

1 **HB 287 (Act 2006-316)**

2 **CHAPTER 9A.**

3 **UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT**

4
5 **ARTICLE I - GENERAL PROVISIONS AND DEFINITIONS**

6
7 **DIVISION I - SHORT TITLE, CONSTRUCTION, APPLICATION**
8 **AND SUBJECT MATTER OF THE CHAPTER**

9 **35-9A-101. Short Title**

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

12
13 **Comment**

14
15 This Act concerns landlord-tenant relationships under rental agreements for
16 residential purposes (Section 1.201)[35-9A-121]. The Act does not apply to rental
17 agreements made for commercial, industrial, agricultural or any purpose other than
18 residential.

19
20 **35-9A-102. Purposes; Rules of Construction.**

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

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

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

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

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

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

5 **Alabama Comment**

6
7 Paragraph (c) has been added to emphasize this Act affects certain rights and
8 responsibilities of parties that arise out of the landlord-tenant relationship. Other
9 duties between parties remain unchanged and are governed by law apart from this
10 Act.

11 **Comment**

12
13 Existing landlord-tenant law in the United States, save as modified by statute
14 or judicial interpretation, is a product of English common law developed within an
15 agricultural society at a time when doctrines of promissory contract were
16 unrecognized. Thus, the landlord-tenant relationship was viewed as conveyance of
17 a lease-hold estate and the covenants of the parties generally independent. These
18 doctrines are inappropriate to modern urban conditions and inexpressive of the vital
19 interests of the parties and the public which the law must protect.
20

21
22 This Act recognizes the modern tendency to treat performance of certain
23 obligations of the parties as interdependent.
24

25 Liberal construction of this Act and its application for promotion of its
26 underlying purposes and policies will permit development by the courts in light of
27 unforeseen and new circumstances and practices. However, proper construction of
28 the Act requires that its interpretation and application be limited to its reason.
29

30 **35-9A-103. Supplementary Principles of Law Applicable.**

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

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2 **Comment**
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4 This section, adapted from Section 1-103 [35-9A-103] of the Uniform
5 Commercial Code, indicates the continued applicability to landlord-tenant relations
6 of all supplemental bodies of law except in so far as they are explicitly displaced by
7 this Act. The listing given in this section is merely illustrative; no listing could be
8 exhaustive.

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

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

13
14 **Comment**
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16 This section indicates the policy that no Act which bears evidence of carefully
17 considered permanent regulative intention should lightly be regarded as impliedly
18 repealed by subsequent legislation. This Act, carefully integrated and intended as a
19 uniform codification of permanent character covering an entire "field" of law, is to
20 be regarded as particularly resistant to implied repeal.

21
22 **35-9A-105. Administration of Remedies; Enforcement.**

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

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

29 **Alabama Comment**

30 Subsection (a) the last sentence was added to make clear the duty to mitigate
31 damages when a tenant vacates the premises does not require the landlord to rent
32 the property ahead of already vacant units.
33

1 **Comment**

2
3 Subsection (a) is intended to negate unduly narrow or technical interpretation
4 of remedial provisions and to make clear that damages must be minimized. The use
5 of the words “aggrieved party” is intended to indicate that in appropriate
6 circumstances rights and remedies may extend to third persons under this Act or
7 supplementary principles of law (compare Article IV, Divisions I and II).
8

9 Under subsection (b) any right or obligation described in this Act is
10 enforceable by court action, even though no remedy may be expressly provided,
11 unless a particular provision specifies a different and limited effect. Whether tort
12 action, specific performance or equitable relief is available is determined not by this
13 section but by specific provisions and supplementary principles (see Section
14 1.103)[35-9A-103].
15

16 **35-9A-106. Settlement of Disputed Claim or Right.**

17 A claim or right arising under this chapter or on a rental agreement, if
18 disputed in good faith, may be settled by agreement.
19

20 **Alabama Comment**

21
22 This act does not address arbitration in any way. This section only authorizes
23 and encourages the parties to settle their disagreements before resorting to judicial
24 action.
25

26 **Comment**

27
28 This section applies to settlements of claims asserted by either landlord or
29 tenant.
30

31 Subsequent sections of this Act (a) forbid the tenant from prior waiver of
32 rights (Section 1.403)[35-9A-163], and (b) subject the bargain of the parties to the test
33 of conscionability (Section 1.303)[35-9A-143].
34

35 **35-9A-107. Notice Requirement.**

36 A cause of action or civil complaint initiated pursuant to this chapter is not
37 subject to the notice requirement of subsection (j) of Section 34-27-31.
38

1 **Alabama Comment**

2
3 The Real Estate Commission’s Recovery Fund in Ala. Code Section 34-27-31(j)
4 requires a licensee to notify the Commission within 10 days of a complaint against
5 the licensee. A tenant’s claim under this Residential Landlord Tenant Act is not
6 subject to this notice requirement.

7
8 **DIVISION II - SCOPE AND JURISDICTION**

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

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

18 **Alabama Comment**

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21 *See* Section 35-9A-102(c) which states this Act affects only the landlord-tenant
22 relationship and does not create any cause of action or deprive anyone of a cause of
23 action in tort. To make this abundantly clear, “and is the exclusive remedy to” has
24 been added to the Uniform Act.

25
26 This act preempts municipalities and counties from enacting residential
27 landlord tenant codes. Further, any code existing on the effective date of the act will
28 be superseded by this Act. This preemption is only to specific residential landlord
29 tenant codes and does not encompass municipal and county resolutions or
30 ordinances that apply to general housing laws which affect health and safety.

1 **35-9A-122. Exclusions from Application of Chapter.**

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

4 (1) residence at an institution, public or private, if incidental to detention or
5 the provision of medical, geriatric, educational, counseling, religious, or similar
6 service;

7 (2) occupancy under a contract of sale of a dwelling unit or the property of
8 which it is a part, if the occupant is the purchaser or a person who succeeds to the
9 interest of the purchaser;

10 (3) occupancy by a member of a fraternal or social organization in the portion
11 of a structure operated for the benefit of the organization;

12 (4) transient occupancy in a hotel, motel, or lodgings;

13 (5) occupancy by an employee of a landlord whose right to occupancy is
14 conditional upon employment in and about the premises;

15 (6) occupancy by an owner of a condominium unit or a holder of a
16 proprietary lease in a cooperative;

17 (7) occupancy under a rental agreement covering premises rented by the
18 occupant primarily for agricultural purposes; ;

19 (8) continuation of occupancy by the seller or a member of the seller's family
20 for a period of not more than thirty-six (36) months after the sale of a dwelling unit
21 or the property of which it is a part.

22
23 **Alabama Comment**

24
25 In paragraph (7) the word "rented" has been substituted for the word "used"
26 in the Uniform Act for clarity.

27
28 Paragraph (8) has been added to provide that a continued occupancy by the
29 seller for a period of not more than 36 months after selling the dwelling is not
30 governed under this act.

1
2 **Comment**
3

4 This Act regulates landlord-tenant relations in residential properties. It is not
5 intended to apply where residence is incidental to another primary purpose such as
6 residence in a prison, a hospital or nursing home, a dormitory owned and operated
7 by a college or school, or residence by a landlord's employee such as a custodian,
8 janitor, guard or caretaker rendering service in or about the demised premises. This
9 Act is intended to apply to government or public agencies acting as landlords
10 (Section 1.301 (8))[35-9A-141(8)].
11

12 This Act does not apply to occupancy by a purchaser under a contract of sale.
13 This Act applies to occupancy by the holder of an option to purchase, as
14 distinguished from a contract of sale.
15

16 This Act applies to roomers and boarders but is not intended to apply to
17 transient occupancy. In many jurisdictions transient hotel operations are subject to
18 special taxes and regulations and, where available, determinations under such
19 authority constitute appropriate criteria.
20

21 All of the exclusions enumerated apply only to genuine, bona fide
22 arrangements not created to avoid the application of the Act and are subject to the
23 test of good faith (see Section 1.302)[35-9A-142].
24

25 Subsection (3) A fraternal or social organization is deemed to also cover
26 "athletic club".
27

28 **35-9A-123. Jurisdiction and Service of Process.**

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

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

5
6 **Alabama Comment**
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8 The act incorporates in paragraph (b) the "long arm" service of process
9 procedure proscribed by Alabama Rules of Court.

10
11 **Comment**
12

13 This section bestows jurisdiction on the courts of the enacting state over
14 landlords who violate the act and provides a method of obtaining personal
15 jurisdiction by service of process. The rights under this section are additional to
16 those provided in Section 2.102[35-9A-202] of this Act.

17
18 **DIVISION III - GENERAL DEFINITIONS AND PRINCIPLES**

19 **OF INTERPRETATION: NOTICE**

20 **35-9A-141. General Definitions.**

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

24 (1) "action" includes recoupment, counterclaim, set-off, suit in equity, and any
25 other proceeding in which rights are determined, including an action for possession;

26 (2) "building and housing codes" include any law, ordinance, or
27 governmental regulation concerning fitness for habitation, or the construction,
28 maintenance, operation, occupancy, use, or appearance of any premises or dwelling
29 unit;

30 (3) "day" means calendar day unless otherwise specified;

1 (4) "dwelling unit" means a structure or the part of a structure, including a
2 manufactured home, that is rented as a home, residence, or sleeping place by one or
3 more persons;

4 (5) "good faith" means honesty in fact in the conduct of the transaction
5 concerned;

6 (6) "landlord" means the owner, lessor, or sublessor of the dwelling unit or
7 the building of which it is a part, and it also means a manager of the premises;

8 (7) "organization" includes a corporation, government, governmental
9 subdivision or agency, business trust, estate, trust, partnership or association, 2 or
10 more persons having a joint or common interest, and any business entity;

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

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

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

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

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

25 (13) "roomer" means a person occupying a dwelling unit that does not include
26 a toilet, a refrigerator, stove, kitchen sink, and either a bath tub or a shower, all

1 provided by the landlord, and where one or more of these facilities are used in
2 common by occupants in the structure;

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

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

10 **Alabama Comment**

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12
13 Subsection (3) "Day" was defined to clarify that day means calendar day and
14 not business day.

15
16 Subsection (6) "Landlord" deletes from the Uniform Act the words "who fails
17 to disclose as required by Section 35-9A-202".

18
19 Subsection (8) Alabama being a "title state", the mortgagee holds legal title
20 but the mortgagor typically remains in possession and will for this Act be
21 considered the "owner" except when the mortgagee goes into possession.

22 **Comment**

23
24
25 Subsection (2) Typical of such "building and housing codes" are housing,
26 building, sanitation, electrical, plumbing, fire prevention, safety and security
27 ordinances and regulations. It is intended to include all such codes whether enacted
28 or promulgated under federal, state or local authority.

29
30 Subsection (7) Accordingly, in the case of an active trust where all the duties
31 and powers of management inure to the trustee and the rights of the beneficiary are
32 limited to the receipt of income from the trust estate and the beneficiary has no right
33 to the present use and enjoyment of the property, the trustee would be considered
34 an owner but the beneficiary would not. In the case of property held in the name of
35 a nominee or straw the beneficial owner would be considered an owner.

1 Subsection (9) Agricultural leases are excluded from operation of the Act
2 (Section 1.202(7)). Inclusion of “grounds, areas and facilities held out for the use of
3 tenants” does not alter the exclusion.
4

5 Subsection (11) “Rental agreement” will thus include the original agreement
6 between landlord and tenant as well as any modification and all valid rules and
7 regulations concerning use and occupancy as provided in Section 3.102.
8

9 Subsection (12) This Act provides lesser rights to a roomer as distinguished
10 from the tenant of a dwelling unit. The definition requires certain facilities to be
11 provided by the landlord. This requirement is not met by provision of the same by
12 the tenant.
13

14 **35-9A-142. Obligation of Good Faith.**

15 Every agreement and duty under this chapter and every act which must be
16 performed as a condition precedent to the exercise of a right or remedy under this
17 chapter imposes an obligation of good faith in its performance or enforcement.
18

19 **Alabama Comment**

20
21 The obligation of good faith is extended to all “agreements” and “duties”
22 under the Act. This section in the Uniform Act only enumerates “duties”. Good
23 faith as to “agreements” are specifically enumerated elsewhere in the Uniform Act.
24 The Alabama Act places the obligation of good faith for both “agreements and
25 duties” in one section and deletes it in other places.
26

27 **Comment**

28
29 Section 1.302[35-9A-142] is adapted from Section 1-203 of the Uniform
30 Commercial Code. As the commentators there said, “This section sets forth a basic
31 principle running throughout this Act. The principle involved is that in commercial
32 transactions good faith is required in the performance and enforcement of all
33 agreements or duties.” The commentators there drew attention to particular
34 applications of this general principle. The intention is that the rule be identical in
35 landlord-tenant relationships and, similarly, particular applications of this general
36 principle appear in specific provisions of this Act such as exclusions (Section
37 1.202)[35-9A-102], retaliatory eviction as well as complaints made to public
38 authorities (Section 5.101)[35-9A-501], and obligation of the landlord to repair
39 (Section 2.104)[35-9A-204].

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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.

Comment

This Section, adapted from the Uniform Commercial Code and the Consumer Credit Code, is intended to make it possible for the courts to police explicitly against rental agreements, clauses, settlements, or waivers of claim or right which they find to be unconscionable. This section is intended to allow the courts to pass directly on the issue of unconscionability and to make a conclusion of law as to unconscionability. The basic test is whether, in light of the background and setting of the market, the conditions of the particular parties to the rental agreement, settlement or waiver of right or claim are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the agreement or settlement. Thus, the particular facts involved in each case are of utmost importance since unconscionability may exist in some situations but not in others. Either landlords or tenants may, in appropriate circumstances, avail themselves of this section.

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35-9A-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.

1 **Alabama Comment**

2
3 The presumption of receipt in subsection (b) merely shifts the burden of proof
4 of non-receipt to the party denying receipt of notice. Presumptive delivery to a
5 landlord in subsection (b)(2) occurs when there is personal delivery by any means to
6 the landlord’s place of business or mailing to an address designated by the landlord.
7 Presumptive delivery to a tenant occurs when there is personal delivery to the
8 tenant or three days after proper mailing to the tenant of notice by regular U.S. mail.
9

10 “Notice” was amended in subsection (c) from the Uniform Act to provide that
11 knowledge is effective from the time it is brought to the attention of the
12 “organization” rather than the “individual conducting the transaction”.
13

14 Pursuant to subsection (d), notice in this section applies to communications
15 relating to the tenancy, but not to termination of the tenancy or eviction of a tenant.
16

17 **Comment**

18
19 This section is adapted from Section 7-1-201(25) of the Uniform Commercial
20 Code. Section 1.302[35-9A-142] imposes the obligation of good faith and is, of
21 course, applicable to this section.
22

23 **DIVISION IV - GENERAL PROVISIONS**

24 **35-9A-161. Terms and Conditions of Rental Agreement.**

25 (a) A landlord and a tenant may include in a rental agreement terms and
26 conditions not prohibited by this chapter or other law, including rent, term of the
27 agreement, and other provisions governing the rights and obligations of the parties.

28 (b) In absence of agreement, the tenant shall pay as rent the fair rental value
29 for the use and occupancy of the dwelling unit.

30 (c) Rent is payable without demand or notice at the time and place agreed
31 upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit
32 and periodic rent is payable at the beginning of any term of one month or less and
33 otherwise in equal monthly installments at the beginning of each month. Unless
34 otherwise agreed, rent is uniformly apportionable from day-to-day.

1 (d) Unless the rental agreement fixes a definite term, the tenancy is week-to-
2 week in case of a tenant who pays weekly rent, and in all other cases month-to-
3 month.

4
5 **Comment**
6

7 In absence of an agreement for a definite term of lease, the tenant has a term
8 of month-to-month without regard to the payment of rent weekly, monthly or
9 otherwise, and a roomer [tenant] who pays rent for longer intervals than week-to-
10 week has a month-to-month term. As to termination of such tenancies, see Section
11 35-9A-441.

12
13 **35-9A-162. Effect of Unsigned or Undelivered Rental Agreement.**

14 (a) If a landlord does not sign and deliver a written rental agreement signed
15 and delivered to the landlord by the tenant, acceptance of rent without reservation
16 by the landlord gives the rental agreement the same effect as if it had been signed
17 and delivered by the landlord.

18 (b) If a tenant does not sign and deliver a written rental agreement signed and
19 delivered to the tenant by the landlord, acceptance of possession and payment of
20 rent without reservation gives the rental agreement the same effect as if it had been
21 signed and delivered by the tenant.

22 (c) If a rental agreement given effect by the operation of this section provides
23 for a term longer than one year, it is effective for only one year.

24
25 **Comment**
26

27 The subsections above apply to transactions in which a written rental
28 agreement has been signed and delivered by either landlord or tenant, the parties
29 have agreed on terms, and the defect is solely the absence of a signature. Delivery
30 thus means legal rather than physical delivery alone. Thus knowledge or notice of
31 the signing of the rental agreement is required. These subsections do not apply to
32 applications for leases or similar writings regarded by the parties as preliminary to
33 written agreements.

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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.

Alabama Comment

(a)(1) The prohibition of waiver applies to rights and remedies relating to Section 35-9A-204, "Landlord Maintaining the Premises"; 35-9A-401, "Noncompliance by the Landlord in General"; and 35-9A-404, the "Wrongful Failure to Make Available Heat, Water, Hot Water or Essential Services, and Security Deposits".

(a)(3) The addition of a prohibition of "cost of collection" is to prohibit a third party from assessing a collection cost.

(b) This section is not effective until January 1, 2008 to enable the landlord sufficient time to revise the rental agreements before subjecting the landlord to the penalties prescribed in section (b).

1
2 **Comment**
3

4 Rental agreements are often executed on forms provided by landlords, and
5 some contain adhesion clauses the use of which is prohibited by this section. Section
6 2.415 of the Uniform Consumer Credit Code provides “a buyer or lessee may not
7 authorize any person to confess judgment on a claim arising out of a consumer
8 credit sale or consumer lease.” The official comment to this section states “This
9 section reflects the view of the great majority of states in prohibiting authorization to
10 confess judgment.” Similarly, clauses attempting to exculpate the landlord from tort
11 liability for his own wrong have been declared illegal by statutes in some states
12 (compare Mass.G.L. Chapter 186, Sec. 15; New York Real Property Law Section 234;
13 and Ill. Ann. Stat., Chapter 80, Section 15a (Smith-Hurd) 1966). Such provisions, even
14 though unenforceable at law may nevertheless prejudice and injure the rights and
15 interests of the uninformed tenant who may, for example, surrender or waive rights
16 in settlement of an enforceable claim against the landlord for damages arising from
17 the landlord’s negligence.

18
19 Attorney’s fees under the Act may be asserted against either the landlord or
20 tenant as enumerated in the Act (see, for example, Sections 1.403(b)[35-9A-163];
21 4.101(b)[35-9A-401(b)]; 4.105(a)[35-9A-405(a)]). The right to recover attorney’s fees
22 against the tenant, however, must arise under the statute, not by contract of the
23 parties.

24 **35-9A-164. Payment of Rent Prerequisite to Enforcing Remedies under this**
25 **Chapter.**

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

28 **Alabama Comment**

29
30 This section was substituted in place of the Uniform Act section entitled
31 “Separation of Rents and Obligations to Maintain Property Forbidden.” This section
32 has been rewritten to provide that a tenant while in possession may not withhold
33 rent as a way to enforce any of the tenant’s rights.

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

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

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

8
9 **Alabama Comment**

10
11 (a) Pursuant to subsection (a) of this section, the landlord may require the
12 deposit of cash of not more than one month's rent as security but may not hold
13 property as security. The landlord may require more than one month's rent as a pet
14 deposit or increased liability risks for damages to the property. When a tenant
15 makes temporary changes to the property such as a ramp or handrails for the
16 handicapped, the landlord may require an additional deposit to assure the premises
17 will be returned to their original condition at the end of the tenancy. Regulations at
18 24 C.F.R. 100.203 under the federal Fair Housing Act, 42 U.S.C. 3601 *et seq.*, impose
19 additional limitations and requirements with respect to security deposits for
20 modifications necessary for handicapped tenants.

21
22 The Uniform Act section (c) has been deleted and a new section (c), (d), (e),
23 and (f) added, with the Uniform Act sections (d) and (e) renumbered as new sections
24 (g) and (h).

25
26 Subsection (b) requires the landlord to refund the deposit within 35 days of
27 the tenant delivering possession and does not require the tenant to demand deposit.

28
29 Subsection (c) is added to the Uniform Act provision that if the entire deposit
30 is not returned there must be an itemized list of the amounts withheld.

31
32 Subsection (d) is new and requires the tenant to provide a forwarding
33 address. Any deposit shall be mailed to the forwarding address, or if none to the
34 tenant's last known address, or if none, to the tenant at the address of the property.
35 If the letter is returned undelivered with the deposit check and the tenant does not
36 make a claim for the check within 180 days after its return the deposit is forfeited
37 and may be kept by the landlord.

1 Subsection (e) landlord may send the deposit as provided in paragraph (d) by
2 first class mail.

3
4 Subsection (f) requires a landlord who fails to timely refund or account for a
5 security deposit to pay the tenant double the amount that would have been
6 refunded if the funds had been returned promptly.

7
8
9 **Comment**

10
11 Widely varying legislation has been enacted affecting security deposits:

12
13 California – Chapter 1317, Acts of 1970, West.Cal.Civ.Code, Sec. 1951.

14
15 Colorado – H.B.No.1230, Acts of 1971, Colo.Rev.Stat.Ann., Ch. 58 (Forcible Entry
16 and Detainer), Sec. 1-26-28.

17
18 Delaware –H.B. 433, Acts of 1971, Del.Code Ann. (Landlord-Tenant), Title 25, Ch. 51,
19 Sec. 5912.

20
21 Florida – Chapter 70-360, Acts of 1970, Fla.Stat.Ann.Civil Practice and Procedure,
22 Ch. 83 (Landlord and Tenant), Sec. 83.261.

23
24 Illinois – P.A. 77-705, Sec. 3, Acts of 1971, Ill.Stat.Ann., Ch. 74 (Interest), Sec. 91-93.

25
26 Maryland – Chapter 633, Sec. 1 of Acts of 1969, as amended by Chapter 291 of Acts
27 of 971, Md.Ann.Code, Art. 53 (Landlord and Tenant), Sec. 41-43.

28
29 Massachusetts – Chapter 244, Sec. 1 of Acts of 1969, as amended by Chapter 666, Sec.
30 1 of Acts of 1970, Mass.Gen.Laws Ann., Ch. 186 (Title to Real Property), Sec. 15B.

31
32 Minnesota – Chapter 784 of Acts of 1971, Minn.Stat., Ch. 504 (Landlord and Tenant),
33 Sec. 504.19.

34
35 New Jersey – S.B. 904, Acts of 1970, N.J.Rev.Stat., Sec. 2A:46-8.

36
37 New York – Chapter 680, Sec. 70 of Acts of 1967, as amended, N.Y.Gen.Obligation
38 Laws, Sec. 7-103 and 7-105.

39
40 Pennsylvania – Pa.Stat.Ann., Title 68 (Real and Personal Property), Sec. 250.512.

1 These statutes generally require a landlord to return security deposits to
2 tenants within a specified time period, account for his claim to any part of the
3 security deposit and provide for penalty in the event landlord fails to comply.
4

5 This section does not limit the amount of prepaid rent, as distinguished from
6 security.
7

8 Subsection (h) of this section resolves a split of authority among the states.
9 See 1 A.L.P. Section 3.73, nn. 9-15. Note that under Section 2.105(a) of the Act the
10 original landlord is bound.
11

12 **35-9A-202. Disclosure.**

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

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

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

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

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

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

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

1 **Alabama Comment**

2
3 (a) The word “business” has been added before address to clarify which
4 address of the manager or owner of the premises must be given to the tenant.

5
6 **Comment**
7

8 This section requires disclosure to the tenant of names and addresses of
9 persons who (a) have power to negotiate, make repairs, etc., in the operation of the
10 premises; (b) are empowered to receive service of notice and process which binds all
11 of the owners. In the absence of such disclosure the person collecting the rent shall
12 be deemed to have the authority to accept notices and service and to provide for the
13 necessary maintenance and repairs.
14

15 The purpose of this section is to enable the tenant to proceed with the
16 appropriate legal proceeding, to know to whom complaints must be addressed and,
17 failing satisfaction, against whom the appropriate legal proceedings may be
18 instituted. Rights under this section are additional to those provided in Section
19 1.203[35-9A-123].
20

21 **35-9A-203. Landlord to Deliver Possession of Dwelling Unit.**

22 At the commencement of the term, a landlord shall deliver possession of the
23 premises to the tenant in compliance with the rental agreement and Section 35-9A-
24 204. The landlord may bring an action for possession against any person wrongfully
25 in possession and may recover the damages provided in Section 35-9A-441(c).
26

27 **Comment**
28

29 Thus, the landlord may proceed directly against a squatter. The tenant may
30 also, pursuant to Section 4.102(a)[35-9A-402(a)], proceed with an action for
31 possession. Where appropriate such actions may be in summary proceedings. It is
32 thus possible that both landlord and tenant may have the right of action against
33 third parties wrongfully in possession of the premises.
34

1 **35-9A-204. Landlord to Maintain Premises.**

2 (a) A landlord shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (f) Rights of the tenant under this section do not arise if the condition was
14 caused by the willful or negligent act or omission of the tenant, a member of the
15 tenant's family, a licensee, or other person on the premises with the tenant's consent.

16
17 **Alabama Comment**
18

19 Subsection (a)(1) requires compliance with various applicable city, county,
20 and state building and housing codes. The generally accepted code is the "Standard
21 Housing Code" by the Southern Building Code Congress International, Inc.
22

23 The enforcement of Subsection (a)(3) may also include applicable duties
24 outside this code which are unaffected by this Act.
25

26 The "good faith" provision in subparagraph (c) was deleted since all
27 agreements must be in good faith as provided in Section 35-9A-142.
28

29 Subparagraph (f) has been added to make clear that tenants cannot benefit
30 from their own willful or negligent act.

1 **Comment**

2
3 Subsections (a) and (b) Vital interests of the parties and public under modern
4 urban conditions require the proper maintenance and operation of housing. It is
5 thus necessary that minimum duties of landlords and tenants be set forth. Generally
6 duties of repair and maintenance of the dwelling unit and the premises are imposed
7 upon the landlord by this section. Major repairs, even access, to essential systems
8 outside the dwelling unit are beyond the capacity of the tenant. Conversely, duties
9 of cleanliness and proper use within the dwelling unit are appropriately fixed upon
10 the tenant (see Sections 3.101[35-9A-301] and 3.102[35-9A-302]).

11
12 Entire section This section follows the warranty of habitability doctrine
13 recognized in the jurisdictions of

14
15 California – *Hinson v. Delis*, 26 C.A.3d 62.

16 Washington, D.C. – *Javins v. First National Realty*, (U.S.C.A.D.C. 1970) 428 F.2d 1071.

17
18 Wisconsin – *Pines v. Perssion*, (1961) 111 N.W.2d 409.

19
20 New Jersey – *Resta Realty Corp. v. Cooper*, (1969) 53 N.J. 444.

21
22 Illinois – *Jack Springs Inc. v. Little*, (1972) 280 N.E.2d 208.

23
24 Hawaii – *Lemler v. Breedin*, (1969) 462 P.2d 470.

25
26 Michigan – *Rome v. Walker*, (1972) 196 N.W.2d 850.

27
28 New Hampshire – *Kline v. Burns*, (1971) 276 A.2d 248.

29
30 Colorado – *Guesenbury v. Patrick*, (March 1972) C.C.H.Pov.L.Rptr. Sec. 15,803.

31
32 Georgia – *Gevens v. Gray*, (April 1972) C.C.H.Pov.L.Rptr. Sec. 15,412.

33
34 Standards of habitability dealt with in this section are a matter of public
35 police power rather than the contract of the parties or special landlord-tenant
36 legislation. This section establishes minimum duties of landlords consistent with
37 public standards. Generally duties of repair and maintenance of the dwelling unit
38 and the premises are imposed upon the landlord by this section. Major repairs, even
39 access, to essential systems, outside the dwelling unit are beyond the capacity of the
40 tenant. Conversely, duties of cleanliness and proper use within the dwelling unit
41 are appropriately fixed upon the tenant (see Sections 3.101 and 3.102).

1 Except as specifically provided, these obligations may not be waived (Section
2 1.403[35-9A-163]).

3
4 **35-9A-205. Limitation of Liability.**

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

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

15
16 **Alabama Comment**

17
18 When the original landlord is released of liability, the bona fide purchaser
19 from the landlord assumes the liability of the original landlord.

20
21 **Comment**

22
23 This section relieves a landlord, unless otherwise agreed, from liability under
24 the rental agreement and this Act as to events occurring after a good faith sale and
25 conveyance to a bona fide purchaser and after written notice to the tenant of the
26 conveyance except as to security recoverable under Section 2.101 and all prepaid
27 rent. As between the original landlord and tenant, it is intended that the loss for
28 failure to account for security and prepaid rent if recoverable should fall upon the
29 landlord who, in contrast to the tenant, can take steps to protect the integrity of the
30 security and prepaid rent account at the time of sale. The landlord for the time
31 being is liable for compliance with the rental agreement and this Act. See definition
32 of "landlord" in Section 1.301(5)[35-9A-141(6)]. See also Sections 1.404[35-9A-164]
33 and 2.105(a)[35-9A-205(a)].

1 **35-9A-302. Rules and Regulations.**

2 (a) "Rules" or "Regulations" pertaining to a residential lease are defined as
3 policies of the landlord affecting the maintenance, operation, or governance of the
4 common areas of the premises, or concerning the general conduct of tenants in their
5 use and enjoyment of the leased premises.

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

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

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

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

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

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

17 and

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

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

24 **Alabama Comment**

25
26 Subsection (a) has been added to the Uniform Act to define the "rules" or
27 "regulations".
28

1 Subsection (b) deleted from the Uniform Act the words “however described
2 concerning the tenant’s use and occupancy of the premises” since “rules and
3 regulations” have been defined.
4

5 Subsection (c) the tenant’s “bargain” in the Uniform Act was changed to
6 “tenant’s use of the leased premises”. Further, the last sentence has been added to
7 this subsection to clarify that least prevails over a conflicting regulation.
8

9 **Comment**

10 Under Section 1.301(11)[35-9A-141(12)] the rental agreement includes valid
11 rules and regulations.
12

13 **35-9A-303. Access.**

14 (a) A tenant shall not unreasonably withhold consent to the landlord to enter
15 into the dwelling unit in order to inspect the premises, make necessary or agreed
16 repairs, decorations, alterations, or improvements, supply necessary or agreed
17 services, or exhibit the dwelling unit to prospective or actual purchasers,
18 mortgagees, tenants, workmen, or contractors.
19

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

22 (c) A landlord shall not abuse the right of access or use it to harass the tenant.
23 Except in case of emergency or unless it is impracticable to do so, the landlord shall
24 give the tenant at least 2 days' notice of the landlord's intent to enter and may enter
25 only at reasonable times. Posting of a note on the primary door of entry to the
26 residence of the tenant stating the intended time and purpose of the entry shall be a
27 permitted method of notice for the purpose of the landlord's right of access to the
28 premises.

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

30 (1) pursuant to court order;

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

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

3 **Alabama Comment**

4
5 In subsection (c) the last sentence has been added to provide after the
6 landlord has attempted to give the tenant personal notice but is unable to reach him,
7 the posting of the 2-day notice at the door is sufficient notice.

8
9 In subsection (d)(3) the words “the landlord has reasonable cause to believe”
10 has been added to the Uniform Act.

11
12 **Comment**

13
14 Special remedies to landlord and tenant for abuse of rights of access
15 are provided by Section 4.302[35-9A-441]. As to wrongful entry to take possession
16 see Sections 4.107[35-9A-407] and 4.207[35-9A-227].
17

18 **35-9A-304. Tenant to Use and Occupy.**

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

23 **Alabama Comment**

24
25 The Uniform Act has been modified to allow that the tenant may give notice
26 of an extended absence up to 5 days after the absence begins.

1
2 **ARTICLE IV - REMEDIES**

3 **DIVISION I - TENANT REMEDIES**

4 **35-9A-401. Noncompliance by the Landlord-In General.**

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

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

15 (2) The tenant may not terminate for a condition caused by the
16 deliberate or negligent act or omission of the tenant, a member of the tenant's family,
17 a licensee, or other person on the premises with the tenant's consent.

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

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

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

1 **Alabama Comment**

2
3 Subsection (a)(2) of the Uniform Act has been omitted.
4

5 Subsection (b) of the Uniform Act the landlord’s noncompliance has been
6 changed from “willful” to “in bad faith”.

7
8 **Comment**
9

10 Claims arising under this section if disputed in good faith may be settled by
11 agreement (see Section 1.106)[35-9A-106]. However, a prior settlement will not
12 prevent a termination under Section 4.101(a)(2)(omitted).
13

14 The availability of injunctive relief is determined by usual principles of
15 equity. See Section 1.103[35-9A-103].
16

17 Remedies available to the tenant pursuant to Section 4.101[35-9A-461] are not
18 exclusive (see Section 1.103[35-9A-103]). A duty to mitigate damages exists under
19 Section 1.105[35-9A-105]. As to rights of third parties, see comment under Section
20 1.105[35-9A-105].
21

22 **35-9A-402. Failure to Deliver Possession.**

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

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

28 or

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

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

5 **Alabama Comment**

6
7 Subsection (a)(2) provides that the tenant can demand possession of the
8 leased premises against the person wrongfully in possession and recover actual
9 damages sustained.

10
11 Subsection (b) has been modified to allow the tenant to recover three times
12 periodic rent or any damages sustained whichever is greater from the person who
13 fails to deliver possession of the premises plus an attorney's fees.

14
15 **Comment**

16
17 "Aggrieved person" includes a landlord entitled to proceed under Sections
18 2.103[35-9A-203] and 4.301(c)[35-9A-441(c)] as well as a tenant entitled to possession.

19
20 Injunctive relief may be available in an appropriate case.

21
22 **35-9A-403. [Reserved].**

23
24 **Alabama Comment**

25
26 The "Self-Help for Minor Defects" provision in the Uniform Act was
27 removed.

28
29 **35-9A-404. Wrongful Failure to Make Available Heat, Water, Hot Water, or**
30 **Essential Services.**

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

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

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

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

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

15 (d) Rights of the tenant under this section do not arise if the condition was
16 caused by the willful or negligent act or omission of the tenant, a member of the
17 tenant's family, a licensee or other person on the premises with the tenant's consent.

18
19 **Alabama Comment**
20

21 Subsection (a) is added to the Uniform Act to make clear the landlord is not
22 responsible for the payment of utility services unless agreed in the lease.
23

24 In subsection (b) (formerly (a) of the Uniform Act) the word "supply" has
25 been changed to "make available". No substantive change is intended.
26

27 Former subsection (a)(3) concerning procuring substitute housing was
28 omitted from the Uniform Act. Subsection (b) concerning payment for substitute
29 housing of the Uniform Act was also omitted.
30

1 Section 35-9A-404(b)(1)] does not specifically address collective action by
2 tenants; the availability of such collective action shall be determined under
3 applicable law.

4
5 The obligation of good faith in 35-9A-142 applies to this section as it does
6 throughout the Act.

7
8 Notice required is described in Section 35-9A-144 of this Act.

9
10 **Comment**

11
12 The remedies under Sections 4.107[35-9A-407] and 5.101(b)[35-9A-501] are
13 applicable where the landlord affirmatively acts to interrupt or diminish services,
14 etc., and those remedies are in addition to the remedies provided in Sections
15 4.101[35-9A-401], 4.103[35-9A-403] and 4.104[35-9A-404].

16
17 Section 4.104(a)(1)[35-9A-404(b)(1)] permits collective action by tenants to
18 secure essential services.

19
20 Section 1.302[35-9A-302] imposes the obligation of good faith and is, of
21 course, applicable to this section.

22
23
24 **35-9A-405. Counterclaims for Action for Possession or Rent.**

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

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

4
5 **Comment**
6

7 Article II defines the obligations of the landlord which the tenant may enforce
8 against him (Section 1.105[35-9A-105]). While *Lindsey v. Normet* (405 U.S. 56) holds
9 no principle of constitutional law requires the admission of the habitability defense
10 in a summary proceeding maintained by the landlord against the tenant, Section
11 4.105[35-9A-405] is consistent with modern procedure reform in permitting the
12 tenant to file a counterclaim or other appropriate pleading in the summary
13 proceeding to the end that all issues between the parties may be disposed of in one
14 proceeding. It is anticipated that upon filing of the counterclaim the court will enter
15 the order deemed appropriate by him concerning the payment of rent in order to
16 protect the interests of the parties. See cases in comment to Section 2.104(e)[35-9A-
17 204(e)].

18
19 **35-9A-406. Fire or Casualty Damage.**

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

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

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

30 (b) If the rental agreement is terminated pursuant to this section, the landlord
31 shall return all security recoverable under Section 35-9A-201 and all unearned

1 prepaid rent. Accounting for rent in the event of termination or apportionment shall
2 be made as of the date of the fire or casualty.

3 **Alabama Comment**

4 Subsection (a) adds the phrase "not caused by the tenant".

5
6 **Comment**

7
8 Under common law, notwithstanding leased premises were destroyed, the
9 tenant was still under obligation to pay rent. Legislation has been adopted in
10 various states providing that if the premises are so destroyed or injured as to be
11 untenable or unfit for occupancy the tenant may quit and surrender possession of
12 the premises:

13
14 Arizona Rev.Stat., Sec. 33-343 (1956)

15
16 Connecticut Gen.Stat.Ann., Sec. 47-24 (1960)

17
18 Michigan Stat.Ann., Sec. 26.1121 (1953)

19
20 Minnesota Stat.Ann., Sec. 504.05 (1947)

21
22 Mississippi Code Ann., Sec. 898 (1957)

23
24 Wisconsin Stat.Ann., 234.17 (1957)

25
26 West Virginia in 1931 adopted Section 37-6-28 providing for

27
28 " ... a reasonable reduction of the rent for
29 such time as may elapse until there be
30 placed again upon the premises buildings,
31 or other structures, of as much value to be
32 tenant for his purposes as those destroyed,
33 ... "

1 **35-9A-407. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or**
2 **Diminution of Service.**

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

12 **Alabama Comment**

13 The Uniform Act allowing three times actual damages was changed to actual
14 damages.

15 **Comment**

16 This section provides a remedy for the violation of Section 4.207[35-9A-407].
17 See also comment to Section 4.104(c)[35-9A-404(c)].

18 Injunctive relief may be available in an appropriate case.
19
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21
22

23 **DIVISION II - LANDLORD REMEDIES**

24 **35-9A-421. Noncompliance with Rental Agreement; Failure to Pay Rent.**

25 (a) Except as provided in this chapter, if there is a material noncompliance by
26 the tenant with the rental agreement or a noncompliance with Section 35-9A-301
27 materially affecting health and safety, the landlord may deliver a written notice to
28 terminate the lease to the tenant specifying the acts and omissions constituting the
29 breach and that the rental agreement will terminate upon a date not less than 14

1 days after receipt of the notice. If the breach is not remedied within the 14 days after
2 receipt of the notice to terminate the lease, the rental agreement shall terminate on
3 the date provided in the notice to terminate the lease unless the tenant adequately
4 remedies the breach before the date specified in the notice, in which case the rental
5 agreement shall not terminate.

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

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

16 **Alabama Comment**

17
18
19 Section (a) has been modified. A material breach in a term of the lease other
20 than nonpayment of rent, notice to the tenant the lease will be terminated in 14 days
21 unless the breach is remedied.

22
23 Subsection (b) shortens the notice period to terminate the lease for
24 nonpayment of rent from 14 days to 7 days. The 7 days is after receipt of written
25 notice to terminate. Where there is both a violation of the term of the lease and the
26 rent is unpaid, the 7-day notice predominates.

27
28 An action for injunctive relief must be brought in circuit court. Injunctive
29 relief is not available in district court.

30
31 The Uniform Act provides for where there has been a similar prior
32 noncompliance within a 6 month period the landlord may terminate the lease. This
33 provision was removed.

1
2
3 **Comment**
4

5 Claims arising under this section if disputed in good faith may be settled by
6 agreement (see Section 1.106[35-9A-106]). However, a prior settlement will not
7 prevent a termination under the last sentence of Section 4.201(a)[35-9A-421].
8

9 The availability of injunctive relief is determined by the usual principles of
10 equity. See Section 1.103[35-9A-103].
11

12 Remedies available to the landlord pursuant to Section 4.201[35-9A-421] are
13 not exclusive (see Section 1.103[35-9A-103]). A duty to mitigate exists under Section
14 1.105. As to rights of third parties, see comment under Section 1.105[35-9A-105].
15

16 **35-9A-422. Failure to Maintain.**

17 If there is noncompliance by the tenant with Section 35-9A-301 materially
18 affecting health and safety that can be remedied by repair, replacement of a
19 damaged item, or cleaning, and the tenant fails to comply as promptly as conditions
20 require in case of emergency or within 7 days after written notice by the landlord
21 specifying the breach and requesting that the tenant remedy it within that period of
22 time, the landlord may enter the dwelling unit and cause the work to be done in a
23 workmanlike manner and submit the itemized bill for the actual and reasonable cost
24 or the fair and reasonable value thereof as rent on the next date periodic rent is due,
25 or if the rental agreement has terminated, for immediate payment.
26

27 **Comment**
28

29 The landlord may proceed under either or both Section 4.201[35-9A-421] or
30 Section 4.202[35-9A-422]. In event of a recurring breach, he can proceed under either
31 section. He must serve notice in all cases.
32

1 **35-9A-424. Waiver of Landlord's Right to Terminate.**

2 Acceptance of rent with knowledge of a default by the tenant or acceptance of
3 performance by the tenant that varies from the terms of the rental agreement
4 constitutes a waiver of the landlord's right to terminate the rental agreement for that
5 breach, unless otherwise agreed after the breach has occurred.

6
7 **Comment**
8

9 If breach of a continuing duty is involved, acceptance of rent or performance
10 will not bar the landlord's remedy for a later or other breach. Acceptance of unpaid
11 rent paid after expiration of a termination notice does not constitute a waiver of the
12 termination.

13
14 **35-9A-425. Landlord Liens; Distraint**
15 **for Rent.**

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

18 (b) Distraint for rent is abolished.

19
20 **Alabama Comment**
21

22 Alabama Code Section 35-9-60 "Landlord Liens" is amended to remove
23 "dwelling house" from the statute, the effect being that landlord liens apply to
24 rentals other than "residential leases" defined in this chapter.

25
26 **35-9A-426. Remedy after Termination.**

27 If a rental agreement is terminated, the landlord has a claim for possession
28 and for rent and a separate claim for actual damages for breach of the rental
29 agreement and reasonable attorney's fees as provided in Section 35-9A-421(c).
30
31

1 **35-9A-427. Recovery of Possession Limited.**

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

7
8 **Comment**
9

10 See Section 4.107[35-9A-407].

11 **DIVISION III - PERIODIC TENANCY; HOLDOVER;**
12 **ABUSE OF ACCESS**

13 **35-9A-441. Periodic Tenancy; Holdover Remedies.**

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

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

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

1 **Alabama Comment**

2
3 Pursuant to subsection (c) a landlord’s remedy against a holdover tenant is
4 limited to the greater of actual damages or three months periodic rent.
5

6 **Comment**

7
8 See Section 1.402[35-9A-162] as to effect of occupancy under lease signed by
9 only one party and Section 2.103[35-9A-303] as to tenant’s rights to bring an action
10 for possession against a prior holdover tenant.
11

12 **35-9A-442. Landlord and Tenant Remedies for Abuse of Access.**

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

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

22 **Alabama Comment**

23 Pursuant to subsection (a) the landlord may recover against the tenant actual
24 damages for the tenant’s refusal to allow the landlord lawful access to the premises
25 but is not entitled to an attorney’s fee.
26

27 Pursuant to subsection (b) the tenant may recover against the landlord actual
28 damages for the landlord’s unlawful or unreasonable entry or demands therefor but
29 is not entitled to an attorney’s fee.
30

31 **Comment**

32
33 See Section 3.103[35-9A-303] as to right of access.
34

1 **DIVISION IV - COURT ACTIONS BY LANDLORD**

2 **35-9A-461. Landlord's Action for Eviction, Rent, Monetary Damages, and/or Other**
3 **Relief.**

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

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

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

25 (d) In eviction actions, an appeal by a tenant to circuit court or to an appellate
26 court does not prevent the issuance of a writ of restitution or possession unless the
27 tenant pays to the clerk of the circuit court all rents properly payable under the

1 terms of the lease since the date of the filing of the action, and continues to pay all
2 rent that becomes due and properly payable under the terms of the lease as they
3 become due, during the pendency of the appeal. In the event of dispute, the
4 amounts properly payable shall be ascertained by the court.

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

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

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

15
16 **Alabama Comment**
17

18 The Unlawful Detainer, Ala. Code § 6-6-310 et seq. is amended and repeals
19 the Sanderson Act § 35-9-1 et seq. Process servers are defined in Alabama Rules of
20 Civil Procedure, Rule 4.1(b).

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Alabama Comment

Subsection (b) is amended from the Uniform Act to omit the presumption that an action by or against the tenant within 6 months before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation.

Subsection (c)(4) has been added to the Uniform Act.

Comment

State and federal courts in California (*Aweeka v. Bonds*, 20 Cal.App.3d 281, 97 Cal.Rptr. 650 [1971]; *Schweiger v. Bonds*, 3 Cal.App.2d 507, 90 Cal.Rptr. 729 [1970]), Florida (*Bowles v. Blue Lake Development Corp.*, [S.Florida, 1971], C.C.H.Pov.L.Rptr. Sec. 12,920), Massachusetts (*McQueen v. Druker*, 317 F.Supp. 1122 [D.Mass.1970]), New Jersey (*Alexander Hamilton Savings and Loan Assn. v. Whalen*, 107 N.J.Super. 89, 257 A.2d 7 [1969]; *Engler v. Capital Management Corp.*, 112 N.J.Super. 445, 271 A.2d 615 [1970]; *E. E. Newman Inc. v. Hallock*, 116 N.J.Super. 220, 281 A.2d 544 [1971]; *Silberg v. Lipscomb*, 117 N.J.Super. 491, 285 A.2d 86 [1971]), New York (*Hosey v. Club Van Courtlandt*, 299 F.Supp. 501 [S.D.N.Y.1969]), Ohio (T.R.O. granted, Case No. 8375 [S.D. Ohio]), Wisconsin (*Dickhut v. Norton*, 45 Wis.2d 309, 173 N.W.2d 297 [1970]) and the District of Columbia (*Edwards v. Habib*, 397 F.2d 687 [D.C.Cir.1968]) have upheld the defense of retaliatory eviction.

A number of states by statute have recognized the defense: Cal.C.C. Sec. 1942.5; Conn.Gen.St. Ann., Sec. 42-540a [Supp.1969]; Del.Ch. 25 Sec. 5917 [Supp.1971]; Ha.Ch. 666 Sec. 43 [Supp.1971]; Ill.Rev.St.Ch. 80, Sec. 71 [Supp.1971]; Me.Rev.St. Tit. 14 Sec. 6001, 6002; Md.Laws Ch. 687 Sec. 9-10 [Supp.1971]; Mass.Comp.Laws Ann., Ch. 186 Sec. 18 [Supp.1970]; Mich.Comp.Laws Ann., Ch. 600, Sec. 5646 [Am'd P.S.1969]; Minn.Stat.Ch. 240 Sec. 566.03 [Supp.1971]; N.J.Stat. Ann. 2A Sec. 42-10.10; N.Y. [McKinney's] Unconsolidated Laws, Tit. 23 Sec. 8590, 8609 [Supp.1971]; Pa.St. Ann.Ch. 35, Sec. 1700-1 (Supp.1971); R.I. Gen.Laws Ann. Sec. 34-20-10 [1968]. The legislatures of Maine, Massachusetts, New Jersey, Michigan, and Rhode Island also protect tenants from eviction if they have organized or become a member of a tenants' union or similar organization.

The question as to whether the landlord is engaging in retaliatory conduct as prohibited by the statute is a question of fact to be determined by the court.

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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."

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

5

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