

1 HB65
2 202629-2
3 By Representative Pringle
4 RFD: Commerce and Small Business
5 First Read: 04-FEB-20
6 PFD: 01/28/2020

SYNOPSIS: Under current law, landlords are required to make certain reasonable efforts to notify a tenant prior to initiating an eviction.

This bill would clarify what efforts must be made by a landlord to give notice to a tenant prior to commencing an eviction.

A BILL
TO BE ENTITLED
AN ACT

Relating to evictions; to amend Sections 6-6-332 and 35-9A-461, Code of Alabama 1975, to clarify what efforts must be made by a landlord to give notice to a tenant prior to commencing an eviction.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 6-6-332 and 35-9A-461, Code of Alabama 1975, are amended to read as follows:

"§6-6-332.

1 "(a) Upon complaint being made, the district judge
2 shall issue a notice to the party against whom the complaint
3 is made to the following effect:

4 The State of Alabama,
5 _____ County.

6 To _____

7 You are hereby commanded to be and appear before me,
8 at _____ on the _____ day of _____, 2__, to answer to, and
9 make defense against a complaint exhibited to me against you
10 by _____, for a forcible entry and detainer (or for unlawful
11 detainer, as the case may be).

12 Witness my hand this _____ day of _____, 2__.

13 _____ District Court Judge

14 "(b) The notice shall be served on the defendant at
15 least six days before the return day of the process and may be
16 served on the defendant anywhere within the state. The return
17 of the service thereof by any sheriff or constable of the
18 state is sufficient, or proof of the fact may be made before
19 the judge. A copy of the notice shall be personally served
20 upon the defendant at the premises. If the sheriff or
21 constable is unable to serve the defendant personally, service
22 may be had by delivering the notice to any person who is sui
23 juris residing on the premises, or if ~~after reasonable effort~~
24 no person is found residing on the premises, by posting a copy
25 of the notice on the door of the premises, and on the same day
26 of posting or by the close of the next business day, the
27 sheriff, the constable, the person filing the complaint, or

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

10 "(c) Upon complaint being made and upon request of
11 the plaintiff to have the notice served on the defendant by a
12 process server other than a sheriff or constable, the court
13 shall, if the process server is qualified under Rule 4.1
14 (b) (2) of the Alabama Rules of Civil Procedure, order the
15 clerk to deliver the notice to the process server for service.

16 "§35-9A-461.

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

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

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

20 "(d) Notwithstanding subsection (a) of Section
21 12-12-70, any party may appeal from an eviction judgment
22 entered by a district court to the circuit court at any time
23 within seven days after the entry thereof. The filing of a
24 timely post-judgment motion pursuant to the Alabama Rules of
25 Civil Procedure shall suspend the running of the time for
26 filing a notice of appeal. In cases where post-judgment
27 motions are filed, the full time fixed for filing a notice of

1 appeal shall be computed from the date of the entry in the
2 civil docket of an order granting or denying such motion, or
3 the date of the denial of such motion by operation of law
4 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
5 Upon filing of an appeal by either party, the clerk of the
6 court shall schedule the action for trial as a preferred case,
7 and it shall be set for trial within 60 days from the date of
8 the filing of the appeal. In eviction actions, an appeal by a
9 tenant to circuit court or to an appellate court does not
10 prevent the issuance of a writ of restitution or possession
11 unless the tenant pays to the clerk of the circuit court all
12 rents properly payable under the terms of the lease since the
13 date of the filing of the action, and continues to pay all
14 rent that becomes due and properly payable under the terms of
15 the lease as they become due, during the pendency of the
16 appeal. In the event of dispute, the amounts properly payable
17 shall be ascertained by the court.

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

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

26 "(e) If an eviction judgment enters in favor of a
27 landlord, a writ of possession shall issue upon application by

1 the landlord. Notwithstanding Rule 62 of the Alabama Rules of
2 Civil Procedure, the automatic stay on the issuance of the
3 writ of possession or restitution shall be for a period of
4 seven days. If a tenant without just cause re-enters the
5 premises, the tenant can be held in contempt and successive
6 writs may issue as are necessary to effectuate the eviction
7 judgment.

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

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.