

1
2 **ARTICLE IV - REMEDIES**

3 **DIVISION I - TENANT REMEDIES**

4 **35-9A-401. Noncompliance by the Landlord-In General.**

5 (a) Except as provided in this chapter, if there is a material noncompliance by
6 the landlord with the rental agreement or a noncompliance with Section 35-9A-204
7 materially affecting health and safety, the tenant may deliver a written notice to the
8 landlord specifying the acts and omissions constituting the breach and that the
9 rental agreement will terminate upon a date not less than 14 days after receipt of the
10 notice if the breach is not remedied within that period, and the rental agreement
11 shall terminate as provided in the notice subject to the following:

12 (1) If the breach is remediable by repairs or the payment of damages or
13 otherwise and the landlord adequately remedies the breach before the date specified
14 in the notice, the rental agreement shall not terminate by reason of the breach.

15 (2) The tenant may not terminate for a condition caused by the
16 deliberate or negligent act or omission of the tenant, a member of the tenant's family,
17 a licensee, or other person on the premises with the tenant's consent.

18 (b) Except as provided in this chapter, the tenant may recover actual damages
19 and obtain injunctive relief for noncompliance by the landlord with the rental
20 agreement or Section 35-9A-204. If the landlord's noncompliance is in bad faith, the
21 tenant may recover reasonable attorney's fees.

22 (c) The remedy provided in subsection (b) is in addition to any right of the
23 tenant arising under subsection (a).

24 (d) If the rental agreement is terminated pursuant to this section, the landlord
25 shall return all security recoverable by the tenant under Section 35-9A-201 and all
26 unearned prepaid rent.

1 **Alabama Comment**

2
3 Subsection (a)(2) of the Uniform Act has been omitted.
4

5 Subsection (b) of the Uniform Act the landlord’s noncompliance has been
6 changed from “willful” to “in bad faith”.

7
8 **Comment**
9

10 Claims arising under this section if disputed in good faith may be settled by
11 agreement (see Section 1.106)[35-9A-106]. However, a prior settlement will not
12 prevent a termination under Section 4.101(a)(2)(omitted).
13

14 The availability of injunctive relief is determined by usual principles of
15 equity. See Section 1.103[35-9A-103].
16

17 Remedies available to the tenant pursuant to Section 4.101[35-9A-461] are not
18 exclusive (see Section 1.103[35-9A-103]). A duty to mitigate damages exists under
19 Section 1.105[35-9A-105]. As to rights of third parties, see comment under Section
20 1.105[35-9A-105].
21

22 **35-9A-402. Failure to Deliver Possession.**

23 (a) If the landlord fails to deliver possession of the dwelling unit to the tenant
24 as provided in Section 35-9A-203, rent abates until possession is delivered and the
25 tenant may:

26 (1) terminate the rental agreement upon written notice to the landlord
27 and within 5 days thereafter the landlord shall return all prepaid rent and security;

28 or

29 (2) demand performance of the rental agreement by the landlord and,
30 if the tenant elects, bring an action for possession of the dwelling unit from the
31 person wrongfully in possession and recover the actual damages sustained by the
32 tenant.

1 (b) If a person's failure to deliver possession is willful and not in good faith,
2 an aggrieved party may recover from that person an amount equal to not more than
3 3 months' periodic rent or the actual damages sustained, whichever is greater, and
4 reasonable attorney's fees.

5 **Alabama Comment**

6
7 Subsection (a)(2) provides that the tenant can demand possession of the
8 leased premises against the person wrongfully in possession and recover actual
9 damages sustained.

10
11 Subsection (b) has been modified to allow the tenant to recover three times
12 periodic rent or any damages sustained whichever is greater from the person who
13 fails to deliver possession of the premises plus an attorney's fees.

14
15 **Comment**

16
17 "Aggrieved person" includes a landlord entitled to proceed under Sections
18 2.103[35-9A-203] and 4.301(c)[35-9A-441(c)] as well as a tenant entitled to possession.

19
20 Injunctive relief may be available in an appropriate case.

21
22 **35-9A-403. [Reserved].**

23
24 **Alabama Comment**

25
26 The "Self-Help for Minor Defects" provision in the Uniform Act was
27 removed.

28
29 **35-9A-404. Wrongful Failure to Make Available Heat, Water, Hot Water, or**
30 **Essential Services.**

31 (a) The landlord is not responsible for the payment of utility services unless
32 agreed in the lease.

1 (b) If contrary to the rental agreement or Section 35-9A-204, after receiving
2 notice of the breach from the tenant, the landlord willfully or negligently fails to
3 promptly make available heat, running water, hot water, electric, gas, or other
4 essential service, the tenant may:

5 (1) send a written notice specifying the date of termination not less
6 than 14 days after receipt of notice and upon vacation of the premises, the rental
7 agreement shall be rightfully terminated without further obligation or penalty. If the
8 rental agreement is terminated pursuant to this section, the landlord shall return all
9 security recoverable by the tenant under Section 35-9A-201 and all unearned prepaid
10 rent; or

11 (2) recover damages based upon the diminution in the fair rental value
12 of the dwelling unit.

13 (c) If the tenant proceeds under this section, the tenant may not proceed
14 under Section 35-9A-401 as to that breach.

15 (d) Rights of the tenant under this section do not arise if the condition was
16 caused by the willful or negligent act or omission of the tenant, a member of the
17 tenant's family, a licensee or other person on the premises with the tenant's consent.

18
19 **Alabama Comment**
20

21 Subsection (a) is added to the Uniform Act to make clear the landlord is not
22 responsible for the payment of utility services unless agreed in the lease.
23

24 In subsection (b) (formerly (a) of the Uniform Act) the word "supply" has
25 been changed to "make available". No substantive change is intended.
26

27 Former subsection (a)(3) concerning procuring substitute housing was
28 omitted from the Uniform Act. Subsection (b) concerning payment for substitute
29 housing of the Uniform Act was also omitted.
30

1 Section 35-9A-404(b)(1)] does not specifically address collective action by
2 tenants; the availability of such collective action shall be determined under
3 applicable law.

4
5 The obligation of good faith in 35-9A-142 applies to this section as it does
6 throughout the Act.

7
8 Notice required is described in Section 35-9A-144 of this Act.

9
10 **Comment**

11
12 The remedies under Sections 4.107[35-9A-407] and 5.101(b)[35-9A-501] are
13 applicable where the landlord affirmatively acts to interrupt or diminish services,
14 etc., and those remedies are in addition to the remedies provided in Sections
15 4.101[35-9A-401], 4.103[35-9A-403] and 4.104[35-9A-404].

16
17 Section 4.104(a)(1)[35-9A-404(b)(1)] permits collective action by tenants to
18 secure essential services.

19
20 Section 1.302[35-9A-302] imposes the obligation of good faith and is, of
21 course, applicable to this section.

22
23
24 **35-9A-405. Counterclaims for Action for Possession or Rent.**

25 (a) In an action for possession or in an action for rent when the tenant is in
26 possession, the tenant may counterclaim for any amount the tenant may recover
27 under the rental agreement or this chapter. It is in the court's discretion whether the
28 tenant is to remain in possession. The tenant shall pay into court rent accrued and
29 thereafter accruing as it comes due. The court shall determine the amount due to
30 each party. The party to whom a net amount is owed shall be paid first from the
31 money paid into court, and the balance by the other party. If no rent remains due
32 after application of this section, judgment shall be entered for the tenant in the
33 action for possession. If the defense or counterclaim by the tenant is without merit
34 and is not raised in good faith, the landlord may recover reasonable attorney's fees.

1 (b) In an action for rent when the tenant is not in possession, the tenant may
2 counterclaim as provided in subsection (a) but is not required to pay any rent into
3 court.

4
5 **Comment**
6

7 Article II defines the obligations of the landlord which the tenant may enforce
8 against him (Section 1.105[35-9A-105]). While *Lindsey v. Normet* (405 U.S. 56) holds
9 no principle of constitutional law requires the admission of the habitability defense
10 in a summary proceeding maintained by the landlord against the tenant, Section
11 4.105[35-9A-405] is consistent with modern procedure reform in permitting the
12 tenant to file a counterclaim or other appropriate pleading in the summary
13 proceeding to the end that all issues between the parties may be disposed of in one
14 proceeding. It is anticipated that upon filing of the counterclaim the court will enter
15 the order deemed appropriate by him concerning the payment of rent in order to
16 protect the interests of the parties. See cases in comment to Section 2.104(e)[35-9A-
17 204(e)].

18
19 **35-9A-406. Fire or Casualty Damage.**

20 (a) If the dwelling unit or premises are damaged or destroyed by fire or
21 casualty not caused by the tenant to an extent that enjoyment of the dwelling unit is
22 substantially impaired, the tenant may:

23 (1) immediately vacate the premises and notify the landlord in writing
24 within 14 days thereafter of the tenant's intention to terminate the rental agreement,
25 in which case the rental agreement terminates as of the date of vacating; or

26 (2) if continued occupancy is lawful, vacate any part of the dwelling
27 unit rendered unusable by the fire or casualty, in which case the tenant's liability for
28 rent is reduced in proportion to the diminution in the fair rental value of the
29 dwelling unit.

30 (b) If the rental agreement is terminated pursuant to this section, the landlord
31 shall return all security recoverable under Section 35-9A-201 and all unearned

1 prepaid rent. Accounting for rent in the event of termination or apportionment shall
2 be made as of the date of the fire or casualty.

3 **Alabama Comment**

4 Subsection (a) adds the phrase "not caused by the tenant".

5
6 **Comment**

7
8 Under common law, notwithstanding leased premises were destroyed, the
9 tenant was still under obligation to pay rent. Legislation has been adopted in
10 various states providing that if the premises are so destroyed or injured as to be
11 untenable or unfit for occupancy the tenant may quit and surrender possession of
12 the premises:

13
14 Arizona Rev.Stat., Sec. 33-343 (1956)

15
16 Connecticut Gen.Stat.Ann., Sec. 47-24 (1960)

17
18 Michigan Stat.Ann., Sec. 26.1121 (1953)

19
20 Minnesota Stat.Ann., Sec. 504.05 (1947)

21
22 Mississippi Code Ann., Sec. 898 (1957)

23
24 Wisconsin Stat.Ann., 234.17 (1957)

25
26 West Virginia in 1931 adopted Section 37-6-28 providing for

27
28 " ... a reasonable reduction of the rent for
29 such time as may elapse until there be
30 placed again upon the premises buildings,
31 or other structures, of as much value to be
32 tenant for his purposes as those destroyed,
33 ..."

1 **35-9A-407. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or**
2 **Diminution of Service.**

3 If a landlord unlawfully removes or excludes the tenant from the premises or
4 willfully diminishes services to the tenant by interrupting or causing the
5 interruption of heat, running water, hot water, electric, gas, or other essential
6 service, the tenant may recover possession or terminate the rental agreement and, in
7 either case, recover an amount equal to not more than 3 months' periodic rent or the
8 actual damages sustained by the tenant, whichever is greater, and reasonable
9 attorney's fees. If the rental agreement is terminated under this section, the landlord
10 shall return all security recoverable under Section 35-9A-201 and all unearned
11 prepaid rent.

12 **Alabama Comment**

13 The Uniform Act allowing three times actual damages was changed to actual
14 damages.

15 **Comment**

16 This section provides a remedy for the violation of Section 4.207[35-9A-407].
17 See also comment to Section 4.104(c)[35-9A-404(c)].

18 Injunctive relief may be available in an appropriate case.
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23 **DIVISION II - LANDLORD REMEDIES**

24 **35-9A-421. Noncompliance with Rental Agreement; Failure to Pay Rent.**

25 (a) Except as provided in this chapter, if there is a material noncompliance by
26 the tenant with the rental agreement or a noncompliance with Section 35-9A-301
27 materially affecting health and safety, the landlord may deliver a written notice to
28 terminate the lease to the tenant specifying the acts and omissions constituting the
29 breach and that the rental agreement will terminate upon a date not less than 14

1 days after receipt of the notice. If the breach is not remedied within the 14 days after
2 receipt of the notice to terminate the lease, the rental agreement shall terminate on
3 the date provided in the notice to terminate the lease unless the tenant adequately
4 remedies the breach before the date specified in the notice, in which case the rental
5 agreement shall not terminate.

6 (b) If rent is unpaid when due and the tenant fails to pay rent within 7 days
7 after receipt of written notice to terminate the lease for nonpayment and if the rent is
8 not paid within the 7-day period, the landlord may terminate the rental agreement
9 at the expiration of the 7-day period. If a noncompliance of rental agreement occurs
10 under both subsection (a) and this subsection, the 7-day notice period to terminate
11 the lease for nonpayment of rent in this subsection shall govern.

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

16 **Alabama Comment**

17
18
19 Section (a) has been modified. A material breach in a term of the lease other
20 than nonpayment of rent, notice to the tenant the lease will be terminated in 14 days
21 unless the breach is remedied.

22
23 Subsection (b) shortens the notice period to terminate the lease for
24 nonpayment of rent from 14 days to 7 days. The 7 days is after receipt of written
25 notice to terminate. Where there is both a violation of the term of the lease and the
26 rent is unpaid, the 7-day notice predominates.

27
28 An action for injunctive relief must be brought in circuit court. Injunctive
29 relief is not available in district court.

30
31 The Uniform Act provides for where there has been a similar prior
32 noncompliance within a 6 month period the landlord may terminate the lease. This
33 provision was removed.

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3 **Comment**
4

5 Claims arising under this section if disputed in good faith may be settled by
6 agreement (see Section 1.106[35-9A-106]). However, a prior settlement will not
7 prevent a termination under the last sentence of Section 4.201(a)[35-9A-421].
8

9 The availability of injunctive relief is determined by the usual principles of
10 equity. See Section 1.103[35-9A-103].
11

12 Remedies available to the landlord pursuant to Section 4.201[35-9A-421] are
13 not exclusive (see Section 1.103[35-9A-103]). A duty to mitigate exists under Section
14 1.105. As to rights of third parties, see comment under Section 1.105[35-9A-105].
15

16 **35-9A-422. Failure to Maintain.**

17 If there is noncompliance by the tenant with Section 35-9A-301 materially
18 affecting health and safety that can be remedied by repair, replacement of a
19 damaged item, or cleaning, and the tenant fails to comply as promptly as conditions
20 require in case of emergency or within 7 days after written notice by the landlord
21 specifying the breach and requesting that the tenant remedy it within that period of
22 time, the landlord may enter the dwelling unit and cause the work to be done in a
23 workmanlike manner and submit the itemized bill for the actual and reasonable cost
24 or the fair and reasonable value thereof as rent on the next date periodic rent is due,
25 or if the rental agreement has terminated, for immediate payment.
26

27 **Comment**
28

29 The landlord may proceed under either or both Section 4.201[35-9A-421] or
30 Section 4.202[35-9A-422]. In event of a recurring breach, he can proceed under either
31 section. He must serve notice in all cases.
32

1 **35-9A-423. Remedies for Absence, Nonuse and Abandonment.**

2 (a) If a rental agreement requires the tenant to give notice to the landlord of
3 an anticipated extended absence in excess of 14 days pursuant to Section 35-9A-304
4 and the tenant willfully fails to do so, the landlord may recover actual damages from
5 the tenant.

6 (b) During any absence of a tenant in excess of 14 days, the landlord may
7 enter the dwelling unit at times reasonably necessary.

8 (c) If a tenant abandons the dwelling unit, the landlord shall make reasonable
9 efforts to rent it at a fair rental. But such duty shall not take priority over the
10 landlord's right to first rent other vacant units. If the landlord rents the dwelling unit
11 for a term beginning before the expiration of the rental agreement, it terminates as of
12 the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the
13 dwelling unit at a fair rental or if the landlord accepts the abandonment as a
14 surrender, the rental agreement is deemed to be terminated by the landlord as of the
15 date the landlord has notice of the abandonment. If the tenancy is from month-to-
16 month or week-to-week, the term of the rental agreement for this purpose is deemed
17 to be a month or a week, as the case may be.

18 (d) If a tenant leaves property in the unit more than 14 days after termination
19 pursuant to this chapter, the landlord has no duty to store or protect the tenant's
20 property in the unit and may dispose of it without obligation.

21
22 **Alabama Comment**

23
24 Pursuant to subsection (c) landlord has no obligation to rent the abandoned
25 rental unit before or in preference to other vacant units.

26
27 Pursuant to subsection (d) landlord liens for household goods are
28 unenforceable under Section 35-9A-425 of this act.
29

1 **35-9A-424. Waiver of Landlord's Right to Terminate.**

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

6
7 **Comment**
8

9 If breach of a continuing duty is involved, acceptance of rent or performance
10 will not bar the landlord's remedy for a later or other breach. Acceptance of unpaid
11 rent paid after expiration of a termination notice does not constitute a waiver of the
12 termination.

13
14 **35-9A-425. Landlord Liens; Distraint**
15 **for Rent.**

16 (a) A lien or security interest on behalf of the landlord in the tenant's
17 household goods is not enforceable unless perfected before January 1, 2007.

18 (b) Distraint for rent is abolished.

19
20 **Alabama Comment**
21

22 Alabama Code Section 35-9-60 "Landlord Liens" is amended to remove
23 "dwelling house" from the statute, the effect being that landlord liens apply to
24 rentals other than "residential leases" defined in this chapter.

25
26 **35-9A-426. Remedy after Termination.**

27 If a rental agreement is terminated, the landlord has a claim for possession
28 and for rent and a separate claim for actual damages for breach of the rental
29 agreement and reasonable attorney's fees as provided in Section 35-9A-421(c).
30
31

1 **35-9A-427. Recovery of Possession Limited.**

2 A landlord may not recover or take possession of the dwelling unit by action
3 or otherwise, including willful diminution of services to the tenant by interrupting
4 or causing the interruption of heat, running water, hot water, electric, gas, or other
5 essential service to the tenant, except in case of abandonment, surrender, or as
6 permitted in this chapter.

7
8 **Comment**
9

10 See Section 4.107[35-9A-407].

11 **DIVISION III - PERIODIC TENANCY; HOLDOVER;**
12 **ABUSE OF ACCESS**

13 **35-9A-441. Periodic Tenancy; Holdover Remedies.**

14 (a) The landlord or the tenant may terminate a week-to-week tenancy by a
15 written notice given to the other at least 7 days before the termination date specified
16 in the notice.

17 (b) The landlord or the tenant may terminate a month-to-month tenancy by a
18 written notice given to the other at least 30 days before the periodic rental date
19 specified in the notice.

20 (c) If a tenant remains in possession without the landlord's consent after
21 expiration of the term of the rental agreement or its termination, the landlord may
22 bring an action for possession and if the tenant's holdover is willful and not in good
23 faith the landlord may also recover an amount equal to not more than 3 month's
24 periodic rent or the actual damages sustained by the landlord, whichever is greater,
25 and reasonable attorney's fees. If the landlord consents to the tenant's continued
26 occupancy, Section 35-9A-161(d) applies.

1 **Alabama Comment**

2
3 Pursuant to subsection (c) a landlord’s remedy against a holdover tenant is
4 limited to the greater of actual damages or three months periodic rent.
5

6 **Comment**

7
8 See Section 1.402[35-9A-162] as to effect of occupancy under lease signed by
9 only one party and Section 2.103[35-9A-303] as to tenant’s rights to bring an action
10 for possession against a prior holdover tenant.
11

12 **35-9A-442. Landlord and Tenant Remedies for Abuse of Access.**

13 (a) If a tenant refuses to allow lawful access, the landlord may obtain
14 injunctive relief to compel access, or terminate the rental agreement pursuant to
15 Section 35-9A-421. In either case, the landlord may recover actual damages.

16 (b) If a landlord makes an unlawful entry or a lawful entry in an
17 unreasonable manner or makes excessive demands for entry otherwise lawful but
18 which have the effect of unreasonably harassing the tenant, the tenant may obtain
19 injunctive relief to prevent the recurrence of the conduct, or terminate the rental
20 agreement pursuant to Section 35-9A-401. In either case, the tenant may recover
21 actual damages.

22 **Alabama Comment**

23 Pursuant to subsection (a) the landlord may recover against the tenant actual
24 damages for the tenant’s refusal to allow the landlord lawful access to the premises
25 but is not entitled to an attorney’s fee.
26

27 Pursuant to subsection (b) the tenant may recover against the landlord actual
28 damages for the landlord’s unlawful or unreasonable entry or demands therefor but
29 is not entitled to an attorney’s fee.
30

31 **Comment**

32
33 See Section 3.103[35-9A-303] as to right of access.
34

1 **DIVISION IV - COURT ACTIONS BY LANDLORD**

2 **35-9A-461. Landlord's Action for Eviction, Rent, Monetary Damages, and/or Other**
3 **Relief.**

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

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

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

25 (d) In eviction actions, an appeal by a tenant to circuit court or to an appellate
26 court does not prevent the issuance of a writ of restitution or possession unless the
27 tenant pays to the clerk of the circuit court all rents properly payable under the

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

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

9 (2) Upon disposition of the appeal, the court shall direct the clerk as to
10 the disposition of the funds paid to the clerk pursuant to this subsection.

11 (e) If an eviction judgment enters in favor of a landlord, a writ of possession
12 shall issue. If a tenant without just cause re-enters the premises, the tenant can be
13 held in contempt and successive writs may issue as are necessary to effectuate the
14 eviction judgment.

15
16 **Alabama Comment**
17

18 The Unlawful Detainer, Ala. Code § 6-6-310 et seq. is amended and repeals
19 the Sanderson Act § 35-9-1 et seq. Process servers are defined in Alabama Rules of
20 Civil Procedure, Rule 4.1(b).

1 **ARTICLE V - RETALIATORY CONDUCT**

2 **35-9A-501. Retaliatory Conduct Prohibited.**

3 (a) Except as provided in this section, a landlord may not retaliate by
4 discriminatorily increasing rent or decreasing services or by bringing or threatening
5 to bring an action for possession because:

6 (1) the tenant has complained to a governmental agency charged with
7 responsibility for enforcement of a building or housing code of a violation applicable
8 to the premises materially affecting health and safety;

9 (2) the tenant has complained to the landlord of a violation under
10 Section 35-9A-204; or

11 (3) the tenant has organized or become a member of a tenant's union or
12 similar organization.

13 (b) If a landlord acts in violation of subsection (a), the tenant is entitled to the
14 remedies provided in Section 35-9A-407 and has a defense in any retaliatory action
15 against the tenant for possession.

16 (c) Notwithstanding subsections (a) and (b), a landlord may bring an action
17 for possession if:

18 (1) the violation of the applicable building or housing code was caused
19 primarily by lack of reasonable care by the tenant, a member of the tenant's family,
20 or other person on the premises with the tenant's consent;

21 (2) the tenant is in default in rent;

22 (3) compliance with the applicable building or housing code requires
23 alteration, remodeling, or demolition which would effectively deprive the tenant of
24 use of the dwelling unit; or

25 (4) other material violations of the lease.

26 (d) The maintenance of an action under subsection (c) does not release the
27 landlord from liability under Section 35-9A-401(b).

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Alabama Comment

Subsection (b) is amended from the Uniform Act to omit the presumption that an action by or against the tenant within 6 months before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation.

Subsection (c)(4) has been added to the Uniform Act.

Comment

State and federal courts in California (*Aweeka v. Bonds*, 20 Cal.App.3d 281, 97 Cal.Rptr. 650 [1971]; *Schweiger v. Bonds*, 3 Cal.App.2d 507, 90 Cal.Rptr. 729 [1970]), Florida (*Bowles v. Blue Lake Development Corp.*, [S.Florida, 1971], C.C.H.Pov.L.Rptr. Sec. 12,920), Massachusetts (*McQueen v. Druker*, 317 F.Supp. 1122 [D.Mass.1970]), New Jersey (*Alexander Hamilton Savings and Loan Assn. v. Whalen*, 107 N.J.Super. 89, 257 A.2d 7 [1969]; *Engler v. Capital Management Corp.*, 112 N.J.Super. 445, 271 A.2d 615 [1970]; *E. E. Newman Inc. v. Hallock*, 116 N.J.Super. 220, 281 A.2d 544 [1971]; *Silberg v. Lipscomb*, 117 N.J.Super. 491, 285 A.2d 86 [1971]), New York (*Hosey v. Club Van Courtlandt*, 299 F.Supp. 501 [S.D.N.Y.1969]), Ohio (T.R.O. granted, Case No. 8375 [S.D. Ohio]), Wisconsin (*Dickhut v. Norton*, 45 Wis.2d 309, 173 N.W.2d 297 [1970]) and the District of Columbia (*Edwards v. Habib*, 397 F.2d 687 [D.C.Cir.1968]) have upheld the defense of retaliatory eviction.

A number of states by statute have recognized the defense: Cal.C.C. Sec. 1942.5; Conn.Gen.St. Ann., Sec. 42-540a [Supp.1969]; Del.Ch. 25 Sec. 5917 [Supp.1971]; Ha.Ch. 666 Sec. 43 [Supp.1971]; Ill.Rev.St.Ch. 80, Sec. 71 [Supp.1971]; Me.Rev.St. Tit. 14 Sec. 6001, 6002; Md.Laws Ch. 687 Sec. 9-10 [Supp.1971]; Mass.Comp.Laws Ann., Ch. 186 Sec. 18 [Supp.1970]; Mich.Comp.Laws Ann., Ch. 600, Sec. 5646 [Am'd P.S.1969]; Minn.Stat.Ch. 240 Sec. 566.03 [Supp.1971]; N.J.Stat. Ann. 2A Sec. 42-10.10; N.Y. [McKinney's] Unconsolidated Laws, Tit. 23 Sec. 8590, 8609 [Supp.1971]; Pa.St. Ann.Ch. 35, Sec. 1700-1 (Supp.1971); R.I. Gen.Laws Ann. Sec. 34-20-10 [1968]. The legislatures of Maine, Massachusetts, New Jersey, Michigan, and Rhode Island also protect tenants from eviction if they have organized or become a member of a tenants' union or similar organization.

The question as to whether the landlord is engaging in retaliatory conduct as prohibited by the statute is a question of fact to be determined by the court.

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1 **ARTICLE VI - EFFECTIVE DATE, SAVINGS CLAUSE, SEVERABILITY**

2 **35-9A-601. Effective Date.**

3 Except for Section 35-9A-163(b) which shall become effective January 1, 2008,
4 this chapter shall become effective on January 1, 2007. It applies to rental agreements
5 entered into or extended or renewed on and after that date.

6

7 **Alabama Comment**

8

9 The section requiring that leases not include prohibited provisions becomes
10 effective January 1, 2008 to allow the landlords an additional year to revise their
11 leases before the penalty for noncompliance is effective.

12

13 **Comment**

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15 This section, drawn from Section 10-101 of the Uniform Commercial Code, is
16 also drawn with the idea of an effective date considerably in advance so there may
17 be ample time for all of those who may be affected by the provisions of the Act to
18 become familiar with it. It is intended that the Act apply to all leases, renewals, and
19 other events occurring after its effective date.

20

21 **35-9A-602. Savings Clause.**

22 Transactions entered into before the effective date of this chapter, and not
23 extended or renewed on and after that date, and the rights, duties, and interests
24 flowing from them remain valid and may be terminated, completed, consummated,
25 or enforced as required or permitted by any statute or other law amended or
26 repealed by this chapter as though the repeal or amendment had not occurred.

27 **35-9A-603. Severability.**

28 If any provision of this chapter or the application thereof to any person or
29 circumstance is held invalid, the invalidity does not affect other provisions or
30 application of this chapter which can be given effect without the invalid provision or
31 application, and to this end the provisions of this chapter are severable.

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Section 2. Sections 6-6-350 and 35-9-60, Code of Alabama 1975, are amended

to read as follows:

"§6-6-350.

"Any party may appeal from a judgment entered against him or her by a district court to the circuit court at any time within ~~14~~ seven days after the entry thereof, and appeal and the proceedings thereon shall in all respects, except as provided in this article, be governed by this code relating to appeal from district courts. However, 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 appeal.

"§35-9-60.

"The landlord of any storehouse, ~~dwelling house~~, or other building shall have a lien on the goods, furniture, and effects belonging to the tenant, and subtenant, for ~~his~~ rent, which shall be superior to all other liens, except those for taxes, and except as otherwise provided in Section 7-9A-333. In case the tenant or subtenant is adjudged a bankrupt, such lien on such goods, furniture, and effects of the bankrupt, ~~except for a dwelling house, used exclusively as a dwelling~~, shall, as against the trustee in bankruptcy, attach only for unpaid rent accrued and which shall accrue within six months from the date of adjudication computed pro rata at the then current rate. The lien amount accrued and to accrue shall not be increased by reason of any default or breach of contract by the bankrupt. From the amount of such lien, so computed, the trustee in bankruptcy may deduct all payments and all demands which could be legally set up against the landlord by way of counterclaim. If the trustee in bankruptcy shall dispose of the lease as an asset of the bankrupt estate, then the landlord shall have a lien on the goods, furniture, and effects of any person holding under the trustee in bankruptcy."

1 Section 3. Section 35-9-4 of the Code of Alabama 1975, relating to hiring of
2 lodgings for indefinite term, is repealed. Article 3, commencing with Section 35-9-80,
3 of Chapter 9 of Title 35 of the Code of Alabama 1975, relating to possession
4 wrongfully withheld, is repealed.

5

6 Section 4. This act shall become effective on January 1, 2007.

SAMPLE FORMS

**STATEMENT OF CLAIM
Unlawful Detainer**

Sections 6-6-310, et seq., Ala. Code 1975

Case Number

IN THE DISTRICT COURT OF _____ COUNTY, ALABAMA

v.

PLAINTIFF(S)

DEFENDANT(S)

ADDRESS: _____

ADDRESS: _____

PLAINTIFF'S ATTORNEY (if applicable): _____

ADDRESS: _____

COMPLAINT

1. Plaintiff(s) demands the right to possession from the defendant(s) of the following described residential, commercial or other real property located at: _____

2. Defendant(s) no longer has the right to possession because: _____

3. Defendant(s) right of possession has been lawfully terminated by written notice.

4. Plaintiff(s) also claims the sum of \$ _____ plus court costs from the Defendant(s) consisting of: unpaid rent and late charges, plus attorney's fees (if applicable) and other charges.

5. Plaintiff(s) also claims future rent and late charges, plus attorney's fees (if applicable) and other charges accruing through the date Plaintiff(s) obtains possession of the above described property.

Clerk

Address: _____

Plaintiff or Attorney Signature

Phone Number: () _____

Attorney Code: _____

NOTICE TO DEFENDANT(S) - READ CAREFULLY

This unlawful detainer complaint must be answered by you within seven (7) days after these papers were either served or posted at the leased premises as provided by law. Your answer must be received by the Court Clerk at the above address within the above seven (7) days. A copy of the answer must be sent to the Plaintiff(s) or Plaintiff(s)' Attorney at the above address. If you file an answer, a notice of trial will be mailed to you; otherwise, an unlawful detainer judgment may be entered against you. If you were personally served and fail to file an answer within fourteen (14) days from the date of service, a money judgment may be entered against you.

SUMMONS

To any Sheriff or any person authorized by Rule 4 (i) (1) (A) or (B) of the Alabama Rules of Civil Procedure to effect Service in the State of Alabama: You are hereby commanded to serve the Summons and Complaint in this action upon the defendant named in the style of the Complaint and make proper return to this court.

Date _____
Date Received _____
Clerk _____

PERSONAL SERVICE: served on the defendant(s) named _____

DATE SERVED _____ Server must complete:
SHERIFF/CONSTABLE _____ Print Name
PROCESS SERVER _____ Address
Phone Number

SERVICE BY DELIVERY TO PERSON SUI JURIS RESIDING ON THE PREMISES: served the defendant(s) named _____ by delivering a copy of the Summons and Complaint on a person who is sui juris residing on the premises described in the Complaint.

DATE SERVED _____
_____ served for _____ is sui juris and is a resident of the
(Person Served) (Defendant(s))
premises described in the Complaint.

SHERIFF/CONSTABLE _____ Server must complete:
PROCESS SERVER _____ Print Name
Address
Phone Number

POSTING OF SUMMONS AND COMPLAINT: served on the defendant(s) named _____ by posting a copy of the Summons and Complaint on the door of the premises described in the Complaint, and A COPY OF THE SUMMONS AND COMPLAINT WAS MAILED BY FIRST CLASS MAIL ON THE FOLLOWING DATE _____ that is not later than the close of the next business day following the aforesaid posting

DATE SERVED _____ Server must complete:
SHERIFF/CONSTABLE _____ Print Name
PROCESS SERVER _____ Address
Phone Number

SERVICE BY CERTIFIED MAIL: This service by certified mail of the summons and complaint is initiated upon the request of Plaintiff pursuant to Rule 4 (i) (2) of the Alabama Rules of Civil Procedure.

Date Requested _____ Date Mailed _____
Return Receipt Date _____ Clerk _____

Eviction - Affidavit for Property Owner

(Please answer all questions and fill in the blanks or circle responses as appropriate.)

Do you have a lease agreement? Yes No
What date did the lease commence? _____
Are the premises used for residential purposes or commercial purposes?
Describe the premises: House Apartment Trailer Trailer Space
Is your lease written or verbal? Written Verbal
What is the lease term? Year 6-Months Monthly Weekly Other: _____

BRING THE LEASE TO COURT FOR THE TRIAL.

Has the Tenant's right to lawful possession of the premises been terminated? Yes No
How and why was it terminated? _____

Have you notified the Tenant of this fact? Yes No
If you did so, how did you notify the Tenant that his right to lawful possession was terminated?

BRING A COPY OF THE NOTICE(S) TO COURT FOR THE TRIAL.

Do you have evidence to support your claim for relief? Yes No
Do you have letters or notes to or from the Tenant? Yes No
Do you have witnesses who will testify in court? Yes No
Do you have relevant photographs of the property? Yes No
Do you have relevant repair bills and cancelled checks? Yes No

BRING ALL OF YOUR EVIDENCE TO COURT FOR THE TRIAL.

If the reason for this dispute is unpaid rent, please list the amounts past due by month:

Month _____	Amount \$ _____	
Month _____	Amount \$ _____	
Month _____	Amount \$ _____	
Month _____	Amount \$ _____	
Month _____	Amount \$ _____	Total Amount Past Due \$ _____

Do you want to recover possession of the premises or do you just want to be paid by the Tenant?

OATH - I hereby swear or affirm that all of the above statements are true and correct. I further acknowledge that it is my responsibility to make myself aware of when this case is actually set for trial and to be present on time with all of my witnesses and evidence.

Property Owner (Print Name)

Property Owner - Signature

Sworn to and subscribed before me this _____ day of _____, 2008.

Notary Public

In the District Court of Mobile County, Alabama

Plaintiff

Vs.

DV-UD-____ - _____

Defendant

Plaintiff's Affidavit of Ownership

(Complete This If You Are Representing Yourself)

I, _____ (Print Your Name), am the Plaintiff in this action and I do hereby swear and/or affirm that all of the following statements are true and correct.

I understand that these statements are material to this legal proceeding. I understand that a Corporation, LLC or Partnership is required by law to be represented by a licensed attorney in Unlawful Detainer proceedings in District Civil Court actions. I understand that this is not a Small Claims Court action. I further understand that **Practicing Law without a License** is a criminal offense in the Code of Alabama.

This real property is owned by me personally and not by anyone else or by any other legal entity. The property is taxed in my name and my name is on the Mobile County tax records for this property. I pay the real property taxes on this property personally. The deed to this property is in my name. All records in the Probate Court concerning this property are listed in my name personally. I fully understand that I execute this affidavit under penalty of perjury.

Property Owner (Print Name)

Property Owner - Signature

Sworn to and subscribed before me this ____ day of _____, _____.

Notary Public

Eviction - Affidavit for Tenant

(Please answer all questions and fill in the blanks or circle responses as appropriate.)

Are you willing to leave this apartment or house? Yes No

If so, when will you be completely out of the premises? Date: _____

If you oppose the Landlord's complaint asking the Court to remove you from the premises and want a trial on this dispute, please answer these questions:

Do you have a lease agreement with the Landlord? Yes No

What is the term of the lease? Weekly Monthly Six Months Year Other: _____

Is the lease written or oral? Written Oral

When did the lease begin? Date: _____

BRING A COPY OF YOUR LEASE TO COURT FOR THE TRIAL.

What is your monthly rent? \$ _____

Are you behind in your rent? Yes No

How much, if any, do you owe on back rent? \$ _____

BRING ALL OF YOUR RECEIPTS, CANCELLED CHECKS, MONEY ORDERS OR ANY OTHER EVIDENCE OR RENTAL PAYMENTS TO COURT FOR THE TRIAL.

Did the Landlord give you a notice to terminate your lease? Yes No

If so, when did you receive it? Date: _____

BRING A COPY OF YOUR NOTICE TO COURT FOR THE TRIAL.

Why do you think you should not have to leave the premises?

BRING ALL OF YOUR EVIDENCE AND WITNESSES TO COURT FOR THE TRIAL.

I swear or affirm, under penalty of perjury, that the statements contained in the answers to this questionnaire are true, correct and complete and that I am prepared to appear in court and support the allegations of this answer to the Landlord's complaint with sworn testimony from myself and other witnesses if necessary AND I will be prepared to do so on the day this case is set for trial.

I further acknowledge that it is my responsibility to make myself aware of when this case is actually set for trial and to be present on time with all of my witnesses and evidence.

Tenant's Signature

Sworn to and subscribed before me on this ____ day of _____, 2008.

District Court Clerk/Magistrate/Notary Public



IN THE DISTRICT COURT OF MOBILE COUNTY, ALABAMA

)	
)	
Plaintiff,)	
)	Case No. DV-104
V)	
)	
)	
)	
Defendant.)	

DEFENDANT'S FIRST AMENDED ANSWER

COMES NOW the Defendant, by and through her attorney, Melody C. Glenn of Legal Services Alabama, and submits Defendant's First Amended Answer to Plaintiff's Complaint as follows:

Affirmative Defense I

This Honorable Court lacks subject matter jurisdiction because the Plaintiff failed to properly serve the Defendant with a proper termination of lease notice prior to the commencement of this action.

Affirmative Defense II

This Honorable Court lacks personal jurisdiction because the Plaintiff failed to properly serve the Defendants in a manner compliant with the Alabama Rules of Civil Procedure, including but not limited to Rule 4.

Respectfully Submitted:

/s/ Melody C. Glenn
Melody C. Glenn, Esq. (GLE012)
Attorney for the Defendant

Of Counsel:
Legal Services Alabama
107 St. Francis Street
Suite 2104
Mobile, AL 36602
Telephone: (251) 382-3103
Facsimile: (251) 450-3348
mglenn@alsp.org

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon all counsel and/or parties of record via the Court's electronic filing system and/or by depositing same in the U.S. Mail, postage prepaid and properly addressed, on this 13th day of September, 2010, as follows:

/s/ Melody C. Glenn
Melody C. Glenn (GLE 012)
Attorney for the Defendant

IN THE DISTRICT COURT OF MOBILE COUNTY, ALABAMA

)	
)	
Plaintiff,)	
)	
)	Case No. DV-10- 10
V)	
)	
)	
)	
Defendant.)	

ANSWER, COUNTERCLAIMS

COMES NOW the Defendants, [REDACTED] and [REDACTED] by
and through their attorney, Melody C. Glenn of Legal Services Alabama, and answers as
follows:

ANSWER

The Defendants deny all material allegations contained within the Plaintiff's
Complaint and demand strict proof thereof.

Affirmative Defense I

This Honorable Court lacks subject matter jurisdiction because the Plaintiff did
not serve a proper termination of lease notice upon the Defendants prior to the
commencement of said action.

COUNTERCLAIMS

Counterclaim I

Breach of Warranty of Habitability under Ala. Code 1975 §35-9A-204

1. Under Alabama's Uniform Residential Landlord and Tenant Act, the landlord is obligated to "make all repairs and do whatever is necessary to put and keep the premises in habitable condition."
2. The Plaintiff has failed to meet his obligations under the Act, breaching the warranty of habitability firmly established by Alabama Statute.
3. Specifically but not exclusively, the following known breaches of the above-referenced provisions exist on the property made the basis of this action:
 - i. Plaintiff failed to remove mold on the interior of the premises.
 - ii. Plaintiff has failed to keep the HVAC and/or heating and cooling unit in safe, operating condition.
4. The Plaintiff's actions are intentional, in bad faith, willful and oppressive, and caused and continue to cause the Defendants to suffer property and monetary damage, pain and suffering, and emotional distress.
5. Therefore, pursuant to Ala. Code 1975 §35-9A-401, the Defendants respectfully pray that this Honorable Court grant them actual damages in an amount to be determined at trial. Additionally, the Defendants respectfully request that this Honorable Court enter an order that the Plaintiff refund any and all security deposits paid by the Defendants.

Counterclaim II

Breach of Contract

6. The Defendants extend and incorporate by reference the foregoing factual and legal assertions.
7. There exists a valid contract between the parties to this action. Said contract should be construed to require the Plaintiff to provide and maintain a certain minimum level of habitability.
8. The Plaintiff failed to provide and maintain such a level of habitability.
9. As a direct and proximate result of the Plaintiff's above-referenced failure, the Plaintiff suffered and continues to suffer property and monetary damage, pain and suffering, and emotional distress.
10. Therefore, the Defendants respectfully pray that this Honorable Court grant them actual and punitive damages, and attorney's fees in an amount to be determined at trial.

Respectfully Submitted:

/s/ Melody C. Glenn
Melody C. Glenn, Esq. (GLE012)
Attorney for the Defendant

Of Counsel:
Legal Services Alabama
107 St. Francis Street
Suite 2104
Mobile, AL 36602
Telephone: (251) 382-3103
Facsimile: (251) 450-3348
mglenn@alsp.org

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon all counsel and/or parties of record via the Court's electronic filing system and/or by depositing same in the U.S. Mail, postage prepaid and properly addressed, on this 14th day of January, 2011, as follows:

Attorney for Plaintiff

/s/ Melody C. Glenn
Melody C. Glenn (GLE 012)
Attorney for the Defendant