



GEORGIA LANDLORD TENANT HANDBOOK

A Landlord-Tenant Guide to the State's Rental Laws

Revised
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Introduction

This Handbook is designed to provide an overview and answer common questions about Georgia residential landlord-tenant law. The information in this Handbook does not apply to commercial or business leases.

The facts in each case determine the proper solution for a problem. Because facts in each case are different, this Handbook covers general terms and answers, and may not apply to your specific problem.

While this publication can be helpful to both landlords and tenants, it should not be a substitute for professional legal advice. This Handbook contains information on Georgia landlord-tenant law as of the revision date and may not reflect the current status of the law. Before relying on information in this Handbook, the underlying law should be independently researched and analyzed in light of your specific problem and facts.

In Georgia, there is not a government agency with power to intervene in a landlord-tenant dispute or force one party to behave a particular way. Landlords or tenants who cannot resolve a dispute need to use the courts, either directly or through a lawyer, to enforce their legal rights.

The Handbook is available on the internet from the Georgia Department of Community Affairs (www.dca.ga.gov).

Finally, although this Handbook provides a good overview of Georgia landlord-tenant law, those seeking additional resources may wish to review secondary legal resources that may be considered authoritative by the courts, including **Georgia Landlord and Tenant** by **William J. Dawkins**, which is available at most law libraries at Georgia superior courts or law schools.

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Relevant Law



Federal and state legislatures create laws that affect landlord-tenant relationships. Local counties and cities may also enact housing codes that affect rental property. Below is a list of relevant laws in Georgia.

- **Georgia Landlord-Tenant Act, Title 44, Chapter 7, of the Official Code of Georgia** contains laws passed by the Georgia Legislature that affect landlord-tenant relationships in Georgia.
- **Georgia Fair Housing Law, Title 8, Chapter 3, Article 4 of the Official Code of Georgia** prohibits discrimination relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling based on race, color, religion, sex, disability or handicap, familial status, or national origin.
- **Federal Fair Housing Laws** protect persons from discrimination. Many Fair Housing Laws only apply to landlords or tenants receiving federal financial assistance, as noted below.
 - **Fair Housing Act (Title VIII of the Civil Rights Act of 1968)** prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, disability or familial status.
 - **Title VI of the Civil Rights Act of 1964** prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance.
 - **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination based on disability in any program or activity receiving federal financial assistance.
 - **Title II of the Americans with Disabilities Act of 1990** prohibits discrimination based on disability in programs, services and activities provided or made available by public entities.
 - **Age Discrimination Act of 1975** prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
 - **Section 109 of Title I of the Housing and Community Development Act of 1974** prohibits discrimination based on disability in any program or activity receiving federal financial assistance.
 - **Architectural Barriers Act of 1968** requires that buildings and facilities designed, constructed, altered or leased with certain federal funds after September 1969 be accessible to and useable by handicapped persons.
- **County and City Ordinances** may contain housing codes that affect rental property. Many ordinances are online (<https://www.municode.com/library/ga>) or at your local county commission or city hall.

In addition, courts may create law based on their interpretation of laws and prior court cases. These rules of law are commonly called **Case Law, Common Law, or Judge-Made Law**.

Basic Tenant Rights



DISCRIMINATION PROHIBITED. Landlords¹ cannot discriminate based on a person's protected class. Protected classes include race, color, religion, sex, national origin, familial status² or disability.

¹ The Fair Housing Acts cover most housing. In some circumstances, the law exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members. See "[Fair Housing-It's Your Right](#)" for more information.

² Families in which one or more children under the age of 18 live with (1) a parent; (2) a person who has legal custody; or (3) a designee of the parent or legal custodian, with the parent or legal custodian's written permission. Family also includes pregnant women and anyone in the process of securing legal custody of a child under the age of 18.

Discrimination can take many forms, including:

- Refusing to rent to a person because he or she is a member of a protected class;
- Engaging in conduct that discourages a person from renting or makes housing unavailable to a person because he or she is a member of a protected class (including failing to tell the person of marketing promotions, rent reductions or privileges or services associated with the complex);
- Imposing different terms and conditions on members of a protected class;
- Steering members of a protected class to particular buildings or units;
- Excluding members of a protected class from advertisements;
- Falsely telling a member of a protected class that a unit is not available; or
- Advertising or making any statement that indicates a limitation or preference based on a protected class. This prohibition applies to single-family and owner-occupied housing even if the housing is otherwise exempt from the Fair Housing Act.

Discrimination can also be indirect, such as an apartment rule that appears neutral but is applied in a way that it causes a protected group to suffer more harshly. Unless the business owner has a legitimate business justification for the rule, then it is discrimination. In addition, it is illegal for anyone to threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Rights of Disabled Tenants. Fair housing also protects individuals with disabilities. Under the Fair Housing Act, landlords must make reasonable accommodations when necessary to allow equal access, permit reasonable modifications, and satisfy certain accessibility requirements.

I. Reasonable accommodations. Landlords must modify rules, policies, practices, or services when a reasonable accommodation is necessary for a disabled person to use and enjoy a program or dwelling. Reasonable accommodations may be necessary at all housing stages, including application, tenancy, or to prevent eviction.

Disabled persons must either (1) have a physical or mental impairment that substantially limits one or more major life activities, (2) have a history of such an impairment, or (3) be regarded as having such an impairment.

Landlords should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden.

Examples of reasonable accommodations: Waiving a no pet policy for a tenant who needs an assistive animal or providing an assigned parking place close to accessible apartments for a mobility impaired tenant.

II. Reasonable modifications. A landlord must allow a disabled tenant to make, at the tenant's expense, reasonable modifications or changes to his or her unit that are necessary to afford the disabled person full enjoyment of the premises. A tenant may be required to restore the premises to their original condition upon vacating the unit, if reasonable. The landlord must also permit reasonable modifications to common areas for accessibility. In most cases, it would be unreasonable for the landlord to require the tenant to return the common areas to their original condition.

III. Accessibility requirements. Newly constructed multifamily dwellings with four or more units must provide basic accessibility to persons with disabilities if the buildings were first ready for occupancy after March 13, 1991, including:

- One entrance to the building on an accessible route;
- Accessibility to public areas such as a lobby or swimming pool;



- Doors wide enough to accommodate persons in wheelchairs;
- Accessibility to each unit (if there is no elevator, only all ground floor units must be accessible);
- Sufficient reinforcement in bathroom walls to allow a tenant to install grab bars where needed;
- Light switches and other controls located low enough for use by a person in a wheelchair; and
- Kitchens and bathrooms designed so that a wheelchair user can maneuver within the space.

Steps if You Believe You Have Been the Victim of Discrimination:

- (1) File a complaint with HUD *within one year* of the alleged violation. The form is available online: https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint.
- (2) HUD will investigate your complaint and, if appropriate, try to reach an agreement with the landlord, called a conciliation agreement. If a conciliation agreement cannot be reached and HUD has reasonable cause to believe discrimination occurred, HUD will allow the tenant to choose whether to have an administrative hearing with an Administrative Law Judge (ALJ) or have the matter referred to federal court. An ALJ can order the landlord to:
 - i. Compensate you for actual damages;
 - ii. Provide injunctive or other equitable relief, for example, make the housing available to you;
 - iii. Pay the federal government a civil penalty; and/or
 - iv. Pay reasonable attorney’s fees and costs.
- (3) If HUD determines during its initial investigation that irreparable harm is likely to occur and there is substantial evidence of a fair housing violation, it may authorize the Attorney General to seek temporary or preliminary relief pending outcome of the complaint.
- (4) As long as you have not signed a conciliation agreement and the ALJ has not started a hearing, you can file suit at your expense in federal or state court within two years of the alleged violation. The court may award actual and punitive damages and attorney’s fees and costs.



If you need assistance filing a fair housing complaint, HUD’s toll-free number is (800) 669-9777 and TDD number is (800) 927-9275.

Entering into a Lease and Other Tenancy Issues



Searching for and finding a rental property in the right location and for a particular budget requires diligence. However, tenants should not relax after finding a property and rush through the leasing process. Both tenant and landlord can benefit by becoming familiar with tenancy laws and making sure the lease accurately reflects each party’s intention regarding their future relationship.

Below is an outline of the leasing process and common tenancy issues.

1. **Submitting a Rental Application:** The first step most landlords require is the submission of a rental application.
 - **Application fees.** Application fees may be required and are usually not refundable if the application is denied or the applicant changes his or her mind. The fee may be applied to the first month’s rent. Always get a receipt for any fee or deposit.

- **Information on application.** Landlords have broad discretion to ask for information on rental applications and the following information is commonly requested: Name, social security number, current landlord’s name, employer’s name, applicant’s job title and annual income, past employment information, relative references, identity of nearest relative and consent for a credit report and criminal record check.
- **Background check.** Landlords may require the tenant to consent to a credit and criminal background³ check as part of the application. Credit reporting agencies can provide information about tenants to a prospective landlord without the tenant’s consent.

2. **Reviewing and Signing a Lease:** If the landlord accepts the tenant’s application and determines that the tenant meets its requirements to lease, the next step is to enter into a rental agreement called a lease.

- ✓ **Landlords should be careful** about language included or left out of a lease and consider consulting with an attorney who regularly handles landlord and tenant matters.
- ✓ **Tenants should *always* read the lease before signing.** Leases differ from landlord to landlord. Tenants are not excused from honoring a lease simply because they did not understand or read it. A tenant may request a copy of the lease to review a day or two in advance of meeting with the landlord to sign and ask an attorney for help understanding the lease if necessary. The tenant should always receive a copy of the signed lease and maintain it in a safe place.

Invalid lease provisions that violate the law include:

- Waives, transfers, or otherwise lessens the landlord’s responsibility to keep the rental property in good repair or for damages caused by the landlord’s failure to keep the property in good repair;
- Requires the tenant to pay the landlord’s attorney fees if a landlord hires an attorney to enforce the lease, unless the provision also makes the landlord responsible for the tenant’s attorney’s fees;
- Avoids compliance with local ordinances;
- Exempts the landlord from compliance with or contradicts the Georgia Security Deposit Act; and
- Permits eviction without going through the dispossessory process in court.

Tenants who dislike certain provisions may ask a landlord to amend the lease. However, a landlord has the right to refuse the requested change and the tenant must then decide whether to go ahead and sign the lease.

Below are examples of what a tenant may decide to negotiate:

- Very long lease terms with early termination penalties;
- Automatic rent increases during the lease term;
- References to rules that you have not received;
- How utilities will be paid; and
- Landlord access to the property.

Lease terms are important.

A lease is a contract and defines the rights and responsibilities of the landlord and tenant. Once you sign the lease, you cannot later change your mind. If the tenant changes his mind and decides not to move into the unit after signing the lease, the landlord can impose early termination penalties as may be provided in the lease.



Pay close attention to the details!

³ A blanket denial of applicants with a criminal record history may amount to discrimination if the policy or practice has an unjustified discriminatory effect on a protected class, including Hispanics and African Americans who have higher than average incarceration rates. To avoid discrimination, a landlord should evaluate each applicant’s history on a case-by-case basis, taking into account the nature, severity and age of a conviction. For additional information, see HUD’s “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016).

- **Written vs. verbal lease.** A written lease provides certainty and clarity and helps resolve disputes. For example, a tenant should make sure the rent amount is clear and cannot be increased during the lease term. Verbal leases often lead to misunderstandings about what was agreed upon.

NOTE: A tenant who occupies property and pays rent *without* a written lease is a “tenant-at-will” and certain laws such as those regarding eviction and security deposits still apply. A landlord must give a sixty (60) day notice to terminate or increase rent and the tenant must give a thirty (30) day notice to terminate or change the agreement. It is best to put the notice in writing. If the tenant fails to pay rent, the landlord can immediately demand possession and file a dispossessory affidavit.



Expecting a job transfer? Moving soon?

Tenants who believe a job transfer is imminent or want to purchase a home can ask for the right to terminate upon that event. Without special written termination provisions, the tenant *cannot* terminate the lease early without penalty.

- **Lease length.** Leases can be made for any length of time with provisions on how to terminate the lease as agreed by the landlord and tenant. **NOTE:** Additional requirements may apply to leases drafted for longer than a year and an attorney may need to be consulted.
- **Renter’s Insurance.** A landlord’s property insurance typically does not cover a tenant’s damaged personal items due to fire, theft or water, therefore, tenants generally consider renter’s insurance a good purchase. Many renter’s insurance policies also provide liability coverage, for example, if a guest is injured in the rental unit. A lease may require tenants to purchase renter’s insurance.
- **Occupancy Limits.** Georgia does not regulate the number of persons who can reside in rental housing, however, local ordinances may establish occupancy limits. In addition, the landlord may choose to limit the number of persons who can live in the unit. Generally, restricting two persons for each bedroom is reasonable.⁴ Occupancy limits should be clear in the lease.
- **Utilities.** A tenant should ask whether utilities will be paid by the landlord or the tenant. If paid by the tenant, the tenant should research utility costs and their budget before signing a lease.

Some landlords may employ “master metering”: The electric, natural gas or water usage of multiple tenants is measured using the same meter when utility service is in the landlord’s name. If the tenant is responsible to pay that utility, the landlord will divide the cost of the utility used by all tenants and in the common areas between each tenant. Tenants should clarify how utility bills will be calculated and paid before signing the lease.

- **Security Deposit.** The security deposit protects the landlord if the tenant vacates owing money or damaged the unit. If the tenant gives proper notice and vacates without owing rent or damages, the landlord must return the security deposit to the tenant within one month. Security deposit rules include:
 - Landlords who own more than ten (10) rental units, including units owned by their spouses and/or children, or who contract with a management agent, must place the security deposit in a bank escrow account to be used solely for security deposits or post bond with the superior court clerk. If kept in escrow, the landlord must give written notice about the location of the security deposit to the tenant.

⁴ Landlords should make sure occupancy limits are reasonable and not used intentionally to exclude or limit families with children, or that they burden families more than other individuals, which may violate fair housing laws.

- If the property changes owners, the former owner must either transfer the funds to the new owner who becomes responsible or refund the security deposit to the tenant. If the former owner fails to take either of these actions, the tenant can bring a legal action to recover the security deposit. Before bringing a lawsuit, the tenant should write to the former and current owners requesting information on the security deposit.
- Pet deposits and advance rent deposits refundable under the lease are considered part of a security deposit. Application fees or deposits to hold an apartment until the lease is signed are not considered security deposits and usually are not refundable.

- **Move-in Inspection.** Some landlords show potential tenants a model unit that looks like the available unit. The tenant should insist on seeing the actual unit they will rent before signing a lease.

A formal move-in inspection process is required for landlords who own more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent. During the inspection, the landlord and tenant will agree on existing damage to the property so that damages caused by the tenant can be easily determined at move-out. Unless the landlord owns fewer than 10 units and does not contract with a management agent, the landlord must give the tenant a complete list of the existing damage before accepting the security deposit and the tenant must be allowed to inspect the unit to determine if the list is accurate. Both the landlord and tenant must sign the list. Additional information on move-out inspections is discussed on page 11.

- **Promised repairs.** During inspection, if the tenant would like something repaired, he or she should get the landlord to agree to the repair in writing. If the landlord only *verbally* agrees to a repair, then later denies the promise, the tenant will have to convince the judge of the verbal agreement and ask the court to enforce it.
- **Name and address of the property owner or authorized agency.** The tenant must receive the name and address of the property owner or authorized agent to receive legally required notices and should receive the name and address of the property manager at the time the lease is signed. If any changes to names or addresses occur during the lease term, the landlord should give notice to the tenant within 30 days by mail or posting it in a common area.
- **House Rules.** A lease may allow the landlord to terminate the lease or evict tenants who violate house rules. Most courts will uphold reasonable house rules. Before signing the lease, the tenant should ask for a copy of house rules and read them carefully. Tenants can discuss rules they object to with the landlord before signing the lease.



CAUTION!

The landlord will *not* be responsible to repair unit defects that were obvious during the move-in inspection unless it makes the unit unsafe or unsanitary; so tenants should inspect thoroughly.



What should be in a lease?

- ✓ Names of the tenant, the landlord or the landlord's agent, and the person or company authorized to manage the property;
- ✓ Description of the unit, identifying the appliances included in the unit and heating and cooling sources;
- ✓ Description of the real property (if a single family home);
- ✓ Length and expiration of the lease;
- ✓ Amount of rent and date due, including any grace period, late charges or returned check charges;
- ✓ How the tenant will deliver rent to the landlord and whether payment may be made by check, money order or cash;
- ✓ How to terminate the lease prior to the expiration date, including early termination fees;
- ✓ Security deposit amount;
- ✓ How utilities will be paid;
- ✓ Amenities and common facilities available for the tenant's use;
- ✓ Rules including, for example, pets and noise, and consequences for rule violations;
- ✓ Parking available for the tenant's use;
- ✓ Pest control if provided, including how often it will occur;
- ✓ Handling of tenant repair requests, including emergency requests; and
- ✓ Circumstances permitting the landlord to enter the rental unit, including notice requirements.

3. Problems During a Lease:

➤ **Repairs and Maintenance.** Residential landlords have a duty to keep a unit in a safe and habitable condition and in good repair.

The landlord must:

- Maintain the building structure;
- Keep electric, heating and plumbing in working order; and
- Exercise ordinary care to keep the unit and access safe for tenants.⁵

Unless provided in the lease, the landlord is not responsible for:

- Defects that were obvious during the move-in inspection, unless the defects make the unit unsafe or unsanitary;
- Carpet cleaning; or
- Air conditioning, appliances⁶, or fences (EXCEPT a landlord who provides these is responsible to repair them.)

What if the landlord fails to repair within a reasonable time⁷ after receiving notice?

1. **File a lawsuit** against the landlord for damages caused by the failure to repair or, if the landlord sues the tenant, counterclaim for damages due to the failure to repair.
2. **Repair-and-deduct.** The tenant can have a qualified and licensed professional perform the required repair at a reasonable cost and deduct the cost from future rent. The tenant should:
 - Notify the landlord in writing that she plans to use the repair-and-deduct remedy before arranging for the repair to be done;
 - Keep copies of all repair receipts and ask the professional for a statement detailing work performed and the problem fixed; and
 - Subtract the costs from next month's rent by sending copies of the repair receipts with any remaining rent due to the landlord.

The tenant should only spend a *reasonable amount* for the repair and not improve the property apart from repairing the defect. In addition, the tenant cannot use repair-and-deduct for common areas.

PROCEED WITH CAUTION! Although repair-and-deduct is an option, tenants should be aware that landlords can argue the repair was unnecessary or completed at an unreasonable cost. It is very important the tenant give notice to the landlord that she is proceeding with repair-and-deduct and ideally get the landlord to agree to the cost before beginning the repair. Tenants who do proceed with this option should get estimates from multiple vendors or contractors and keep copies of those estimates along with the receipts.

3. **Contact the local, county or city housing code inspector.** Landlords must comply with local housing codes during the lease. If the county or city government condemns the leased property and prohibits residential use, the tenant can treat the landlord as having



Notice of repair required!

Tenants must *immediately* give written notice of any problem(s) needing repair to the landlord. Make sure the notice adheres to requirements in the lease and keep a copy of the notice to later prove that the landlord was aware of the problem(s).



CAUTION!

Even if the Landlord fails to make repairs, the tenant generally *must continue to pay rent*. If the tenant does not pay rent, the landlord can consider it a breach of the lease and take action.

⁵ Landlords must take ordinary care to prevent foreseeable third party criminal acts on tenants. For example, if there is a broken parking lot light and the tenant is concerned about safety, give written notice of the problem to the property manager and owner and state the safety concern because of the defect. The landlord may be liable if someone is later injured because there was an unsafe condition that the landlord knew about and did not repair.

⁶ Georgia law does not require landlords to supply appliances such as refrigerators or stoves, but local ordinances may.

⁷ Reasonable time is determined by the seriousness of the condition and the nature of the repair.

broken the lease and move from the premises. Before moving, the tenant should have proof that the property was condemned and write to the landlord declaring the lease in default.

PROCEED WITH CAUTION! Tenants should be aware that contacting a code inspector might further strain their relationship with the landlord and only proceed as a last resort.

4. **Move out.** Sometimes the landlord's failure to repair can make the unit uninhabitable. The landlord's failure to repair may be a breach of the duty to keep the unit in good repair and amount to a 'constructive eviction,' which relieves the tenant from having to pay rent. The classic constructive eviction requires that:

- The landlord's failure to keep the unit repaired has allowed the unit to become an unfit place for the tenant to live,
- The unit cannot be restored to a fit condition by ordinary repairs, and
- The tenant moves out of the premises.

An example of constructive eviction is a landlord who makes no attempt to repair a massive roof leak, resulting in the unit completely flooding when it rains.

5. **Other Damages.** If the landlord makes repairs in a reasonable time, the tenant generally cannot recover damages in court for temporary loss of a part of the unit or personal property damages (unless the damage is caused by the landlord's negligence). However, the tenant may still ask the landlord for compensation for the loss and convenience. The property owner(s) is a business and the tenant is the customer. An owner of a well-run property should want to maintain good tenant relations and ensure that the tenant will remain when the lease expires. The tenant should consider negotiating for a future rent credit instead of cash out of pocket. Tenants should use common sense and reasonableness when approaching the landlord seeking compensation.



CAUTION!

A tenant cannot claim constructive eviction if the unit's condition results from another tenant or individual's act; the condition must result from the landlord's actions.

The unit cannot be merely "uncomfortable," it must be completely uninhabitable. For example, inoperable air conditioning for three days or air conditioning that does not meet the tenant's comfort standards will probably not be considered constructive eviction.

➤ **Landlord is not paying the utility bills?** *If utilities are paid by the Landlord:* Landlords receiving electric service from a Public Service Commission regulated electric provider (example: Georgia Power or Savannah Electric Power) have special rules that require the power company to give tenants at least five (5) days written notice prior to disconnection. The notice must be personally served on at least one adult in each dwelling unit or posted conspicuously on the premises when personal service cannot be made. In this situation, tenants may want to organize to pay the bill. The electric provider is required to accept payments from tenants for their portion of any past due amounts and must issue receipts to those tenants indicating that such payments will be credited to the landlord's account. If you are seriously ill or the termination is scheduled during a period of either extreme heat or cold, you may be able to have the disconnection postponed by contacting the company and providing supporting evidence.

➤ **Visitors and Tenant's Use of the Rental Unit.** Tenants have the right to use, occupy and enjoy the leased premises in accordance with the lease.

- **Visitors.** Unless restricted in the lease, the landlord generally cannot limit visitors unless they disrupt other residents. However, a tenant should:
 1. Not allow visitors to spend the night too many times in a row or receive mail or deliveries at the unit without the owner's permission. This conduct makes it appear as though the visitor is living at the unit, which may be a lease violation.

2. Adhere to lease provisions regarding occupancy limits.

- **Pets.** A violation of pet restrictions may allow the landlord to terminate the lease and seek eviction. Even if the landlord previously did not enforce the lease’s pet restriction, she can change her mind and give notice of her intent to enforce the term.
- **Noisy Neighbors.** Tenants with noisy or disruptive neighbors should contact the landlord or the police, if necessary. If the landlord continually refuses to address the problem, the tenant can ask to be released from the lease or transferred to another unit, which a landlord should permit if the conduct of other tenants would be considered disruptive to an ordinary, reasonable person.
- **Altering the Unit.** As a general rule, tenants *cannot* substantially or permanently alter leased premises without the landlord’s consent. A tenant can make minor alterations, but it is best to get written approval from the landlord to prevent issues later about what is a minor alteration. The tenant must return the premises to the same condition as when received, subject to normal wear and tear. *Example:* There is a tree the tenant is worried about on the property. The tenant does not have the right to cut or destroy growing trees or make similar permanent changes to the property.

➤ **Landlord Access to the Rental Unit.**

Landlords may enter units according to language in the lease. Typically, most leases stipulate that the landlord can have reasonable access with notice. In such a case, landlords may be liable by entering the unit at unreasonable times. If the lease does not give the landlord the right to enter the unit, a tenant could legally refuse entry except in cases of emergency. However, the best practice is for the landlord and tenant to reach a mutually acceptable solution.

➤ **Right to Access Landlord’s Files.** Tenants have no legal right to demand access to the landlord’s files apart from court proceedings. However, landlords should be willing to allow tenants to view a copy of the lease if necessary.

➤ **Changes to Lease Terms.** Changes to a lease must adhere to lease modification requirements.

- Rent can only be increased during a lease if allowed under the terms of the lease, which determines whether or not and how often the landlord can raise rent.
- If the apartment complex changes owners, the new owners are generally subject to existing leases and cannot raise rents or change rules.

4. **Subletting:** Someone who leases a unit from the original tenant is called a subtenant. The lease determines whether a tenant can sublet. Often, subletting requires the landlord’s permission.

A subtenant has the right to use and occupy the rental property from the original tenant and not directly from the landlord. The subtenant may pay rent directly to the landlord but the original tenant remains liable to the landlord for the rent and any damages caused by the subtenant.

However, the landlord may choose to treat the subtenant as his tenant, either expressly or implied from the landlord’s acts and conduct. Mere acceptance of the subtenant’s rent does not mean that the landlord has chosen to treat the subtenant as his tenant and release the original tenant.



Can a tenant change the locks?

Typically, the lease will state that the tenant cannot change locks without the landlord’s permission. If the lease is silent about changing locks, then technically the tenant may change locks without the landlord’s permission and not give the landlord new keys. However, the tenant must give the new keys to the landlord or restore the lock to its original condition upon vacating the unit. If the tenant does neither, the landlord may deduct the replacement cost for the lock from the security deposit.

5. **Early Termination:** The landlord and tenant may only terminate a written lease according to its provisions. A tenant who terminates or abandons the property outside of what is allowed in the lease may suffer financial consequences:

- **Early Termination Fees.** A lease may require the tenant to pay certain fees for early termination. Early termination fees may or may not be enforceable. Courts will uphold early termination fees if (1) the landlord's damages caused by the early termination are difficult or impossible to estimate accurately, (2) the landlord and tenant intend the fees to cover damages and not act as a penalty, and (3) the fees are a reasonable estimate of the landlord's damages caused by early termination. If these requirements are not met, then the early termination fee is unenforceable.
- **Duty to Continue Paying Rent.** In Georgia, if a tenant abandons the unit or terminates the lease early without the landlord's authorization, the landlord does *not* have to find another tenant or allow another person to lease the unit. Unless the lease says otherwise, the landlord can allow the unit to remain vacant and hold the tenant responsible for rent through the end of the lease. This rule applies unless the landlord accepts the tenant's surrender of the property. For example, if the landlord retakes possession of the unit and re-rents it or allows others to live in it, he cannot hold the tenant responsible for rent owed. However, the landlord does not accept surrender merely by accepting the keys or by entering the property.

6. **End of the Lease:** A lease can terminate, extend or renew at the end of the lease term according to the lease.

- **Termination.** If the lease expires or otherwise terminates, the landlord can seek possession of the rental property.
- **Extension.** A lease may allow the tenant to extend the tenancy for an additional term under the same lease provisions. There usually is no need to sign a new lease to extend. The lease may allow automatic extension at the end of the current lease unless the tenant gives notice that they do not wish to extend the lease. Under such a lease provision, the tenant who fails to notify the landlord that they will not be extending could end up obligated for another lease term.
- **Renewal.** A lease may allow the tenant to renew by signing a new lease. Under such a term, the tenant must give the landlord written notice of her intention to renew the lease. If the tenant does not timely renew the lease, the landlord may treat the lease as terminated on the expiration of the lease term and seek possession of the property.

Tenants who want to remain in the unit should read the lease to find out how to renew or extend the lease. A landlord can choose not to extend the existing lease or decline to offer a new lease. A private landlord is not required to give a reason for refusing to extend or renew a lease unless the lease requires. However, the landlord cannot discriminate. If the tenant and landlord cannot reach an agreement on a new lease or extension, the tenant should plan to move when the lease ends.

What if the tenant stays in the unit after a lease expires?



It is best to negotiate the new lease before the old lease expires. If the lease expires, the landlord can require that the tenant immediately sign a new lease with new terms or vacate. If a new lease is not signed, and the landlord continues to accept monthly rent, a tenancy-at-will is created and the terms of the original lease still apply except the landlord can only terminate or change the terms with a sixty (60) day notice and the tenant can only terminate with a thirty (30) day notice.

7. Security Deposit

Move-out Inspection. Landlords who own more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent, must adhere to a formal inspection process or forfeit the security deposit.

- Within three (3) business days after the lease terminates, or a reasonable time after the landlord discovers the tenant vacated, the landlord must inspect the unit and prepare a list of all damages and the estimated dollar value of such damage. The landlord must sign the list and provide it to the tenant.
- The tenant may inspect the premises within five (5) business days after the termination. The tenant must sign the move-out inspection list or specify in writing the items in dispute. It is best for the tenant to be present at the move-out inspection with the landlord.
- If the tenant does not dispute or challenge the damages listed on the move-out inspection list, the tenant cannot contest the landlord's withholding of the security deposit to cover the damage. Therefore, it is very important for a tenant to carefully read through the move-out inspection report.

Deductions from the security deposit. The landlord *cannot* retain the security deposit to cover normal wear and tear that occurs as a result of the tenant using the property for its intended purpose. However, the landlord may deduct for:

- Physical damage to the premises by the tenant, members of the tenant's household, pets or guests;
- Damage caused by negligent or careless acts;
- Damage due to accident or abuse of the property;
- Unpaid rent or late charges;
- Unpaid pet fees;
- Unpaid utilities that were the tenant's responsibility under the lease; or
- Damage to the landlord caused by early termination.

Repair or replacement amount? Example: Tenant damaged ten-year-old carpet so it can no longer be used, the tenant should be charged for the value of the ten-year-old carpet and not for the cost of the new replacement carpet. Amounts withheld must be reasonable.

Damages exceed security deposit? Landlord can sue tenant for cost of damages above security deposit amount.

Returning the security deposit. All landlords, regardless of the number of units owned, must return the security deposit within one month after termination of the lease or the surrender and acceptance of the premises, whichever occurs last. If the security deposit is held because of damage to the unit, the landlord must send the tenant notice within one month identifying the damage, the estimated dollar amount of the damage, and a refund, if any, of the difference between the security deposit and the amount withheld for damages.

What if the landlord does not know the tenant's new address? The security deposit and any statement of damages must be mailed to the tenant's last known address even if that is the vacated rental property. If it is returned as undeliverable and the landlord is unable to locate the tenant after a reasonable effort, the security deposit becomes the property of the landlord ninety (90) days after it was mailed.

Wrongfully withheld security deposit. If the landlord refuses to refund the security deposit, the tenant may bring a lawsuit in the county court where the landlord resides or where his designated agent for service resides to recover the security deposit, interest on the amount while it was wrongfully withheld, attorney fees, and the cost of filing the legal action. The tenant can only recover amounts held by the landlord for damages that the tenant disputed on the move-out inspection list. The court will most likely not allow the tenant to recover for the cost of repairing items listed as damaged on the move-out inspection list and not disputed by the tenant. A landlord who owns more than ten units or uses a management agent can be liable for three times the amount of the amount withheld plus attorney fees, unless the withholding was a mistake that occurred despite the landlord's procedures reasonably designed to avoid a mistake.

Evictions



In Georgia, landlords cannot kick tenants out of or prevent access to a unit without going through the court dispossession process. Self-help evictions are illegal, even if the tenant has violated the lease.

During the eviction process, the tenant is allowed to remain in possession of the property until there is a court decision. During this time, the landlord cannot cut off utilities.

Bases for Eviction: Nonpayment of rent or failure to move out at the expiration or termination of the lease.

Eviction Process:

1. **Read the lease.** The first step in pursuing eviction is to read the lease. The landlord must comply with lease terms regarding notice and termination.
2. **Demand for possession.** The landlord must demand that the tenant immediately give up possession and vacate. This demand is best made in writing but there is no “magic language” that must be used. The landlord should keep track of how and when service of the demand was made, including any evidence of service.

A demand should be dated, list the name of the tenant and premises, and may state: “You [tenant] are notified that you have violated or failed to perform terms of the Lease as follows: _____. You must surrender possession and vacate the premises within ____ days after service of this notice.”

3. **File a dispossession affidavit under oath.** If the tenant refuses or fails to give up possession of the premises, the landlord can file a dispossession affidavit under oath in magistrate court⁸ in the county where the rental property is located. The affidavit should state: The name of the landlord; the name of the tenant; the reason the tenant is being removed; verification that the landlord demanded possession of the property and was refused; and the amount of rent or other money owed, if any.

Note: After filing a dispossession based on nonpayment of rent, the landlord cannot accept rent from the tenant because it would give the tenant a defense to the dispossession. However, the landlord can request that the court order the tenant to pay rent into court if the dispossession process takes longer than two weeks before a final decision. The amount due can be shown by attaching a copy of the lease or evidence of past payments. If the tenant fails to pay, the court can issue a writ of possession and the tenant would be subject to immediate eviction.

4. **Service of the dispossession affidavit on the tenant.** After the landlord files the dispossession affidavit, it must be legally delivered

What if you allowed a friend to move into a house you own only until he can find another place to live, but he is still there?

Even though you did not charge rent, you may have created a landlord tenant relationship when you gave your friend the right to possess and use the property. A tenancy-at-will was created if the right was not restricted to a specific end date. To end the tenancy, you must give a sixty (60) day notice to vacate. If you want to allow your friend to remain but wish to begin charging rent, you have to give a sixty (60) day notice.

⁸ Dispossession actions are usually filed in magistrate court because they are easier to navigate, but can also be filed in municipal, state or superior court. For more information on how the Georgia courts operate, see www.georgiacourt.gov, which can help you locate courts in your area. Some magistrate courts have their own websites and a few allow filing of dispossession affidavits online.

to the tenant. In most counties, the sheriff will have the tenant served. There are three ways a summons can be served:

- (1) Personally delivered to the tenant,
- (2) Delivered to a competent adult who resides in the unit, or
- (3) *Most Common* Tacked on the door of the home and sent by first class mail to the tenant's address ("tack and mail"). The date stamped on the envelope to indicate its mailing date *should be the same* as the date it was tacked on the door. If the date is not the same, the tenant may be able to assert insufficient service. Tack and mail is only appropriate if no one was at home when the sheriff attempted personal service. If the dispossessory affidavit was served by tack and mail, and the tenant did not file an answer or appear in court, the court may still order the tenant to move, but cannot award rent or other money damages to the landlord.

5. **Tenant Answer.** The summons served on the tenant should require a response either verbally or in writing within seven (7) days from the date of service. If the seventh day is a Saturday, Sunday or legal holiday, the answer is required to be filed on the next day that is not a Saturday, Sunday or legal holiday. If the tenant fails to respond at the end of the seventh day, the lawsuit is in default and the court can grant a writ of possession for the sheriff to immediately remove the tenant⁹.

- The answer is the tenant's chance to explain why the landlord is not legally entitled to evict.
- The answer must contain any legal or equitable counterclaims against the landlord (ex: landlord failed to make repairs and personal property was damaged; or you want any potential judgment reduced by previously paid rents). Failure to include the counterclaims in the answer may stop the tenant from asserting them later.
- The answer can seek foreseeable damages caused by the wrongfully filed eviction, such as time spent filing an answer, work hours missed, travel expenses and attorney fees.
- Knowingly and willingly making a false statement on an answer is a misdemeanor.
- Where an answer has been filed, even if it does not contain an adequate legal defense, the clerk must treat it as an answer until a judge determines otherwise. Before a judge can strike an answer as legally inadequate the tenant must be given notice and opportunity for a hearing on whether the answer has legal merit.

Note: If right of possession cannot be determined within two weeks of when the tenant was served, the tenant must pay the court past rent owed and future rent as it becomes due. Failure to pay will result in a writ of possession.

⁹ Tenants cannot appeal a default judgment.



Tender Defense

A tenant may be able to avoid eviction by paying all rent the landlord alleges is owed plus court costs. The amount owed should be stated on the dispossessory affidavit and the tenant must offer payment within seven (7) days of receiving the dispossessory affidavit. The landlord is required to accept the payment up to once a year. If the landlord accepts payment, the tenant must file an answer within the seven (7) days that the landlord accepted payment. If the landlord refuses payment, the tenant should file an answer stating that tender was offered, but refused. If a court finds the landlord refused a proper tender, the court can order the landlord to accept payment and allow the tenant to remain in possession if the tenant makes payment within three days of the court's order. See O.C.G.A. § 44-7-52.

6. **Hearing.** If the tenant files an answer, a hearing on the issues will be held. Once a hearing is held, the court will issue its decision.
7. **Writ of possession.** If the court rules for the landlord, the landlord should request a writ of possession that requires the tenant move after seven (7) days and may also demand payment of past rent owed. The writ is a separate document from the court's order. Once a writ of possession issues, the following occurs:

- Generally, the sheriff will supervise the landlord's removal of a tenant who refuses to leave. The landlord is responsible for the cost of eviction.
- When a tenant's personal property is removed, it must be placed on some portion of the landlord's land. If the landlord and officer executing the warrant agree, the property may be placed on land other than that owned by the landlord such as the sidewalk or street. The landlord must use reasonable care in removing the property, but once removed, the landlord owes the tenant no duty to protect the personal property. If the landlord transports the property elsewhere or leaves it in the unit, he may be sued by the tenant for conversion.
- Once judgment has been entered in favor of the landlord, the tenant can still be removed even if the tenant pays the landlord.



No court hearing?

The tenant may not get a hearing if she did not file an answer and assert valid defenses. Therefore, a tenant should make sure to assert **all** valid defenses in her answer and not wait to raise issues at the hearing.

The general rule is that when a landlord evicts a tenant and takes possession, the lease is terminated and the tenant does not owe future rent.

8. Appeals.

- A landlord can appeal within seven (7) days from the date judgment was entered by the court. A request for jury trial must be within thirty (30) days from the filing of the appeal. It is wise to consult an attorney when considering an appeal.
- A tenant can appeal within seven (7) days from the date judgment was entered by the court. To file an appeal, the tenant must pay court costs or obtain a court order that costs are not owed. A tenant who cannot afford to pay court costs to file an appeal can ask that the court waive payments by filing a pauper's affidavit.

An appeal prevents a writ of possession from being executed. A tenant who wishes to continue living in the unit while the appeal is pending must pay the court rent amounts found due. A tenant who cannot pay the rent amounts may still appeal but must vacate the unit. The court may also order the tenant to pay into court the future rent as it comes due while the appeal is pending. If the tenant fails to pay, the court will order that the tenant be removed from the property.

Miscellaneous

- **Military Service Members as Tenants.** Active members of the military have protection under state and federal law. The Service Members Civil Relief Act:



Affords some relief if military service makes rent payment difficult. Before a court can evict, it must find that the service member's ability to pay rent was not materially affected by his military service. "Material effect" is present when the service member does not earn sufficient income to pay the rent. If the member's ability to pay was materially affected, the court may stay the eviction for up to 90 days unless the court decides a shorter or longer period is in the interest of justice or adjust the obligation under the lease. The military member or his dependents must request this relief. There is no requirement that service member signed the lease before entering active duty. This rule applies when: (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty; (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and (3) The agreed rent does not exceed a certain maximum (as of Jan. 1, 2017: \$3,584.99 per month, subject to change.)

Provides an option to postpone court proceedings. If service members are unable to appear in court or at an administrative proceeding due to their military duties, they may postpone the proceeding for a mandatory minimum of ninety (90) days. The request must be in writing and (1) explain why current military duty materially affects the service member's ability to appear; (2) Provide a date when the service member can appear; and (3) Include a letter from the commander stating that the service member's duties preclude his or her appearance and that he is not authorized to take leave at the time of the hearing. Further delays may be granted at the court's discretion. If the court denies additional delays, an attorney must be appointed to represent the service member.

Allows default judgments to be set aside. If a default judgment is entered against a service member during his or her active duty service, or within sixty (60) days thereafter, the service member may **reopen** the default judgment and set it aside. The service member must show that he was prejudiced by not being able to appear in person and that he has good legal defenses to the claims against him.

Permits relocation and early lease termination. Service members may terminate leases without penalty that were entered into before entering military service or while in military service and that were occupied or intended to be occupied by the service member or his dependents. The service member must deliver written notice of termination to the landlord and a copy of the military orders. If the lease provides for monthly payment of rent, the lease is terminated effective 30 days after the first date on which the next rental payment is due after giving notice. For example, if notice is given on March 15, the next rental payment is due April 1, so the lease is terminated effective May 1.

Georgia Law (O.C.G.A. 44-7-22) allows a service member who meets certain requirements to terminate a lease entered into on or after July 1, 2005 by giving the landlord a thirty (30) day advance written notice of termination.

- **Lead Based Paint Disclosures.** Landlords who rent units built before 1978 must disclose the presence of all known lead-based paint and lead hazards in the rental unit and common areas, unless the property is determined to be lead-based paint free by a state-certified inspector. Lofts, studios or short-term leases of less than 100 days are exempt.



Requirements for Landlords:

- Give the future tenant an Environmental Protection Agency (EPA) approved pamphlet entitled "Protect Your Family from Lead in Your Home" on how to identify and control lead-based paint hazards.

- Disclose any known information concerning lead-based paint or lead hazards. The landlord must also disclose information such as the location of the lead-based paint and/or lead hazards and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead hazards that are available to the landlord. For multi-unit buildings, this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
- Include a Lead Warning Statement and language in the lease or as a lease attachment that confirms that the landlord has complied with all notification requirements. Landlords, agents and tenants must sign and date the statement.
- If a child under the age of six is found to have lead poisoning and resides in a dwelling with lead hazards, the owner must take steps to reduce the lead hazards. O.C.G.A. § 31-41-14.

Tenants who did not receive the disclosure and have been damaged by lead paint can call 1-800-424-LEAD (5323) or contact a lawyer. The tenant may be able to recover triple the amount of their actual damages and the landlord may be subject to other civil or criminal penalties. The landlord may offer transfers, with or without incentives, to a family residing in a unit where lead-based paint hazards have not been controlled to enable the family to move to a unit where lead-based hazards have been controlled.

- **Foreclosure.** If a property is foreclosed, the original landlord-tenant relationship ends and the tenant becomes a tenant at sufferance with the new owner.¹⁰ A tenant at sufferance is a tenant who stays in the unit without the landlord's permission.



- The tenant acquired rights to the property through legal means but no longer has legal rights to the property.
- A basis for eviction is met: Failure to surrender property at the end of the lease term.
- As a result, a foreclosed property's new owners may begin the process to evict tenants immediately. Ultimately, if one is a tenant of a property that is about to be, or has been, foreclosed, he/she should be prepared to find new living accommodations.
- If a foreclosed property's new owners wish to dispossess the property from previous tenants through eviction proceedings, accepting or demanding rent from a tenant at sufferance can create a valid **tenancy at will** or a **month to month tenancy** which may delay the eviction process.

- **Roommates.** Individuals who plan to rent a unit with a roommate(s) should be aware of the following:



- Each roommate who is in a tenant relationship with the landlord can be held responsible for the *full* amount of the rent due. For example, if all the roommates sign the lease and one moves out, the others will be responsible for the full rent. However, if you end up paying more than your share of the rent, you can sue your former roommate to recover the difference.
- Landlords collect money from tenants who actually signed the lease agreement. Roommates who did not sign the lease are not legally liable to the landlord unless the landlord accepted payment from the roommate or other actions established a landlord-tenant relationship.
- Security deposits are usually divided equally among the tenants. Landlords should try to spell out the terms of the security deposit in the lease's terms.
- Landlords do not have legal means to step in and resolve roommate disputes unless there is a lease violation or criminal act.

¹⁰ Until December 31, 2014, The Protecting Tenants at Foreclosure Act, which was extended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, allowed tenants of foreclosed properties to remain in the foreclosed property for the remainder of the lease, or 90 days if the new owner wished to live in the foreclosed property. This law has since expired.

- **Manufactured and Mobile Homes.** Mobile homes are considered personal property unless they are permanently affixed to the land.



Repairs

- Tenants who rent a mobile home from someone who does *not* own the land under the mobile home cannot use landlord-tenant law to demand the owner of the mobile home make repairs unless required by the rental contract.
- The owner of the land under the mobile home is not responsible to repair the mobile home unless the landowner owns the mobile home and it is permanently affixed to the land. However, the landowner must still keep the lot and common areas of the mobile home park in good repair.

Repossession of Mobile Homes and Lots

- When an owner only conveys the mobile home (not land) for use, the owner must file a personal property foreclosure to repossess the mobile home. The owner may not use the dispossessory process.
- The owner of the land where a mobile home is located can use the dispossessory process to gain possession of the land.
- If the tenant moves out of and leaves the mobile home, the mobile home generally can be considered abandoned after being unattended on private property for a period of at least thirty days without anyone making a claim to it. See O.C.G.A. § 40-11-1. The best practice is for an owner who owns the land to file a dispossessory affidavit before treating the mobile home as abandoned.

- **Sex Offender Registry.** Georgia prohibits sexual predators or offenders, whose date of offense was on or after June 4, 2008, from living within a specified distance of places such as schools, daycares, parks or playgrounds. For specific restrictions, see O.C.G.A. §§ 42-1-15 to 41-1-17.



What if the owner of my mobile home fails to make payments?

Unfortunately, the mobile home can be repossessed. If the mobile home was repossessed while still containing the tenant's personal property, the tenant should contact the person who owned the mobile home to determine how to reclaim any personal property. Georgia law sets requirements on when the personal property inside a motor vehicle can be disposed. See O.C.G.A. § 44-14-411.1.

Appendix A

What if I am being evicted?

This appendix provides answers to common questions that tenants may have during the eviction process and is not intended to be legal advice for a specific situation. Seeking the assistance of a licensed attorney is the best way to protect your legal interests in your case. If you cannot afford an attorney, organizations such as Georgia Legal Aid (<https://www.georgialegalaid.org/>) may be able to help.

Q. I've been served with an eviction. Do I have to answer?

A. You must answer the eviction. If you do not file an answer within the time period specified on the complaint, a default judgment may be entered against you. Most counties will have a pre-printed answer form or you can draft your own answer. See page 16 for a discussion of what should be in an answer.

Q. What if I answer late? What if I missed the deadline because I was out of town?

A. It is often very difficult to get an extension if you do not file an answer on time. You may be able to request permission to file an answer late if you were unaware that the answer was served. You can file a motion to set aside the judgment or extend the time to answer and hire an attorney if possible. You must explain why you did not file an answer and why the landlord should not be allowed to evict. Ask the court to immediately issue an order preventing the landlord from removing you until after a court hearing. If granted such an order, you should give a copy to the landlord and keep a copy in the unit in case the sheriff comes to remove the tenant.

However, because an extension is usually unlikely, you should make sure to file on time.

Q. I am being evicted. Do I have any defenses?

A. Yes, you may have multiple defenses that can dismiss an eviction. However, be aware that the landlord typically can refile a complaint even after it is dismissed.

You must assert any and all defenses in your answer to the eviction. FAILURE TO ASSERT DEFENSES MAY ALLOW THE LANDLORD TO OBTAIN A JUDGMENT AGAINST YOU FOR FAILURE TO RAISE A DEFENSE. If possible, you should consult an attorney regarding your defenses.

If you use a pre-printed answer form from the court, you can attach additional sheets or write in defenses. You should raise any of the following defenses relevant to your situation in your answer:

- **Lack of Notice/No Demand for Possession:** As further discussed on page 15, the landlord must demand that you vacate the premises before filing for an eviction. The demand does not require any magic language, but the landlord must ask you to leave the property either in writing or verbally. If the landlord does not do this, you should indicate that you received improper notice or that no demand for possession was filed.
- **Improper Service:** The landlord may have improperly served the eviction on you (see requirements listed on page 13.) If the landlord did not meet the requirements in serving the complaint, you should assert that the complaint was improperly served.
- **Month to Month Lease:** If you never had a written lease (see page 7), or if your written lease expired and the landlord permitted you to remain in the unit (see page 13), then you are considered a “tenant-at-will” and the landlord must give you 60 days’ notice to terminate the lease. If the landlord gave you less than 60 days’ notice, then you should assert that termination of the lease was not valid.

Note: this situation applies where the landlord is evicting you for staying in the unit despite termination of the lease. If you fail to pay rent, the landlord does not need to give a 60 days' notice and terminate before seeking eviction.

- **Amounts Owed:** Landlords will typically ask for an amount they claim you owe. Sometimes, without your knowledge, extra fees or other penalties can be added to this amount. You can assert that you do **not** owe the amounts alleged. While it will not cause the case to be tossed out, it will give you an opportunity to speak to the judge concerning amounts owed.
- **Complete Tender:** A tenant may be able to avoid eviction by paying all rent the landlord alleges is owed plus court costs. If the landlord refuses, you can assert the tender defense. To be a defense, you must have made the offer to pay within seven days of being served. See page 16 for additional details on this defense.
- **Not My Landlord:** If a person you do not know, or who you know lost the property to foreclosure, is filing for eviction against you, you should indicate this on the answer. As an example, in one litigated case, a landlord asserted that he was owed current rents, but that landlord had lost the property to foreclosure months earlier and no longer owned the property.
- **Accused of doing something “wrong” and lease terminated:** A landlord may terminate your lease and try to evict you for acts such as criminal activity, destroying or damaging property, disturbing other tenants, refusing to allow the landlord in your unit for maintenance according to the lease, or other house rules violations. If this occurs, the tenant can either challenge the violation factually or show that the incident did occur but did not violate the lease. For the latter argument, the tenant should thoroughly read the lease to determine whether the incident in fact violates the lease to allow termination.

Tenants who live in public housing or receive a rental subsidy may have the right to an informal hearing before the landlord can pursue eviction in the courts. Tenants should consult with an attorney to learn more about their rights.

- **Accused of not paying rent, but you did drop it off according to landlord’s instructions:** If the landlord claims you did not pay rent, but you did pay according to the lease or landlord’s instructions (example: you dropped a check in the designated box at the rental office on the day it was due based on what the landlord told you), then you should assert that you paid rent.
- **Partial Payment - you paid part of this month’s rent:** The landlord cannot evict you for failure to pay if he accepted partial payment for the current month. Also, if the landlord accepts payment in the current month, he cannot evict for past unpaid months. In this situation, you should assert that you made and the landlord accepted partial payment.
- **Waiver:** If you normally pay rent late and the landlord accepts it, then you should assert a waiver defense. A waiver defense asserts that because the landlord has accepted late payments in the past, he “waived” his right to enforce on-time rent payments. You can assert this defense unless the landlord had previously told you of his intent to start requiring on-time payment again.
- **Constructive Eviction:** If you vacated the house because it was uninhabitable and stopped paying rent (see page 9) and now your landlord is trying to evict you and/or recoup money, then you should assert a constructive eviction defense.
- **Discrimination:** If you feel that you are being discriminated on the basis of race, color, religion, sex, national origin, familial status or disability, you should assert a defense under the federal and/or Georgia Fair Housing Act.
- **You feel that the eviction is based on your status as a victim of domestic violence, dating violence, sexual assault or stalking:** If you live in public housing or your rent is subsidized and you feel that you are being evicted based on either (1) your current or previous status as a victim of domestic violence, dating violence, sexual assault or stalking or (2) criminal activity related to an act of domestic violence by a member of your household or guest against you or an affiliated individual, then you should assert protection under

the Violence Against Women Act. This situation generally arises when the perpetrator causes harm or property damage, and perhaps even law enforcement is called, and now the landlord wants to evict the victim.

PERSONAL LIFE EVENTS ARE NOT A DEFENSE: It is never a defense in a non-payment of rent eviction that you did not have the money, that you lost your job, or had other financial hardship. The judge may sympathize with you, but he or she cannot stop the eviction.

Q. I see that the answer form has a space for counterclaims. What are these? Do I have to assert them? What should I put down?

A. Counterclaims should be asserted if you feel that the landlord did something wrong or did not do something he or she should have done and owes you damages or another remedy.

Below is a list of common counterclaims you may assert if relevant to your situation:

- **Failure to repair:** If your landlord is trying to evict you but you feel that you are owed money for the landlord's failure to repair, then you should assert a failure to repair counterclaim. You should calculate the damages the landlord owes based on the unit or property's reduced value due to the failure to repair. For example, for each day that you could not take a hot shower, how much do you feel the value of your unit was diminished? Or what is the daily value of not being able to use your washing machine due to plumbing issues? Determine the daily value or cost of the loss of use and multiple it by the number of days the problem was not repaired.
IMPORTANT: If you are going to assert a failure to repair counterclaim, you must be able to prove you gave notice of the problem and the need for repair to the landlord. (See page 10.)
- **Damage to personal property because of flooding or other conditions:** If your landlord is trying to evict you but you feel that he owes you money for damaged personal property, then you should assert intentional and/or negligent damage to personal property as a counterclaim. You should claim the item's value when it was damaged. You cannot claim the cost to replace personal property with a brand new version.
- **Landlord Activities:** If your landlord is trying to evict you but you feel that your enjoyment and use of the unit or property has been diminished, then you should assert breach of your right to quiet enjoyment as a counterclaim. Examples of acts that fall under this counterclaim may include the landlord constantly disrupting your use of the unit or land, noisy neighbors, or not being able to use the unit or property as you intended and as allowed under the lease. (See page 12 for additional information.)

Q. I'm going to court. How does this work?

- **Calendar call:** You must be at the courthouse on time. When your name is called, verbally respond and stand up (if able to do so) so that the court knows you are present. If you need any special accommodations for the hearing, be sure to discuss your needs with the court prior to the hearing. You, the tenant, will be the defendant. The landlord will be the plaintiff. The purpose of calendar call is to let the court know you are there; this is not the time to dive into the facts of your case and explain your position.

However, if the landlord is present and you would like to speak with him again prior to the hearing to work out a solution, then you can ask for the opportunity to speak with the landlord if the landlord agrees.

- **Mediation:** Prior to the hearing, the court will explain whether it requires or suggests mediation. Courts with a mandatory mediation process will require that the tenant and landlord meet with a mediator to try to settle the case before a hearing with the judge. A mediator is not a judge and will only work with the parties

to see if settlement can be reached. Neither party has to agree to anything at a mediation. There will be a hearing if the parties cannot agree.

- **Presentation tips:** Keep your presentation and argument brief and concise. Be respectful and do not speak over the judge or opposing counsel. You must be fully prepared to discuss all facts and issues in the case. Your argument should focus on legal defenses. Do not focus on sympathy stories (unexpected expenses, hard times, health issues, etc.). Although the judge may be sympathetic, those issues will not bear on the legal resolution of the case. If the judge wants to know more, he will ask you more. Do not argue with the judge.
- **Witnesses (subpoena):** You may want to have a witness present at the hearing to speak about the facts. Witnesses can be required to attend a hearing via a properly served subpoena. You can obtain a subpoena from the court. Some courts may issue subpoenas in blank. The subpoena must state the name of the court, the name of the clerk, and the title of the proceeding and shall command each person to whom it is directed to attend and give testimony or produce evidence at a time and place specified by the subpoena. Subpoenas may be served by (1) Any sheriff or by any person not less than 18 years of age, proven by return or certificate endorsed on a copy of the subpoena, or (2) Registered or certified mail or statutory overnight delivery, proven by the return receipt. The subpoena should be served at least 24 hours in advance of the hearing.

If you obtained a subpoena in blank from the clerk, then you must present the name and address of the witness subpoenaed to the clerk at least six hours before the hearing to preserve your right to postpone the hearing in case the witness fails to appear.

Fees and mileage: The witness fee is \$25.00 per diem but does not have to be paid until after the hearing unless the witness resides outside the county where the court hearing will be held. In such a case, the witness fee plus mileage of 45 cent(s) per mile for traveling expenses from and returning to the witness' place of residence must be given when the subpoena is served. The fees and mileage may be made by cash, postal money order, cashier's check, certified check, or the check of an attorney or law firm.

- **Hearsay:** Generally, the court will not allow you or another witness to state what a third person said. Such testimony evidence is called "hearsay" and not allowed. So for example, you generally cannot testify about something your roommate said. If your roommate knows something that is evidence for your case, then your roommate should attend the hearing and testify. Similarly, a written statement or notarized statement is typically not admissible unless the person who wrote it is present in court.

There are some common exceptions to the hearsay rule. For example, testimony about something your roommate said can support your testimony if the landlord claims you are lying and the roommate is available to testify. Or testimony about something your roommate said can be used to hurt the landlord's credibility. There are other exceptions to the hearsay rule and an attorney can help if you have further questions.

- **Appeals:** If you decide to appeal from a judgment in magistrate court, you must file an appeal with the magistrate court within seven (7) days of the court's judgment. The court will require that you pay court costs to file the appeal. If you cannot pay, then you may do a paupers affidavit. In addition, if you want to continue living in your unit while waiting for the appeal hearing, you must pay any rent the magistrate court ordered you to pay in addition to the monthly rent as it comes due. If you cannot pay these amounts, you must move from the rental property or the court will allow the landlord to remove you. After filing the appeal, your case will be sent to state or superior court. These courts can be more complicated than magistrate court and you may need to obtain the assistance of an attorney to succeed.

Q. What is a move-out agreement?

A. The tenant and landlord can agree to a move-out agreement either informally or as part of mediation. A move-out agreement settles the case and may be made a part of the court order. Typically, the agreement will reduce amounts owed to the landlord if the tenant agrees to move out by a certain date. The agreement could also affirm amounts owed and give the tenant extra time to move out. If the tenant does not move out and the agreement was made a part of the court order, the landlord can immediately seek a writ of possession without further court appearance.

The agreement may also allow the tenant to stay if he or she pays a certain amount by a certain date. If the tenant does not pay and the agreement was made a part of the court order, then the landlord can immediately seek a writ of possession without further court appearance.

The parties should be careful that language in the agreement reflects the understanding of the parties. It is also presumed that an agreement settles counterclaims at the same time. Therefore, the tenant should make sure his or her counterclaims are addressed in the agreement or they will be presumed dismissed. If the tenant wants to keep the ability to raise a counterclaim later, then a provision should state that these counterclaims are preserved for future litigation.

Appendix B

Text of Callout Boxes

The text of callout boxes in this document are listed below to accommodate screen reader accessibility.

p. 4: A tenant or applicant must **request** that the landlord make the necessary accommodations. An accommodation request can be made by the person with disability, a family member, or someone else acting on the individual's behalf.

p. 5: If you need assistance with filing a fair housing complaint, HUD's toll-free number is **(800) 669-9777** and TDD number is **(800) 927-9275**.

p. 6: Lease terms are important! A lease is a contract and defines the rights and responsibilities of the landlord and tenant. Once you sign the lease, you cannot later change your mind. If the tenant changes his mind and decides not to move into the unit after signing the lease, the landlord can impose early termination penalties as may be provided in the lease.

p. 6: Tenants who believe a job transfer is imminent or want to purchase a home soon can ask for the right to terminate upon that event. Without special written termination provisions, the tenant *cannot* terminate the lease early without penalty.

p. 7: CAUTION! The landlord will *not* be responsible to repair unit defects that were obvious during the move-in inspection unless it makes the unit unsafe or unsanitary; so tenants should inspect thoroughly.

p. 8: Notice of repair required! Tenants must *immediately* give written notice of any problem(s) needing repair to the landlord. Make sure the notice adheres to requirements in the lease and keep a copy of the notice to later prove that the landlord was aware of the problem(s).

p. 9: CAUTION! Even if the Landlord fails to make repairs, the tenant generally *must continue to pay rent*. If the tenant does not pay rent, the landlord can consider it a breach of the lease and take action.

p. 9: CAUTION! A tenant cannot claim constructive eviction if the unit's condition results from another tenant or individual's act; the condition must result from the landlord's actions. The unit cannot be merely "uncomfortable," it must be completely uninhabitable. For example, inoperable air conditioning for three days or air conditioning that does not meet the tenant's comfort standards will probably not be considered constructive eviction.

p. 10: *Can a tenant change the locks?* Typically, the lease will state that the tenant cannot change locks without the landlord's permission. If the lease is silent about changing locks, then technically the tenant may change locks without the landlord's permission and not give the landlord new keys. However, the tenant must give the new keys to the landlord or restore the lock to its original condition upon vacating the unit. If the tenant does neither, the landlord may deduct the replacement cost for the lock from the security deposit.

p. 12: *What if the tenant stays in the unit after a lease expires?* It is best to negotiate the new lease before the old lease expires. If the lease expires, the landlord can require that the tenant immediately sign a new lease with new terms or vacate. If a new lease is not signed, and the landlord continues to accept monthly rent, a tenancy-at-will is created and the terms of the original lease still apply except the landlord can only terminate or change the terms with a sixty (60) day notice and the tenant can only terminate with a thirty (30) day notice.

p. 14: What if you allowed a friend to move into a house you own only until he can find another place to live, but he is still there? Even though you did not charge rent, you may have created a landlord tenant relationship when you gave your friend the right to possess and use the property. A tenancy-at-will was created if the right was not restricted to a specific end date. To end the tenancy, you must give a sixty (60) day notice to vacate. If you want to allow your friend to remain but wish to begin charging rent, you have to give a sixty (60) day notice.

p. 14: Tender Defense: A tenant may be able to avoid eviction by paying all rent the landlord alleges is owed plus court costs. The amount owed should be stated on the dispossessory affidavit and the tenant must offer payment within seven (7) days of receiving the dispossessory affidavit. The landlord is required to accept the payment up to once a year. If the landlord accepts payment, the tenant must file an answer within the seven (7) days that the landlord accepted payment. If the landlord refuses payment, the tenant should file an answer stating that tender was offered, but refused. If a court finds the landlord refused a proper tender, the court can order the landlord to accept payment and allow the tenant to remain in possession if the tenant makes payment within three days of the court's order. See O.C.G.A. § 44-7-52.

p. 15: No hearing? The tenant may not get a hearing if she did not file an answer and assert valid defenses. Therefore, a tenant should make sure to assert all valid defenses in her answer and not wait to raise issues at the hearing.

p. 15: The general rule is that when a landlord evicts a tenant and takes possession, the lease is terminated and the tenant does not owe future rent.

p. 18: What if the owner of my mobile home fails to make payments? Unfortunately, the mobile home can be repossessed. If the mobile home was repossessed while still containing the tenant's personal property, the tenant should contact the person who owned the mobile home to determine how to reclaim any personal property. Georgia law sets requirements on when the personal property inside a motor vehicle can be disposed. See O.C.G.A. § 44-14-411.1.

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