is added to Title 35 of the Code of Alabama 1975, to read as follows:

CHAPTER 9A.

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS.

DIVISION I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE CHAPTER.

35-9A-101. Short Title

This chapter shall be known and may be cited as the "Alabama Uniform Residential Landlord and Tenant Act."

35-9A-102. Purposes; Rules of Construction.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are:

(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this chapter among those states which enact it.

(c) This chapter shall be construed as applying only to the residential landlord and tenant relationship. The chapter does not create any duties in tort or causes of action in tort, nor does it deprive anyone of any causes of action in tort that may exist apart from this chapter.

#### 35-9A-103. Supplementary Principles of Law Applicable.

Unless displaced by the provisions of this chapter, the principles of law and equity, including, but not limited to, the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

#### 35-9A-104. Construction Against Implicit Repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

#### 35-9A-105. Administration of Remedies; Enforcement.

(a) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages; provided, the duty of a landlord shall not take priority over the landlord's right to first rent other vacant units.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

#### 35-9A-106. Settlement of Disputed Claim or Right.

A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

#### 36-9A-107. Notice Requirement.

A cause of action or civil complaint initiated pursuant to this chapter is not subject to the notice requirement of subsection (j) of Section 34-27-31.

## DIVISION II

### SCOPE AND JURISDICTION.

#### 35-9A-121. Territorial Application.

This chapter applies to and is the exclusive remedy to regulate, and determine rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state. No resolution or ordinance relative to landlords, rental housing codes, or the rights and obligations governing landlord and tenant relationships shall be enacted by any county or municipality that contravenes any provision of this chapter and any resolution or ordinance enacted both prior to or after the effective date of this chapter which contravenes any portion of this chapter is superseded by this chapter.

#### 35-9A-122. Exclusions from Application of Chapter.

Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

- (1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
- (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the interest of the purchaser;
- (3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
- (4) transient occupancy in a hotel, motel, or lodgings;
- (5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;
- (6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
- (7) occupancy under a rental agreement covering premises rented by the occupant primarily for agricultural purposes; ;
- (8) continuation of occupancy by the seller or a member of the seller's family for a period of not more than thirty-six (36) months after the sale of a dwelling unit or the property of which it is a part.

35-9A-123. Jurisdiction and Service of Process.

(a) The district and circuit courts of this state, according to their respective established jurisdictions, may exercise jurisdiction over any landlord with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this state or is a business entity not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, the entity may be served as provided by Rule 4 of the Alabama Rules of Civil Procedure.

DIVISION III

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION: NOTICE.

35-9A-141. General Definitions.

Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or divisions thereof, and unless the context otherwise requires, in this chapter:

- (1) "action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;
- (2) "building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises or dwelling unit;
- (3) "day" means calendar day unless otherwise specified;
- (4) "dwelling unit" means a structure or the part of a structure, including a manufactured home, that is rented as a home, residence, or sleeping place by one or more persons;
- (5) "good faith" means honesty in fact in the conduct of the transaction concerned;
- (6) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises;
- (7) "organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, and any business entity;

(8) "owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee only when in possession;

(9) "person" includes an individual, individuals, or organization;

(10) "premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised by the rental agreement to the tenant;

(11) "rent" means all payments to be made to or for the benefit of the landlord under the rental agreement;

(12) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 35-9A-302 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(13) "roomer" means a person occupying a dwelling unit that does not include a toilet, a refrigerator, stove, kitchen sink, and either a bath tub or a shower, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

(14) "single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

(15) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

#### 35-9A-142. Obligation of Good Faith.

Every agreement and duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

#### 35-9A-143. Unconscionability.

(a) If the court, as a matter of law, finds:

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

55-9A-144. Notice.

(a) A person has notice of a fact if:

(1) the person has actual knowledge of it;

(2) the person has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, the person has reason to know that it exists.

A person "knows" or "has knowledge" of a fact if the person has actual knowledge of it.

(b) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person presumatively "receives" a notice or notification when:

(1) it comes to the person's attention;

(2) in the case of the landlord, it is delivered at the place of business of the landlord or mailed to any place designated by the landlord as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or three days after mailing with adequate prepaid postage in the United States mail to the tenant's last known place of residence.

(c) "Notice," knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the organization.

(d) Notice provided in this section does not apply to the notice required to terminate a tenancy or evict a tenant.

## DIVISION IV

### GENERAL PROVISIONS.

#### 35-9A-161. Terms and Conditions of Rental Agreement.

- (a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.
- (b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.
- (c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.
- (d) Unless the rental agreement fixes a definite term, the tenancy is week-to-week in case of a tenant who pays weekly rent, and in all other cases month-to-month.

#### 35-9A-162. Effect of Unsigned or Undelivered Rental Agreement.

- (a) If a landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.
- (b) If a tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
- (c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.

#### 35-9A-163. Prohibited Provisions in Rental Agreements.

- (a) A rental agreement may not provide that the tenant:
  - (1) agrees to waive or forego rights or remedies established under Section 35-9A-204, 35-9A-401, or 35-9A-404, or requirements of security deposits established by this chapter or under the law of unlawful detainer;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay the landlord's attorney's fees or cost of collection; or

(4) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited, the tenant may recover in addition to actual damages an amount up to 1 months' periodic rent and reasonable attorney's fees.

#### 35-9A-164. Payment of Rent Prerequisite to Enforcing Remedies under this Chapter.

The tenant may not withhold payment of rent to the landlord, while in possession, to enforce any of the tenant's rights under this chapter.

## ARTICLE II

### LANDLORD OBLIGATIONS.

#### 35-9A-201. Security Deposits; Prepaid Rent.

(a) A landlord may not demand or receive money as security, in an amount in excess of 1 month's periodic rent except for pets, changes to the premises, or increased liability risks to the landlord or premises, for tenant's obligations under a rental agreement.

(b) Upon termination of the tenancy, money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with Section 35-9A-301 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due 35 days after termination of the tenancy and delivery of possession.

(c) If the landlord does not refund the entire deposit, the landlord, within the 35-day period, shall provide the tenant an itemized list of amounts withheld.

(d) Upon vacating the premises, the tenant shall provide to the landlord a valid forwarding address, in writing, to which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the landlord shall mail, by first class mail, the deposit or itemized accounting, or both, to the last known address of the tenant or, if none, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 180 days.

(e) The landlord's mailing by first class mail to the address provided in writing by the tenant, within 35 days of the refund or itemized accounting, or both, is sufficient compliance with this chapter.

(f) If the landlord fails to mail a timely refund or accounting within the 35-day period, the landlord shall pay the tenant double the amount of the tenant's original deposit.

(g) This section does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant may be entitled.

(h) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

#### 35-9A-202. Disclosure.

(a) A landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and business address of:

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for:

(1) service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

#### 35-9A-203. Landlord to Deliver Possession of Dwelling Unit.

At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 35-9A-204. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 35-9A-441(c).

#### 35-9A-204. Landlord to Maintain Premises.

(a) A landlord shall:

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is necessary to put and keep the premises in a habitable condition;

(3) keep all common areas of the premises in a clean and safe condition;

(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(5) provide and maintain appropriate receptacles and conveniences for the removal of garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(b) If the duty imposed by subdivision (1) of subsection (a) is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision (1) of subsection (a).

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling.

(d) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(1) the agreement of the parties is set forth in a separate writing signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a)(1); and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

(f) Rights of the tenant under this section do not arise if the condition was caused by the willful 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.

#### 35-9A-205. Limitation of Liability.

(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. However, the landlord remains liable to the tenant for all security recoverable by the tenant under Section 35-9A-201 and all prepaid rent.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of management by the manager.

### ARTICLE III

#### TENANT OBLIGATIONS.

#### 35-9A-301. Tenant to Maintain Dwelling Unit.

A tenant shall:

- (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit;
- (3) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;
- (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
- (6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises; or knowingly, recklessly, or negligently permit any person to do so; and
- (7) conduct himself or herself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.

35-9A-302. Rules and Regulations.

(a) "Rules" or "Regulations" pertaining to a residential lease are defined 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.

(b) A landlord, from time to time, may adopt a rule or regulation. It is enforceable against the tenant only if:

(1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) it is reasonably related to the purpose of which it is adopted;

(3) it applies to all tenants in the premises in a fair manner;

(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) it is not for the purpose of evading the obligations of the landlord; and

(6) the tenant has notice of it at the time the tenant enters into the rental agreement, or when it is adopted.

(c) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of the tenant's use of the leased premises, it is not valid unless the tenant consents to it in writing. In the case of any variance between the lease and a rule or regulation, the lease prevails.

35-9A-303. Access.

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 2 days' notice of the landlord's intent to enter and may enter only at reasonable times. Posting of a note on the primary door of entry to the residence of the tenant stating

the intended time and purpose of the entry shall be a permitted method of notice for the purpose of the landlord's right of access to the premises.

(d) A landlord has no other right of access except:

(1) pursuant to court order;

(2) as permitted by Sections 35-9A-422 and 35-9A-423(b); or

(3) unless the landlord has reasonable cause to believe the tenant has abandoned or surrendered the premises.

35-9A-304. Tenant to Use and Occupy.

Unless otherwise agreed, a tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of 14 days no later than the fifth day of the extended absence.

#### ARTICLE IV

#### REMEDIES.

#### DIVISION I

#### TENANT REMEDIES.

35-9A-401. Noncompliance by the Landlord-In General.

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 35-9A-204 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice if the breach is not remedied within that period, and the rental agreement shall terminate as provided in the notice subject to the following:

(1) If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(2) The tenant may not terminate 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.

(b) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or Section 35-9A-204. If the landlord's noncompliance is in bad faith, the tenant may recover reasonable attorney's fees.

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under subsection (a).

(d) If the rental agreement is terminated pursuant to this section, the landlord shall return all security recoverable by the tenant under Section 35-9A-201 and all unearned prepaid rent.

#### 35-9A-402. Failure to Deliver Possession.

(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 35-9A-203, rent abates until possession is delivered and the tenant may:

(1) terminate the rental agreement upon written notice to the landlord and within 5 days thereafter the landlord shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the landlord and, if the tenant elects, bring an action for possession of the dwelling unit from the person wrongfully in possession and recover the actual damages sustained by the tenant.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved party may recover from that person an amount equal to not more than 3 months' periodic rent or the actual damages sustained, whichever is greater, and reasonable attorney's fees.

#### 35-9A-403. [Reserved].

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

(a) The landlord is not responsible for the payment of utility services unless agreed in the lease.

(b) If contrary to the rental agreement or Section 35-9A-204, after receiving notice of the breach from the tenant, the landlord willfully or negligently fails to promptly make available heat, running water, hot water, electric, gas, or other essential service, the tenant may:

(1) send a written notice specifying the date of termination not less than 14 days after receipt of notice and upon vacation of the premises, the rental agreement shall be rightfully terminated without further obligation or penalty. If the rental agreement is terminated pursuant to this section, the landlord shall return all security recoverable by the tenant under Section 35-9A-201 and all unearned prepaid rent; or

(2) recover damages based upon the diminution in the fair rental value of the dwelling unit.

(c) If the tenant proceeds under this section, the tenant may not proceed under Section 35-9A-401 as to that breach.

(d) Rights of the tenant under this section do not arise if the condition was caused by the wilful 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.

#### 35-9A-405. Counterclaims for Action for Possession or Rent.

(a) In an action for possession or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or this chapter. It is in the court's discretion whether the tenant is to remain in possession. The tenant shall pay into court rent accrued and thereafter accruing as it comes due. The court shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

(b) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (a) but is not required to pay any rent into court.

#### 35-9A-406. Fire or Casualty Damage.

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty not caused by the tenant to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(1) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated pursuant to this section, the landlord shall return all security recoverable under Section 35-9A-201 and all unearned prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

35-9A-407. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service.

If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to not more than 3 months' periodic rent or the actual damages sustained by the tenant, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated under this section, the landlord shall return all security recoverable under Section 35-9A-201 and all unearned prepaid rent.

DIVISION II

LANDLORD REMEDIES.

35-9A-421. Noncompliance with Rental Agreement; Failure to Pay Rent.

(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with Section 35-9A-301 materially affecting health and safety, the landlord may deliver a written notice to terminate the lease to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within the 14 days after receipt of the notice to terminate the lease, the rental agreement shall terminate on the date provided in the notice to terminate the lease unless the tenant adequately remedies the breach before the date specified in the notice, in which case the rental agreement shall not terminate.

(b) If rent is unpaid when due and the tenant fails to pay rent within 7 days after receipt of written notice to terminate the lease for nonpayment and if the rent is not paid within the 7-day period, the landlord may terminate the rental agreement at the expiration of the 7-day period. If a noncompliance of rental agreement occurs under both subsection (a) and this subsection, the 7-day notice period to terminate the lease for nonpayment of rent in this subsection shall govern.

(c) Except as provided in this chapter, a landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or Section 35-9A-301. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

35-9A-422. Failure to Maintain.

If there is noncompliance by the tenant with Section 35-9A-301 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within 7 days after written notice by the landlord specifying the breach and

requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.

#### 35-9A-423. Remedies for Absence, Nonuse and Abandonment.

(a) If a rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 14 days pursuant to Section 35-9A-304 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of a tenant in excess of 14 days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If a tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. But such duty shall not take priority over the landlord's right to first rent other vacant units. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

(d) If a tenant leaves property in the unit more than 14 days after termination pursuant to this chapter, the landlord has no duty to store or protect the tenant's property in the unit and may dispose of it without obligation.

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

Acceptance of rent with knowledge of a default by the tenant 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, unless otherwise agreed after the breach has occurred.

#### 35-9A-425. Landlord Liens; Distress for Rent.

(a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before January 1, 2007.

(b) Distraint for rent is abolished.

#### 35-9A-426. Remedy after Termination.

If a rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Section 35-9A-421(c).

#### 35-9A-427. Recovery of Possession Limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

### DIVISION III

#### PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS.

#### 35-9A-441. Periodic Tenancy; Holdover Remedies.

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least 30 days before the periodic rental date specified in the notice.

(c) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount equal to not more than 3 month's periodic rent or the actual damages sustained by the landlord, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 35-9A-161(d) applies.

#### 35-9A-442. Landlord and Tenant Remedies for Abuse of Access.

(a) If a tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement pursuant to Section 35-9A-421. In either case, the landlord may recover actual damages.

(b) If a landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes excessive demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement pursuant to Section 35-9A-401. In either case, the tenant may recover actual damages.

### DIVISION IV

## COURT ACTIONS BY LANDLORD.

35-9A-461. Landlord's Action for Eviction, Rent, Monetary Damages, and/or Other Relief.

(a) A landlord's action for eviction, rent, monetary damages, or other relief relating to a tenancy subject to this chapter shall be governed by the Alabama Rules of Civil Procedure and the Alabama Rules of Appellate Procedure except as modified by this act.

(b) District courts and circuit courts, according to their respective established jurisdictions, shall have jurisdiction over eviction actions, and venue shall lie in the county in which the leased property is located. Eviction actions shall be entitled to precedence in scheduling over all other civil cases.

(c) Service of process shall be made in accordance with the Alabama Rules of Civil Procedure. However, if a sheriff, constable, or process server is unable to serve the defendant personally, service may be had by delivering the notice to any person who is sui juris residing on the premises, or if after reasonable effort no person is found residing on the premises, by posting a copy of the notice on the door of the premises, and on the same day of posting or by the close of the next business day, the sheriff, the constable, the person filing the complaint, or anyone on behalf of the person, shall mail notice of the filing of the unlawful detainer action by enclosing, directing, stamping, and mailing by first class a copy of the notice to the defendant at the mailing address of the premises and if there is no mailing address for the premises to the last known address, if any, of the defendant and making an entry of this action on the return filed in the case. Service of the notice by posting shall be complete as of the date of mailing the notice.

(d) In eviction actions, an appeal by a tenant to circuit court or to an appellate court does not prevent the issuance of a writ of restitution or possession unless the tenant pays to the clerk of the circuit court all rents properly payable under the terms of the lease since the date of the filing of the action, and continues to pay all rent that becomes due and properly payable under the terms of the lease as they become due, during the pendency of the appeal. In the event of dispute, the amounts properly payable shall be ascertained by the court.

(1) If the tenant should fail to make any payments determined to be properly payable as they become due under this subsection, upon motion, the court shall issue a writ of restitution or possession and the landlord shall be placed in full possession of the premises.

(2) Upon disposition of the appeal, the court shall direct the clerk as to the disposition of the funds paid to the clerk pursuant to this subsection.

(e) If an eviction judgment enters in favor of a landlord, a writ of possession shall issue. If a tenant without just cause re-enters the premises, the tenant can be held in contempt and successive writ may issue as are necessary to effectuate the eviction judgment.

## ARTICLE V

### RETALIATORY CONDUCT.

#### 35-9A-501. Retaliatory Conduct Prohibited.

(a) Except as provided in this section, a landlord may not retaliate by discriminatorily increasing rent or decreasing services or by bringing or threatening to bring an action for possession because:

(1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) the tenant has complained to the landlord of a violation under Section 35-9A-204; or

(3) the tenant has organized or become a member of a tenant's union or similar organization.

(b) If a landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 35-9A-407 and has a defense in any retaliatory action against the tenant for possession.

(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

(1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent;

(2) the tenant is in default in rent;

(3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit; or

(4) other material violations of the lease.

(d) The maintenance of an action under subsection (c) does not release the landlord from liability under Section 35-9A-401(b).

## ARTICLE VI

### EFFECTIVE DATE, SAVINGS CLAUSE, SEVERABILITY.

#### 35-9A-601. Effective Date.

Except for Section 35-9A-163(b) which shall become effective January 1, 2008, this chapter shall become effective on January 1, 2007. It applies to rental agreements entered into or extended or renewed on and after that date.

#### 35-9A-602. Savings Clause.

Transactions entered into before the effective date of this chapter, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the repeal or amendment had not occurred.

#### 35-9A-603. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 2. Sections 6-6-350 and 35-9-60, Code of Alabama 1975, are amended to read as follows:

#### §6-6-350.

"Any party may appeal from a judgment entered against him or her by a district court to the circuit court at any time within ~~14~~ seven days after the entry thereof, and appeal and the proceedings thereon shall in all respects, except as provided in this article, be governed by this code relating to appeal from district courts. However, the clerk of the court shall schedule the action for trial as a preferred case, and it shall be set for trial within 60 days from the date of appeal.

#### §35-9-60.

"The landlord of any storehouse, ~~dwelling house~~, or other building shall have a lien on the goods, furniture, and effects belonging to the tenant, and subtenant, for his rent, which shall be superior to all other liens, except those for taxes, and except as otherwise provided in Section 7-9A-333. In case the tenant or subtenant is adjudged a bankrupt, such lien on such goods, furniture, and effects of the bankrupt, ~~except for a dwelling house, used exclusively as a dwelling~~, shall, as against the trustee in bankruptcy, attach only for unpaid rent accrued and which shall accrue within six months from the date of adjudication computed pro rata at the then current rate. The lien amount accrued and to accrue shall not be increased by reason of any default or breach of contract by the bankrupt. From the amount of such lien, so computed, the trustee in bankruptcy may deduct all payments and all demands which could be legally set up against the landlord by way of counterclaim. If the trustee in bankruptcy shall dispose of the lease as an asset

of the bankrupt estate, then the landlord shall have a lien on the goods, furniture, and effects of any person holding under the trustee in bankruptcy."

Section 3. Section 35-9-4 of the Code of Alabama 1975, relating to hiring of lodgings for indefinite term, is repealed. Article 3, commencing with Section 35-9-80, of Chapter 9 of Title 35 of the Code of Alabama 1975, relating to possession wrongfully withheld, is repealed.

Section 4. This act shall become effective on January 1, 2007.

Landlord-Tenant

Property, Real and Personal

Housing

Consumers and Consumer Protection

Business and Commerce

Popular Names

Code Amended

Code Repealed