

**PUBLIC HOUSING AUTHORITIES
AND THE
ALABAMA UNIFORM LANDLORD TENANT ACT**

*Understanding Landlord and Tenant
Rights, Duties, and Obligations*



Presented by:
MORRIS & BRUMLOW, P.C.
Attorneys at Law
137 Main Street, Suite 202
Trussville, AL 35173
Phone: (205) 661-3643
Fax: (205) 661-3645

M & B

I. INTRODUCTION.

In 2006, the Alabama State Legislature passed the Alabama Uniform Residential Landlord and Tenant Act ("Act"), which is codified at Title 35, Chapter 9A of the *Alabama Code*.¹ However, the federal laws and regulations have long set forth substantially similar provisions. The Act governs, among other things, the termination of lease agreements.² The purpose of this article is to set forth the statutory requirements for public housing authorities ("PHAs") to enter into and terminate lease agreements in conformity with Alabama and federal law.

II. REQUIRED AND PROHIBITED LEASE PROVISIONS.

The initial terms and conditions of a tenant's right to use a PHA residence should be clearly set out in a written lease. A PHA should make sure that its lease conforms to both federal and state law. The good news is that both Alabama and federal regulations are substantially similar as to the initial requirements of a PHA lease, and the federal rules only slightly modify Alabama landlord-tenant law.

¹ See Ala. Code §§ 35-9A-101-603 (1975).

² See Ala. Code §§ 35-9A-421-27.

A. Permitted lease provisions.

A lease between the PHA and each tenant must contain the name of the parties, the address of the dwelling unit being rented, and the term of the lease.³ The lease should also state what utilities, services, and equipment will be provided by the PHA without additional cost, and what are to be paid for by the tenant. The composition of the household (family members and any PHA-approved live-in-aids) should be approved by the PHA.⁴ It is the tenant's obligation to add any other family member as an occupant of the unit⁵. HUD regulations state that a tenant's guest becomes an unauthorized household member if the person "has been in the unit more than 15 consecutive days without PHA approval, or a total of thirty days in a 12 month period."⁶

The lease shall have a 12 month term and must be renewed automatically for the same period.⁷ The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program.⁸ The lease may be modified at any time by written agreement of the tenant and the

³ 24 C.F.R. 966.4(a)(1)(v).

⁴ Ala. Code § 35-9A-161.

⁵ 24 CFR § 982.551(h)(2). Most administrative plans will interpret this provision to require that any person residing on the property longer than 14 consecutive days, or 30 calendar days in any 12 month period, will be considered in the unit as an unauthorized household member. Basco v. Machin, 514 F. 3d 1177 (11th Cir. 2008).; Saxton v. Housing Authority of City of Tacoma, 1 F. 3d 881 (9th. Cir. 1993).

⁶ Basco, 514 F. 3d at 1179.

⁷ 24 C.F.R. 966.4(a)(2)(i).

⁸ 24 C.F.R. 966.4(a)(2)(ii).

PHA.⁹ The lease must be executed by the tenant and the PHA, except on automatic renewals of the lease.

B. Prohibited lease provisions.

Alabama law, in near perfect harmony with federal law, strictly prohibits the following lease terms¹⁰:

- (1) A provision whereby the tenant agrees to waive or forego rights or remedies established under Section 35-9A-204 (regarding the PHA's obligation to maintain the premises).¹¹
- (2) A provision whereby the tenant agrees to waive or forego rights or remedies established under Section 35-9A-401 (regarding the tenant's statutory remedies upon the PHA's noncompliance with the lease agreement).¹²
- (3) A provision whereby the tenant agrees to waive or forego rights or remedies established under Ala. Code § 35-9A-404 (regarding the PHA's wrongful failure to make available heat, water, hot water, or essential services).¹³

⁹ 24 C.F.R. 966.4(a)(2)(iii).

¹⁰ Compare Ala. Code § 35-9A-163 with 24 C.F.R. 966.6(a)-(h).

¹¹ Ala. Code § 35-9A-163.

¹² Id.

¹³ Id.

- (4) A provision whereby the tenant agrees to waive or forego requirements of security deposits established by this chapter or under the law of unlawful detainer.¹⁴
- (5) A provision whereby the tenant authorizes any person to confess judgment on a claim arising out of the lease agreement.¹⁵
- (6) A provision whereby the tenant agrees to pay the PHA's attorney's fees or cost of collection.¹⁶
- (7) A provision whereby the tenant agrees to the exculpation or limitation of any liability of the PHA arising under law or to indemnify the PHA for that liability or the costs connected therewith.¹⁷
- (8) A provision that the court finds unconscionable when made.¹⁸ Unconscionable agreements or provisions are those which show no regard for conscience; they affront our sense of justice, decency, or reasonableness.¹⁹

Under Alabama law, when prohibited terms or conditions are found to be deliberately within the lease, the tenant is entitled to recover from the

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Ala. Code § 35-9A-143. If a court finds that a lease agreement or a provision within a lease agreement was unconscionable when made, the court has discretion to refuse to enforce it, enforce the remainder of the agreement, or limit the application of the unconscionable provision to avoid an unconscionable result. *See Id.*

¹⁹ Black's Law Dictionary 1561 (8th ed. 2004).

PHA actual damages up to 1 month's periodic rent together with attorney fees²⁰ and costs.²¹ PHAs should periodically review their lease to make sure there are no offending provisions.

III. PUBLIC HOUSING AUTHORITY AND TENANT OBLIGATIONS.

A. Security deposits.

The security deposit cannot be in excess of one month's rent unless there are pets, changes to the premises, or an increased risk of liability to the PHA or to the premises.²²

When the tenancy is terminated, the PHA may apply the security deposit towards the payment of accrued rent and/or the amount of damages due to the tenant's noncompliance with Ala. Code § 35-9A-301 (regarding tenant's obligation to maintain the dwelling unit).²³ However, to do so, the PHA must deliver a written notice to the tenant stating the amount due and itemizing any and all damages or accrued rent.²⁴ This must be done within 35 days after the termination of the tenancy and delivery of possession.²⁵

If the PHA does not refund the entire security deposit, the PHA must provide the tenant with an itemized list of the amounts withheld within 35 days after the termination of the tenancy and delivery of possession.²⁶

²⁰ Attorney's fees are recoverable from a tenant only when the tenant's conduct is found to be willful, such as destruction of the PHA's property. *See* Ala. Code § 35-9A-421(c).

²¹ Ala Code § 35-9A-163.

²² Ala. Code § 35-9A-201.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

When the tenant vacates the premises, the tenant must provide the PHA a valid forwarding address, in writing, to which the security deposit or itemized accounting, or both, may be mailed.²⁷ If the tenant fails to do this, the PHA must mail, by first class mail, the security deposit or itemized accounting, or both, to the last known address of the tenant or, if none, to the tenant at the address of the property.²⁸ If the security deposit is not claimed by the tenant within 180 days, the tenant forfeits the said deposit.²⁹

If the PHA fails to mail a timely refund or accounting within the 35-day period, the PHA shall pay the tenant double the amount of the tenant's original deposit.³⁰

B. Disclosure.

The PHA shall disclose, in writing, to the tenant, at or before the commencement of the tenancy, the name and business address of: (1) the person authorized to manage the premises; and (2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.³¹

This information must be kept current.³²

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Ala. Code § 35-9A-202.

³² Id.

C. *Deliver possession of dwelling unit.*

When the lease term begins, the PHA shall deliver possession of the premises to the tenant, pursuant to the lease agreement and pursuant to Section 35-9A-204 (regarding the PHA's obligation to maintain the premises).³³

If any person is wrongfully in possession of the premises at the commencement of the lease term, the PHA may bring an action for possession against that person and recover damages, as provided in Section 35-9A-441(c) (regarding holdover remedies).³⁴

D. *Maintain premises.*

Under the Act, the PHA is required to:

- (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety.³⁵
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a habitable condition.³⁶
- (3) Keep all common areas of the premises in a clean and safe condition.³⁷
- (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating,

³³ Ala. Code § 35-9A-203.

³⁴ Id.

³⁵ Ala. Code § 35-9A-204.

³⁶ Id.

³⁷ Id.

air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA.³⁸

- (5) Provide and maintain appropriate receptacles and conveniences for the removal of garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.³⁹ However, the PHA and tenant of a single family residence may agree in writing that the tenant perform this duty.⁴⁰
- (6) Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.⁴¹ However, the PHA and tenant of a single family residence may agree in writing that the tenant perform this duty.⁴²

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

The PHA and tenant of a single family residence may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling.⁴³

The PHA and tenant of any dwelling unit that is not a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if: (1) the agreement of the parties is set forth in a separate writing signed by the parties and supported by adequate consideration; (2) the work is not necessary to cure noncompliance with Ala. Code § 35-9A-204(a)(1) (regarding compliance with building and housing codes); and (3) the agreement does not diminish or affect the obligation of the PHA to other tenants in the premises.⁴⁴ The PHA may not treat performance of the separate agreement as a condition to any obligation or performance of any lease agreement.⁴⁵

The tenant cannot seek a remedy against the PHA for the PHA's failure to maintain the premises if the condition was caused by the willful or negligent act or omission of the tenant, a member of the tenant's family, a licensee, or other person on the premises with the tenant's consent.⁴⁶

E. Retaliatory conduct prohibited.

Except as otherwise provided by the Act, a PHA may not retaliate by discriminatorily increasing rent or decreasing services or by bringing or

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

threatening to bring an action for possession because: (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; (2) the tenant has complained to the PHA of a violation under Ala. Code § 35-9A-204; or (3) the tenant has organized or become a member of a tenant's union or similar organization.⁴⁷

If a PHA retaliates in any of the above-described manners, the tenant is entitled to the remedies provided in Ala. Code § 35-9A-407 and has a defense in any retaliatory action against the tenant for possession.⁴⁸

A PHA may bring an action for possession if: (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent; (2) the tenant is in default in rent; (3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit; or (4) other material violations of the lease.⁴⁹ The maintenance of an action for possession for these reasons does not, however, release the PHA from liability under Ala. Code § 35-9A-401(b).⁵⁰

⁴⁷ Ala. Code § 35-9A-501.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

F. Tenant obligations.

Like PHAs, tenants also have obligations under their lease. The lease must state that the tenant may not assign the lease, sublease the dwelling unit, or provide accommodations for boarders or lodgers.⁵¹ The tenant must use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not use or permit its use for any other purpose.⁵² The tenant must abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease.⁵³ The tenant must comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety; and to keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.⁵⁴ All garbage, rubbish, and other waste from the dwelling unit must be disposed of in a sanitary and safe manner. Further, all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities must be used in a reasonable manner.⁵⁵

The tenant must refrain from, and cause other household members and guests to refrain from, destroying, defacing, damaging, or removing any part of the dwelling unit or project. They must also pay reasonable charges for the repair of damages to the dwelling unit, or to the project caused by the

⁵¹ 24 C.F.R. 966.4(a)(3)(f)(1)-(2).

⁵² 24 C.F.R. 966.4(a)(3)(f)(3).

⁵³ 24 C.F.R. 966.4(a)(3)(f)(4).

⁵⁴ 24 C.F.R. 966.4(a)(3)(f)(5)-(6).

⁵⁵ 24 C.F.R. 966.4(a)(3)(f)(7)-(8).

tenant, a member of the household, or a guest.⁵⁶ The tenant must act, and cause other household members and guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations. This will also be conducive to maintaining the premises in a decent, safe, and sanitary condition.⁵⁷

The tenant must refrain from, and require that any member of the tenant's household or a guest refrain from engaging in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents. This includes any drug related criminal activity, whether on or off the premises.⁵⁸ There also must not be any member of the household engaging in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.⁵⁹

The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwelling units of similar design are customary, provided this inclusion of the lease is in good faith and not an attempt to evade the obligations of the PHA.

If there is any damage to the unit that could create a hazardous environment and endanger the health of the tenant, the PHA is responsible for those damages. However, if the said damages were created by the tenant,

⁵⁶ 24 C.F.R. 966.4(a)(3)(f)(9-10)

⁵⁷ 24 C.F.R. 966.4(a)(3)(f)(11)

⁵⁸ 24 C.F.R. 966.4(a)(3)(f)(12)(i)(A)

⁵⁹ 24 C.F.R. 966.4(a)(3)(f)(12)(iii); *see also* Burton v Tampa Housing Authority, 171 F. Supp. 2d 1314 (M.D. Fla. 2000).

a member of the tenant's household, or a guest of the tenant, the reasonable cost of the repairs may be charged to the Tenant.

G. Rules and regulations.

"Rules" or "regulations" pertaining to a residential lease are defined as policies of the PHA affecting the maintenance, operation, or governance of the common areas of the premises, or concerning the general conduct of tenants in their use and enjoyment of the leased premises.⁶⁰

A PHA, from time to time, may adopt a rule or regulation. It is enforceable against the tenant only if:

- (1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the PHA's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;⁶¹
- (2) it is reasonably related to the purpose of which it is adopted;⁶²
- (3) it applies to all tenants in the premises in a fair manner;⁶³
- (4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the

⁶⁰ Ala. Code § 35-9A-302.

⁶¹ Id.

⁶² Id.

⁶³ Id.

tenant of what the tenant must or must not do to comply;⁶⁴

- (5) it is not for the purpose of evading the obligations of the PHA;⁶⁵ *and*
- (6) the tenant has notice of it at the time the tenant enters into the lease agreement, or when it is adopted.⁶⁶

If a rule or regulation is adopted after the tenant enters into the lease agreement that works a substantial modification of the tenant's use of the leased premises, it is not valid unless the tenant consents to it in writing.⁶⁷ In the case of any variance between the lease and a rule or regulation, the lease prevails.⁶⁸

H. Access to the premises.

A tenant shall not unreasonably withhold consent to the PHA to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.⁶⁹

A PHA may enter the dwelling unit without consent of the tenant only in the following circumstances:

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Ala. Code § 35-9A-303.

- (1) in case of emergency;⁷⁰
- (2) pursuant to court order;⁷¹
- (3) if there is noncompliance by the tenant with Ala. Code § 35-9A-301 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within seven days after written notice by the PHA specifying the breach and requesting that the tenant remedy it within that period of time, the PHA may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment;⁷²
- (4) during any absence of a tenant in excess of 14 days, the PHA may enter the dwelling unit at times reasonably necessary;⁷³
- (5) at reasonable times and with prior notice as provided in Ala. Code § 35-9A-303(c) (2 days' notice), to show

⁷⁰ Id.

⁷¹ Id.

⁷² Ala. Code §§ 35-9A-303, 422.

⁷³ Ala. Code §§ 35-9A-303, 423(b).

the premises to a prospective tenant or purchaser, if a PHA provides the tenant separate from the rental agreement a general notice signed by the tenant for the right to access for such a purpose within four months of the expiration of the rental agreement, and only in the company of a prospective tenant or purchaser;⁷⁴ and

- (6) when the PHA has reasonable cause to believe the tenant has abandoned or surrendered the premises.⁷⁵

A PHA shall not abuse the right of access or use it to harass the tenant.⁷⁶ Except as provided in Ala. Code § 35-9A-303 or unless it is impracticable to do so, the PHA may show the premises at any reasonable time by giving the tenant at least two days' notice of the PHA's intent to enter and may enter only at reasonable times.⁷⁷ Posting of a note on the primary door of entry to the residence of the tenant stating the intended time and purpose of the entry shall be a permitted method of notice for the purpose of the PHA's right of access to the premises.⁷⁸

If a PHA provides separate from the lease in a general notice or an advance schedule in excess of 2 days for repairs, maintenance, pest control, or for service relating to health or safety, whether such notice is for a specific time or within a designated time period, then no additional day's notice is

⁷⁴ Ala. Code § 35-9A-303.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

required to access the premises.⁷⁹ A tenant may consent to provide a PHA with access to the premises with less than 2 days' notice.⁸⁰

IV. BREACH OF LEASE – TERMINATION OR CURE?

A. Nonpayment of rent.

If rent is unpaid when due and the tenant fails to pay rent with 7 days after receipt of written notice to terminate the lease for nonpayment and if the rent is not paid within the 7 day period, the PHA may terminate the lease agreement at the expiration of the 7 day period.⁸¹ If a noncompliance of the lease agreement occurs under both subsections (a) and (b) of Ala. Code § 35-9A-421, the 7 day notice period to terminate the lease for nonpayment of rent in subsection (b) subsection shall govern.⁸² However, federal law provides that a 14 day notice of termination for non-payment of rent must be given the tenant.⁸³

B. Breaches other than non-payment of rent.

Under federal law, the PHA may have the right to terminate the tenancy for: repeat violations of the lease agreement; failure to make payments; or failure to fulfill household obligations described in the lease agreement.⁸⁴ Additionally, the tenancy may be terminated because the tenant

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Ala. Code § 35-9A-421(b).

⁸² Id.

⁸³ 42 U.S.C.A. § 1437d(l)(4).

⁸⁴ 24 C.F.R. 966.4(a)(3)(i)(2)(i)(A)-(B).

has income over the income limit or for good cause.⁸⁵ Good cause may include, but is not limited to, violations such as criminal activity, alcohol abuse, discovery of fraud or deceit, and the discovery of information that makes the tenant ineligible for public housing.⁸⁶

Similarly, under Alabama law, if there is a material noncompliance by the tenant with the lease agreement or a noncompliance with Ala. Code § 35-9A-301 materially affecting health and safety, the PHA may deliver a written notice to terminate the lease to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice.⁸⁷ If the breach is not remedied within the 14 days after receipt of the notice to terminate the lease, the lease agreement shall terminate on the date provided in the notice to terminate the lease unless the tenant adequately remedies the breach before the date specified in the notice, in which case the lease agreement shall not terminate.⁸⁸

A PHA may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the lease agreement or Ala. Code § 35-9A-301.⁸⁹ If the tenant's noncompliance is willful, the PHA may also recover reasonable attorney's fees.⁹⁰

⁸⁵ 24 C.F.R. 966.4(a)(3)(i)(2)(ii).

⁸⁶ 24 C.F.R. 966.4(a)(3)(i)(2)(iii)(A)-(C).

⁸⁷ Ala. Code § 35-9A-421(a).

⁸⁸ Id.

⁸⁹ Ala. Code § 35-9A-421(c).

⁹⁰ Id.

C. *Termination for failure to maintain.*

If there is noncompliance by the tenant with Ala. Code § 35-9A-301 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within 7 days after written notice by the PHA specifying the breach and requesting that the tenant remedy it within that period of time, the PHA may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.⁹¹

D. *Termination for absence, nonuse, or abandonment.*

If a rental agreement requires the tenant to give notice to the PHA of an anticipated extended absence in excess of 14 days pursuant to Ala. Code § 35-9A-304 and the tenant willfully fails to do so, the PHA may recover actual damages from the tenant.⁹²

During any absence of a tenant in excess of 14 days, the PHA may enter the dwelling unit at times reasonably necessary.⁹³

If a tenant abandons the dwelling unit, the PHA shall make reasonable efforts to rent it at a fair rental.⁹⁴ But such duty shall not take

⁹¹ Ala. Code § 35-9A-422.

⁹² Ala. Code § 35-9A-423(a).

⁹³ Ala. Code § 35-9A-423(b).

⁹⁴ Ala. Code § 35-9A-423(c).

priority over the PHA's right to first rent other vacant units.⁹⁵ If the PHA rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy.⁹⁶ If the PHA fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the PHA accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the PHA as of the date the PHA has notice of the abandonment.⁹⁷ If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.⁹⁸

If a tenant leaves property in the unit more than 14 days after termination pursuant to this chapter, the PHA has no duty to store or protect the tenant's property in the unit and may dispose of it without obligation.⁹⁹

E. Remedies for criminal activity.

Alabama statutory law does not explicitly address the issue of terminating a lease agreement when a tenant, a member of the tenant's household, or a guest of the tenant engages in criminal activity on or off the PHA's premises.

PHAs frequently include provisions in their lease agreements, such as the following, that govern criminal activity:

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Ala. Code § 35-9A-423(c).

To assure that the Tenant, other persons under the Tenant's control, any member of the Tenant's household, or a guest, shall not engage in: (1) Any criminal activity on or off the Landlord's premises that the Landlord determines may interfere with or threaten the health, safety, or right to peaceful enjoyment of the premises by other Tenants, employees of the Landlord or any other person lawfully on the Landlord's premises.; (2) Any drug-related criminal activity on or off such premises; or any activity by a Tenant or guest in which the Landlord determines that a Tenant or guest is illegally using a controlled substance.; and/or (3) Abuse of alcohol that the Landlord determines it has reasonable cause to believe that such illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other Tenants, employees of the Landlord, or persons legally on the premises.

Such provisions oftentimes are accompanied by a statement that the PHA has a zero tolerance policy for criminal activity and that such activity constitutes a serious violation of the material terms of the lease agreement.

Criminal activity provisions are intended, in large part, to protect the health, safety, or right to peaceful enjoyment of the premises by other Tenants, employees of the PHA, or persons legally on the premises. Under Ala. Code § 35-9A-301(7), tenants are required to conduct themselves and to require others who are on the premises with their consent to conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of the premises. Accordingly, termination for criminal activity is

typically pursued in the same manner as termination for failure to maintain the dwelling unit.

Under federal law, the PHA must terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.¹⁰⁰ Going further, though, any drug-related and violent criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate the tenancy for the entire family.¹⁰¹ In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using

¹⁰⁰ 24 C.F.R. 982.553(b) states, "(b) Terminating assistance—(1) Terminating assistance for drug criminals. (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under §982.551 not to engage in any drug-related criminal activity.

(2) Terminating assistance for other criminals. **The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under §982.551 not to engage in violent criminal activity.**

¹⁰¹ See HUD v Rucker, 535 U.S. 125 (2002). However, domestic violence victims' lease should be bifurcated.

a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

In HUD v. Rucker, the U.S. Supreme Court ruled that PHAs are permitted to evict tenants when they, their household members, or their guests are involved in illegal drug activity.¹⁰² The Court stated that such evictions are permissible even if the tenant himself has no knowledge of, or control over, the criminal activity, thus partially abrogating the innocent tenant rule.

Any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of the tenancy.¹⁰³

F. Holdover termination.

If a tenant remains in possession without the PHA's consent after expiration of the term of the rental agreement or its termination, the PHA may bring an action for possession and if the tenant's holdover is willful and not in good faith the PHA may also recover an amount equal to not more than 3 month's periodic rent or the actual damages sustained by the PHA,

¹⁰² Id.

¹⁰³ 42 U.S.C.A. § 1437(d)(1)(6).

whichever is greater, and reasonable attorney's fees.¹⁰⁴ If the PHA consents to the tenant's continued occupancy, Ala. Code § 35-9A-161(d) applies.¹⁰⁵

G. *Remedy after termination.*

If a rental agreement is terminated, the PHA has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Ala. Code § 35-9A-421(c).¹⁰⁶

H. *Waiver of the PHA's right to terminate.*

Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement constitutes a waiver of the PHA's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.¹⁰⁷

V. *THE EVICTION PROCESS.*

The specific process for eviction begins with the breach of the lease by the tenant, and ends with the tenant leaving the property for good. PHAs should understand how the federal rules interplay with Alabama law and

¹⁰⁴ Ala. Code § 35-9A-441(c).

¹⁰⁵ *Id.* citing Ala. Code § 35-9A-161(d) ("Unless the rental agreement fixes a definite term, the tenancy is week-to-week in case of a tenant who pays weekly rent, and in all other cases month-to-month.").

¹⁰⁶ Ala. Code § 35-9A-426.

¹⁰⁷ Ala. Code § 35-9A-424.

how, at each stage, both must be respected. A failure by the PHA to complete the process correctly and the process must be started over.

A. Determine a breach of the lease has occurred.

Determining whether a breach of the lease has occurred is not always an easy task. While a breach of the lease for non-payment of the rent is any easy call, others, such as failing to maintain the property regarding health standards, parking on the grass, and criminal issues require a more discerning eye and a fuller understanding of the policies of the housing authority and the contents of the lease, and the facts (and proof of) the circumstances of the breach. When determining whether a breach has happened, always check the actual language of the lease and the PHA policy when determining these non-standard breaches of the lease.

If a rental agreement is terminated, the PHA has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Ala. Code § 35-9A-421(c).

B. Drafting a termination notice.

The first step under Alabama and federal law is to give notice to the tenant of your intention to terminate the lease, together with any rights to cure and to a grievance hearing that the tenant may have. Under both state and federal rules, the PHA has the obligation to notify the tenant of specific

grounds for any proposed adverse action, which includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities. Notification must also be given to the tenant of their opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action.¹⁰⁸ The contents of the notice of adverse action must be “sufficiently specific for it to enable an applicant to prepare rebuttal evidence to introduce at the hearing.”¹⁰⁹ Drafting an appropriate lease termination for the situation is an important and statutory step in the process.

The termination notice must be in writing and it must specify the acts and/or omissions constituting the breach. The notice must state that the lease agreement will terminate upon a date not less than 14 days after receipt of the notice. The notice should also state that, if the breach is not remedied within the prescribed period of time after receipt of the notice to terminate the lease, the lease agreement shall terminate on the date provided in the notice to terminate the lease unless the tenant adequately remedies the breach (cures the breach) before the date specified in the notice, in which case the lease agreement shall not terminate.

It is good practice for the PHA to cite the precise lease provision that was breached by the tenant and quote that provision in its entirety. The PHA should thereafter briefly and accurately describe how the tenant breached that specific lease term.

¹⁰⁸ 24 C.F.R. 966.4(a)(3)(e)(8)(i-ii).

¹⁰⁹ Ervin v HABD, 281 Fed. App'x 938, 941 (11th Cir. 2008) (citing Billington v. Underwood, 613 F. 2d 91, 94 (5th Cir. 1980)).

The notice of lease termination must state specific grounds for termination, and must inform the tenant of his or her right to make such reply as the tenant may wish.¹¹⁰ Specific grounds for termination, or “statement of reasons” for the termination of the lease, are described in this way: “Such a statement must be sufficiently specific for it to enable an applicant to prepare rebuttal evidence to introduce at his hearing appearance.”¹¹¹ The notice must inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction.¹¹² When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant’s right to request a hearing in accordance with the PHA’s grievance procedure.¹¹³

A notice to vacate that is required by state or local law may be included, or run concurrently, with a notice of lease termination under the PHA’s lease termination procedure.¹¹⁴

The termination notice should include a short statement regarding the tenant's right to cure, even if there is no such right. The PHA should be very specific. For example, if terminating for nonpayment of August rent, the right to cure may be payment of rent in the amount of \$500.00, plus a late penalty of \$100.00. If the breach is not cured by the tenant within 14 days after receipt of the notice to terminate, then the lease agreement will terminate on the date provided in the notice. If there is a right to cure, the

¹¹⁰ 24 C.F.R. 966.4(a)(3)(i)(3)(C)(ii).

¹¹¹ Ervin, 281 Fed. App'x at 941.

¹¹² Id.

¹¹³ Id.

¹¹⁴ 24 C.F.R. 966.4(a)(3)(i)(3)(C)(iii).

PHA should state the reasonable manner that the right to cure should take. However, if there is no right to cure, the PHA should simply state that there is no right to cure.

Oftentimes tenants are repeat violators of the same lease provisions. Some such provisions will appear relatively unimportant to a court, unless the PHA can show the court that it is a repetitive problem. Terminating a tenant's lease for parking on the grass may appear petty to a court. However, what if the tenant is a repeat violator of a lease provision that prohibits parking on the grass and the PHA has documented it? Unfortunately, the Act is silent as to the PHA's remedy regarding multiple violations of the same lease term. The best policy is to issue a notice of termination for the first violation. The right to cure should be payment of a reasonable fine and a requirement that the tenant sign a statement wherein the tenant recognizes that he or she will not be afforded another right to cure if the same lease term is violated a second time¹¹⁵. Thus, if the tenant parks on the grass a second time, the PHA can issue another termination notice with no right to cure. If the tenant takes the matter to court, the PHA has documented evidence that the tenant violated the lease more than once and expressly understood that an additional violation would result in termination of the lease. With such evidence in hand, a PHA can terminate a lease with greater confidence that, if the matter goes to court, the court will enter a judgment in favor of the PHA.

¹¹⁵ The property manager should take note of any special HA policy considerations. For instance, the PHA policy may be one of increasing fines each time the breach happens, and then termination on a specific breach. That should be incorporated into the notice.

When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination, the tenancy shall not terminate, even if any notice to vacate under state or local law has expired, until the time for the tenant to request a grievance hearing has expired, or the grievance process has been completed.¹¹⁶

C. Delivering the notice of termination.

According to the Act, the termination notice must simply be delivered to the tenant. This may occur by hand delivery, posting the notice on the tenant's front door, and/or mailing the notice to the tenant's address.

The PHA must take reasonable measures to ensure that the tenant receives the notice. Further, it is good practice for the PHA to deliver (by hand or placing in the mail) the termination notice on the same day that it was drafted. It is advisable that, if the termination notice is placed in the mail, that it is mailed by certified mail or by priority mail with delivery confirmation.

A PHA is obligated to provide proper notice when required by statute.¹¹⁷ Under Alabama law, a person has notice of a fact if:

- (1) the person has actual knowledge of it;¹¹⁸
- (2) the person has received a notice or notification of it;¹¹⁹

or

¹¹⁶ 24 C.F.R. 966.4(a)(3)(i)(3)(C)(iv).

¹¹⁷ Ala. Code § 35-9A-144.

¹¹⁸ Id.

- (3) from all the facts and circumstances known to the person at the time in question, the person has reason to know that it exists.¹²⁰

A person "knows" or "has knowledge" of a fact if the person has actual knowledge of it.¹²¹ A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it.¹²² A person is presumed to have "received" a notice or notification when:

- (1) it comes to the person's attention;¹²³
- (2) in the case of the PHA, it is delivered at the place of business of the PHA or mailed to any place designated by the landlord as the place for receipt of the communication;¹²⁴ *or*
- (3) in the case of the tenant, it is delivered in hand to the tenant or 3days after mailing with adequate prepaid postage in the United States mail to the tenant's last known place of residence.¹²⁵

"Notice," knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time it is

¹¹⁹ Id.
¹²⁰ Id.
¹²¹ Id.
¹²² Id.
¹²³ Id.
¹²⁴ Id.
¹²⁵ Id.

brought to the attention of the organization.¹²⁶ *Notice provided in this section does not apply to the notice required to terminate a tenancy or evict a tenant.*¹²⁷

D. The grievance process.

When the termination notice permits the tenant to ask for a grievance hearing, the PHA must comply. During the grievance process, the PHA should stay all evictions of the tenant until the hearing is held.

To properly invoke the process, the complainant must submit a written request for a hearing to the PHA or the project office within a reasonable time after the receipt of the summary of discussion pursuant to § 966.54.¹²⁸ The complainant must submit each request at such time as is specified by the PHA for a grievance under the expedited grievance procedure.¹²⁹ The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves any criminal or drug-related criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's premises by other residents or employees of the PHA. The written request must specify the reason for the grievance as well as the action or relief sought.¹³⁰

A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ 24 C.F.R. 966.55(a).

¹²⁹ Id.

¹³⁰ 24 C.F.R. 966.55(a)(1-2).

the PHA action under review or a subordinate of such person. The appointment of the hearing officer or panel can be accomplished in several different ways. The tenants, approved by the majority, may vote in an election or meeting of tenants held for the purpose. The PHA may also appoint the person or persons that they select in a manner that is required under the PHA grievance procedure.

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to pay an escrow deposit, the amount to be paid is the amount of rent the PHA states is due and payable as of the first of the month preceding in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or panel. A PHA must waive the escrow requirement if required by § 5.630 (regarding financial hardship exemption from minimum rent requirements) or § 5.615 (regarding the effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

A hearing shall be scheduled by the hearing officer or panel promptly for a time and place reasonably convenient to both the complainant and the

PHA. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

If the complainant does not request a hearing in accordance with these procedures, then the PHA's disposition of the grievance is final.¹³¹ However, the failure to request a hearing does not constitute a waiver by the complainant of the right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.¹³² In Whitfield v. Public Housing Agency of the City of St. Paul, the United States District Court, in a well reasoned opinion, found that a tenant can waive a grievance hearing as part of a settlement of the case or a cure provision knowingly and voluntarily entered into at the grievance hearing.¹³³

In some cases, the failure to adequately handle a grievance hearing can be fatal to an eviction. Such a failure allows a tenant to sue the PHA under federal law for denial of due process by seeking a preliminary injunction. In Colvin v. Housing Authority of City of Sarasota, Fla., the Eleventh Circuit Court of Appeals stated unequivocally, "a tenant *must* receive a hearing under Sec. 882.216 before Section 8 assistance can be terminated, even if that tenant has been evicted and the payments to the landlord have ceased."¹³⁴ The court in Basco stated that the local housing

¹³¹ 24 C.F.R. 966.55(c).

¹³² Id.

¹³³ Whitfield v. Public Housing Agency of the City of St. Paul, 2004 WL 2801589 (D.C. Minn. Dec. 7, 2004).

¹³⁴ Colvin v. Housing Authority of City of Sarasota, Fla., 71 F. 3d 864, 867 (11th Cir. 1996) (emphasis added).

authority “has the burden of persuasion and must initially present sufficient evidence to establish a prima facia case”¹³⁵

A temporary injunction issued before or during trial is intended to prevent an irreparable injury occurring before the court has a chance to decide the case. A preliminary injunction will be issued only after the defendant receives notice and an opportunity to be heard. Showing irreparable harm is:

the single most important prerequisite for the issuance of a preliminary injunction...In order to satisfy the irreparable harm requirement, the Plaintiff must demonstrate that absent a preliminary injunction [she] will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm.¹³⁶

For example, “If a plaintiff alleges the deprivation of a constitutional right, this is typically sufficient to support a finding of irreparable harm.”¹³⁷

In Taylor v. City of Decatur, Alabama, Housing Authority, Taylor was arrested on drug charges and received a notice of eviction.¹³⁸ Taylor was given a grievance hearing at which the PHA produced evidence that she had been arrested at the unit by way of newspaper articles.¹³⁹

During the administrative grievance hearing, the court stated that the PHA presented no evidence to establish a *prima facia* case, but instead

¹³⁵ Basco, 514 F. 3d at 1182.

¹³⁶ Grillasca v. New York City Housing Authority, 2010 WL 1491806, *14 (S.D.N.Y. April 7, 2010) (citations omitted)

¹³⁷ Id.

¹³⁸ Taylor v. The City of Decatur, Alabama, Housing Authority, 5:09-CV-01279-CLS, Doc. 12 (N.D. Ala. Sept. 10, 2009).

¹³⁹ Id.

placed the burden on the plaintiff to refute the charges asserted against her.¹⁴⁰ The PHA based the termination of the plaintiff on her file as well as a newspaper article.¹⁴¹ The court found that there was no indication that the plaintiff had access to either of these items prior to the administrative hearing, and she was therefore unable to prepare a proper defense.¹⁴² Before the hearing on her eviction, she filed a motion for preliminary injunction in the U.S. District Court to request that the defendant continue to provide her with Section 8 housing benefits during the pendency of this action.¹⁴³ In the court's eyes, those circumstances did not satisfy the constitutional guarantee of procedural due process.¹⁴⁴ The court granted the preliminary injunction for the plaintiff.¹⁴⁵

The hearing officer or panel shall prepare a written decision as well as their reasons within a reasonable time after the hearing, reciting in its opinion that the burden of proof is on the housing authority. A copy of their decisions should be sent to the Complainant and the PHA. The PHA should retain a copy of the decision in the tenant's folder and should also be maintained in the files of the PHA. The decision of the hearing officer or panel shall be binding on the PHA which shall take all actions, or refrain from any action, necessary to carry out the decision unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id.

¹⁴⁵ Id.

the complainant of its determination that the grievance does not concern a matter subject to a grievance hearing, or violates state or federal law or regulation.

A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in a part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

The lessons learned from these most recent cases is that the PHA must understand its obligation to present to the hearing officer sufficient first hand evidence to sustain a termination. The hearing officer's notice should state clearly and succinctly what evidence was presented by the housing authority, and what evidence was presented by the tenant to rebut the accusation.

E. Waiver of termination.

It is important to note that a PHA must not accept rent from a tenant while attempting to terminate and evict a tenant. Under Alabama case law, acceptance of rent during this time operates as a waiver of the lease termination notice. If the tenancy has already been terminated, then subsequent acceptance of rent operates as a new lease agreement.

In Housing Authority of the Birmingham District v. Durr, the PHA terminated Durr's lease because Durr's brother was arrested on the premises for possession of drugs.¹⁴⁶ Pursuant to HUD guidelines, Durr received a utility check from which she was obligated to pay her utility bills.¹⁴⁷ The PHA deducted \$40 per month from Durr's check as rent and continued to do so following her lease termination.¹⁴⁸ Under Alabama law, it is well settled that, to evict a tenant, the tenant must have no possessory interest in the property.¹⁴⁹ Consequently, in Durr, the Court of Civil Appeals held, "Alabama law is unequivocal that the acceptance of rent in a 'holdover' tenancy gives rise to at least a month-to-month landlord-tenant relationship."¹⁵⁰ In other words, by accepting Durr's payment after her possessory interest was terminated, a new tenancy arose. Thus, the PHA could no longer maintain its unlawful detainer action against Durr.

The best policy for a PHA to follow once it has made the decision to terminate a lease is to refuse to accept any payment from the tenant. If the PHA provides a right to cure and the tenant fails to properly cure the breach, or if the PHA does not provide a right to cure, then the lease is terminated upon the expiration of the applicable statutory time period.

¹⁴⁶ Housing Authority of the Birmingham District v. Durr, 735 So. 2d 469, 470 (Ala. Civ. App. 1998).

¹⁴⁷ Id. at 470-71.

¹⁴⁸ Id. at 471.

¹⁴⁹ See Barnewell v. Stephens, 142 Ala. 609, 613, 38 So. 662, 663 (1905); see also Lott v. Douglas Oil Purchasing Co., 501 So.2d 1195 (Ala.1986); Myles v. Strange, 226 Ala. 49, 145 So. 313 (1932); Bishop v. Truitt, 85 Ala. 376, 5 So. 154 (1888); and McKeen v. Nelms, 9 Ala. 507 (1846).

¹⁵⁰ Id. at 471-72.

G. *Public Housing Authority self-help remedies.*

A PHA may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in Chapter 9A.¹⁵¹ Such actions constitute impermissible self-help remedies.

H. *The action for unlawful detainer and ejectment.*¹⁵²

A PHA's action for eviction, rent, monetary damages, or other relief relating to a tenancy subject to this chapter shall be governed by the Alabama Rules of Civil Procedure and the Alabama Rules of Appellate Procedure except as modified by the Act.

District courts and circuit courts, according to their respective established jurisdictions, shall have jurisdiction over eviction actions, and venue shall lie in the county in which the leased property is located. Eviction actions shall be entitled to precedence in scheduling over all other civil cases.

Service of process shall be made in accordance with the Alabama Rules of Civil Procedure. However, if a sheriff, constable, or process server is unable to serve the defendant personally, service may be had by delivering the notice to any person who is *sui juris* residing on the premises, or if after reasonable effort no person is found residing on the premises, by posting a

¹⁵¹ Ala. Code § 35-9A-427.

¹⁵² Ala. Code § 35-9A-461.

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

Notwithstanding Ala. Code § 12-12-70(a), any party may appeal from an eviction judgment entered by a district court to the circuit court at any time within seven days after the entry thereof. The filing of a timely post-judgment motion pursuant to the Alabama Rules of Civil Procedure shall suspend the running of the time for filing a notice of appeal. In cases where post-judgment motions are filed, the full time fixed for filing a notice of appeal shall be computed from the date of the entry in the civil docket of an order granting or denying such motion, or the date of the denial of such motion by operation of law pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure. Upon filing of an appeal by either party, the clerk of the court shall schedule the action for trial as a preferred case, and it shall be set for trial within 60 days from the date of the filing of the appeal. In eviction actions, an appeal by a tenant to circuit court or to an appellate court does not prevent the issuance of a writ of restitution or possession unless the tenant

pays to the clerk of the circuit court all rents properly payable under the terms of the lease since the date of the filing of the action, and continues to pay all rent that becomes due and properly payable under the terms of the lease as they become due, during the pendency of the appeal. In the event of dispute, the amounts properly payable shall be ascertained by the court.

If the tenant should fail to make any payments determined to be properly payable as they become due under this subsection, upon motion, the court shall issue a writ of restitution or possession and the PHA shall be placed in full possession of the premises.

Upon disposition of the appeal, the court shall direct the clerk as to the disposition of the funds paid to the clerk pursuant to this subsection.

If an eviction judgment enters in favor of a PHA, a writ of possession shall issue upon application by the PHA. Notwithstanding Rule 62 of the Alabama Rules of Civil Procedure, the automatic stay on the issuance of the writ of possession or restitution shall be for a period of 7 days. If a tenant without just cause re-enters the premises, the tenant can be held in contempt and successive writs may issue as are necessary to effectuate the eviction judgment.

In the event that the PHA is placed in possession under a writ of restitution or possession, and on appeal the judgment is reversed and one entered for the tenant or the proceeding on appeal is quashed or dismissed, the circuit court may award a writ of restitution or possession to restore the tenant to possession as against the PHA, but not as against a third party. The

issuance of the writ rests in the discretion of the appellate court, and the circuit court, in all cases, may direct writs of restitution or possession to be issued by the trial court when, in the judgment of the circuit court, such writ is proper or necessary.

I. Tenant and Public Housing Authority appeals.

In eviction actions, an appeal by a tenant to circuit court or to an appellate court does not prevent the issuance of a writ of restitution or possession unless the tenant pays to the clerk of the circuit court all rents properly payable under the terms of the lease since the date of the filing of the action, and continues to pay all rent that becomes due and properly payable under the terms of the lease as they become due, during the pendency of the appeal.¹⁵³ In the event of dispute, the amounts properly payable shall be ascertained by the court.¹⁵⁴

If the tenant should fail to make any payments determined to be properly payable as they become due under this subsection, upon motion, the court shall issue a writ of restitution or possession and the PHA shall be placed in full possession of the premises.¹⁵⁵

Upon disposition of the appeal, the court shall direct the clerk as to the disposition of the funds paid to the clerk.¹⁵⁶

¹⁵³ Ala. Code § 35-9A-461(d).

¹⁵⁴ Id.

¹⁵⁵ Ala. Code § 35-9A-461(d)(1).

¹⁵⁶ Ala. Code § 35-9A-461(d)(2).

If an eviction judgment enters in favor of a PHA, a writ of possession shall issue.¹⁵⁷ If a tenant without just cause re-enters the premises, the tenant can be held in contempt and successive writs may issue as are necessary to effectuate the eviction judgment.¹⁵⁸

VI. PUBLIC HOUSING AUTHORITY AND TENANT REMEDIES FOR ABUSE OF ACCESS.

Typically, a lease will provide that the tenant will give access to the unit for maintenance, inspection and other lawful purposes. Access is usually limited by the rules of the PHA as to advanced notice and the purpose for the access. A tenant cannot lawfully refuse access to the PHA once all the conditions have been met by the PHA to enter the unit. If a tenant refuses to allow lawful access, the PHA may obtain **injunctive relief** to compel access, or **terminate** the rental agreement pursuant to Ala. Code § 35-9A-421.¹⁵⁹ In either case, the PHA may recover actual damages.¹⁶⁰

It should also be emphasized that, if a PHA makes an unlawful entry or a lawful entry in an unreasonable manner or makes excessive demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement pursuant to Ala. Code § 35-9A-401.¹⁶¹ In either case, the tenant may also recover actual damages.¹⁶²

¹⁵⁷ Ala. Code § 35-9A-461(e).

¹⁵⁸ Id.

¹⁵⁹ Ala. Code § 35-9A-442(a).

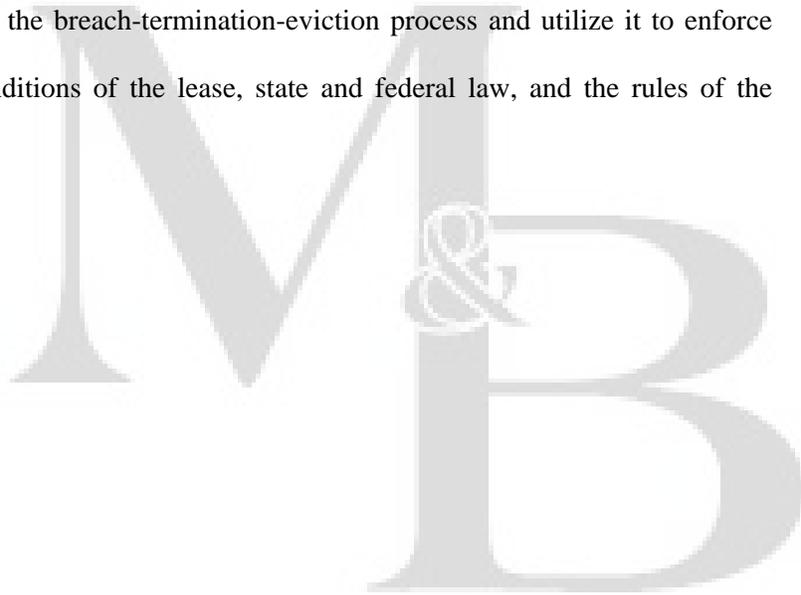
¹⁶⁰ Id.

¹⁶¹ Ala. Code § 35-9A-442(b).

VII. CONCLUSION

The Alabama Uniform Landlord Tenant Act provides a protection for tenants from the abuses of landlords, but also provides a relatively speedy resolution of most issues. PHA's should be well aware of both the implications of the ULTA and the federal rules for termination of public housing assistance.

Property managers should strive to make sure that each lease, and each renewal, contains the required terms and condition, names, property and unit descriptions, and is properly executed by the tenants and the landlord. Further, they should understand the breach-termination-eviction process and utilize it to enforce the terms and conditions of the lease, state and federal law, and the rules of the property.



¹⁶² Id.

MB

MB

Presented by:
MORRIS & BRUMLOW, P.C.

Attorneys at Law

137 Main Street, Suite 202

Trussville, AL 35173

Phone: (205) 661-3643

Fax: (205) 661-3645

info@morrisbrumlow.com