

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 used as a substitute for professional legal advice. This Handbook contains information on Georgia landlord-tenant law as of April 2005 and, as such, may not reflect the current 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 which 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. The Georgia Department of Community Affairs contracts with the Georgia Legal Services Program to operate a Landlord-Tenant Hotline, which provides general information, simple advice, and referrals to callers with residential landlord-tenant questions. This service is available to all Georgians. The Landlord-Tenant Hotline is not a regulatory agency. It does not provide direct intervention or enforcement activity, nor does it keep records regarding landlord complaints.

If you have questions related to residential rental property, call the Landlord-Tenant Hotline at 404-463-1596 or 800-369-4706. Single copies of the Handbook will be provided free of charge. Multiple copies are available for \$2.00 a copy, which covers the cost of postage and printing. The Handbook is also available on the internet at <http://www.dca.state.ga.us/housing/landlord/contents.html>. Please address Handbook requests to:

GEORGIA LANDLORD-TENANT HOTLINE
P.O. Box 1127
Atlanta, Georgia 30301-1127
404-463-1596
800-369-4706

RENTAL PROPERTY AND THE LAW

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 which 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 the case law created by court decisions. 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/legis/GaCode/index.htm. You may access decisions of the Georgia courts through their website at www.gaappeals.us and www.supremecourt.georgia.gov. 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 or state government housing program, there are only a few federal laws which apply to you. Federal law requires a landlord to notify renters of lead paint and to avoid discrimination in housing. 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 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. If you pay for housing by the month, you are probably a tenant. To determine if you are a tenant or boarder the court will look at:

- * Whether there is a written agreement and if it refers 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;
- * 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 are 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 weeks notice to vacate is all that would be required. However, if payment is past due or the boarder has

violated the occupancy rules, no notice is required and the boarder can be required to leave immediately.

Are landlords required to provide smoke detectors?

Yes, under Georgia law (O.C.G.A. §25-2-40) an approved battery operated smoke detector is required in every apartment, house, condominium, and townhouse constructed prior to July 1, 1987. 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. Where 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 to be enforced by local building and fire code officials. Tenants are required to keep the smoke detector in good working order

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. You should check your lease to see if such appliances are to be supplied under the terms of your 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.

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 in the files through court procedures. If the landlord participates in a federal or state housing program, the landlord may have to give tenants access to some parts of their housing file.

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 a housing unit. However, county or city ordinances may impose such limits.

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.

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 which 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 a landlord's rights and responsibilities.

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. If the landlord does provide parking and unauthorized cars are parking there, the landlord may have the cars towed. If a tenant has a specifically designated parking space, the tenant may have the right to have unauthorized vehicles removed. Under Georgia law (O.C.G.A. §44-1-13) before towing a car the property owner must have posted notice 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. If the apartment complex contains four or fewer residential units, the landlord need not post the required notice. Second, the landlord must use a towing and storage firm with a permit and license from the local government, the Department of Motor Vehicle Safety, or appropriate state agency. Third, the towing and storage firm must have a secured impoundment lot.

Do landlords have to reveal to prospective tenants 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 should 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 a question concerning the property's prior occupancy by a diseased person, whether the property was the site of a homicide, other felony, suicide, or death by accidental or natural causes. If answering such questions would require disclosure of information that is prohibited from release under state or federal law, the landlord may not answer. No cause of action is created by the failure to disclose such information. Georgia requires that certain sexual offender report their location and that the local sheriff make that information public. Owners and their agents in real estate transaction have no liability if they do not disclose such information. It is the sheriff's duty to maintain a public registry of the name and address of offenders. For a list of offenders go to www.ganet.org/gbi/disclaim.html

I own rental property located near a creek which floods. Occasionally the flood waters 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 prospective tenants 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. An owner who fails to provide the

required notice can be held liable for damages to the tenant's personal property caused by flooding during the lease term.

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. 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. The landlord can charge a reasonable fee for cost of establishing, serving, and billing for water service. The tenant is to be told how the water bill will be calculated before signing the 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 also contact the police, if the neighbor's conduct would constitute disturbing the peace. If the landlord and the police cannot help, the tenant needs to continue to pressure the landlord to 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 hurt, inconvenience, or damage. The neighbors' conduct must be considered disruptive to the ordinary, reasonable person not a person of abnormal sensibilities and feelings. 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 probably are not creating a nuisance.

Is my landlord allowed to enter the apartment without notifying me first? Can my apartment be shown to prospective tenants during the last month of my occupancy without my permission?

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 such entry is necessary to cure a dangerous condition, prevent destruction, or respond to a bona fide emergency on the premises. There is no legal requirement that a landlord notify a tenant prior to making entry under the above circumstances. You should check your lease to see if there are any provisions related to the landlord's right to show the apartment. If the lease does not state that the landlord can enter the apartment, a tenant could legally refuse the landlord access except as described above. However, it is best for the landlord and tenant to discuss the matter and reach a mutually acceptable solution. Notification requirements and entry provisions should be included in each lease. A reasonable accommodation might be for the landlord to provide advance notice, such as twenty-four (24) hours before entering the apartment.

I have a one year lease which prohibits pets. I am six months into my lease. 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 the lease term. To enforce the suspended lease term the landlord need only give notice that he wants you to comply with the rules.

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

The Federal Communications Commission adopted the Over-the-Air Reception Devices Rule which permits viewers 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 person'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. A "dish" antenna that is one meter or less in diameter is covered by this rule. For more information on this rule go to www.fcc.gov/cgb/satellite.html.

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 failed to pay. Do I have to pay that bill?

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 in a single or multifamily dwelling, which has a separate water meter for each residential unit, because the prior owner or prior tenant owes money to the water provider. The water provider is to seek payment of unpaid charges from the

person who incurred the charges.

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

Special rules regarding repairs and use of the dispossessory process apply to rentals 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, your landlord may not be responsible for repairs unless the lease states that he will make repairs. If the mobile home and the land on which it is located are rented together, the landlord does have a duty to repair. When land is rented separately from the mobile home, the landowner is not responsible for the repair of the mobile home which he does not own but which is on his land. However, the landlord who rents the lot on which a mobile home is located is responsible for maintaining the lot and the common areas of the mobile home park. Second, when only the mobile home (not land) is leased for use, the owner of the mobile home cannot recover possession through use of the dispossessory process. When the owner of the lot can use the dispossessory process to gain possession of the land on which the mobile home is located.

I think my apartment has mold. What can I do?

There's been a lot of talk about mold recently in the media. 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. 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 <http://www.epa.gov/iaq/molds/index.html>.

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 you can write to the landlord disputing the debt and write to the collection agency disputing the debt, 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 this 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 reinvestigate it within a reasonable period of time unless it believes that the dispute is irrelevant or frivolous. If after reinvestigation a disputed item is found to be inaccurate or can no longer be verified, the credit bureau must delete it. If the reinvestigation 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. For more information go to www.ftc.gov/bcp/conlin/pubs/credit/fdc.htm.

LEAD PAINT DISCLOSURE RULE

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 disclosure requirements. The law applies to all residential rental units except housing units such as lofts or studios or to short-term leases of less than 100 days. Violations of the law requiring disclosure do 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/disclosurerule/index.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 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 at www.nsc.org
- * 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 confirm 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, and agents, and tenants, must sign and date the attachment.

What if I did not receive the required notice?

If you did not receive the Disclosure of Information on Lead-Based Paint and/or Lead Hazards form when your leased housing built before 1978, call 1-800-424-LEAD (5323).

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 which 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 decline 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.

What does state law require?

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 child's brain, central nervous system, and other organ systems. Georgia law (O.C.G.A. §31-41-14) provides 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.

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 permanently affixed structures on that land. In return, the tenant generally 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
- * Seek 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.
- * 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 which 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 illegal 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 source. If it is a house, a description of the property rented.
- * 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 and the account where it is held.
- * 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.
- * 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 generally considered to be 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. Where 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. Absent language in the lease, Georgia law does not allow a tenant to terminate their lease because they are buying a home or being transferred by their employer.

Does a tenant have any 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 subject to any restrictions upon which the landlord and the tenant have agreed. 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 which the tenant-at-will and the landlord must give to terminate or change the original rental agreement. A tenant-at-will must give thirty (30) days notice to the landlord to terminate or change the original agreement. A landlord who has a tenant-at-will must give 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. 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 days notice, the landlord can demand possession and immediately file a dispossessory warrant seeking possession.

Aren't 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 which you do not understand, get help. Ask someone you trust to explain what the language means. Be careful of leases which contain the following:

- * An extremely long lease term with penalties for early termination;
- * Automatic rent increases during the lease term;
- * References to rules which 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 claim that the landlord can evict you without going into court and using the dispossessory process; and
- * Lease terms requiring the tenant to have renter's insurance.

Before a 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.

When should the tenant get a copy of the lease?

It is a good idea to get a copy of the lease before signing so that you will have a chance to review it. A tenant should be given a copy of the lease and any rules or regulations referred to in the lease, after both the landlord and tenant have signed. If the landlord does not voluntarily give the tenant a copy of the lease and rules and regulations, the tenant should request a copy in writing. Since the lease spells out the tenant and landlords' responsibilities, 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?

The tenant should insist on seeing the 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 at the time 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 www.sos.state.ga.us. 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 notices, and performing the obligations of the landlord.

LEASE TERMINATION AND RENEWAL

Is there a seventy-two (72) hour period after signing my 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 landlord tenant law 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. You should read your lease carefully and thoroughly inspect the unit before signing the lease.

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

The answer to this question will be found in your lease. 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 which allows for termination prior to the lease term's expiration. If so, you will need to follow the terms of that lease provision. For example, you may be required to give thirty (30) days notice and to 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.

When the lease has "expired" but the landlord has continued to accept rental payments, what rights does a tenant have?

The terms renewal and extension are often confused but each has its own separate meaning. Language in a lease which intends to lengthen the tenancy for an additional period under the same terms and conditions provides for an extension of the lease. Language in a lease which states that the tenancy can only be extended at the end of the current lease term by the signing of a new lease provides for a renewal.

If the lease provides for an extension of the lease term at the end of the current lease, the tenant needs to read the language carefully. The lease may provide for an automatic extension in which case the lease is extended for an additional term if the tenant remains in possession after the expiration of the original lease term and the landlord accepts rent. But if the language of the lease states that the tenant must give the landlord notice of his intent to extend the lease, the tenant must provide the notice for the lease to be extended. If notice is not given and the tenant

remains, he can be evicted as a tenant holding over. The only exception would be if the landlord accepted payment after the end of the original lease term in which case the landlord would be treated as having waived the requirement for notice to extend and the parties would be bound for an additional term.

Generally, when the lease requires a renewal (a new contract) at the end of the term, and the term ends without such a new contract, the tenancy has terminated as of the last day of the lease term. 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 could terminate or change the terms with 60 days notice. The tenant could terminate the lease with 30 days notice to the landlord.

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 a lump sum 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 are 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 is actually a penalty. In the alternative, the lease may require the tenant to pay the rent for the months that remain under the terminated lease minus any amount the landlord collects if the property is re-rented.

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 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 sixty (60) days notice to terminate the tenancy.

I need to move. 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 which prohibits you from leasing your apartment to another. When someone other than the original tenant occupies the premises, they are called a subtenant. The landlord may elect to treat the occupant in possession as his tenant under the lease for the unexpired term or the landlord can elect to treat the subtenant as an intruder. The landlord's election may be an express recognition of the subtenant or be implied from affirmative acts and conduct. However, 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.

My apartment owner failed to make mortgage payments and the property has been foreclosed, what will happen?

A tenant who remains in rental property after the owner has lost title to the property due to foreclosure becomes a tenant-at-sufferance. The lease between the tenant and the original owner/landlord will, in most cases, be terminated by the foreclosure sale. If the purchaser at the foreclosure sale wants the tenant to vacate, he must first demand possession of the property and, if refused, file a dispossessory warrant. The purchaser can choose to become a landlord, either by offering a new lease or accepting payment under the prior agreement. A purchaser at foreclosure who accepts rent from existing tenants creates a tenancy-at-will which he can terminate with sixty (60) days notice and which the tenant can terminate with thirty (30) days notice.

A tenant residing in property that is threatened with foreclosure should attempt to contact the attorney handling the foreclosure to determine if the tenancy will continue. If a tenant does not receive assurances of continued tenancy from the foreclosure attorney, the tenant may argue that the lease was terminated by the pending foreclosure. A tenant who becomes aware that his landlord is facing foreclosure might want to consider doing the following:

- * Check the local newspaper which carries the legal notices and see if the property is being advertised for foreclosure sale.
- * Write to the landlord asking for information on the status of the mortgage. You may want to consider asking the landlord to let you out of your lease. If your landlord agrees, make sure to have him put it in writing.
- * If the property is being advertised for sale, the legal notice should contain the name and address of the party foreclosing on the property. You may wish to write to the party intending to foreclose, tell them that you are renting the property, explain your situation,

and that you would like to be notified of what happens with the property.

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 we must vacate the units. 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 does not apply to purchasers at a foreclosure sale. This means that the new owner has purchased your lease and must abide by your lease's terms. Any change or modification to the existing leases, which the new owner wishes to make, must be done in accordance with the terms of the existing leases. Unless the existing leases contain provisions allowing the owner to terminate or modify, they may not be changed prior to their 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, the tenant can consider the new leases an offer of new tenancy and agree to the terms and conditions of the new lease by signing it. If signed, the new lease will control the terms of the new landlord tenant relationship.

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 so provides. 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 days to sign the new lease or vacate.

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

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. 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. However, the apartment complex can only collect the full amount from one of you. 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.

I have decided to remodel my apartments and rent the units 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.

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 which 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, you should plan on moving when your lease ends. At the end of a lease term a landlord can choose not to renew 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.

MILITARY SERVICEMEMBERS AS TENANTS

I am a member of the Georgia National Guard and have been called to service and must relocate. I just signed a lease for an apartment but have yet to move in. What can I do to terminate my lease?

In 2005, the Georgia Legislature passed O.C.G.A. § 44-7-22 which allows service members to terminate their lease when necessary to fulfill their military obligations. This new law applies to all residential rental or lease agreements entered into on or after July 1, 2005, and

to any renewals, modifications, or extensions of such agreements which occur after July 1, 2005.

A landlord may not ask or require the tenant to waive or modify the application of this law.

A service member may terminate his or her residential rental or lease agreements by providing the landlord with a written notice of termination to be effective on the date stated in the notice as long as that date is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer. For this provision to apply one of the following must have occurred:

- * 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 or state 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 of record 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 onto government quarters will result in a forfeiture of the services 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.

The service member is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the rent is due under the lease. The service member is not liable for any other rent or damages due to the early termination of the tenancy. 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 by the landlord.

In the unfortunate event that a service member dies during active duty, an adult member of his or her immediate family may terminate the service member's residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice as long as the date is at least 30 days after the landlord's receipt of the notice. The notice to the landlord 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.

The term '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 90 days or longer.

Less than six months ago, in 2004, my husband leased an apartment for me and our children to live in while he served at a local military base. My husband has been relocated to a military base out-of-state and we want to move with him. Can we terminate our lease

without paying a penalty?

For more than ten years, Georgia law (O.C.G.A. § 44-7-37) has allowed families in your situation to terminate their lease without a penalty. If while on active military duty, a service member leases a residence for occupancy by either the service member or his immediate family the lease may be terminated if the service member receives permanent change of station orders or temporary duty orders for a period in excess of three months. The family can only be required to pay thirty days' rent after written notice and proof of the assignment are given to the landlord. The family can still be held responsible for the cost of repairing damage to the premises caused by an act or omission of the tenant.

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?

Although the Servicemembers Civil Relief Act does not excuse soldiers from paying rent, 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 failure to pay rent was not materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction up to three months unless the court decides on a shorter or longer period 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
- * The agreed rent does not exceed \$2,534.32 per month. The amount is subject to change in future years.

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 Servicemembers Civil Relief Act (SCRA) permits active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety days upon the service member's request. The request must be in writing and (1) explain why the current military duty materially affects the servicemembers 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 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 Servicemembers 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 or she was prejudiced by not being able to appear in person, and that he or she has good legal defenses to the claims against him/her.

SECURITY DEPOSITS

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

Under Georgia law (O.C.G.A. § 44-7-34) a security deposit is money paid by the tenant to the landlord and includes damage deposits, advance rent deposits, and pet deposits but does not include non refundable pet fees, application fees, and payments to the landlord for taking property off the rental market prior to the tenant signing the lease. The 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. §44-7-34), 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 later. If the landlord retains all or part of the security deposit, he must send the former tenant a statement of the exact reasons why the security deposit was retained within thirty (30) days. The notice must identify the damage allegedly caused by the tenant, the estimated dollar amount of the damage, and a refund, if any, of the difference between the security deposit and the 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 premises signed by the landlord. 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 applies to landlords who collectively own more than ten (10) rental units including units owned by their spouse and 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 them helpful.

What do I need to do at the end of the tenancy?

Within three (3) business days after the termination of the lease or the surrender and acceptance of the premises, whichever occurs later, the landlord must inspect the unit and prepare a comprehensive list of 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 occupancy. The tenant must sign the move-out inspection list or specify in writing the items in dispute and then sign. It is best for the tenant to schedule to be present at the move-out inspection.

The move-out inspection discussed applies to landlords who collectively own more than ten (10) rental units including units owned by their spouse and 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 them helpful in establishing repair needs and responsibilities.

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 to compensate for physical damage caused to the premises by the tenant or members of the tenant's household, pets or guests. The tenant can be charged for damage caused by her negligent or careless acts and for damages due to accident or abuse of the property by the tenant. 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 which occurs as a result of the tenant using the property for its intended purpose. A landlord can also deduct from the security deposit unpaid rent, late charges, unpaid pet fees, unpaid utilities which were the tenant's responsibility under the terms of the lease, or for actual damages caused by the tenant's breach of the lease or rental agreement.

I am a landlord who rents two homes. I do not employ a management agent. My tenants moved out, how do I return the security deposit?

The security deposit and any statement which accompanies it should be sent 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.

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 any interest that is 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 is the landlord required to do with the security deposit?

Under Georgia law (O.C.G.A. §§44-7-31 and 44-7-32), a landlord who owns more than ten (10) rental units, including units owned by their spouse and children, or who employs a management agent, regardless of the number of units owned, must give the tenant written notice of the location and number of the account in which the security deposit is held. As a substitute for having an escrow account, the landlord may post a \$50,000 bond with the superior court clerk of the county in which the rental property is located.

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

The former owner 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.

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 and an advance rent deposit. 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. Refundable pet deposits and advance rent deposits are considered 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 under Georgia law 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 months 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.

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

If the amount paid was for a security deposit, Georgia law requires it to be returned thirty (30) days from the date the tenant vacates. Thus, the landlord may have a duty to return the security deposit within thirty (30) days after an application is rejected. It is possible that the holding deposit would not be refundable. The answer would depend 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 this information on the receipt.

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 wrongfully 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 otherwise has designated a person as his agent of service. 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.

I moved out prior to the end of my 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 equal to or less than the amount of your security deposit, your landlord had the legal right to keep your security deposit but should have returned any excess money to you. If you owed 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 the unpaid rent owed by the tenant, he is not required to notify the tenant of the reason for keeping the security deposit. While the law does not require such notice, it is still a wise business practice to provide notice to the tenant when the security deposit is retained to cover the unpaid rent.

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 and visitors. The landlord can either deduct the charges from your security deposit when you move out or can present you with a bill at the time the repairs are made. 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 the security deposit. Can they deduct this cost from the security deposit?

Generally, the tenant is not responsible for defects that existed when the tenant occupied the premises. The purpose of a move-in inspection is to determine any defects before 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 inspection, the cost of the repair should not be deducted from your security deposit.

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 this 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. Also, a landlord may not advertise rates at a certain rent level only to 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. Georgia law does not limit the amount by which the rent can be increased. If the tenant does not have a lease, the landlord must give 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. The best protection against rent increases is a

long term 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.

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?

Yes, Georgia law (O.C.G.A. § 13-6-15) provides that any person, including landlords, who receive "bad checks" can demand payment in cash within ten days. If your rent check was refused by the bank due to a lack of funds, your landlord can charge a returned check fee and charge you for damages. If you do not pay the charges, your landlord can sue you to recover the fee and damages. The service charge for the returned check may not exceed \$30 or 5% of the amount of the check, whichever is greater. You will also have to pay the amount of any fees the landlord was charged by his 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 he suffered, 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. Consequently, the landlord is not required to accept a portion 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. If the landlord does accept the rent in the reduced amount due to needed repairs, the tenant should get a memo from the landlord showing the rent for the month is considered "paid in full."

I paid the rent on the 5th 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. The landlord must receive the rent by the date it is due. It is not sufficient for the tenant to mail the rent on the date it is due. 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.

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 back 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?

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 keeping the building structure, roof, heating and plumbing operational. 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 by the tenant. 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 notification.

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 as to any changes to be made. The landlord will be less likely to deny making such promises when they are in writing.

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 and keep a copy for yourself. Written notice provides tangible 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 written notice, you may want to consider using "repair and deduct." In determining what is a reasonable time, consider the seriousness of the condition and the nature of the repair.

When the landlord fails to respond to repair requests, the tenant can arrange to have the required repairs done by a competent repair person at a reasonable cost. 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 deduct these

repair costs from your future rent by sending copies of the repair receipts along with the remaining amount of rent due to your landlord.

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 repairs to be done. Written notice is the best notice. There are additional remedies which are risky to pursue without legal counsel. If you do not feel that "repair and deduct" will address your issue, you should consider contacting an attorney for more detailed information.

You may also wish to contact the local county 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.

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. If a landlord rents a unit with air conditioning, he must keep it 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 then pay a competent repair person for the repair and deduct that cost from your future 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 sixty (60) days notice. Read your lease carefully to determine what notice your landlord would need to give before terminating your tenancy.

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?

A tenant may be entitled to a rent reduction due to the loss in value caused by the lack of repairs. Such a claim is best brought with the advice and guidance of an attorney. 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 approaching the landlord about the loss and inconvenience. The tenant should try to negotiate compensation for the loss. While the law may not require the landlord to compensate you, 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. For example, was the room involved the kitchen or the only bathroom, both of which are essential for health or safety reasons? Or, was it a spare bedroom or storage area that is not significantly used each day?

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.

Is the tenant required to pay rent when the unit has been destroyed? What if the unit is unlivable?

Yes, under Georgia law (O.C.G.A. §§ 44-7-13 and 44-7-14) the destruction of the rental unit by fire or acts not caused by the landlord does not affect the tenant's obligation to pay the rent under the lease. The tenant of a rented house is liable for rent to the end of the lease term even if the house is destroyed unless the lease provides otherwise. However, it is possible to argue that the destruction of the rental unit, unrepaired by the landlord, amounts to a constructive eviction which would excuse the tenant from paying rent. The defense of constructive eviction has two essential elements. First, that the landlord by his failure to keep the unit repaired allowed the unit to become unfit for the tenant to continue to live there. Second, the rental unit cannot be restored to a satisfactory condition by ordinary repairs which could be made without unreasonable disruption to the tenant. In short, there must be some grave act of a permanent character by the landlord made with the intention of depriving the tenant of the enjoyment of the rented property before a constructive eviction will result.

In cases where the tenant's unit is damaged by an act that is not the fault of the landlord, the tenant needs to notify the landlord of the damage. If the tenant wants to move, the tenant should offer to vacate the unit and ask that the landlord to provide a written document releasing the tenant from the lease. If the tenant does not want to move or the landlord will not let the tenant out of the lease, the landlord must make any necessary repairs to the unit. If the landlord refuses to make repairs but insists on the tenant paying rent, the tenant could raise the defense of constructive eviction if the property is unlivable but this is best done with an attorney.

I do not have a written lease agreement but I 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 not be wise to spend on repairs more than he can deduct 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. The lease should be read 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 keep the premises in repair. 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 you 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 box 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.

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. 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 can hold the landlord responsible if it is shown that it is the landlord's fault that the pipes burst. The landlord must repair the water damage to the apartment.

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?

If you promptly reported the repair, took action to protect your property and your landlord failed to respond, you may have a claim for the loss of your personal property. 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 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 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.
- * Dilapidation, disrepair and structural defects.

* Uncleanliness.

When a county or city has enacted a housing code, it can also establish ordinances outlining how the code is enforced. Georgia law requires that the owner receive notice of the housing code violation and an opportunity for 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 remedy 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 would be justified in treating their lease as in default and moving from the premises. The tenant should keep proof of the property's condemnation and write to the landlord declaring the lease in default, prior to moving.

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 prior to the end of the lease term, it constitutes abandonment of the tenancy. A landlord must be cautious in declaring rental property abandoned and taking possession. If a landlord mistakenly declares property abandoned and removes the tenant's property, the landlord may be held liable for the property the tenant lost. 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. It is best for a landlord not to consider property abandoned while rent is paid. Once rent is past due it is best for the landlord to file a dispossessory affidavit and obtain a court order for possession of the property. This will protect

the landlord from liability. 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. It is good practice for a landlord to have language in the lease which states that personal property left in the rental property after termination of the lease will be considered the landlord's property.

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

The grounds for evicting a tenant are:

- * Non-payment 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, if the lease provides such breach entitles the landlord to terminate the lease.

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 must file a dispossessory affidavit in either the magistrate, state, or superior court where the rental unit is located. The affidavit states:

- * The name of the landlord,
- * The name of the tenant,
- * The grounds for the eviction,
- * 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.

The court will issue a summons to the sheriff. There are three ways in which the summons can be served:

1. Delivered personally to the tenant at home;
2. If the tenant is not home, it will be delivered to an adult who resides at the home and understands the importance of the summons; or
3. The summons will be tacked on the door of the home and on the same day sent by first class mail to the tenant's address. This type of service is appropriate only if no one is at home when the sheriff attempts personal service.

The summons requires the tenant to answer either orally or in writing within seven (7) days from the date that the summons is served. 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 summons 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 appropriate court. The tenant is allowed to remain in possession of the rental property until there is a court order to vacate. The landlord may request that the court order the tenant to pay rent into the registry of the court while waiting for the hearing. If payment is ordered, non-payment of rent into the registry could 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 the past due rent.

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.

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 non-payment 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 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. If a court finds that a landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and require that the landlord 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.

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 has filed a dispossessory based on non-payment 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 until after the dispossessory affidavit has been filed. If the landlord accepts rent

after the existing tenancy has terminated but before filing a dispossessory warrant, it will create a new tenancy. The new tenancy created would be a tenancy-at-will and would require sixty (60) days notice to terminate.

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, which could result in your being evicted. A sheriff, marshal, constable, or your landlord may then remove your property from the premises, if a court has ordered that they may do so.

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 recourse do I have?

Self help evictions, including changing the locks, are illegal under Georgia law. You may take action against the landlord for any damages you suffer due to his wrongful conduct. It is best that this type of action be pursued with the assistance of a legal representative. 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.

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.

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 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; and, 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 tenant filed an answer to a dispossessory warrant which 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 pay into court the rent and utility payments that become due, if the dispossessory process will last more 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 which can then be distributed to the landlord. If the tenant fails to make payments, the court can order the tenant to be 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 an order that the tenant make payment which states the amount to be paid.

The court awarded 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 the plaintiff an award gives the plaintiff the right to collect the money damages from the defendant, but the plaintiff is responsible for actually collecting the award. The court cannot, and will not, collect the award for you. If the defendant is unable to make full

payment immediately, the plaintiff may ask the court at the hearing to order a payment plan. If the judgment is not appealed or paid within 30 days, there are several methods you can use to collect the judgment. These methods only work if the party has assets or is working. Upon receiving a judgment from the court the following methods of collection are available to you:

- * 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 (fi.fa.). The fi.fa., (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 employee 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. Mail the form, which can be obtained from the Clerk of the Magistrate's Court, to the defendant who must respond under oath within 30 days. Note that the defendant may close the bank account when advised of the pending garnishment and then you would need to obtain information about any new account.
- * 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.

I was employed as a resident manager of an apartment complex. I recently lost 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 landlord/employer cannot just come and move the employee out. The former employer will have to file a dispossessory, if the former employee refuses to move voluntarily.

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 stating that the tenant owes me money for past due rent.

Why?

A dispossessory warrant taken due to non-payment will usually request possession and a judgment for the amount of rent owed. If the dispossessory warrant is served by "tack and mail" service, a copy being placed on the door and a second copy sent by mail, the court cannot issue a money judgment. However, if the tenant served by tack and mail files an answer, the court can award a money judgment.

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

A judgment in a dispossessory case must be appealed 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.

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 rug were damaged. I would like to sue my landlord for the damage to my property. How can I do this?

If a tenant has any claims against the landlord for damage caused by the landlord's breach of the lease or failure to perform his responsibilities, the tenant should consult an attorney before filing their answer. The answer must contain any legal and equitable counterclaims which the tenant has against the landlord. If the tenant has a claim against the landlord which arises out of the tenancy that claim 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 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. Also, 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 affidavit is dismissed or a writ of possession issues before a final judgment, the tenant is still entitled to a hearing on the counterclaims.

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

By ruling for your landlord, the court ruled 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 removed from the

property. 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 judgment, 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?

You have seven (7) days after entry of the judgment in a dispossessory to file an appeal. Entry of judgment is the filing with the court clerk of a judgment, signed by the judge. The notice of appeal is filed in the court appealed from. Once a notice of appeal is filed and the court costs are either paid or a pauper's affidavit has been filed, it prevents the judgment for possession from being executed. Tenants must be aware that under Georgia law (O.C.G.A. § 44-7-56), if the landlord requests, the court may order the tenant to pay into court the rent the trial court found the tenant owed, as well as future rent which comes due while the appeal is pending. If the tenant fails to pay, the court will order that the tenant to be removed from the property.

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?

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 which comes due after the termination. The exception to this rule is when the lease contains explicit and detailed language which clearly expresses the landlord's intention to hold the lessee responsible for rent under the

lease, even if an eviction takes place. Such provisions are enforceable as valid liquidated damages clauses if (1) the injury caused by breach of the lease is difficult or impossible to estimate accurately; (2) the parties intend to provide for damages rather than a penalty; and (3) the stipulated sum is a reasonable pre-estimate of the landlord's probable loss due to the termination of the lease. If these requirements are not met, then the provision fails as a penalty and cannot be enforced against the tenant.

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 rental property the tenant and her personal property left in the unit. Personal property includes the tenant's general belongings such as clothing, furniture, dishes, and other household items. Land is real property. Under Georgia law (O.C.G.A. § 44-7-55) when the landlord removes the tenant's personal property from the rental unit, that property 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. The landlord is not a bailee of the tenants' personal property and owes the tenant no duty to protect that personal property. 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.

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 type of transportable housing and the tenant does not move the same within ten days after a final order is entered, the landlord will be entitled to have such transportable housing moved from the property at the expense of the tenant by a motor common carrier licensed by the Public Service Commission for the transportation of manufactured housing. There will be a lien upon the mobile home to the extent of moving fees and storage expenses in favor of the person performing such services. Such a lien may be claimed and foreclosed in the same manner as special liens on personalty. Storage fees are not to exceed \$4.00 per day.

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, the 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 unavailable housing;
- * 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 from the rental opportunity 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 that 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 familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- * A parent, or
- * 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 18. 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 which I wanted to rent. When I talked to the landlord over the telephone, it was available. But 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 it 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 <http://www.hud.gov/complaints/housediscrim.cfm> or you can print out the form and delivery 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. Or, you can write to HUD at the above address. To file a complaint under state law, or for information on State 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, you can 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. Normally, HUD also will:

- * Notify the alleged violator of your complaint and permit that person to submit an answer

- * Investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated

- * Notify you if it cannot complete an investigation within 100 days of receiving your complaint

HUD will try to reach an agreement with the person your complaint is against. A conciliation

agreement 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 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. If, after investigating your complaint, HUD finds reasonable cause to believe that discrimination occurred, it will inform you. Your case will be heard in an administrative hearing within 120 days, 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 (ALA) will consider evidence from you and the respondent. If the ALA 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. The maximum penalties are \$10,000 for a first violation and \$50,000 for a third violation within seven years.
- * To pay reasonable attorney's fees and costs. If you or the

respondent choose to have your case decided in Federal District Court, the Attorney General will file a suit and litigate it on your behalf. Like the ALA, 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
- * 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 District 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 determine occupancy standards. The landlord can impose occupancy requirements through provisions 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 a 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 Georgia's 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 and may be requested to provide a doctor's statement indicating that the accommodation is necessary. A disability is 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 reasonable

accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. Examples of reasonable accommodations include a landlord's waiving of a no pet rule for a tenant who needs to use an animal assistant and reserving parking places 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 disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities, or
- * Have a record of such a disability or
- * 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.

ADDITIONAL RESOURCES

LEGAL ASSISTANCE

Free or reduced cost legal assistance for low income persons is available through either the Atlanta Legal Aid Society or Georgia Legal Services Program.

Albany Office: serves the following counties: Baker, Ben Hill, Calhoun, Clay, Crisp, Decatur, Dooley, Dougherty, Early, Grady, Miller, Mitchell, Quitman, Randolph, Seminole, Terrell, Turner, Wilcox, Worth

Albany Towers

235 Roosevelt Avenue, Suite 410

P.O. Box 2578 (31702-2578)

Albany, Georgia 31702

229-430-4261; Fax No.: 229-430-4434

Toll-Free No.: 1-800-735-4271

Augusta Office: serves the following counties: Burke, Columbia, Glascock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Screven, Taliaferro, Warren, Washington, Wilkes.

209 7th Street, Suite 400

P.O. Box 2185 - Zip Code 30903

Augusta, Georgia 30901

706-721-2327; Fax No.: 706-721-4897

Toll-Free: 1-800-248-6697

Columbus Office: serves the following counties: Chattahoochee, Harris, Lee, Macon, Marion, Meriwether, Muscogee, Pike, Schley, Stewart, Sumter, Talbot, Taylor, Troup, Upson, Webster.

1036 First Avenue - P.O. Box 176

Columbus, Georgia 31902

706-649-7493; Fax No.: 706-649-7519

Toll-Free No.: 1-800-533-3140

Dalton Office: serves the following counties: Catoosa, Chattooga, Dade, Murray, Whitfield, Walker

1508 North Thornton, Suite 100, Dalton, GA 30720

P.O. Box 2004, Dalton, GA 30722-2004

Toll-Free No.: 1-888-408-1004; Fax No.: 706-272-2259

Public/ General No: 706-272-2924

Gainesville Office: serves the following counties: Banks, Barrow, Cherokee, Clarke, Dawson, Elbert, Fannin, Forsyth, Franklin, Gilmer, Habersham, Hall, Hart, Jackson, Lumpkin, Madison, Oconee, Oglethorpe, Pickins, Rabun, Stephens, Towns, Union, White.

705 Washington Street, NW, Suite B-1

P.O. Box 1337 - Zip Code 30503

Gainesville, Georgia 30501

770-535-5717; Fax No.: 770-531-6011

Toll-Free No.: 1-800-745-5717

Macon Office: serves the following counties: Baldwin, Bibb, Bleckley, Butts, Crawford, Dodge, Hancock, Houston, Jasper, Johnson, Jones, Lamar, Laurens, Monroe, Montgomery, Peach, Pulaski, Putnam, Telfair, Truetlen, Twiggs, Wheeler, Wilkinson.

241 Third Street

P.O. Box 1057, Zip Code 31202-1057

Macon, Georgia 31201

478-751-6261; Fax No.: 478-751-6581

Toll-Free No.: 1-800-560-2855

Piedmont Office: serves the following counties: 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; Fax No.: 404-463-1584

Toll-Free No.: 1-800-822-5391

Savannah Office: serving the following counties: Bryan, Bulloch, Candler, Chatham, Effingham, Emanuel, Evans, Liberty, Long, Tattnall, Toombs.

10 Whitaker Street

P.O. Box 8667 - Zip Code 31412

Savannah, Georgia 31401

912-651-2180; Fax No.: 912-651-3300

Toll-Free No.: 1-888-220-8399

Valdosta Office: serving the following counties: Berrien, Brooks, Colquitt, Cook, Echols, Irwin, Lanier, Lowndes, Thomas, Tift

1101 North Patterson Street

Valdosta, Georgia 31601

229-333-5232 Fax No.: 229-333-5236

Toll-Free No.: 1-800-546-5232

Waycross Office: serving the following counties: Appling, Atkinson, Bacon, Brantley, Camden, Charlton, Clinch, Coffee, Glynn, Jeff Davis, McIntosh, Pierce, Ware, Wayne.

1057 Grove Avenue

Waycross, GA 31501

912-285-6181; Fax No.: 912-285-6187

Toll-Free No.: 1-800-498-9508

Metro Atlanta Offices: serving the following counties: Clayton, Cobb, DeKalb, Fulton, Gwinnett

Atlanta Legal Aid Society, Inc.

151 Spring Street, N. W.

Atlanta, Georgia 30309 (404) 524-5811