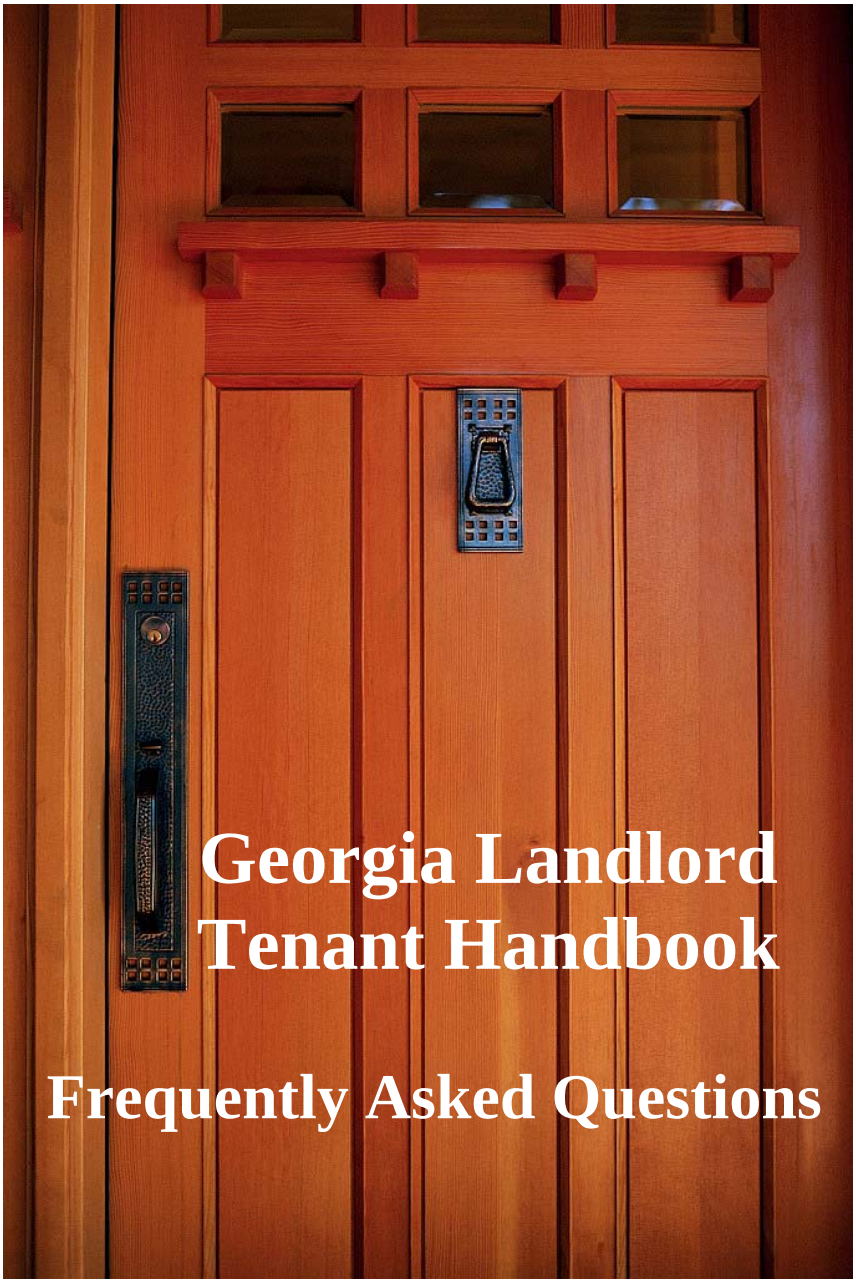

Georgia Landlord Tenant Handbook

Frequently Asked Questions

Tenth Edition - Reprinted June 2012

Provided by
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60 Executive Park South
Atlanta Georgia 30329

TABLE OF CONTENTS

Introduction	3
Additional Resources	4
Landlord Tenant Basics	6
Leases and Rental Agreements	15
Lease Termination and Renewal	23
Utility Issues	29
Security Deposits	35
Rent Payments and Other Charges	42
Repairs and Maintenance	46
Evictions and The Dispossessory Process	54
Military Service Members As Tenants	68
Foreclosure and Tenants	72
Renting With Roommates	75
Rental Of Manufactured Housing and Mobile Homes	77
Lead Paint and Environmental Issues	78
Questions Asked About Fair Housing	82

INTRODUCTION

This Handbook is designed to answer common residential landlord-tenant questions. The information in this Handbook does not apply to commercial or business leases. The facts determine the proper solution to each problem. Because the facts of each case are different, the answers contained in this Handbook are given in general terms 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 June 2012 and, as such, may not reflect the status of Georgia law. Before relying on the 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 governmental agency that has the power to intervene in a dispute between a landlord and tenant to force one or the other party to behave in any particular manner. A landlord or tenant who cannot resolve a dispute on their own would need to use the courts, either directly or through a lawyer, to enforce their legal rights.

A single copy of the Handbook is provided free of charge. The Handbook is also available on the internet at the Georgia Department of Community Affairs Website, www.dca.ga.gov under Publications, and at www.legalaid-ga.org.

ADDITIONAL RESOURCES

If you are seeking to locate housing or wish to publicize your rental unit's availability you can use the website www.GeorgiaHousingSearch.org or call (877) 427-8844 a program that provides a listing of affordable rental units and other helpful resources.

Free or reduced cost legal assistance for low-income persons is available through either the Atlanta Legal Aid Society, www.atlantalegalaid.org or the Georgia Legal Services Program, www.glsp.org. Legal Information on a variety of topics, including landlord tenant law, can be found at www.legalaid-ga.org.

Offices	Service Areas	Contact Information
Albany	Baker, Ben Hill, Calhoun, Clay, Crisp, Decatur, Dooley, Dougherty, Early, Grady, Miller, Mitchell, Quitman, Randolph, Seminole, Terrell, Turner, Wilcox, Worth	131 W. Oglethorpe Boulevard P.O. Box 2578 Albany, Georgia 31702 (229) 430-4261 (800) 735-4271
Atlanta	The Legal Aid Society serves: Clayton, Cobb, DeKalb, Fulton, and Gwinnett	151 Spring Street, NW Atlanta, Georgia 30309 (404) 524-5811 Clayton County Office (404-524-5811) Cobb County Office (770-528-2565) DeKalb County Office (404-377-0701) Fulton County Office (404-524-5811) Gwinnett County Office (678-376-4545)
Augusta	Burke, Columbia, Glascock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Screven, Taliaferro, Warren, Washington, Wilkes.	209 7th Street, Suite 400 Augusta, Georgia 30901 (706) 721-2327 (800) 248-6697
Brunswick	Appling, Atkinson, Bacon, Brantley, Camden, Charlton, Clinch, Coffee, Glynn, Jeff Davis, McIntosh, Pierce, Ware, Wayne	1607 Union Street Brunswick, Georgia 31520 (912) 264-7301 (877) 808-0553
Columbus	Chattahoochee, Harris, Lee, Macon, Marion, Meriwether, Muscogee, Pike, Schley, Stewart, Sumter, Talbot, Taylor, Troup, Upson, Webster	233 12th Street, Suite 910 The Corporate Center P.O. Box 176 Columbus, Georgia 31901 (706) 649-7493 (800) 533-3140

Offices	Service Areas	Contact Information
Dalton	Catoosa, Chattooga, Dade, Murray, Whitfield, Walker	219 West Crawford Street P.O. Box 2004 Dalton, Georgia 30720 (706) 272-2924 (888) 408-1004
Gainesville	Banks, Barrow, Cherokee, Clarke, Dawson, Elbert, Fannin, Forsyth, Franklin, Gilmer, Habersham, Hall, Hart, Jackson, Lumpkin, Madison, Oconee, Oglethorpe, Pickens, Rabun, Stephens, Towns, Union, and White	705 Washington Street, NW, Suite B-1 Gainesville, Georgia 30501 (770) 535-5717 (800) 745-5717
Macon	Baldwin, Bibb, Bleckley, Butts, Crawford, Dodge, Hancock, Houston, Jasper, Johnson, Jones, Lamar, Laurens, Monroe, Montgomery, Peach, Pulaski, Putnam, Telfair, Treutlen, Twiggs, Wheeler, Wilkinson	241 Third Street Macon, Georgia 31201 (478) 751-6261 (800) 560-2855
Piedmont	Bartow, Carroll, Coweta, Douglas, Fayette, Floyd, Gordon, Greene, Haralson, Heard, Henry, Morgan, Newton, Paulding, Polk, Rockdale, Spalding, Walton	104 Marietta Street, Suite 240 Atlanta, Georgia 30303 (404) 894-7707 (800) 822-5391
Savannah	Bryan, Bulloch, Candler, Chatham, Effingham, Emanuel, Evans, Liberty, Long, Tattnall, Toombs	6602 Abercorn Street Suite 203 Savannah, Georgia 31405 (912) 651-2180 (888) 220-8399
Valdosta	Berrien, Brooks, Colquitt, Cook, Echols, Irwin, Lanier, Lowndes, Thomas, Tift	1101 North Patterson Street Valdosta, Georgia 31601 (229) 333-5232 (800) 546-5232

LANDLORD TENANT BASICS

What laws govern the landlord tenant relationship?

Georgia law does not regulate the details of the landlord-tenant relationship but does set forth the general rights and responsibilities of landlords and tenants. The Georgia Legislature passes laws, which govern the rental of residential rental property in this state. These laws are contained in the Official Code of Georgia, Title 44, Chapter 7. The Georgia Supreme Court and the Georgia Court of Appeals decide cases that clarify how laws apply. Court decisions create a second type of law: case law. A court deciding a landlord tenant dispute looks at both the laws contained in the Code and case law. Your public library may have copies of the Official Code of Georgia and the decisions of the Georgia Supreme Court and Court of Appeals. You can access the Official Code of Georgia through the internet at www.legis.state.ga.us. You can access decisions of the Georgia courts through their website at www.gaappeals.us and www.gasupreme.us. You can also access information on landlord tenant law and other housing issues at www.legalaid-ga.org.

If you are a landlord or tenant, not participating in a federal government-housing program, there are only a few federal laws that apply to you. Federal law requires a landlord to notify renters of lead paint and to avoid discrimination in housing. Federal law also governs the treatment of military service members and tenants living in foreclosed properties. In addition to federal and state law, the management of residential rental property is regulated by local housing codes. A landlord should contact their local county commission or city hall to find out if their community has a housing code and how it is enforced.

What are the responsibilities of a landlord?

If you are a landlord, you are responsible for keeping the unit in a safe and habitable condition, making repairs, selecting tenants, and collecting rent from tenants. Once a property is leased, the tenant has the right to use, occupy and enjoy the premises in accordance with the lease or rental agreement. A written lease, which clearly sets out the duties of both the landlord and the tenant, provides the best protection for both parties. The actions of a landlord are controlled by the terms of the lease and applicable federal, state, and local law. There are a variety of books and websites that describe in general terms the advantages and disadvantages of becoming a landlord. You might also wish to consult with an attorney or real estate agent, experienced in managing rental property, for help in selecting a lease and understanding the rights and responsibilities of a landlord.

What is the difference between a tenant and a boarder?

Your legal rights depend on whether you are a tenant or boarder. A tenant is one who pays rent for the exclusive right to use the premises, usually for a defined period. A boarder is one who pays a fee for the right to use a room and receive services, generally for a short period of time. To determine if you are a tenant or boarder the court will look at:

- Does the written agreement refer to itself as a lease and to payments as rent;
- The length of time you have lived at the residence;
- Whether the room is the only residence you have;
- Whether you are residing there temporarily or for a long period of time;
- How often you pay rent: if you pay daily, you are likely a guest or boarder;
- Whether services such as linen service, switchboard service and maid service are provided;
- Whether you own the furnishings in the room;
- Whether the amount you pay includes tax; and
- Whether the person you pay has a business license.

If you are not a tenant but a guest or boarder, you have limited protection under the law. If the hotel or boarding house owner wants a resident to move, he need only give notice equal to the time for which the occupancy is paid. For example if payment is made weekly, one-week notice to vacate is all that would be required. However, if payment is past due or the boarder has violated the occupancy rules, advanced notice is not required and the boarder can be required to leave immediately.

Is the landlord responsible for maintaining rental property and complying with local housing codes?

Yes. Many communities have local housing codes. These codes are local ordinances or laws that require owners of real property, including landlords, to maintain the property and make any necessary repairs. These codes typically require that residential property meet the minimum standards established in the code. The landlord's responsibility is not only to deliver the rental property to the tenant in compliance with the housing codes but also to maintain compliance with the housing codes throughout the lease term.

I own rental property. I have been notified that the county government has declared my property unfit for occupancy. What does this mean?

Georgia law gives county and city governments the authority to order repairs, close, or demolish structures which are unfit for human habitation and dangerous or detrimental to health and safety. The county or city government may exercise this authority by establishing local ordinances. You should contact the county or city government for a copy of their housing code. Georgia law recognizes the following conditions as threatening health and safety:

- Defects which increase the hazard of fire, accidents, or other calamities
- Lack of adequate ventilation, light or sanitary facilities
- Disrepair and structural defects
- Uncleanliness

When a county or city has enacted a housing code, it can also establish procedures to enforce the code. Georgia law requires that the owner receive notice of the housing code violation and an opportunity for a hearing. If violations are found, the owner can be ordered to repair, vacate, close, or demolish the property. If the owner fails to comply with the order to correct the code violations, the local government may "condemn" the property declaring it unfit for human habitation and prohibiting its use as a residence. A tenant living in condemned property is justified in treating the landlord as having broken the lease and moving 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.

Are landlords required to provide smoke detectors?

Effective June 1, 1994, an apartment, house, or condominium must contain a smoke detector. The smoke detector is to be located on the ceiling or wall at a point centrally located in the corridor or other area giving access to each group of rooms used for sleeping. If the dwelling has more than one story, detectors are required on each story including cellars and basements, but not including uninhabitable attics. The detectors must be listed and meet the installation requirements of NFPA 72. The law is enforced by local building and fire code officials. Tenants are required to keep the smoke detector in good working order. Local fire departments often distribute free smoke detectors.

Are landlords required to provide appliances such as refrigerators or stoves for use in their rental property?

There is no state law requiring a landlord to furnish appliances such as refrigerators or stoves. Tenants should check the lease to see if such appliances are to be supplied under the terms of your lease agreement. It is important to inspect the unit prior to signing a lease to see what appliances are included and to see if they work properly. Local city or county housing codes may require the landlord to supply appliances.

What responsibility does a landlord have to provide parking for residents of his rental property?

Georgia law does not regulate the number of parking spaces that a landlord must provide but city or county ordinances may. Unless the lease states that parking will be provided, the landlord is not responsible for ensuring that the tenant has a parking place.

My landlord had my car towed. I was not parked in my authorized parking spot. Can he do this? How do I get my car back?

The landlord or an authorized person may have removed cars that are parked on the complex's property if the car is trespassing or is parked in an unauthorized location. Under Georgia law (O.C.G.A. §44-1-13) before towing a car the property owner must have posted a notice on the property stating that unauthorized vehicles may be removed at the owner's expense, the location where the car can be recovered, the cost to recover the car, and the form of payment accepted. The car may only be removed by a towing and storage firm licensed by either the Public Service Commission or the local government and must have a secured impoundment lot. No storage fee is charged for the first 24-hour period, which begins at the time the car is removed. Owners of residential rental property containing no more than four units are not required to post the required notice.

Can the landlord limit visitors to the tenant's rental unit?

Generally, a landlord generally cannot limit visitors as long as they do not disturb other residents or violate the lease. However, a tenant should be careful not to have the same visitor spend the night too many times in a row without the landlord's permission. The landlord may consider the visitor an unauthorized occupant. Certainly, a visitor should not get mail or other deliveries at the rental unit. A tenant should not allow nonresidents to receive mail at the tenant's rental address since it will appear that they are living in the unit, which may be a violation of the lease.

Is there a limit on the number of persons who can reside in a one-bedroom apartment?

Georgia law does not regulate the number of persons who can reside in rental housing. However, county or city ordinances may impose such limits. Many cities located near universities or colleges have established occupancy limits. The landlord can choose to limit the number of persons who can live in the rental unit and this should be stated in the lease. Any occupancy limit should be based on the number of bedrooms, the age of the occupants, and the physical layout of the unit. Generally, an occupancy policy of two persons in each bedroom is considered reasonable. However, any occupancy limit set by the landlord must not discriminate against families with children.

What information can a landlord request on an application? Can landlords charge an application fee?

Yes, a landlord can charge an application fee. This fee is usually not refundable if the application is denied. Georgia law does not limit the information a landlord can request from applicants. The following information is commonly requested on rental applications: name, social security number, current landlord's name; address and phone number, employer's name; address and telephone number, applicant's job title and annual income, employment information going back five years, relative references, identity of nearest relative, and consent for both a credit report and a criminal record check. Credit reporting agencies can provide information about you to your prospective landlord without your consent.

I am considering renting an apartment that requires that I purchase "Renter's Insurance." What is rental insurance and why would I need it?

It is likely you have valuable personal items, which would be expensive to replace if they were stolen or damaged. A renter's insurance policy will compensate the tenant for the damage or loss of personal property such as furniture, electronics, clothing, and other items you use each day. Typical policies will compensate you for items damaged or loss due to fire, theft, or water. The details depend on the policy you purchase. Your landlord should have insurance on the

structure you rent but that policy does not protect your personal property. In addition, you have potential legal liability if someone is injured in the apartment, even if you are not the property owner. Many insurance policies for renters also provide liability coverage, which protects the tenant if someone is accidentally injured in the rental unit. There is no law that requires tenants to purchase renter's insurance but a landlord is not prohibited from requiring tenants to purchase renter's insurance. The lease should be read carefully to determine what insurance, if any, a tenant is required to have.

Do landlords have to reveal to possible tenant that a murder occurred in the apartment? Does the landlord have to notify other residents if he rents a unit to a convicted child molester?

Owners and their agents are required to respond truthfully if they are asked direct questions about the property's past. Georgia law (O.C.G.A.§ 44-1-16) directs owners, or an owner's agent, in a real estate transaction to answer truthfully to the best of their knowledge if asked about the property's prior occupancy by a diseased person or whether the property was the site of a homicide, felony, suicide, or a death by accidental or natural causes. If answering such questions would disclose information that is prohibited from release under state or federal law, the landlord may not answer. No legal cause of action is created by the failure to disclose such information. Georgia requires that certain sexual offenders report their location and that the local sheriff make that information public. It is the sheriff's duty to maintain a public registry of the name and address of offenders. For a list of sex offenders go to the Georgia Bureau of Investigations website at http://bit.ly/gbiList

I own rental property located near a creek which floods. Occasionally the floodwaters reach my rental property. Do I need to notify my tenants about the possibility of flooding?

Yes, Georgia law (O.C.G.A. § 44-7-20) requires that owners notify possible tenants, prior to the signing of the lease, if the property has a propensity for flooding. If flooding has damaged any portion of the rented living space three times during the preceding five-year period, the owner must give the tenant written notice that the apartment is prone to flooding before the lease

is signed. An owner who fails to provide the required notice can be held liable for damage to the tenant's personal property caused by flooding during the lease term. Flooding is defined as water that enters the unit from a river, stream, drainage ditch, or pool of collected rainwater.

Is my landlord allowed to enter the apartment without notifying me first?

A tenant has the right to the exclusive use of the lease premises. Unless the lease states otherwise, the landlord can only enter the property if entry is necessary to cure a dangerous condition, prevent damage to the unit, or respond to an emergency on the premises. There is no legal requirement that a landlord notify a tenant prior to entering the unit in such emergency circumstances.

Can my apartment be shown to prospective tenants during the last month of my occupancy without my permission?

You should read your lease to see if there is language giving the landlord the right to enter the apartment. If the lease does not give the landlord the right to enter the apartment, a tenant could legally refuse the landlord entry except in case of an emergency. However, it is best for the landlord and tenant to discuss the matter and reach a mutually acceptable solution. A reasonable solution might be for the landlord to provide advance notice, such as twenty-four (24) hours before entering the apartment. To avoid problems in the future it is best to have the lease state under what circumstances the landlord can enter the property and what notice the tenant is to receive before the landlord's entry. If the lease gives the landlord the right to enter the rental unit, the tenant should read to see if the lease requires the landlord to notify the tenant before entering. If the lease does not contain a requirement of notice prior to entry, the tenant can request such language be added before the lease is signed.

My former landlord sent me a letter saying that I owed $500. I wrote the landlord stating that I disagreed with this statement. The landlord has now turned the matter over to a collection agency. What do I do?

If the landlord has turned the debt over to a collection agency and the debt is on your

credit report, you can write to the landlord and the credit bureau disputing the debt and informing them that the information given them by the landlord is incorrect. It may be helpful to send the credit agency a copy of any inspection lists or other letters that you wrote to your landlord concerning the debt. Under the Fair Credit Reporting Act, a person may have incorrect or incomplete information corrected without charge. If a tenant disputes information in their credit report, the credit bureau must investigate it within a reasonable period of time unless it believes that the dispute is irrelevant or frivolous. If after investigation a disputed item is found to be inaccurate or can no longer be verified, the credit bureau must delete it. If the investigation does not resolve the dispute, the tenant may file a statement of up to one hundred (100) words with the credit bureau. This statement becomes part of the credit report unless the credit bureau has reasonable grounds to believe it is frivolous or irrelevant. The Federal Trade Commission has information on debt collection on its website at www.ftc.gov. In most cases, the credit-reporting agency may not report negative information that is more than seven years old or a bankruptcy that is more than ten years old.

A tenant wants to review the file the landlord maintains on the unit. Must the landlord allow a tenant to review their rental file?

No, those files are the property of the landlord or management company. The tenant has no legal right to demand access to these files. However, if the file is used by the landlord against a tenant in court, the tenant can access the information through court procedures.

I operate a public housing authority. Do different rules apply to my actions?

Yes. Federal law determines when a housing authority may terminate a tenant, the notices the tenant must receive, and the administrative process that must be followed by the housing authority before it can go into court and seek possession. Georgia law requires that before a public housing authority can file a dispossessory affidavit, it must demand possession of

the property in writing separate from the federally required written notice of lease termination but the demand and termination notice can be delivered at the same time.

LEASES AND RENTAL AGREEMENTS

What is a lease and why is it important?

A lease is a contract between the landlord and the tenant. The lease sets forth the rights and responsibilities of both the landlord and the tenant. The lease allows the tenant to occupy and use, for a specific period of time, land and the buildings on the land. In return, the tenant pays a specified rent. The lease may set forth other duties and responsibilities of the landlord and tenant. Once the parties sign the lease both are bound by its terms. Landlords should select their leases with care. Before selecting a lease, a landlord may wish to consult with an attorney who regularly handles landlord and tenant matters. Georgia law (O.C.G.A. § 44-7-2) prohibits leases for residential dwellings from containing language which

- Seeks to waive, assign, transfer, or otherwise weaken the landlord's legal responsibility to keep the rental property in good repair or lessen his responsibility for any damages caused by his failure to keep the property in good repair;
- Attempts to avoid having the property comply with local ordinances;
- Seeks to exempt the landlord from complying with the Georgia Security Deposit Act;

- Would allow the landlord to regain possession of the property without first going through court, as is legally required; or
- Requires the tenant to pay the landlord's attorney fees caused by the tenant's breach of the lease unless the lease also requires the landlord to pay the tenant's attorney fees caused by the landlord's breach of the lease.

A lease that contains the above-prohibited language is still a valid lease but the prohibited lease language is void and unenforceable.

What should a lease contain?

The lease is a contract. Unless the lease contains legal provisions, a court will require the landlord and tenant to do what the language of the lease provides. The answer to most landlord-tenant questions can be found in the language of the lease between the parties. A comprehensive lease should include the following:

- Names of the tenant, the landlord or the landlord's agent, and the person or company authorized to manage the property;
- A description of the rental unit, identifying the appliances included in the unit and the heat and cooling sources. If it is a house, a description of the property;
- The time period for which the property is rented and the date the lease ends;
- The amount of rent and the date it is due, including any grace period, late charges, or return check charges;
- How rent is to be delivered to the landlord and whether payment may be made by check, money order, or cash;
- How to terminate the agreement prior to the expiration date and what, if any, charges will be imposed;
- The amount of the security deposit;
- Utilities furnished by the landlord and, if the landlord charges for such utilities, how the utility charge will be calculated;
- Amenities and facilities on the premises which the tenant is entitled to use such as swimming pool, laundry, or security systems;
- Rules and regulations such as pet rules, noise rules, and whether or not breaking such rules can be grounds for eviction;
- Identification of parking available, including designated parking spaces, if provided;
- Pest control, if provided, and how often;
- How tenant repair requests are handled and procedures for emergency requests; and
- Under what circumstances the landlord can enter the property and with what notice to the tenant.

What are the advantages and disadvantages of a written lease?

The advantages of a written lease are certainty and clarity. The lease sets the rent for the lease term. Unless the language of the lease states otherwise, rent cannot be increased during the lease term. A lease spells out the obligations of the tenant and landlord. If there are any disputes between the tenant and the landlord, the lease represents what was agreed upon by the parties. When there is not a written lease, there are often misunderstandings between the tenant and landlord.

The primary disadvantage of a lease is that it binds the tenant to the premises for a specified amount of time. Therefore, if you are planning to live in the unit for a very short period of time, you may not want a lease. Leases can be made for any length of time, so you could ask the landlord if the lease could be written for the time period you expect to live in the unit. If you may have to move due to a job transfer during the term of the lease, you can ask that the lease include a provision allowing you to terminate without penalty due to employment reasons. Similarly, if you intend to buy a house during the rental period you may ask that the lease include a provision allowing you to terminate without a penalty upon closing on a home. If the lease does not contain language allowing the tenant to terminate before the end of the lease, the tenant cannot end the lease before its expiration without penalty. Georgia law does not allow a tenant to terminate their lease because they are buying a home or being transferred by their employer.

Are not all leases "standard?" What difference does it make whether the tenant reads the lease before signing it?

Although many leases are similar, there is no such thing as a "standard" lease provided or approved by any government agency or court. Lease agreements differ from landlord to landlord. Therefore, it is very important to read the lease carefully before signing it. The lease is

a legal document, which defines the relationship between the landlord and the tenant. If there are provisions in the lease that you do not understand, get help. Ask someone you trust to explain what the language means. Be careful of leases that contain the following:

- An extremely long lease term with penalties for early termination
- Automatic rent increases during the lease term
- References to rules that are not provided to you
- Any attempt by the landlord to make you responsible for repairs
- Language which provides that the tenant pays the landlord for utilities rather than being billed by the utility provider
- Provisions which require 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
- Lease terms which state that the landlord can evict you without going into court and using the dispossessory process

Before the lease is signed, a tenant may request changes to the lease. Some landlords will agree to the changes, others will not. If signed, both the landlord and tenant will be required to comply with the lease terms.

Is the length of the lease term important?

Yes. For example, a written lease agreement for longer than one year must describe the leased property clearly and in detail to be valid. Leases for one year or less are not required to contain such a detailed description of the property being leased. A lease that is for a period of more than five years does not normally create a landlord tenant relationship but instead creates an estate for years. An estate for years is taxable and can be recorded with the title to the land in the local court.

What happens at the end of the lease?

Depending on the language of the lease, the lease terminates, extends, or renews at the end of the lease term. The lease terminates if there is not a renewal or an extension. Once the lease terminates, the landlord may seek possession of the rental property from the tenant.

Language in a lease that lengthens the tenancy for an additional period under the same terms and conditions provides for an extension of the lease. If there is an extension, there is usually no need for a new lease to be signed. The lease may provide for an 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

Language in a lease that states that the tenancy can be extended at the end of the current lease term but requires the signing of a new lease provides for a renewal. Some leases have language that gives the tenant an option to renew the lease. Under such a lease 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 will treat the lease as terminated on the expiration of the lease term.

Does a tenant have rights when there is not a written lease?

A tenant who occupies rental property with the landlord's consent and makes rent payments without a written lease is a "tenant-at-will." Georgia landlord tenant laws, including eviction laws and security deposits laws, still apply. A tenant-at-will has the right to occupy and use the rented property according to the agreement between the landlord and the tenant. When the lease does not state when the tenancy will end, as usually happens when there is not a written lease, Georgia law (O.C.G.A. §44-7-7) specifies the notice the landlord must give to terminate or

change the original rental agreement. A landlord who has a tenant-at-will must give a sixty (60) days notice to the tenant before seeking to terminate the agreement or change any term of the original agreement. This means the landlord must give a tenant-at-will sixty (60) days notice before imposing a rent increase or requesting that the tenant move. A tenant-at-will must give a thirty (30) day notice to the landlord to terminate or change the original agreement. To protect your legal rights any and all notices should be in writing. When a tenant-at-will fails to pay rent the landlord is not required to give the sixty (60) days notice, the landlord can demand possession and immediately file a dispossessory affidavit seeking possession in court.

I am a tenant at will and I wish to terminate my lease. What notice do I have to give my landlord?

As a tenant-at-will, you are required to give your landlord a thirty (30) day notice of your intention to terminate the rental agreement. It is best to for the tenant to provide this notice in writing. If a tenant-at-will gives notice to the landlord on July 15 of his intention to vacate the rental property on August 1 the lease will not terminate until August 15. The tenant is still responsible for the full August rent which came due before the lease terminated.

When should the tenant get a copy of the lease?

It is a good idea to get a copy of the lease and any house rules before signing so you will have a chance to review them. At a minimum, a tenant should be given a copy of the lease and any rules referred to in the lease after it has been signed. Because the lease spells out the responsibilities of the tenant and landlord, it is important for both parties to have a copy of the lease to answer any questions. Keep your lease in a safe place.

When should the tenant be shown the apartment they will be renting?

Some landlords will show potential tenants a model unit and tell them the unit they rent will look like the model. The tenant should insist on seeing the actual apartment they will be renting before signing a lease. A tenant should not sign a lease before inspecting the unit they will be renting.

The resident manager of my apartment complex refuses to provide me with the name and address of the property owner. How can I find out the name and address of the property owner?

Georgia law (O.C.G.A. § 44-7-3) requires that when the lease is signed the tenant be given the name and address of the property owner or his authorized agent for purposes of receiving legally required notices. The tenant should also be given the name and address of the person authorized to manage the property. If after signing the lease, there is a change in the designated individuals or their address, the landlord should give notice to the tenant within thirty days of the change. Such notice may be sent to each individual tenant or posted in an obvious place such as the complex office or the community bulletin board. You may be able to find the owner of the property or the designated agent for service through the internet using the Georgia Secretary of State's website at http://sos.georgia.gov/corporations/. If you were not given the required information when you signed the lease, the person who signed the lease for the landlord becomes the agent of the landlord for receiving notice, and performing the obligations of the landlord.

After I signed the lease with my landlord, he gave me a two page list of "House Rules." I have not moved into the unit yet. Do I have to follow these rules?

You need to read your lease. It is likely that your lease contains language in which you agreed to follow the landlord's House Rules Depending on the language of your lease, if you violate a House Rule, your landlord could terminate your lease and file action to evict you. Most

courts will uphold a landlord's rules as long as they are reasonable. You should have been given a copy of the House Rules before you signed your lease. Read the rules carefully and if you object to any of them contact your landlord to discuss the matter before you move-in. If you strongly disagree with the House Rules, you could ask your landlord to let you out of your lease since you were not aware of them when you signed your lease.

My neighbors are constantly playing loud music. I no longer enjoy living in my apartment because of the constant noise? What can I do?

The tenant should first contact the landlord and report the problem. The tenant may contact the police, if the neighbor's conduct would constitute disturbing the peace. If the conduct continues, the tenant needs to continue requesting that the landlord address the disturbing conduct. If the landlord refuses to address the problem, the tenant can ask to be released from the lease or transferred to another unit. A tenant has the right to be free from the conduct of other tenants, which causes disruption, inconvenience, or damage. The neighbors' conduct must be considered disruptive to an ordinary, reasonable person. Therefore, tenants who are hypersensitive to noise or who have unreasonable expectations would have difficulty proving that the noise and activities complained of violate their right to use and enjoy their unit. This would be especially true if the noise and activities do not bother other tenants. Tenants who are using and enjoying their apartment in normal, everyday activities are not creating a nuisance.

I have a one year lease that prohibits pets. For the past three months, I have kept a dog in my apartment. The landlord was aware that I brought a dog into the apartment and, initially, told me it was all right. Last week I received a letter from my landlord giving me thirty days to get rid of my dog and reminding me that the lease prohibits pets. Do I have to get rid of my dog?

Yes. The fact that your landlord chose to allow you to have a dog and did not enforce the lease term prohibiting pets does not mean that the landlord can never enforce that lease term. To enforce the suspended lease term, the landlord need only give you notice that he wants you to

comply with the no pet rule in your lease. If you fail to remove the pet, the landlord may terminate your lease and seek to evict you. If your landlord had agreed in writing to allow you to keep the dog and waive the no pet lease term, he would not be able to later change his mind and ask you to remove the dog

I have lived in my unit for two months. Today my landlord told me my girlfriend was visiting too often and that she could no longer come to my unit. Can my landlord do this?

A landlord cannot limit a tenant's visitors unless they are disturbing other tenants or violating the terms of the lease. However, a tenant should be careful not to allow a visitor to stay overnight too many times in a row because it may appear to the landlord that the visitor has moved into the unit, which might be a violation of the lease. It is best to talk with your landlord about why he objects to your girlfriend's visits. If your landlord is objecting to your girlfriend's visits because he is prejudiced due to her race, color, religion, sex, national origin, family status, or disability that is discrimination and violates the Fair Housing Act.

LEASE TERMINATION AND RENEWAL

Is there a seventy-two (72) hour period after signing a lease during which the landlord or tenant can change their mind and get out of the lease?

No, there is not a "cooling off" period in Georgia, which would enable you to change your mind after signing a lease. If you decide not to move into the unit after signing the lease, the landlord may impose early termination penalties against you.

The apartment complex where I live changed owners last month. The new owners have notified all tenants that the old leases are cancelled and have given us new leases to sign within thirty (30) days or vacate. The new leases have higher rents and different rules. I had five more months on my old lease. Can the new owners do this?

Generally, a person who buys rental property does so subject to any existing leases with current tenants. This means that the new owner, who purchased your rental property, must abide by your lease's terms. Any change or modification to the existing lease, which the new owner

wishes to make, must be done in accordance with the terms of the existing lease. Unless an existing lease contains language allowing the owner to terminate or modify, the lease may not be changed prior to its expiration. If you want to remain a tenant under your lease, you should notify the new owner in writing that you expect him to honor your current lease. On the other hand, a tenant can consider the new lease as an offer of a new tenancy and agree to its terms and conditions by signing the new lease. If signed, the new lease will create a new landlord tenant relationship. Different rules apply when a property is purchased at a foreclosure sale.

My lease will expire in two months. I want to stay in the same apartment. What should I do?

First, you need to read your lease paying special attention to paragraphs that discuss renewal, extension, or expiration of the tenancy. If your lease does not answer your question, contact your landlord and discuss the matter with him or her. If you and the landlord cannot reach an agreement on a new lease or an extension of your existing lease, you should plan to move when your lease ends. At the end of the lease term, a landlord can choose not to extend the existing lease or can offer the tenant a new lease with different terms, including an increase in rent. Georgia law does not limit the amount of rent a landlord can charge or the amount by which rent can be increased. If you remain in your unit after your lease expires, the landlord can require that you immediately sign a new lease with new terms or vacate. It is best to negotiate your new lease before your old lease expires.

After my lease expired, the landlord continued to accept my monthly rental payments, what rights do I have?

After expiration of the old lease, if the landlord accepts rent and permits the tenant to remain, a tenancy-at-will has been created. The terms of the original lease would still apply to the tenancy except that the landlord can terminate or change the terms with a sixty (60) day notice. The tenant could terminate the lease with a thirty (30) day notice to the landlord.

I have received notice that my landlord is not going to renew my lease. According to the terms of the lease, the landlord must provide a thirty (30) day notice that the lease will not be renewed. Does the landlord have to give me a reason for not renewing my lease?

No, a private landlord is not required to give a reason for refusing to renew a lease unless the lease so requires. The landlord can refuse to renew a lease for any reason but cannot discriminate based on race, color, disability, religion, nationality, or because children are in the household. A private landlord merely has to give the tenant notice of non-renewal or other notice as required under the lease. If there is no written lease, the landlord has to give the tenant a sixty (60) day notice to terminate the tenancy.

My lease is not up for another six months. I am being transferred by my employer. What can I do to terminate the lease? What penalties are involved?

The answer to this question will be found in your lease. Generally, a tenant is not allowed to terminate their lease because they are transferred by their employer or because they are purchasing a home. First, read the lease carefully. Your ability to get out of the lease depends on the language of your lease and the willingness of the landlord to allow you to terminate the lease early. There may be a provision that allows you to terminate prior to the lease's expiration. If so, you will need to follow the terms of that lease provision. For example, you may be required to give a thirty (30) day notice and forfeit your security deposit. Some leases impose additional penalties for early termination and require longer notice periods. You are responsible for paying rent during the notice period. Your lease is not terminated until the notice period expires and you vacate the property.

I notified my landlord that I would be terminating the lease early. According to the lease, I must pay the equivalent of one month's rent in order to terminate the lease early. Am I required to pay the early termination fee even if the landlord did not lose a month's rent?

Where the lease identifies an amount that must be paid if the lease is terminated before it expires, a tenant can generally be charged that amount. If the parties to the lease agree what the damages for early termination will be, the damages are said to be liquidated. Such lease terms

will be enforced if the damage caused by the termination is difficult to estimate and the agreed amount is a reasonable estimate of the landlord's loss and the expenses caused by the termination. The early termination fee should not be so high that it penalty for terminating. In the alternative, some leases may not allow for an early termination and may require the tenant to pay the rent for the months that remain under the terminated lease.

My tenant has a one year lease but moved out after six months. Can I sue my tenant for rent due for the remaining six months?

The general rule in Georgia is that if a tenant abandons rental property, before the lease expires, the landlord is not required to mitigate damages by re-letting the apartment. The landlord can allow the abandoned unit to remain vacant and hold the tenant responsible for rent that comes due under the lease. This rule applies unless the landlord accepts the tenant's surrender of the property or the tenant successfully terminates the lease by following the language of the early termination provision of the lease. The landlord does not accept the surrender merely be accepting the keys or by entering onto the property. However, if the landlord retakes possession of the unit and re-rents the unit or allows others to live in the unit, he cannot hold the tenant responsible for rent owed under the lease.

My lease expired two months ago, but the landlord allowed me to continue at the same rent without signing a new lease. Now, the landlord has decided that I must sign a new lease with a higher rent or move out. The landlord gave me only two weeks' notice to decide. What does the law say about this situation?

Since the landlord accepted rent after the original lease expired, a tenancy-at-will was created. The tenant continues to occupy the unit under the same terms and conditions as in the expired lease. However, the landlord must give a sixty (60) day notice prior to any change in the tenancy, including increasing rent, an offer of a new lease, or termination of the rental arrangement. The landlord is not required to give this notice in writing unless the lease requires it. However, it is better practice to provide written notice. Likewise, the tenant must provide a

thirty (30) day notice to the landlord if the tenant wants to terminate the tenancy. In this case, the landlord should have given the tenant sixty (60) days to sign the new lease or vacate.

I moved out of my unit three months before my lease expired. The lease states that I have to pay my landlord an early termination fee of $1000. Is this legal?

Early termination fees are enforceable as a valid liquidated damage clause if (1) the injury caused by breach of the lease is difficult or impossible to estimate accurately; (2) the parties intend the amount to cover damages and not act as a penalty; and (3) the amount is a reasonable estimate of the landlord's loss due to the early termination of the lease. If these requirements are not met, then the early termination fee cannot be enforced against the tenant.

I need to move, but the landlord will not let me terminate my lease early. Can I sublet my apartment to someone else for the remaining six months of the lease?

You need to read your lease carefully and see if it contains language that prohibits you from leasing your apartment to another. Often the lease will require the landlord’s permission prior to subletting. When someone other than the original tenant occupies the premises, they are called a subtenant. A subtenant has the right to use and occupy the rental property but that right comes 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. The landlord can elect to treat the subtenant as his tenant for the unexpired term or the lease. The landlord's election must be an express recognition of the subtenant or be implied from affirmative acts and conduct. The landlord's acceptance of rent from the subtenant does not alone establish that the landlord elected to treat the subtenant as his tenant so as to release the original tenant from liability under the lease.

Who is a subtenant?

A subtenant is a person who has the right to use and occupy rental property leased by a tenant from a landlord. A tenant can sublet rental property to a subtenant, but often must obtain

the prior agreement of the landlord. The original tenant remains responsible for the payment of rent to the landlord and any damages to the property caused by the subtenant.

I have decided to remodel my apartments and rent to a higher income market. How much notice to vacate must I give the current tenants?

The length of the termination notice depends on whether or not you have a lease with the tenants. If you do have a lease, its provisions for termination would apply. For example, a thirty (30) day notice to vacate would be appropriate only if the lease specifically provided for a thirty (30) day termination notice. If there is not a termination provision in the lease, you must wait until the lease expires. If there is no lease, the landlord must give the tenant-at-will a sixty (60) day termination notice.

Utility Issues

I am considering apartments. What should I consider besides rent in determining how much I can afford?

When determining how much you can afford when renting an apartment, do not forget about the cost of establishing and paying for utility service. Researching utility costs and reviewing your budget is a good idea before signing a lease for a new apartment.

When renting an apartment, which is responsible for setting up electric, natural gas, telephone, and water service. Who is responsible for the monthly charges?

The rental agreement should explain who is responsible for establishing and paying for utility services. Generally, the landlord will establish service if the utility bills are included in the monthly rent. On the other hand, if utilities are not included in the rent, tenants are responsible for contacting the utility companies directly to establish service and paying their bills. If this is the case, the tenant may have to pay deposits to the utility companies to have service turned on.

I am renting an apartment and am setting up utilities. How much should I budget for security deposits and connection costs?

The Georgia Public Service Commission regulates the amount Georgia Power can charge for deposits. The Public Service Commission limits cash deposits for establishing or reestablishing credit to no more than two-and-one-half twelfths of the estimated charge for the service for the next twelve months, which is about 21% of the annual cost of electric service. The deposit is calculated based upon what the company expects your usage for the upcoming 12-month to be taking into consideration variables such as your past usage, weather for the period, cooling and heating degree days, and other factors. The Public Service Commission also regulates most natural gas providers and limits security deposits to no more than $150.00 for any

consumer who primarily uses gas for personal family or household purposes. For more information, go to the Public Service Commissions website at www.psc.state.ga.us.

Utilities are included in my rent. Is that legal?

When utilities are included in the rent, the tenant does not pay the utility company directly and instead the monthly rental amount includes payment for the utilities. The utilities are provided by the landlord and the costs are being paid from the rent. It is important that the tenant understand which utilities are being paid by the landlord. Every lease should identify who is responsible for paying for services such as water, electric, garbage, natural gas, telephone, internet service, and cable television.

What is master metering and how does it work?

Master metering is where the electric, natural gas, or water usage of multiple tenants is measured using the same meter. This only occurs when the utility service is in the landlord's name. For example, when an apartment is master metered for electric usage, the landlord would receive one electric bill for all tenants measured through the one electric meter.

I rent an apartment in a complex with more than 20 units. My unit does not have a water meter. My landlord bills me for water. I think I am paying more than my fair share of the water bill. What can I do?

Under Georgia law (O.C.G.A. §12-5-180.1) your landlord can have only one water meter for the apartment complex and charge tenants for water usage and waste-water service, plus a reasonable fee for establishing, servicing, and billing for the water service. The amount billed includes water used by the tenants and water used in the complex's common areas. The amount the landlord collects from each tenant must not exceed the amount the landlord is charged for water and waste-water service for the building and the common areas, plus the landlord's fee.

The tenant is to be told how the water bill will be calculated before signing the lease.

I am renting a house. When I tried to have my water service turned on, I was told by the water company that I would first have to pay the $100 bill the prior tenant left. Do I have to pay that bill?

No, under Georgia law (O.C.G.A. §§ 36-60-17) no public or private water provider can refuse to supply water to a new residential tenant, with a separate water meter for each residential unit, because the prior occupant owes money to the water provider. The water provider is to seek payment of unpaid charges from the person who incurred the charges, not the current occupant.

I am renting a house. I moved in and found the water is supplied by a well. I am worried that the well water is unsafe. What can I do?

If your water is supplied by a private well, the owner of the well is responsible for testing and treating the water to avoid any possible health risks. If you suspect there may be a problem with your well water, you need to notify your landlord. You can request that the landlord have the well tested. Some local health departments test private well water for free. Phone numbers for your local, county, or state health department are available under the "health" or "government" listings in your phone book. The Georgia Small Water Supplies Program, housed in the State Environmental Health Office, provides a resource for information on wells ranging from installation of new wells, maintenance of wells, and the abandonment of wells. They can be contacted at 404-657-6534 or http://health.state.ga.us/programs/envservices/WellWater/privatewells.asp.

I rent a home and the water coming out of the pipes looks brown and smells strange. My landlord says that the water comes from the city and is not his responsibility. Is that correct?

If you are concerned about the quality of your water, you should have it tested by a state-certified laboratory. Testing will identify contaminants and the extent of the problem. You can

have your household water tested through your local county extension office found at www.caes.uga.edu/extension/office.cfm. It is not necessary for everyone to have his or her water tested. Public and municipal water supplies are routinely tested and must meet standards established by the Environmental Protection Agency (EPA); therefore, these sources usually do not need to be tested unless contamination is suspected.

I rented an apartment. The landlord has the electric service connected and the account is in his name but the bill comes to my rental address. My landlord wants me to open the bill and pay the electric company each month? Do I have to do that?

If the bill is not in your name, it is a good idea to consider switching the bill to your own name as this is helpful in establishing your credit. If the electric service is not in your name, you can make the payment to the utility company. Even if the electric service is not in the tenant's name, the landlord should not interfere with the electric service except in emergency situations.

I am considering renting a house that has a septic tank. Should I be worried?

If your water is not supplied by a city or county drinking water system, chances are you have a septic tank. Properly installed and maintained septic tanks normally function well for many years. Septic tanks require reasonable usage and maintenance to ensure efficient operation. Prior to renting, ask the previous tenant or the landlord when the septic tank was last emptied and if it has been repaired recently. Any person who cleans or removes the contents of septic tanks must have a permit, which is renewed annually. You should check for the following signs that the septic tank may have a problem: foul odors in the home or yard, wet or spongy places in the yard, and slow draining toilets or sinks. The University of Georgia Cooperative Extension Service has more information on septic tanks on its website www.fcs.uga.edu/ext/housing/.

I live in an apartment with a balcony. I want to install a satellite dish. Can I?

The Federal Communications Commission adopted the Over-the-Air Reception Devices Rule, which permits tenants to place antennas that meet size limitations on property they rent and that is within their exclusive use or control, such as a balcony or patio. The rule prohibits restrictions that impair a tenant's ability to install, maintain, or use an antenna covered by the rule. The rule does allow landlords to enforce restrictions needed for safety or historic preservation. The rule covers "dish" antenna that are one meter or less in diameter and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite. For more information on this rule, go to www.fcc.gov.

I am a landlord. My tenant left owing a water bill. Will the water company put a lien on my property if I do not pay the bill?

No, a public or private water supplier should not impose a lien on the property for water service delivered to the property unless the owner incurred the charges. Similarly, providers of natural gas, sewage service, or electricity cannot place a lien on property for the cost of services provided unless the owner of the property incurred the charges.

My rent includes utilities. I have paid my rent on time but my landlord is not paying the electric bill. What will happen if the landlord fails to pay the electric bills?

If you receive your electric service from a Public Service Commission regulated electric provider such as Georgia Power or Savannah Electric Power Company, special rules apply to you and can be found at www.psc.state.ga.us. Under these rules, tenants in a multi-family dwelling (not a single family home) in which the landlord pays for the electric service should receive 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. You may want to organize with the other tenants to pay the electric 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 utility company.

Does a landlord have to maintain utility service in a vacant apartment?

No, but a landlord may have an agreement with the utility company to have the electric, natural gas and water service placed under his or her name until a new tenant moves in. This will ensure that service is not interrupted. This may be especially important during the winter months to keep water lines from freezing.

What happens if several people live in an apartment but the person whose name is on the utility bill moves out?

One of the people still living in the rental unit should apply for utility service. The utility may require proof that the previous customer no longer lives at the location. The utility can disconnect service to a new customer if the previous customer, who owes money on the bill, continues to live at the address. Additionally, the previous tenant is responsible for closing the account in his or her name and runs the risk of additional charges on the account if the services are not canceled.

My tenants have not paid rent in several months. Can I turn off their utilities?

No. Under Georgia law (O.C.G.A. § 44-7-14.1), a landlord who wants to force tenants to move must go through court and follow the dispossessory process. A landlord who terminates or suspends a tenant's utility service prior to the final judgment in a dispossessory action has broken the law and may be subject to a fine up to $500.

SECURITY DEPOSITS

What is a security deposit and why do I have to pay it?

The security deposit protects the landlord if the tenant vacates without making required payments or damages the unit. If the tenant gives proper notice and vacates without owing any rent or damages, the landlord must return the security deposit to the tenant within thirty (30) days. Under Georgia law (O.C.G.A. §44-7-30) a security deposit is money paid by the tenant to the landlord and includes damage deposits, advance rent deposits, and pet deposits. Amounts identified in the lease as the security deposit are refundable to the tenant. The security deposit does not include nonrefundable fees, or amounts applied toward payment of rent, services, or utilities

What other types of deposits may be required by the landlord?

In addition to the security deposit, the landlord may require an application fee, cleaning fee, pet deposit, advance rent deposit, or other fees. Before paying any of these deposits or fees, a tenant should get in writing what the payment is for and under what terms the payment will be refunded. Pet deposits and advance rent deposits, which are refundable under the lease, are considered part of a security deposit under the Georgia law. Application fees or deposits to hold an apartment until you actually sign a lease are not considered security deposits and are usually not refundable, should you choose not to move into the unit. You should ask if the holding deposit or application fee will be applied to your first month's rent or security deposit if you sign a lease and move in. Always get a receipt for any deposit or fee that you pay. If the fee is refundable, ask the landlord to put this information on the receipt.

What is the landlord required to do with the security deposit?

Under Georgia law, a landlord who owns more than ten (10) rental units, including units owned by their spouse and/or children, or who employs a management agent is required to place the security deposit in a bank escrow account, used only for security deposit funds. The landlord must give the tenant written notice of the location where the security deposit is held but is not required to disclose the account number. As a substitute for having an escrow account, the landlord may post a bond with the superior court clerk of the county in which the rental property is located.

Is a landlord required to give the tenant the interest earned on the security deposit?

No. Georgia law does not require the landlord to place the security deposit in an interest-bearing account nor does the law require that interest earned be paid to the tenant. However, the tenant and landlord may agree that the landlord will provide interest earned on the security deposit and, if agreed upon, this should be reflected in the lease.

What happens to the security deposit when the apartment complex changes owners?

The former owner, to whom the security deposit was paid, is responsible for making appropriate arrangements for the security deposit. The security deposit may be transferred to the new owner, making the new owner responsible, or the former owner may 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 against the former owner to recover the security deposit. Before bring a lawsuit, the tenant should write to the former owner and the current owner requesting information on the security deposit.

When is the landlord required to return the tenant's security deposit?

Under Georgia law (O.C.G.A. §44-7-34), all landlords, regardless of the number of units they own, must return the security deposit within thirty (30) days after the 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 thirty (30) days 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 do I need to know about security deposits before I sign a lease?

Georgia law (O.C.G.A. §44-7-33) establishes an inspection procedure, the purpose of which is for the landlord and tenant to agree on the pre-occupancy condition of the rental unit. Georgia law requires that before the tenant pays a security deposit and moves into the rental unit the landlord must give the tenant a complete list of any existing damages to the unit that is signed by both the landlord and tenant. The tenant is to be given an opportunity to inspect the rental unit to determine if the list is accurate or if additional defects need to be added to the list. The tenant must sign the list or specify in writing on the list the items in dispute and then sign.

The move-in inspection requirement applies to landlords who owns more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent regardless of the number of units owned. Under Georgia law (O.C.G.A. §44-7-36), landlords who own fewer than ten (10) units and who manage the units themselves are not required to follow the inspection procedures but may find the process helpful. Landlords are required to conduct a move-in inspection are not allowed to withhold the security deposit if they failed to perform the inspection when the tenant moved into the unit.

I am a landlord and my tenant is moving out. What do I need to do at the end of the tenancy?

Within three (3) business days after the tenant vacates, 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 is entitled to inspect the premises within five (5) business days after the termination of their occupancy. The tenant must sign the move-out inspection list or specify in writing the items in dispute. It is best for the tenant to schedule to be present at the move-out inspection with the landlord. If the tenant does not dispute or challenge the damage listed on the move-out inspection, the tenant cannot contest the landlord's withholding of the security deposit to cover the damage. It is very important for a tenant to carefully read the move-out inspection report.

The move-out inspection requirement applies to landlords who owns more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent regardless of the number of units owned. A landlord covered by this law is not allowed to keep the security deposit if he failed to perform the required move-out inspection. Under Georgia law (O.C.G.A. §44-7-36), landlords who own fewer than ten (10) units and who manage the units themselves are not required to follow the inspection procedures but may find it helpful in establishing repair needs and responsibilities.

My tenants moved out without giving me their new address. How do I return the security deposit?

The security deposit and any statement, which accompanies it, must be mailed to the last known address of the tenant 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.

As a landlord what can I deduct from a tenant's security deposit?

All or part of the security deposit may be retained by the landlord as compensation for physical damage caused to the premises by the tenant, members of the tenant's household, pets, or guests. The tenant can be charged for damage caused by negligent or careless acts and for damages due to accident or abuse of the property. The landlord can charge the tenant for the loss caused by their damage. For example, if the tenant damaged a ten-year-old carpet so that it could 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. A landlord cannot retain a security deposit to cover normal wear and tear that occurs as a result of the tenant using the property for its intended purpose. A landlord can deduct from the security deposit unpaid rent, late charges, unpaid pet fees, and unpaid utilities which were the tenant's responsibility under the terms of the lease. If the tenant contracted for the rental property to be repaired or cleaned and those charges are not paid the landlord can retain the security deposit to cover those costs. The landlord can also keep the security deposit for damage caused by the tenant's early termination of the lease.

I moved owing two months' rent. My landlord has not returned my security deposit or sent me a letter explaining why. What can I do?

If you moved owing your landlord rent less than the amount of your security deposit, your landlord had the legal right to subtract the amount you owe from the security deposit but should return any excess money to you. If you owe more rent than the amount of your security deposit, your landlord can keep your full security deposit and sue you to recover the remaining rent. When the security deposit is held by the landlord to cover unpaid rent and not damages, the landlord should consider sending the tenant notice of the reason for the holding of the security deposit. The law does not require the landlord to send such a notice when the security deposit is held to cover unpaid rent. It is still a wise business practice to provide notice to the tenant when the security deposit is retained to cover the unpaid rent.

What happens if the landlord refuses to refund the security deposit even though the tenant satisfied the conditions for refunding the security deposit?

If the landlord refuses to refund the security deposit, the tenant may bring a lawsuit to recover the security deposit in the magistrate, state, or superior court where the landlord resides or where his designated agent for service resides. The tenant can sue 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 sue to recover amounts held by the landlord for damages, which 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.

Under Georgia law (O.C.G.A. §44-7-35), a landlord who owns more than ten (10) units or uses a third party to manage the units can be liable for three times the amount of the improperly withheld security deposit plus attorney fees. The landlord may not have to pay treble damages if the landlord shows that the withholding was not intentional and resulted from an error, which occurred in spite of procedures reasonably designed to avoid such an error.

My friend was visiting and accidentally burned a hole in the carpet with a cigarette. The landlord says I am responsible for the cost of the repairs and that it will be deducted from my security deposit. Can the landlord do this? How does a tenant know if the landlord is charging a reasonable amount for the repairs?

The tenant is responsible for damages to the premises caused by the tenant and the tenant's household members, guests, or visitors. The landlord can either deduct the charges from your security deposit when you move out or he can perform the repairs and bill you for any incurred cost. To determine the reasonableness of the charges, you could talk with reliable sources in the repair business and get estimates from them to compare to the amount charged by the landlord.

When I moved into the apartment, two windows did not have screens and two other screens were ripped. After I vacated the apartment, I received a letter from the management company saying they were going to deduct the cost of the screens from my security deposit. Can they deduct this cost from the security deposit?

Generally, the tenant is not responsible for defects that existed when the tenant moved into the unit. The purpose of a move-in inspection is to identify any defects existing at the time the tenant moves in. If you signed the move-in inspection list and failed to identify the missing and torn screens, you can be charged for the replacement and repair of those screens. The list from the move-in inspection establishes the condition of the apartment at the time you moved in. If you noted the condition of the screens on the list at the time of the move-in inspection, the cost of the repair should not be deducted from your security deposit.

After my tenant moved out, I discovered that he had damaged the unit. The cost of making the repairs is much greater than the amount of the security deposit. What can I do?

The answer depends on if the landlord owns more than ten (10) rental units, including units owned by his spouse and/or children, or if the landlord employed a management company to rent the unit. If either of these is true, the landlord must comply with the requirements of the Security Deposit Act before he can keep the tenant's security deposit or sue the tenant for the cost of damages above the amount of the security deposit. Such landlords are required to inspect the property at move-in and move-out and to provide the tenant with a list of any damages discovered. The landlord must also have placed the security deposit in an escrow account or posted the required bond with the court. Further, the landlord must provide the tenant with notice of his intent to keep the security deposit within thirty (30) days of the tenant's vacating the unit. Only when the landlord has met the requirements of the Security Deposit Act may he keep the security deposit and sue the tenant for any damages above the amount of the security deposit. A landlord who owns fewer than ten (10) units and did not employ a management company to rent the unit would only need to notify the tenant of his intent to keep the security deposit to cover the damages and that the tenant owes an additional amount for damages.

If an individual pays a security deposit on an apartment and the application is rejected, how long does the person holding the security deposit have to return the funds?

The landlord has a duty to return the security deposit within thirty (30) days after an application is rejected. If the amount paid was a deposit to keep the property off the market, it would generally not be refundable. The answer depends on the agreement between you and the landlord at the time of payment. Always get a receipt for any deposit or fee that you pay. If the fee is refundable, ask the landlord to put that information on the receipt.

I made an application to move into an apartment and gave the manager $100 as a deposit to hold the apartment. I have decided that I do not want the apartment. Does the landlord have to refund the deposit?

No, the landlord does not have to refund the deposit unless otherwise agreed upon by you and the landlord. The purpose of this deposit was to have the landlord take the property off the market while you decided whether or not to rent it. For this reason, it is usually not refundable. It is important any time you pay money to a landlord to get a written statement of the amount paid and under what circumstances it will be refunded to you.

RENT PAYMENTS AND OTHER CHARGES

Can a landlord charge different rents for the same type of unit?

A landlord can charge different rates for identical apartment units if both the landlord and the tenant agree to the rental rate. However, the landlord cannot base the difference in rent on the tenant's race, color, religion, sex, national origin, disability or family status. In addition, a landlord may not advertise rents at one rate and then rent them at a higher rate.

How often can a private landlord raise the rent in a year? Is there a limit on how much rent can be raised each time an increase is made? What protection do renters have against rent increases?

The answers to these questions will be found in your lease. If there is a lease, rent can only be increased as allowed under the terms of the lease. The lease determines whether or not and how often the landlord can raise the rent. The best protection against rent increases is a lease

that prohibits or restricts rent increases during its term. When a lease expires, the landlord can offer a new lease at an increased rent without prior notice. Georgia law does not limit the amount by which the rent can increase. If the tenant does not have a lease, the landlord must give a sixty (60) day notice before any rent increase. Such increases may occur as frequently as the landlord desires as long as the sixty (60) day notice is given.

My rent check for $500 was returned by the bank for insufficient funds. My landlord wants to charge me a $25 fee and $300 to cover the fees he incurred because my check bounced. Is this right?

Georgia law (O.C.G.A. § 13-6-15) permits a landlord, who received a check which was refused by the bank due to a lack of funds, to seek damages if the tenant does not pay the amount of the check and fees to the landlord within ten days of the landlord's written demand for payment. The landlord can charge a returned check fee, which may not exceed $30 or 5% of the amount of the check, whichever is greater. The landlord can also charge for the amount of any fees charged by the bank due to the check being dishonored. If the landlord files a lawsuit, he can recover up to double the amount of the check for damages, but no more than $500 plus any court costs. Additionally, if the check was written with the knowledge that it would not be honored by the bank, the check writer could face criminal prosecution

The landlord will not accept only half of the rent. Why not?

Under most rental agreements and leases, the tenant agrees to pay a specified amount of rent on a certain date. Failure of the tenant to pay the full rent by the due date is a breach of the lease. The landlord is not required to accept only part of the rent unless the landlord has established a pattern and practice of doing so by accepting partial payment in the past. If the landlord has accepted partial payments in the past, he cannot refuse partial payments without first giving notice that he will only accept full payment.

I paid the rent on the fifth of the month. The manager charged me a $15.00 late fee. Is there a grace period under Georgia law?

The date the rent is due should be stated in the lease or agreed upon by the landlord and tenant. There is no law, which specifies any grace period or designates a due date. Rather, a grace period is a matter of agreement between the landlord and tenant. A grace period allows the tenant extra time in which to pay the rent without breaching the lease or rental agreement. The landlord and tenant may agree to any grace period they choose or they can agree not to have a grace period. In addition, a grace period may be created based on the landlord's conduct of accepting late rent over the course of several months without charging a penalty. If a tenant fails to pay the rent by the required date, including the time allowed for a grace period, the landlord may charge a late fee if the late fee is provided for in the lease. If the lease does not allow for a late fee, the landlord is not allowed to impose such a fee. The amount of the late fee will be the amount agreed upon by the landlord and tenant in the lease itself.

I went to pay my rent today but my landlord refused to accept my payment. What happens now?

It is important that you have evidence to prove that your landlord refused your rent when you offered it to him when it was due. If your landlord refuses your rent, he cannot file a dispossessory against you for nonpayment. If the landlord does file a dispossessory against you, you will need to file an answer explaining to the court that you offered the full rent payment but it was refused. This does not apply if your rent was late when you offered it to the landlord or if you offered your landlord less than the full amount owed.

I recently moved in and offered my landlord the rent using a check but he said I would have to pay the rent in cash. Can my landlord require that I pay the rent in cash?

The language of the lease should state the form in which the rent is to be paid to the landlord. If the lease does not state that rent can be paid by check, the landlord can require that you make payment in cash.

My tenant and I disagree over the amount of rent due this month. The tenant gave me a check for part of the rent. Should I cash the check?

If the landlord accepts partial rent he cannot then seek to dispossess or evict the tenant for failure to pay the monthly rent. If the tenant fails to pay the remaining amount of rent due, the landlord would have to sue the tenant for payment but could not dispossess or evict the tenant for nonpayment. A landlord's acceptance of a tenant's check for less than the full rental amount, does not release the tenant from having to pay the disputed amount.

My tenant's rent was due on the fifth of the month and it was not paid. I want to file legal action to evict my tenant for failure to pay rent but I have not yet filed legal action. On the 15th the tenant offered me the rent and the late charges. Can I take the rent and file to evict for nonpayment?

No. The rent must be unpaid when the dispossessory action for nonpayment is filed with the court. The acceptance of late rent, even the acceptance of partial rent; will prevent the landlord from being able to evict a tenant for nonpayment.

My landlord gave me notice that his records show that I did not pay rent for July. It is now October. I paid rent for August, September and October and my landlord never mentioned that I owed him the July rent. Can my landlord evict me now because he claims I didn't pay July rent?

If you can find proof that you paid July's rent (cancelled check or money order receipt), you should provide copies to your landlord, along with a letter explaining your position. If your landlord remains convinced that you did not pay July's rent, he may be able to sue you to collect the money but cannot seek to evict you because of nonpayment. Your landlord's acceptance of rent in August, September and October prevents him from seeking to evict you for failing to pay July rent. Your landlord can sue you to recover the rent you owe him for the month of July but cannot use the dispossessory process.

REPAIRS AND MAINTENANCE

My lease agreement says that the tenant is responsible for all repairs. I thought the landlord was responsible for repairs?

In all residential leases, the landlord has a responsibility to keep the rental property in good repair. The lease should not require the tenant to make repairs or waive the landlord's responsibility for maintaining the property. Any lease provision, which makes the tenant responsible for repairs, is challengeable under Georgia law. The landlord is responsible for maintaining the building structure and keeping operational systems such as the electric, heating, and plumbing. The landlord is also responsible for repairing any appliances including heating and air conditioning included in the rental unit. A landlord is further responsible for meeting all local ordinances and minimum safety standards. The tenant should not be charged for repairs caused by ordinary wear and tear. Before a landlord can be required to make a repair, he must be given notice of the defect. The tenant should give the landlord written dated notice of the problem needing repair. The tenant should keep a copy as a record of any such notice.

The landlord promised to replace the carpet before I moved in. I have been living here for three (3) months. Now the landlord says that there was no agreement to replace the carpet and that he does not intend to replace it. What can I do?

The landlord may be responsible for fulfilling a verbal promise to replace the carpet. You would have to go to court, prove the promise was made, and ask the court to enforce the promise. If there are no witnesses to the verbal agreement and the landlord denies it, your ability to enforce the promise may depend on whether a judge believes you or your landlord. The better way to handle this type of situation is to have a written agreement of all promises to repair made by the landlord at the time you move in. The landlord will be less likely to deny making such promises when they are in writing.

When I moved into my apartment, the ceiling in the bathroom had a hole in it and needed to be repaired. I have asked the landlord to repair it but he won't. What can I do?

Defects in the unit that were obvious when the tenant inspected the unit before moving in are not the responsibility of the landlord to repair. If the damaged ceiling does not make the unit unsafe or unsanitary, the landlord is not required to repair it. If the tenant was aware of a defect at the time the lease was signed, the tenant waived the right to require the landlord to make the repair. This is why it is important for a tenant to carefully inspect the unit before signing the lease and to have the landlord put in writing any promises to make repairs. This does not apply to problems with the unit that the tenant would not be able to discover during an ordinary inspection of the unit prior to moving in.

I spoke to my landlord over a month ago about repairing a leak in the kitchen, but it still has not been done. What can a tenant do to force a landlord to make repairs?

First, you must notify the landlord of the condition needing repair. It is best to give a written dated notice informing the landlord of the problem. Keep a copy for yourself. Written notice provides evidence that the landlord was aware of the need for the repair. If it is not possible to give written notice, verbal notice is acceptable unless the lease requires written notice. Be sure the lease provision for notice is followed. If your landlord fails to make the requested repairs within a reasonable time after notice, you can either file a lawsuit against your landlord for damages caused by his failure to repair or, if your landlord sues you, counterclaim for damages due to the failure to repair. A tenant may also want to consider using repair and deduct. The tenant cannot stop paying rent even if the landlord fails to make repairs.

What is repair and deduct?

Georgia courts have held that when a landlord fails to respond to repair requests after a reasonable time, the tenant can have the required repair performed by a competent repair person at a reasonable cost and deduct the cost from future rent. In determining what is a reasonable

time for the landlord to make the repair, consider the seriousness of the condition and the nature of the repair. It is a good idea to notify the landlord in writing that you plan to use the "repair and deduct" remedy before you arrange for the repair to be done. Written notice is the best notice. The tenant should keep copies of all repair receipts and ask the repair person for a statement detailing the work performed and the problem corrected. Keep copies of this information. You may subtract these repair costs from your next month's rent by sending copies of the repair receipts along with the remaining amount of rent due to your landlord. When using "repair and deduct" the tenant must be careful and spend only a reasonable amount on the repair. The tenant should not improve the property, only repair the defect. The tenant should use only qualified and licensed workers to make the repairs. If you do not feel that "repair and deduct" will address your issue, you should consider contacting an attorney.

Are there any agencies that can force a landlord to make repairs?

There is no statewide agency that regulates the condition of residential rental housing. Some cities and counties have local ordinances or codes that regulate residential rental housing. These codes and ordinances are often enforced by the city or county. You may wish to contact the housing code inspector if you are in a city, town or county with a housing, building, or health and safety code. A landlord must comply with applicable local housing codes. If you are unaware whether or not your area has such codes, call the city hall or county courthouse and ask for the building inspector or the code enforcement office.

The home I was renting was severely damaged during recent flooding. I can no longer live in the home due to the water damage. Do I still have to pay rent to my landlord?

In general, a tenant should not have to pay rent if the rental unit is no longer habitable. When the tenant's unit is damaged, the tenant needs to notify the landlord of the damage verbally and in writing. If the tenant wants to moves, the tenant should offer to vacate the unit and ask

that the landlord provide a written document releasing the tenant from the lease.

If the landlord will not let the tenant out of the lease, the landlord must make any necessary repairs to the unit. Georgia law (O.C.G.A. §§ 44-7-13) states that in a residential lease "[t]he landlord must keep the premises in repair." This law requires that a landlord repair the unit damaged by a natural disaster.

Georgia courts have recognized that when a landlord fails to make repairs that are necessary that failure can make the residential unit uninhabitable. The landlord's failure to repair a unit damaged by flooding or any other natural disaster is a breach of his duty to the tenant to keep the unit in good repair. When a landlord breaches his duty to a tenant, it can result in what the courts call a "constructive eviction" which relieves the tenant from having to pay rent. It may be possible to argue that the destruction of the property, unrepaired by the landlord, is a constructive eviction, which would make the tenant no longer responsible for paying the rent.

What is a constructive eviction?

There are two elements necessary to show there has been a constructive eviction. They are: (1) That the landlord's failure to repair has made the unit an unfit place for the tenant to live, and (2) That the unit cannot be restored to a fit condition by ordinary repairs. Put another way, for damage to a residential unit to constitute a constructive eviction which would release the tenant from the obligation to pay rent, there must be a failure by the landlord to make repairs which leaves the unit unfit for the tenant to live in and not just uncomfortable for the tenant to live in. The tenant must also vacate the unit.

My lease requires the landlord to provide air conditioning. This summer it has been out of order for six weeks. I am paying for a service that is not being provided. Can I get an adjustment on the rent?

Landlords are not required to provide air conditioning. However, if a landlord rents a

unit with air conditioning, he must keep the air conditioners in good repair. Because your lease specifies air conditioning will be provided, you can use repair and deduct. You should first notify the landlord that the air conditioning is out of order, preferably in writing. If the landlord fails to repair within a reasonable amount of time, you can pay for the repair and subtract that cost from your next month's rent. You need to be careful not to spend more on the repair than you can deduct from your future rent. If you are a tenant-at-will, you should not spend more than two months rent since your landlord can terminate your lease with a sixty (60) day notice.

The roof on my unit is leaking. I notified the landlord and it was fixed but it took about three weeks to have the repairs completed. During that time, I did not have use of the room where the leak occurred. Shouldn't the landlord reduce the rent to compensate me for the time I could not use that room? What if my furniture or personal belongings were damaged?

The landlord is responsible for making repairs within a reasonable time after being notified of the need for the repair. If the landlord undertook and completed roof repairs within a reasonable time after notice, the landlord has fulfilled his repair responsibilities and compensation to the tenant for the loss of the room is unlikely. However, if the landlord unreasonably delayed in undertaking the repairs and the tenant suffered a loss due to the delay, the tenant may have a claim against the landlord for damages to personal property caused by the delay in repair. The tenant does have a responsibility to protect his property from damage.

Generally, a landlord will not be required to compensate a tenant for the temporary loss of a portion of the premises. This should not prevent the tenant from asking the landlord for compensation for their loss and inconvenience. The apartment complex is a business and you are its customer. A well-run apartment complex would want to maintain good tenant relations and ensure that you will want to remain there when your current lease expires. It is usually more successful for a tenant to negotiate for a future rent credit, than to ask the landlord to pay cash out of pocket. Use common sense and reasonableness when approaching the landlord seeking

compensation.

I do not have a written lease agreement and am renting an apartment month-to-month. The landlord is refusing to make repairs. Should I expect the landlord to repair the leaky roof and plumbing?

Yes, regardless of whether or not you have a written lease, your landlord is obligated under state law to make repairs. A tenant-at-will has the right to use repair and deduct but should keep in mind that the lease can be terminated with sixty (60) days notice. A tenant-at-will would be wise not to spend more on repairs than he can deduct from the rent in sixty (60) days.

Is pest control part of the maintenance responsibilities of the landlord?

No, unless your rental agreement provides that the landlord will supply pest control services. Read your lease to see if pest control is specified as the responsibility of the landlord. If it is not in the lease, pest control may not be required of the landlord unless local housing or health codes require it. If the pest problem in the apartment is severe, the landlord may be required to address the problem because the property's condition violates local health and safety ordinances.

My landlord will not repair a broken parking lot light. I am concerned about my safety. What can I do to force the landlord to make this repair?

Your landlord is obligated to exercise ordinary care in keeping the unit and access to the unit safe for tenants. The landlord has a duty to exercise ordinary care to prevent foreseeable third party criminal attacks on tenants. You need to give written notice of the problem to both the local property manager and the owner. In that letter you need to state that you are worried about your safety because of the defect. If a landlord has knowledge of unsafe conditions and does not repair, the landlord may be liable if someone is injured as a result of the danger. You should state how you want the landlord to remedy the situation. You should keep a copy of this letter for your own records. Beyond notifying your landlord, your options are limited. Repair

and deduct would not be an appropriate remedy since a tenant cannot authorize repairs on the common areas of the apartment. If you are living in a locality with a housing code, one option would be to complain to the building inspector or code enforcement officials at your city hall or county courthouse.

A tenant of mine changed the locks on the unit without my permission and will not give me a set of keys. The locks were not broken. What can I do to force the tenant to give me the keys?

Unless the lease prohibits the tenant from changing the locks without permission, the tenant is permitted to do so. Unless the lease states that the tenant must give the landlord a key, the tenant is not obligated to do so. When the tenant vacates the premises, the tenant either has to turn over the new keys or restore the lock to its original condition and return the appropriate keys. If the tenant neither turns over the keys nor restores the lock, the landlord may deduct the cost of replacing the lock from the security deposit and notify the tenant that this deduction will be made.

One of my tenants wallpapered a bathroom and did a very poor job. The tenant did not ask my permission. Can a tenant make changes to rental property without the landlord's permission? What remedy do I have?

As a general rule, a tenant is prohibited from substantially altering leased premises without the landlord's consent. A tenant may make minor alterations to the premises. Determining what may be a minor alteration is often difficult. It is best for a tenant to get written approval from the landlord before altering the rental property. A tenant is required to return the premises in the same condition as when received, subject to normal wear and tear. If the tenant fails to return rental property in such condition, the measure of damages is the reasonable cost of restoring the premises to their original condition. In these circumstances, if the lease so provides, the landlord could retain as much of the security deposit as is necessary to return the unit to its original state. If the security deposit does not cover the full amount of the repair cost,

the landlord can file suit against the tenant seeking to recover the amount spent on repairs. The landlord would need to comply with the requirements of the Georgia Security Deposit Act.

There is a tree on the property I am renting. I would like to cut it down because I fear it might fall on my home. Can I cut down the tree?

A tenant does not have the right to cut or destroy growing trees or make similar permanent changes to the property. A tenant has a right to use and enjoy the rental property but not to make changes in the property. You should contact your landlord informing him of your concerns about the tree, the danger you believe it poses, and the action you wish him to take. If the landlord fails to repair a dangerous condition, he may be held responsible for any damages, which result from the failure to remedy the problem.

My personal property was damaged by a fire that started in a vacant apartment next door. The fire department states the fire was caused by an electrical shortage. Can the landlord be held responsible?

Most leases state that the landlord is not responsible for loss or damage to the tenant's personal property. Despite this lease language, a court may hold the landlord responsible if the loss or damage was caused by the landlord's negligence. A tenant should first seek reimbursement for lost or damaged property by writing to the property manager. If that is not successful, write to the property owner. If you are not reimbursed and feel your landlord is responsible, you should talk with an attorney. If you cannot afford an attorney, you can file a claim against your landlord in the magistrate court where he lives.

The pipes in my apartment froze and when they melted they leaked. Who is responsible for the damage to the pipes and damage to my property?

If your water pipes freeze, then burst, your landlord most likely will not be responsible for the damage to your personal property. The landlord must repair the water damage to the apartment. You need to read your lease carefully. Most leases state that the tenant must take steps to keep pipes from freezing in winter, such as keeping the apartment heated or the water

running. Even if your lease says that your landlord is not legally responsible for damage to your personal property, a court may hold the landlord responsible if it is shown that it is the landlord's fault that the pipes burst.

I rented a house with land. The land is fenced. The fence was damaged. Does the landlord have to repair?

Yes, if the property rented includes the land on which the fence was located, the landlord is responsible for keeping it in good repair.

My landlord refused to repair a hole in my ceiling and my personal property was damaged. Can my landlord be held responsible?

You may have a claim for the loss of your personal property, if you promptly reported the repair, took action to protect your property and your landlord failed to timely repair. You should read your lease carefully to see what it provides. Prior to filing suit, you should write to your landlord explaining the situation and requesting reimbursement.

I have been in my apartment for several months and the carpet needs to be cleaned. Is this my landlord's responsibility?

No. It is important to distinguish between repairs, improvements, and maintenance. A repair returns a structure, system, or appliance to its original condition before it became damaged. An improvement is more than a repair; it is an act that makes the item better than it was originally when the tenant moved in. The landlord is responsible for repairs but not improvements. If the carpet needs cleaning due to the tenant's use, the tenant is responsible for its cleaning. Keeping the unit clean is considered maintenance and is the tenant's responsibility.

EVICTIONS AND THE DISPOSSESSORY PROCESS

My tenant has not been seen for several weeks; rent is paid. Can I consider the property abandoned?

When the tenant vacates the premises before the end of the lease term, it is a breach of the lease. If a tenant needs to move out before the end of the lease, they should tell the landlord

that they are moving and explain why. Sometimes, tenants move out without telling the landlord. In this situation the tenants are considered to have abandoned the rental unit. Often tenants will leave personal items in the unit when they leave. A landlord must be cautious in declaring rental property abandoned and taking possession. If a landlord mistakenly declares the unit to be abandoned and removes the tenant's property, the landlord may be held liable for the items the tenant lost and for a wrongful eviction. While the tenant's property may not seem valuable to the landlord, the tenant may consider it to be very valuable and could sue to recover for its loss. A landlord should not consider property abandoned while rent on the unit is paid. The landlord should also determine if the tenant is still paying to have utilities furnished to the unit. The safest course of action is for the landlord to wait until rent is past due and file a dispossessory affidavit and obtain a court order for possession of the property. This will protect the landlord from liability if the tenant claims they had not abandoned the unit and their personal items. If the landlord does remove the tenant’s property without a court order, it is a good idea for the landlord to take pictures of the property disposed of in case the tenant raises a claim against the landlord.

I do not have the money to pay my rent. My landlord says my furniture will be placed on the street if I don't pay the rent by the due date. Can my landlord do this?

No, the landlord cannot put your possessions on the street without a court order. A dispossessory proceeding can be brought by the landlord that could result in your being evicted. A sheriff, marshal, or constable would then remove your property from the premises, if a court has ordered that they may do so. Your landlord cannot file a dispossessory for nonpayment of rent until the rent is past due.

My landlord removed all my possessions and changed the locks on the apartment. He did not give me any warning or go through the courts to evict me. What can I do?

Self help evictions, including changing the locks, are illegal in Georgia. You may file a

lawsuit against the landlord for any damages you suffer due to his wrongful conduct. It is best if this type of action is pursued with the assistance of an attorney. If you cannot obtain an attorney, you can file a claim in the magistrate court of the county where the landlord is located.

My tenants have not paid rent in several months. Can I turn off their utilities?

No. Under Georgia law (O.C.G.A. § 44-7-14.1), a landlord who wants to force tenants to move must go through court and follow the dispossessory process. A landlord who suspends a tenant's utility service prior to the final judgment in a dispossessory action has broken the law and may be subject to a fine up to $500.

When can a landlord begin legal proceedings to evict a tenant?

A landlord can file a dispossessory action to remove a tenant if the tenant fails to pay rent, violates a term of the lease, or remains in possession after the lease has ended. The grounds for evicting a tenant are nonpayment of rent, failure to surrender the premises at the end of the lease term, or breach of the lease, including any rules that are part of the lease.

Where does a landlord file a legal claim to remove a tenant?

The action must be filed in the county where the rental property is located. Dispossessory actions are usually filed in the magistrate court since they are easier for a non-lawyer to navigate. Dispossessory actions can also be filed in municipal, civil, state, or superior court. For more information on how the Georgia courts operate go to the website of the Administrative Office of the Court of Georgia at www.georgiacourt.gov. This site can help you locate the courts in your area. Some magistrate courts have their own websites with information on their specific rules and a few courts even allow landlords to file dispossessory affidavits online.

What must a landlord do to evict a tenant?

Before contacting the court to begin eviction proceedings, the landlord should read the lease and be familiar with its provisions and comply with its terms regarding notice and termination. Once the terms of the lease have been followed, Georgia law requires a landlord to go through court to remove a tenant. First, before filing a dispossessory action, the landlord must demand that the tenant immediately give up possession and vacate. This demand is best made in writing. If the tenant refuses or fails to give up possession, the landlord or the landlord's agent or attorney may go to the magistrate court and file a dispossessory affidavit under oath. The affidavit states:

- The name of the landlord,
- The name of the tenant,
- The reason the tenant is being removed,
- Verifies that the landlord has demanded possession of the property and has been refused, and
- The amount of rent or other money owed, if any.

What is "service" and why is it important?

After the landlord files the dispossessory affidavit, it must be legally delivered to the tenant. That delivery is called service. In most counties, the sheriff will see that the tenant is served. There are three ways in which the summons can be served on the tenant:

- It can be delivered personally to the tenant,
- It can be delivered to a competent adult who resides in the unit, or
- The summons can be tacked on the door of the home and on the same day sent by first class mail to the tenant's address. The third type of service is called tack and mail and is appropriate only if no one is at home when the sheriff attempts personal service. If the dispossessory warrant was served by tack and mail, and the tenant did not file an answer or appear in court, the court may not award rent or other money damages to the landlord. The court can still order the tenant to move.

Once a tenant is served with a dispossessory affidavit, what should they do?

The court papers served on the tenant should state that the tenant may answer either orally or in writing within seven (7) days from the date of service. If the seventh day is a Saturday, Sunday, or a legal holiday, the answer is required to be filed on the next day that is not a Saturday, Sunday, or a legal holiday. The court papers should state the last day to file an answer and the court in which the answer should be filed. If the tenant fails to respond at the end of the seventh day, the lawsuit is in default. The court can then grant the landlord a writ of possession and the sheriff can remove the tenant immediately. If the tenant answers the summons, a trial of the issues will be held in accordance with the procedures of the court.

I have been served with a dispossessory warrant. It states that I can file an answer. What is an answer?

An answer is your response to your landlord's dispossessory warrant. It can be written or you can tell your response to the court clerk and have it written for you. The filing of an answer may not be conditioned on payment of rent. Payment of the rent alleged to be owed does not have to be made with the answer. The answer is your opportunity to state why you do not feel your landlord is legally entitled to have you evicted. If your landlord is seeking to evict you alleging that you violated your lease, your answer should state why you believe that you did not violate the lease. If an answer is filed, the court will schedule a hearing in which the tenant and landlord can each present their case. Anyone who knowingly and willingly makes a false statement in an answer could be found guilty of 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 filed has legal merit.

How long do I have to file an answer?

A tenant must answer a dispossessory **within seven days of service**. A tenant has until the close of business on the seventh day to file the answer. You need to contact the court in which dispossessory affidavit was filed to determine their business hours. Some courts have business hours other than the traditional nine-to-five each day. Georgia law (O.C.G.A. §1-3-1) provides the method for counting the seven days. The first day (the day of service) is not counted but the last day is counted. If the last day falls on Saturday or Sunday, the party has through the following Monday. When the last day prescribed for such action falls on a public and legal holiday, the party has until the next business day.

My landlord has filed a dispossessory action against me. **The landlord has failed to make repairs to the leak in my ceiling and my furniture and rugs were damaged. I would like to sue my landlord for the damage to my property. How can I do this?**

Your answer to the dispossessory must contain any legal or equitable counterclaims you have against the landlord. If the tenant has any claims against the landlord for damage caused by the landlord's breach of the lease or failure to perform his responsibilities those claims must be put in the answer as a counterclaim. If a tenant fails to put in their answer any logically related claims, which she has against the landlord, the tenant may not be able to raise those claims later in a separate action. This means that if a tenant has a damage claim for failure to repair it must be raised as a counterclaim or lost. In addition, a party seeking to have any potential judgment for the landlord reduced by previously paid rent deposits must raise such a claim in their answer or it is lost. Even if the dispossessory action is dismissed or a writ of possession issued before a final judgment, the tenant is still entitled to a hearing on their counterclaims.

My landlord filed a dispossessory against me. I have paid my rent on time and have not violated my lease. I am going to file an answer. Can I ask for damages for my landlord's wrongful conduct in filing a dispossessory against me for no reason?

Yes. In your answer you will need to request the court award you such damages and

prove the amount of your damages at the hearing. You will need to provide proof of the damages you suffered. Your damages may include the time you spent filing an answer, work hours you missed, travel expenses, and attorney fees. If the court enters a judgment for you, allowing you to remain in the unit, it can also award a money judgment against your landlord for all the foreseeable damages caused by his wrongful filing of the dispossessory action.

Today I received a dispossessory affidavit because I failed to pay my rent. I now have the money to pay my rent. What can I do?

A tenant whose landlord has filed a dispossessory affidavit because of nonpayment of rent may be able to avoid being evicted by paying all rent that the landlord alleges is due plus court costs. This is called the "tender defense" because the tenant tenders the rent owed to the landlord. The amount owed should be stated on the dispossessory affidavit served on the tenant. The tenant must offer payment within seven (7) days of receiving the dispossessory affidavit. The landlord is required to accept such payment from the tenant only once in a twelve-month period. If the landlord does accept the tender payment, the tenant must still file an answer to the dispossessory with the court stating that the landlord accepted payment. If the tenant does not put in their answer that the landlord accepted tender, the court will not be aware of payment and may issue an order for you to be evicted.

If a landlord refuses to accept an offer of tender, the tenant should file an answer to the dispossessory affidavit stating that tender was offered, but refused. Some courts will allow the tenant to tender payment to the court. If a court finds the landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and allow the tenant to remain in possession, if the tenant makes payment within three days of the court's order. If the court finds that the landlord refused a proper tender and orders the landlord to accept payment, that payment will not count as use of the "tender defense" which can only be used once every twelve months.

My tenant was served with the dispossessory. When can I require her to move?

The tenant is allowed to remain in possession of the rental property until there is a court order that she vacates. If the dispossessory warrant was served and the tenant did not file an answer, the court can issue a "writ of possession" after the time to file an answer expires. If the

tenant files an answer, the court will schedule a date for a hearing. The landlord may request that the court order the tenant to pay rent into court while waiting for the hearing. If payment is ordered, nonpayment of rent into court can result in the court issuing a "writ of possession" and the tenant becoming subject to immediate eviction. The tenant must be notified by the court that they are to pay rent into court before the court can order the tenant to vacate for failure to make payment. Once an answer has been filed, and a hearing has been held, the court will issue its decision. If the court rules for the landlord, the tenant will be ordered to move after seven (7) days and may be ordered to pay past due rent.

I filed a dispossessory warrant in the middle of the month and the hearing will not be held until the middle of next month. Rent is due on the first of the month. Can I accept rent while I wait on the dispossessory hearing?

When a landlord files a dispossessory based on nonpayment of rent, the landlord cannot accept rent from the tenant because it would give the tenant a defense to the dispossessory. After the dispossessory affidavit has been filed, the landlord can request that the court order the tenant to pay rent into court. Where the dispossessory has been filed because the lease has expired or been terminated but the tenant has not vacated, the landlord should not accept payment. If the landlord accepts rent after the existing tenancy has terminated but before filing a dispossessory warrant, it creates a tenancy-at-will, which would need to be terminated before the tenant could be dispossessed. The creation of a tenancy-at-will would require the landlord to give the tenant a sixty (60) day notice to terminate.

My tenant filed an answer to the dispossessory warrant. I filed because she did not pay the rent. I use the rent money to pay the mortgage on the rental property. What can I do to collect rent while waiting for a court decision?

The tenant is allowed to remain in the rental property until the dispossessory process is complete. Under Georgia law (O.C.G.A. § 44-7-54) a landlord can request that the court order the tenant to the rent into court as it comes due, if the dispossessory process will take longer than

two weeks before a final decision. The amount of rent due can be shown by attaching a copy of the lease or evidence of past payments. The court will order the tenant to make payments into court that can then be distributed to the landlord. If the tenant fails to make the court ordered payments, the court can order the tenant to be immediately removed from the property. The statute does not expressly state that a court order is necessary to compel payment of rent into court. However, court decisions make clear that before a court can order the tenant to vacate for failure to make payments into court there must be court order that the tenant makes payment and the amount to be paid.

The court gave me a "writ of possession" which states that my tenants are no longer entitled to remain in my rental house. How do I get my tenants and their property out of my house?

The "writ of possession" allows the landlord to remove from his property the tenant and her personal property. The landlord can remove the tenant and those persons occupying the property with the tenant's permission. Personal property includes the tenant's general belongings such as clothing, furniture, dishes, and other household items. The landlord is responsible for the cost of the eviction and can use the service offered by the sheriff or hire a private company. Georgia law (O.C.G.A. § 44-7-55) states that when the tenant's personal property is removed from the rental unit it is to be placed on some portion of the landlord's land. If the landlord and the officer executing the warrant agree, the tenant's property may be placed on land other than that owned by the landlord such as the sidewalk or street. The landlord owes the tenant no duty to protect the personal property removed from the unit. After the "writ of possession" is executed and the property removed from the rental property, the tenant's personal property is considered to be abandoned.

It is important that when a landlord removes a tenant's property that he place it on land outside the unit. The landlord is not required to protect the property from third-parties or the

weather. It is very important that the landlord set the property outside the unit. A landlord who does not do so may be sued by the tenant for conversion. For example, it is improper for a landlord to hire persons to remove the property and transport it elsewhere. The tenant's property must be placed on the land outside the rented unit.

My tenant was personally served and did not file an answer. What happens now?

If there was personal service and the tenant did not file an answer, the court can issue a writ of possession after expiration of the last day to file an answer. The court, without hearing any evidence, can issue a money judgment for all rent sought by the landlord in the dispossessory affidavit.

My tenant was served with the dispossessory warrant by tack and mail service. The tenant did not file an answer. The court says that it can issue an order to have the tenant removed but it could not issue a judgment for money for past due rent. Why?

A dispossessory warrant will usually request possession and a judgment for the amount of rent owed. If the tenant was personally served with the dispossessory affidavit, the court can enter judgment giving the landlord possession and a money judgment for the amount stated in the dispossessory. If the dispossessory warrant is served by tack and mail service, a copy placed on the door of the rental unit and a second copy sent by mail, the court can issued an order giving the landlord possession of the unit but cannot issue a money judgment. However, if the tenant served by tack and mail files an answer, the court can award a money judgment and possession. A court can only enter a money judgment if it has personal jurisdiction over the person. Tack and mail service does not give the court that type of jurisdiction.

The court ruled in favor of my tenant in our dispossessory case. I disagree. What can I do?

Different rules apply for appeals depending on whether it is the tenant or the landlord filing the appeal. A landlord can appeal a judgment in a dispossessory case within seven (7)

days from the date the judgment is entered by the court. Once appealed, the case will be placed on the court's next calendar for a non-jury hearing. If a jury trial is desired, it must be requested within thirty (30) days from the filing of the appeal. It is wise to consult an attorney when considering an appeal.

The court ruled for my landlord at our dispossessory hearing. How long do I have to move?

By ruling for your landlord, the court found that your landlord did have the legal right to have you removed from the property. The court may also have entered a judgment that you owe money to your landlord. The money judgment can be enforced by garnishment or other methods. The "writ of possession" issued by the court allows the landlord to have you and your property removed from the rental unit. Your landlord cannot execute the writ; remove you from the property, until the expiration of the seventh (7th) day after the judgment was entered or longer if the court orders. Once judgment has been entered, even if you pay the landlord the money, you can still be removed from the property.

I disagree with the court's judgment that I owe my landlord money and that I have to move. What can I do?

A tenant has seven (7) days after the judgment is entered in a dispossessory to file an appeal. The judgment is entered once it is filed with the court clerk. An appeal is filed in the court, which entered the judgment being appealed. To file an appeal, the court costs must either be paid or the court orders that you do not have to pay the costs. If you cannot afford to pay the court costs to file an appeal you can ask the court to waive payment by filing a paupers affidavit, which is a request that you not have to pay the court costs. The appeal once filed prevents the judgment for possession from being executed.

Tenants must be aware that under Georgia law (O.C.G.A. § 44-7-56), if they wish to continue to live in the unit while the appeal is pending, they must pay into court the amount of

rent found due by the trial court. If the tenant cannot afford to pay the rent the court found due, the tenant can still file an appeal but will have to vacate the rental 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.

I was served with a dispossessory warrant by tack and mail service. I was out of town for two weeks due to a death in the family. I did not receive notice of the dispossessory in time to file an answer. I have not been removed from the unit yet. What can I do?

You will need to contact the court in which the dispossessory was filed and file a motion to set aside the judgment against you. If you can afford to hire an attorney, you should do so. You need to explain to the court why you did not file an answer and why your landlord should not be allowed to evict you. You should also ask the court to immediately issue an order preventing your landlord from removing you from the rental property, until after a court hearing. In extraordinary cases to ensure justice, the court can issue an order stopping your eviction. If granted such an order, you will need to give a copy of the order to your landlord and keep a copy with an adult living in the unit, in case the sheriff comes to remove your property.

My tenant did not file an answer to the dispossessory even though she was personally served. The court gave me a writ of possession. My tenant is now saying she is going to file an appeal.

When a tenant fails to file an answer in a dispossessory action, the court enters a default judgment against the tenant. This judgment gives the landlord the right to take possession of the rental unit and may include a money judgment against the tenant. A tenant in Georgia cannot appeal a default judgment. To be careful, the landlord should call the clerk of the court to see if any new legal action or appeal has been filed before removing the tenant.

The court awarded me a money judgment against my landlord. How do I collect the money?

In many cases collecting the court award is more difficult than proving the case in court. A judgment granting a party a money judgment gives that party the right to collect the money

- Place a lien on the defendant's property, giving the plaintiff the right to sell the defendant's property to collect the money award. You may request that the court issue a fieri facias (fifa). The fifa, (proof of your judgment) once issued, places a lien against the losing party and any property he/she may own;
- Garnish the employer or bank account of the defendant in order to seize the defendant's wages or bank deposits. The garnishment process allows the plaintiff to collect installment payments on the debt owed by the defendant. The plaintiff must file a separate garnishment action and pay a filing fee. In most counties, garnishments are filed through the magistrate court. Garnishments filed against wages are filed in the county where the employer is located. Garnishments filed against a bank account should be filed in the county where the bank is located. If you do not know the name of the defendant's bank or the location of other assets, you can file a post judgment interrogatory; or
- Hire a collection agency to recover the money damages owed. These services can be costly and are usually based on a percentage of the money collected from the defendant.

The court awarded my landlord possession of the lot on which my mobile home is located. What will happen?

Under Georgia Law (O.C.G.A. § 44-7-59) if a court issues a writ of possession for property upon which a tenant has placed a mobile home or other transportable housing, the tenant must move the same within ten days after the final order is entered. If the tenant does not do so, the landlord is entitled to have such transportable housing moved from the property at the expense of the tenant by a common carrier licensed by the Public Service Commission. There will be a lien upon the mobile home for the moving fees and storage expenses in favor of the person performing such services. Such a lien may be foreclosed in the same manner as special liens on personal property. Storage fees are not to exceed $4.00 per day.

Six months into my 12-month lease my landlord evicted me. My landlord is now suing me to collect rent under the lease? Since I was evicted do I owe my landlord rent under the lease?

The general rule is that when a landlord evicts a tenant and takes possession of the premises, the lease is terminated and the landlord does not have the right to claim rent that comes

due after the eviction. The exception to this rule is when the lease contains language that clearly expresses the landlord's intention to hold the tenant responsible for rent under the lease, even if an eviction takes place. The landlord is required to deduct from the amount owed by the tenant any amounts recovered by the landlord's re-letting of the property.

My tenant's lease has expired but he continues living in my rental property and will not move. What can I do?

Under Georgia law the owner of real property who wants to remove a tenant can file in court to have the tenant removed. The dispossessory process can be use by the owner to remove tenants who fail to vacate when their lease ends. It can also be used to remove a tenant who has failed to make required rental payments.

I allowed a friend to move in a house I own until he could find another place to live. I did not charge him any rent. It has been more than three months and he has not moved. I need for him to move. What can I do?

Even though you did not charge rent, you created a landlord tenant relationship when you gave your friend the right to possess and use your real property. A tenancy-at-will is created when the tenant's right to possess the property does not have a specific end date. Your act of allowing your friend to use your property without a specified end date created a tenancy-at-will. To end a tenancy at will 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 would have to give a sixty (60) day notice of your intent to change the terms of your agreement and begin charging rent.

I was employed as a resident manager of an apartment complex. I recently loss my job, my former employer has given me twenty-four hours to move. Is that right?

Some employees are given housing as part of their employment. If the employment ends, the former employee can be asked to move without any additional notice besides a demand for possession. If the former employee refuses to move, the employer cannot just come and move the employee out. The former employer will have to file a dispossessory to remove the former employee. The employee would be considered a tenant at sufferance.

Military Service Members as Tenants

I am serving in the military and my family cannot afford to pay their rent. What can I do to protect my family from being evicted?

As an active member of the military you have protection under state and federal law. The federal law, the Service Members Civil Relief Act does not excuse soldiers from paying rent but it does afford some relief if military service makes payment difficult. Military members and their dependents have some protection from eviction. 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. When the member’s ability to pay rent is “materially affected” by his military service, the court may stay the eviction for up to three months unless the court decides a shorter or longer period is in the interest of justice. The military member or his dependents must request this relief. There is no requirement that the lease be entered into before entry into active duty. This rule applies when:

- 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;
- The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- For 2010, the agreed rent does not exceed $2,958.53 per month. The amount is subject to change in February of each year.

I am on active military service and my former landlord has sued me for damages to my former residence. I received a copy of the lawsuit but was unable to file an answer. A default judgment was entered against me. What can I do?

The Service Members Civil Relief Act (SCRA) permits active duty service members, who are unable to appear in court or at an administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety (90) days upon the service member's request. request must be in writing and (1) explain why current military duty materially affects the service members 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. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member.

If a default judgment is entered against a service member during his or her active duty service, or within 60 days thereafter, the Service Members Civil Relief Act allows the service member to reopen the default judgment and set it aside. In order to set aside a default judgment, 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.

I signed a year lease but I am in the military service and must relocate. Can I terminate my lease?

Yes, under both state and federal law you can terminate your lease early. The federal law, the Service Members Civil Relief Act, allows the termination of leases entered into before the tenant enters military service and leases entered into while the tenant is in military service. The Act applies to residential leases for housing occupied or intended to be occupied by the service member or his dependents. The tenant can terminate the lease at any time after entry into military service or the date the tenant receives military orders for a permanent change of station

or to deploy for a period of not less than 90 days. The tenant can terminate the lease by delivering to the landlord written notice of such termination and a copy of the service member's military orders. If the lease provides for monthly payment of rent, once the notice is delivered the lease is terminated effective 30 days after the first date on which the next rental payment is due. For example, if notice is given on March 15, the next rent payment is due April 1, so the lease is terminated effective of May 1.

Under Georgia Law (OCGA § 44-7-22), a service member may terminate his lease, entered into on or after July 1, 2005, by giving the landlord a thirty (30) day advance written notice of termination. The notice to the landlord shall be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer. Once the lease is terminated, the service member is liable for the rent due prorated to the effective date of the termination. The rent that comes due during the thirty (30) day period is payable as required under the terms of the lease. The service member is not liable for any other rent or damages due to the early termination of the tenancy. A service member can terminate under the following conditions:

- The service member is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
- The service member is released from active duty after having leased the rental premises while on active duty status and the rental premises is 35 miles or more from the service member's home prior to entering active duty;
- After entering into a rental agreement, the service member receives military orders requiring him or her to move into government quarters;
- After entering into a rental agreement, the service member becomes eligible to live in government quarters and the failure to move into government quarters will result in a forfeiture of the service member's basic allowance for housing;
- The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or
- The service member has leased the property but prior to taking possession of the

> rental premises receives a change of orders to an area that is 35 miles or more from the location of the rental premises. If a service member terminates the rental agreement 14 or more days prior to occupancy, no damages or penalties of any kind can be charged.

A "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of ninety (90) days or longer. In the event a service member dies during active duty, an adult member of his immediate family may terminate the service member's lease by giving the landlord thirty (30) days advanced written notice of termination. The notice must be accompanied by either a copy of the official military orders showing the service member was on active duty or a written verification signed by the service member's commanding officer and a copy of the service member's death certificate.

For leases entered into before July 1, 2005, Georgia law (O.C.G.A. § 44-7-37) permits a person on active military duty who enters into a lease for themselves or their immediate family may terminate their dwelling lease if they receive permanent change of station orders or temporary duty orders for a period in excess of three months. Upon termination, the service member can only be required to pay an amount equal to thirty days' rent once they provide written notice and proof of their assignment to the landlord. The military member and his or her immediate family remain responsible for the cost of repairing damage to the premises caused by an act or omission of the tenant or his family.

Foreclosure and Tenants

I have paid my rent to my landlord every month. Today I found out that my landlord has not been paying the mortgage and the house has been foreclosed upon. I have nine months left on my lease. What will happen to me now?

On May 20, 2009, President Obama signed a new federal law protecting tenants when the property they rent is sold at a foreclosure sale, The Protecting Tenants at Foreclosure Act (PTFA). The Dodd-Frank Wall Street Reform and Consumer Protection Act extended the PTFA protections until December 31, 2014. The Protecting Tenants at Foreclosure Act is a federal law but it applies to state court eviction proceedings. Under this new law, the tenant's lease does not end when the property is sold at foreclosure. For example, if a tenant living in the foreclosed property has a lease with nine months remaining, the new owner cannot evict the tenant until the lease expires. If the tenant has a lease the purchaser at foreclosure must allow the tenant to remain until the end of the lease term. The only exception is if the unit is sold to a purchaser who will occupy the property as their residence and, even in this case, the tenant is to receive ninety (90) days notice before having to vacate. If the existing lease has less than ninety (90) days remaining before it expires, the tenant must still be given a ninety (90) day notice before having to move.

I purchased a foreclosed property with a tenant living in the home. Does the tenant have to pay the rent?

Following foreclosure, the tenant must pay rent to the new owner or face eviction. The rent owed is the amount stated in the lease with the old owner. If the tenant does not pay rent, the landlord can go to court to have the tenant evicted without giving the ninety (90) days notice.

The home I rent was sold at foreclosure. I do not have a written lease. I have been told I have to move immediately, is that correct?

No, at a minimum you should be given a 90-day notice before you have to move. If you do not have a written lease, you are a tenant-at-will. The new owner is now your landlord and must give you a ninety (90) day notice before you have to vacate. This rule also applies to a month to month tenancy.

The owner is about to lose his property to foreclosure. I plan on purchasing the property at the foreclosure sale and living in the property. There are tenants living in the property. Can I give the tenants the ninety day notice now or do I have to wait until after the foreclosure sale?

You have to wait until after the foreclosure sale to give the tenants a notice to vacate. The Act requires the new owner of the property, after the foreclosure sale, give the tenants notice to vacate. The owner of the property after foreclosure does not exist until the title documents naming the new owner have been filed with the superior court in the county where the land is located. Any notice sent prior to the filing of the new title does not have any legal effect.

I purchased a home at a foreclosure sale. The former owner had his mother sign a three-year lease before the foreclosure sale. The rent under the lease is very low. Do I have to honor the lease?

No, to qualify for protection under The Protecting Tenants at Foreclosure Act the lease between the tenant and the former owner, who lost the property to foreclosure, must meet the following:

- The tenant cannot be the child, spouse or parent of the former owner of the property;
- The original lease must have been the result of an arms-length transaction. The lease must not be an attempt to avoid or gain the protection of this new law; and
- The rent due under the lease must be close to what other similar units rent for unless the rent is subsidized by the government.

I purchased a home at foreclosure. I was aware that there was a tenant in possession when I purchased. I was not aware that the tenant was using a housing voucher to pay part of the rent. What do I do now?

The new law also protects tenants who rent using housing vouchers. The new owner who purchases at a foreclosure sale is legally bound by the tenant's lease and the Housing Assistant Payment (HAP) contract entered into by the prior owner and the housing authority. If a tenant has an unexpired lease, the tenant has a right to remain in the unit until the end of the lease term. Only if the purchaser at foreclosure intends to occupy the property as his residence can the lease be terminated and the tenant must receive a ninety (90) day notice before the lease is terminated. The new owner must follow the Housing Assistance Payments (HAP) contract between the former owner and the housing authority. The new owner will receive rent payments from the housing authority and possible the tenant. At the end of the lease term, the new owner can terminate the lease and the HAP contract by giving the tenant at least ninety (90) days notice prior to the end of the lease and HAP contract. The new owner can terminate at any time if the voucher tenant violates any terms of the lease or fails to pay rent.

The home I rent was sold at a foreclosure sale. The landlord would never make repairs and now I just want to move. Do I have to stay and rent from the new owner?

The Protecting Tenants at Foreclosure Act's language does not state that the tenant is required to remain in the unit. The original landlord's loss of the property to foreclosure gives the tenant the option of declaring the lease between him and the landlord at an end. The tenant could decide to move and not receive the protection of the new law.

The home I rent was foreclosed upon and the new owner has filed in court to have me evicted what do I do?

If you rent property that is foreclosed upon, the owner must follow the new law. If the purchaser at foreclosure files to evict without giving the required notice, the tenant should file an answer and tell the court the law was not followed. The law that provides these protections is the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702 (2009). You can also file a

complaint with the Office of the Comptroller of the Currency, which regulated federally chartered banks at www.helpwithmybank.gov.

I purchased a home in which a tenant was living. Under the new law I have to let the tenant remain until his lease expires in four months. The tenant has requested that I repair a broken light fixture. Do I have to make the repair?

Yes, the new owner is the landlord and has the obligations associated with being a landlord. This means the new owner must make necessary repairs.

Renting with Roommates

We signed a year lease on a rental unit for our college-bound son, with the understanding that his roommates would pay their part of the rent. One roommate left without paying his share of the rent. How can we get out of this lease?

Read the lease and see if there is a provision for terminating the lease. If you terminate early you will likely have to pay a penalty such as paying an extra months' rent or some other amount of money. If there is no early termination provision, you are liable for the entire rent for the rest of the lease. You can sue the roommate for his portion of the rent and utilities. If the roommate's parents also cosigned the lease, you can also sue them.

Who is a roommate?

A roommate might be either a joint tenant or a subtenant, depending upon the terms of the lease or rental agreement. When all roommates sign the lease, each one can be responsible for the full amount of the rent due to the landlord. When a roommate is not listed on the lease and has not signed the lease, the landlord cannot hold him responsible for rent under the lease. As far as the landlord is concerned, the persons that signed the lease are his tenants. If you are just living with someone and giving them money to stay there, you are not considered a tenant of the landlord. If you sign the lease then you are a tenant of the landlord and are responsible for getting all of the rent to the landlord, even if you paid your share already. If the landlord does not get all the money, he can seek to evict all the tenants listed on the lease.

My roommate and I both signed a lease but she has moved out. Can I get out of the lease?

The apartment complex will expect to receive the full monthly rent and, since you are living in the unit, will hold you responsible for payment. Generally, if you signed a lease with your roommate, the apartment complex can hold each of you liable for the entire amount of rent owed. However, the apartment complex can only collect the full amount from one of you. You should read the lease; it may allow you to terminate the lease early. You may wish to contact the apartment manager about terminating the lease and offer to pay a portion of the charges to be released from liability for the entire amount. If you end up paying more than your share of the rent, you can sue your former roommate to recover the difference.

My roommate and I fight all the time. Can I make the landlord evict him?

If you and your roommate have a disagreement, your landlord probably cannot and will not want to get involved. A call to the police will probably not help unless your roommate is committing a criminal act such as threatening you.

I rented to three roommates. The lease has ended and they moved. Who do I return the security deposit to?

Unless it is specifically spelled out in the lease differently, any money that is returned should be divided equally among all the tenants. Of course, if one of the roommates performed all the work to clean up that will not make him happy. Landlords handle this situation differently but it is best to state in the lease how the security deposit will be returned.

I am a landlord. Several college students want to rent from me. Should I have each of them sign the lease?

Each person who signs the lease is responsible for fulfilling the lease terms. If the landlord wants to be able to pursue each of the students for unpaid rent or damages to the unit, the landlord should have them each sign the lease. If all the roommates sign the lease and one move out, the others will be responsible for the full rent. You may want to state in your lease that the security deposit will be returned to when the lease ends.

Rental of Manufactured Housing and Mobile Homes

I rent a mobile home. What rights do I have?

Special rules apply to the rental of mobile homes. First, if you are renting a mobile home and the owner of the mobile home does not own the land on which it is located, the owner of the mobile home is not responsible for repairs unless the lease states that he will make repairs. Second, the owner of the land, who rents a lot for the location of a mobile home owned by another, is not responsible for the repair of the mobile home. However, the owner of the land is responsible for keeping the lot and the common areas of the mobile home park in good repair. Third, when only the mobile home (not land) is conveyed for use, the owner of the mobile home cannot recover possession through use of the dispossessory process but must file a personal property foreclosure. However, the owner of the lot can use the dispossessory process to gain possession of the land on which the mobile home is located.

I am renting a mobile home and have a separate agreement to rent the lot on which it is located. What will happen if I do not pay the mobile home payment?

When only the mobile home (not land) is conveyed for use, the owner of the mobile home cannot recover possession through use of the dispossessory process. If you fail to pay your monthly payment on the mobile home, the owner of the home can filed a personal property foreclosure, a process very similar to the dispossessory process.

I rent a lot to a tenant who has placed a mobile home on it. The tenant has not paid her rent. I know I can file a dispossessory for the lot but how do I describe it on the dispossessory affidavit?

When a dispossessory affidavit is issued for land on which a mobile home is located, the affidavit can describe the land and the location where the mobile home is located.

I rent a mobile home and the owner failed to make payments and it was repossessed. What will happen to my personal property?

Under Georgia law (O.C.G.A. §44-14-411.1) the person repossessing a mobile home must within ten days of the date of repossession notify the owner of the motor vehicle of the

intent to dispose of the personal property. Such notice may be by personal service, service by certified mail, or statutory overnight delivery. If the personal property is not redeemed within thirty (30) days from the date of the first notice, a second notice should be sent in the same manner. If the personal property is not redeemed within thirty (30) days from the date of the second notice, the personal property may be discarded. You should contact the owner to determine how to claim your personal property.

I own a lot on which my tenant placed a mobile home. My tenant has stopped paying the lot rent. It looks like they have moved. What do I do about the mobile home they left on my lot?

Georgia law (O.C.G.A. §40-11-1) defines when a mobile home can be considered abandoned. This normally occurs when the mobile home has been left unattended on private property for a period of not less than thirty (30) days without anyone making a claim to it. The best advice is to first file a dispossessory affidavit before treating the mobile home as abandoned.

Lead Paint and Environmental Issues

Must a landlord inform tenants that rental property contains lead-based paint?

Yes, most property owners who rent residential property built before 1978 must disclose the presence of all known lead-based paint and lead hazards in the rental unit and common areas. If the rental property has been found to be free of lead-based paint by a state-certified inspector, the landlord does not need to comply with these requirements. The law applies to all residential rental units except housing units such as lofts, studios, or short-term leases of less than 100 days. A violation of the law requiring disclosure does not invalidate the lease. If the landlord fails to disclose the presence of lead paint or lead hazards and a tenant suffers damage from lead, the tenant may be able to recover triple the amount of their actual damage. A landlord who fails to comply with the law may also be subject to civil or criminal penalties. For more information on the lead paint disclosure rule go to www.hud.gov/offices/lead/healthyhomes/lead.cfm or www.epa.gov/lead/index.html. You can also call the National Lead Information Clearinghouse

at 800-424-LEAD.

What is required under the law?

For units built before 1978 and which are not certified as free of lead-based paint, the landlord must:

- Give the future tenant an Environmental Protection Agency (EPA) approved pamphlet on identifying and controlling lead-based paint hazards. The pamphlet is titled "Protect Your Family from Lead in Your Home" and is available in multiple languages at www.epa.gov/lead/pubs/leadprot.htm or by calling the National Lead Information Clearinghouse at 800-424-LEAD.
- Remodelers and builders who perform work on homes built before 1978 must comply with new lead paint safety requirements set by the EPA. Any company doing work in these homes must be certified, follow specific work practices, and keep detailed records.
- 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, which 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 in the lease or as an attachment to the lease, a Lead Warning Statement and language, which confirms that the landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Landlords, agents, and tenants, must sign and date the attachment.

I own an apartment building built before 1978. I want to remodel and repaint. Are there any special rules I need to follow?

You want to make sure you hire contractors who are trained in the use of lead safe work practices. Effective April of 2010, remodelers and builders who do renovation or remodeling projects in homes built before 1978 must comply with new lead paint safety requirements set by EPA. Any company doing work in these homes must be certified, follow specific work practices and keep detailed records. If a landlord disturbs more than six square feet of a painted surface inside, more than twenty square feet outside, or conducts any window replacement or demolition, he is subject to the new rule and must comply with the lead paint safety standards. Additional information on this rule can be found at www.epa.gov/lead.

What if I did not receive the required notice from my landlord?

If you did not receive the Disclosure of Information on Lead-Based Paint and/or Lead Hazards form when your leased a house built before 1978, call 1-800-424-LEAD (5323) or contact a lawyer if you have been damaged by lead paint.

May a housing provider exclude families with children from units where lead-based paint hazards have not been controlled? Can the Landlord terminate the tenancy of families, which live in units where lead-based paint hazards have not been controlled?

A landlord is prohibited from discriminating based on the fact that a tenant's household includes children. If a unit that has not undergone lead hazard control treatments is available and the family chooses to live in the unit, the housing provider must advise the family of the condition of the unit but may not refuse to allow the family to occupy the unit because the family has children. Similarly, it would violate the Fair Housing Act for a housing provider to seek to terminate the tenancy of a family residing in a unit where lead-based paint hazards have not been controlled because of the presence of minor children in the household. The housing provider 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 paint hazards have been controlled.

Does any government agency in Georgia regulate lead in rental housing?

Yes. Children under the age of six are particularly vulnerable to lead poisoning because they are more likely to ingest lead in housing situations and because ingested lead can adversely affect the development of children's brains, central nervous systems, and other organ systems. Georgia law (O.C.G.A. §31-41-14) requires that when a child under the age of six is found to have lead poisoning and resides in a dwelling containing lead poisoning hazards, the Georgia Division of Public Health has the authority to require that the owner take steps to reduce the lead poisoning hazards in the home.

Should I be worried about mold in my apartment?

Mold is found everywhere in our environment, both indoors and outdoors and in both new and old structures. In general, most types of mold are harmless. Some types of mold may cause health-related problems for some people. Mold tends to grow in warm, moist environments. The Environmental Protection Agency (EPA) states that moisture control is the key to mold control. Keeping your dwelling clean and promptly reporting any water leaks or other water-related problems to the property owner or management are two important steps you can take to fight mold. More information about mold is available from the Environmental Protection Agency at their website found at www.epa.gov/mold.

I was told that mold can make me very ill?

For the average healthy individual, limited natural exposure to mold spores is a part of everyday life and is typically not a health threat. However, prolonged exposure to elevated levels of mold spores can cause a reaction in otherwise healthy individuals. Likewise, certain individuals have hypersensitivity to mold spores and can experience serious health reactions with only minor exposure to mold. If you are experiencing health problems, which you think maybe caused by mold, you should contact a health professional such as your doctor. The Center for Disease Control says that molds can trigger asthma episodes in sensitive individuals with asthma. Additionally, some persons are particularly sensitive to mold and they may have allergic

reactions or other respiratory complaints. For these people, exposure to molds can cause symptoms such as nasal stuffiness, eye irritation, wheezing, or skin irritation.

If I have mold or mildew in my house, do I need professional help?

Probably not. Unless you have vast areas of your house covered in mold, you can probably clean it yourself. The Center for Disease Control recommends that you clean hard surfaces with a mixture of 1 cup bleach in 1 gallon of hot water, then rinse and dry. It may help to fully ventilate wet areas of your home such as baths, kitchens, and basements. If you begin to experience an unpleasant reaction to your cleaning, you should stop and consult your health care professional. If they recommend professional cleaning, then it makes sense to seek such a service and you should discuss it with your landlord.

QUESTIONS ASKED ABOUT FAIR HOUSING

What actions, in connection with the rental of housing, are considered discriminatory?

Discrimination can take many forms. It can be as direct as a refusal to rent because of the applicant's race, color, national origin, religion, sex, familial status (because the household includes children) or handicap. Discrimination can also be indirect. For example, an apartment complex rule may not appear to be discriminatory on its face but it may be applied in such a way that a protected group suffers more harshly from the rule. If the owner does not have a legitimate business reason for the rule, it may be found discriminatory. Clear examples of discriminatory conduct include:

- Refusing to rent to a person because of their race, color, religion, sex, national origin, familial status or disability
- Landlords or rental agents who, while not directly refusing to rent, engage in conduct which discourages or makes housing unavailable
- Landlords who impose different terms and conditions on those who are members of a protected group
- Landlords or property managers who steer tenants of a protected class to particular buildings or units
- Advertisements which exclude members of a protected group
- Stating that a unit is not available for rental when it is available

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
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing even if that housing is otherwise exempt from the Fair Housing Act

What is meant by "conduct which discourages or makes unavailable" housing?

Examples of prohibited conduct include failing to inform an applicant of a protected class of the availability of privileges, services, or facilities associated with the complex. Also, conduct which discourages members of a protected class from applying for housing directly or by failing to inform applicants who are members of a protected class of the availability of marketing promotions or rent reductions.

I am a single mother with three small children. I am having a difficult time finding rental housing. Am I protected by the Fair Housing Laws?

Yes, a landlord may not discriminate based on family status. That is, it may not discriminate against families in which one or more children under the age of 18 live with:

- A parent;
- A person who has legal custody of the child or children; or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone in the process of securing legal custody of a child under eighteen (18) years of age. The only exception is for housing designated for older persons. To qualify for this exception, the HUD Secretary must have determined that the housing is specifically designed for and occupied by elderly persons under a federal, state or local government program or it is occupied solely by persons who are 62 or older or it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

What types of rental housing are covered by the fair housing law?

The fair housing laws cover activities related to the sale, rental, or advertising of dwellings, the provision of brokerage services, or the availability of residential real estate-related transactions. Owners of rental property are exempt from the fair housing laws provided that the following conditions are met:

- The owner does not own or have any interest in more than three single-family houses at any one time;
- The owner does not use a real estate broker, agent, or salesperson in renting the dwelling; or
- The owner occupies one of the units in a building intended to be occupied by not more than four families.

In general, a landlord who owns more than three rental units, uses a real estate broker or agent to rent the units, or advertises the units, must follow the fair housing laws.

I found an apartment that I wanted to rent. When I talked to the landlord over the telephone, it was available. However, when I went to see the unit, the landlord said it had just been leased. I feel that the landlord may have discriminated against me. What can I do?

If you think a landlord has discriminated against you, you can file a complaint with the Department of Housing and Urban Development (HUD). You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible. If HUD has determined that your state or local agency has the same fair housing powers as HUD, HUD will refer your complaint to that agency for investigation and notify you of the referral. That agency must begin work on your complaint within 30 days or HUD may take your complaint back. To file a complaint you should contact the United States Department of Housing and Urban Development (HUD). You can file a complaint using HUD's online form found at www.hud.gov/offices/fheo/online-complaint.cfm or you can print out the form and mail it to HUD at:

U.S. Department of Housing and Urban Development
Five Points Plaza
40 Marietta Street, 16th floor
Atlanta, Georgia 30303-2806

HUD also has a toll-free number (800) 669-9777 and a TDD number (800) 927-9275. Alternatively, you can write to HUD at the above address. To file a complaint under state law, or for information on Georgia's Fair Housing Law, you should contact the Fair Housing Division of the Commission on Equal Opportunity. That office can be reached at (404) 656-1736 or 1-800-473-OPEN or write to:

Georgia Commission on Equal Opportunity
229 Peachtree St. NE
710 Peachtree Tower
Atlanta, GA 30303 404-656-1736

What will happen if I do file a housing discrimination complaint?

HUD will notify you when it receives your complaint. If HUD has determined that your state or local agency has the same fair housing powers as HUD, HUD will refer your complaint to that agency for investigation and notify you of the referral. That agency must begin work on your complaint within 30 days or HUD may take it back. Normally, HUD also notifies the alleged violator of your complaint and permits that person to submit an answer. HUD will investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated. If HUD cannot complete an investigation within 100 days of receiving your complaint, it will notify you. Once the investigation is complete, HUD will try to reach an agreement with the person your complaint is against. This is called a conciliation agreement and must protect both you and the public interest. If an agreement is signed, HUD will take no further action on your complaint. However, if HUD has reasonable cause to believe that a conciliation agreement is breached, HUD will recommend that the Attorney General file suit. If a conciliation agreement cannot be reached, there may be an administrative hearing on your complaint unless you or the respondent want the case to be heard in federal district court. Either way, there is no cost to you.

If your case goes to an administrative hearing HUD attorneys will litigate the case on your behalf. You may intervene in the case and be represented by your own attorney if you

wish. An Administrative Law Judge (ALJ) will consider evidence from you and the respondent. If the ALJ decides that discrimination occurred, the respondent can be ordered:

- To compensate you for actual damages, including humiliation, pain and suffering;
- To provide injunctive or other equitable relief, for example, to make the housing available to you;
- To pay the Federal Government a civil penalty to vindicate the public interest; and/or
- To pay reasonable attorney's fees and costs. If you or the respondent chooses to have your case decided in Federal District Court, the Attorney General will file a suit and litigate it on your behalf. Like the ALJ, the District Court can order relief, and award actual damages, attorney's fees and costs. In addition, the court can award punitive damages.

My roommate and I signed a lease. The landlord didn't meet my roommate until two weeks after we moved in. My roommate is African American and I am not. The landlord now says he does not like my roommate and that we need to move in two days. Can the fair housing laws help me?

Yes, if you need immediate help to stop a serious problem that is being caused by a Fair Housing Act violation, HUD may be able to assist you as soon as you file a complaint. HUD may authorize the Attorney General to go to court to seek temporary or preliminary relief, pending the outcome of your complaint, if irreparable harm is likely to occur without HUD's intervention and there is substantial evidence that a violation of the Fair Housing Act occurred.

Can I file a lawsuit without going through HUD?

Yes, you may file suit, at your expense, in federal court or state court within two years of an alleged violation. You may bring suit even after filing a complaint with HUD, if you have not signed a conciliation agreement and an administrative law judge has not started a hearing. A court may award actual and punitive damages and attorney's fees and costs.

Can the landlord limit the number of children residing in a unit to the number of bedrooms that the unit has?

Local ordinances and safety codes may establish occupancy standards. The landlord can impose occupancy requirements in the lease. However, those requirements must be reasonable, based on factors such as the number and size of bedrooms and the overall size of the unit. For

example, setting a limit of two persons per bedroom would likely be considered reasonable, but requiring each child to have their own bedroom could be considered discriminatory. A landlord can set an occupancy limit as long as such policy does not have a disparate impact on families with children so as to constitute discrimination on the basis of familial status. Occupancy policies which are used to exclude families with children or unreasonable limit a family's access to housing, may constitute a violation of state and federal fair housing laws.

I am disabled and looking for rental housing. I am having a difficult time finding housing. Can the fair housing law help me?

Persons with disabilities must be given reasonable accommodations in regard to rules, policies, practices or services. A tenant or applicant must request that the landlord make the necessary accommodations. The tenant may be requested to provide a doctor's statement indicating that the accommodation is necessary. The tenant does not have to supply medical records. To be entitled to an accommodation due to disability the tenant must have a physical or mental impairment, which substantially limits one or more major life activities. This protected class includes those who have a disability, have a history of having a disability, and those who are regarded as having a disability. It is prohibited, as discriminatory, for a landlord to refuse to make a reasonable accommodation in rules, policies, practices or services when such an accommodation is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. Examples of reasonable accommodations include a landlord waiving a no pet rule for a tenant who needs to use an assistive animal and reserving parking place close to accessible apartments for mobility impaired tenants.

I am a landlord how can I determine if my tenant is disabled and entitled to a reasonable accommodation?

A tenant or potential tenant is considered disabled and covered by the fair housing act if they or someone in their household:

- Has a physical or mental impairment (including hearing, mobility and visual impairments, mental illness, AIDS, AIDS related complex, or mental retardation) that substantially limits one or more major life

- Have a record of such a disability
- Are regarded as having such a disability

My tenant has asked me to install a ramp to her apartment and a grab bar in the bathroom. Must I make these changes?

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, such as a pool, to make the area accessible or usable. In most cases it would be unreasonable for the landlord to require the tenant to return the common areas to their original condition.

Newly constructed multifamily dwellings with four or more units must provide basic accessibility to persons with disabilities if the buildings were ready for first occupancy after March 13, 1991. Basic accessibility requires that the apartment complex have:

- One entrance to the building on an accessible route;
- Accessibility to public areas such as a lobby or swimming pool;
- A door wide enough to accommodate persons in wheelchairs;
- Accessibility to each unit (unless there is no elevator, in which case 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.