

1 SB397
2 110004-7
3 By Senator Barron
4 RFD: Judiciary
5 First Read: 17-FEB-09

1 SB397

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4 ENROLLED, An Act,

5 Relating to landlord and tenant agreements pursuant
6 to the Uniform Residential Landlord and Tenant Act; to amend
7 Sections 35-9A-121, 35-9A-141, 35-9A-303, 35-9A-421, and
8 35-9A-461, Code of Alabama 1975; to provide further for
9 territorial application, defined terms, landlord access,
10 noncompliance by the landlord, remedies for noncompliance with
11 the rental agreement and failure to pay rent; non-curable acts
12 or omissions by a tenant or occupant; remedy after termination
13 of a rental agreement; remedies for periodic and holdover
14 tenancy; and remedies related to landlord's action for
15 eviction, rent, damages, and other relief for breach of a
16 rental agreement.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 35-9A-121, 35-9A-141, 35-9A-303,
19 35-9A-421, and 35-9A-461 of the Code of Alabama 1975, are
20 amended to read as follows:

21 "§35-9A-121.

22 "This chapter applies to and is the exclusive remedy
23 to regulate and determine rights, obligations, and remedies
24 under a rental agreement, wherever made, for a dwelling unit
25 located within this state. No resolution or ordinance relative

1 to residential landlords, rental housing codes, or the rights
2 and obligations governing residential landlord and tenant
3 relationships shall be enacted or enforced by any county or
4 municipality , and any such resolution or ordinance enacted
5 both prior to or after January 1, 2007, is superseded by this
6 chapter. Notwithstanding these provisions, a county or
7 municipality may enact and enforce building codes, health
8 codes, and other general laws that affect rental property
9 provided that such codes equally affect similarly situated
10 owner-occupied residential property.

11 "§35-9A-141.

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

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

19 "(2) "building and housing codes" include any law,
20 ordinance, or governmental regulation concerning fitness for
21 habitation, or the construction, maintenance, operation,
22 occupancy, use, or appearance of any premises or dwelling
23 unit;

24 "(3) "day" means calendar day unless otherwise
25 specified;

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

5 "(5) "eviction" means a civil action filed as a
6 remedy, where a tenant has lawfully taken possession of a
7 premises and fails or refuses, after the termination of the
8 possessory interest of the tenant, to deliver possession of
9 the premises to anyone lawfully entitled or to his or her
10 agent or attorney;

11 "(6) "good faith" means honesty in fact in the
12 conduct of the transaction concerned;

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

16 "(8) "organization" includes a corporation,
17 government, governmental subdivision or agency, business
18 trust, estate, trust, partnership or association, two or more
19 persons having a joint or common interest, and any business
20 entity;

21 "(9) "owner" means one or more persons, jointly or
22 severally, in whom is vested (i) all or part of the legal
23 title to property or (ii) all or part of the beneficial
24 ownership and a right to present use and enjoyment of the

1 premises. The term includes a mortgagee only when in
2 possession;

3 "(10) "person" includes an individual, individuals,
4 or organization;

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

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

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

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

22 "(15) "single family residence" means a structure
23 maintained and used as a single dwelling unit. Notwithstanding
24 that a dwelling unit shares one or more walls with another
25 dwelling unit, it is a single family residence if it has

1 direct access to a street or thoroughfare and shares neither
 2 heating facilities, hot water equipment, nor any other
 3 essential facility or service with any other dwelling unit;
 4 and

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

8 "§35-9A-303.

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

16 "(b) A landlord may enter the dwelling unit without
 17 consent of the tenant only in the following circumstances:

18 "(1) In case of emergency.

19 "(2) Pursuant to court order.

20 "(3) As permitted by Sections 35-9A-422 and
 21 35-9A-423(b).

22 "(4) At reasonable times and with prior notice as
 23 provided in subsection (c), to show the premises to a
 24 prospective tenant or purchaser, if a landlord provides the
 25 tenant separate from the rental agreement a general notice

1 signed by the tenant for the right to access for such a
2 purpose within four months of the expiration of the rental
3 agreement, and only in the company of a prospective tenant or
4 purchaser.

5 "(5) When the landlord has reasonable cause to
6 believe the tenant has abandoned or surrendered the premises.

7 "(c) A landlord shall not abuse the right of access
8 or use it to harass the tenant. Except as provided in this
9 section or unless it is impracticable to do so, the landlord
10 may show the premises at any reasonable time by giving the
11 tenant at least two days' notice of the landlord's intent to
12 enter and may enter only at reasonable times. Posting of a
13 note on the primary door of entry to the residence of the
14 tenant stating the intended time and purpose of the entry
15 shall be a permitted method of notice for the purpose of the
16 landlord's right of access to the premises.

17 "(d) If a landlord provides separate from the lease
18 in a general notice or an advance schedule in excess of two
19 days for repairs, maintenance, pest control, or for service
20 relating to health or safety, whether such notice is for a
21 specific time or within a designated time period, then no
22 additional day's notice is required to access the premises. A
23 tenant may consent to provide a landlord with access to the
24 premises with less than two days' notice.

25 "§35-9A-421.

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

15 "(b) If rent is unpaid when due , the landlord may
16 deliver a written notice to terminate the lease to the tenant
17 specifying the amount of rent and any late fees owed to remedy
18 the breach and that the rental agreement will terminate upon a
19 date not less than seven days after receipt of the notice. If
20 the breach is not remedied within the seven days, the rental
21 agreement shall terminate. If a noncompliance of rental
22 agreement occurs under both subsection (a) and this
23 subsection, the seven-day notice period to terminate the lease
24 for nonpayment of rent in this subsection shall govern.

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

6 "§35-9A-461.

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

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

18 "(c) Service of process shall be made in accordance
19 with the Alabama Rules of Civil Procedure. However, if a
20 sheriff, constable, or process server is unable to serve the
21 defendant personally, service may be had by delivering the
22 notice to any person who is sui juris residing on the
23 premises, or if after reasonable effort no person is found
24 residing on the premises, by posting a copy of the notice on
25 the door of the premises, and on the same day of posting or by

1 the close of the next business day, the sheriff, the
2 constable, the person filing the complaint, or anyone on
3 behalf of the person, shall mail notice of the filing of the
4 unlawful detainer action by enclosing, directing, stamping,
5 and mailing by first class a copy of the notice to the
6 defendant at the mailing address of the premises and if there
7 is no mailing address for the premises to the last known
8 address, if any, of the defendant and making an entry of this
9 action on the return filed in the case. Service of the notice
10 by posting shall be complete as of the date of mailing the
11 notice.

12 "(d) Notwithstanding subsection (a) of Section
13 12-12-70, any party may appeal from an eviction judgment
14 entered by a district court to the circuit court at any time
15 within seven days after the entry thereof. The filing of a
16 timely post-judgment motion pursuant to the Alabama Rules of
17 Civil Procedure shall suspend the running of the time for
18 filing a notice of appeal. In cases where post-judgment
19 motions are filed, the full time fixed for filing a notice of
20 appeal shall be computed from the date of the entry in the
21 civil docket of an order granting or denying such motion, or
22 the date of the denial of such motion by operation of law
23 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
24 Upon filing of an appeal by either party, the clerk of the
25 court shall schedule the action for trial as a preferred case,

1 and it shall be set for trial within 60 days from the date of
2 the filing of the appeal. In eviction actions, an appeal by a
3 tenant to circuit court or to an appellate court does not
4 prevent the issuance of a writ of restitution or possession
5 unless the tenant pays to the clerk of the circuit court all
6 rents properly payable under the terms of the lease since the
7 date of the filing of the action, and continues to pay all
8 rent that becomes due and properly payable under the terms of
9 the lease as they become due, during the pendency of the
10 appeal. In the event of dispute, the amounts properly payable
11 shall be ascertained by the court.

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

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

20 "(e) If an eviction judgment enters in favor of a
21 landlord, a writ of possession shall issue upon application by
22 the landlord. Notwithstanding Rule 62 of the Alabama Rules of
23 Civil Procedure, the automatic stay on the issuance of the
24 writ of possession or restitution shall be for a period of
25 seven days. If a tenant without just cause re-enters the

1 premises, the tenant can be held in contempt and successive
2 writs may issue as are necessary to effectuate the eviction
3 judgment.

4 "(f) In the event that the landlord is placed in
5 possession under a writ of restitution or possession, and on
6 appeal the judgment is reversed and one entered for the tenant
7 or the proceeding on appeal is quashed or dismissed, the
8 circuit court may award a writ of restitution or possession to
9 restore the tenant to possession as against the landlord, but
10 not as against a third party. The issuance of the writ rests
11 in the discretion of the appellate court, and the circuit
12 court, in all cases, may direct writs of restitution or
13 possession to be issued by the trial court when, in the
14 judgment of the circuit court, such writ is proper or
15 necessary."

16 Section 2. The provisions of this act are severable.
17 If any part of this act is declared invalid or
18 unconstitutional, that declaration shall not affect the part
19 which remains.

20 Section 3. This act shall become effective August 1,
21 2009, following its passage and approval by the Governor, or
22 its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB397

Senate 30-APR-09

I hereby certify that the within Act originated in and passed
the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Passed: 14-MAY-09

By: Senator Barron