

GEORGIA CODE
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*** Current through the 2010 Regular Session ***

TITLE 44. PROPERTY
CHAPTER 7. LANDLORD AND TENANT
ARTICLE 1. IN GENERAL

§ 44-7-1. Creation of landlord and tenant relationship; rights of tenant; construction of lease for less than five years

(a) The relationship of landlord and tenant is created when the owner of real estate grants to another person, who accepts such grant, the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor. In such a case, no estate passes out of the landlord and the tenant has only a usufruct which may not be conveyed except by the landlord's consent and which is not subject to levy and sale.

(b) All renting or leasing of real estate for a period of time less than five years shall be held to convey only the right to possess and enjoy such real estate, to pass no estate out of the landlord, and to give only the usufruct unless the contrary is agreed upon by the parties to the contract and is so stated in the contract.

§ 44-7-2. Parol contract creating landlord and tenant relationship; certain provisions prohibited; effect of provision for attorney's fees

(a) Contracts creating the relationship of landlord and tenant for any time not exceeding one year may be by parol.

(b) In any contract, lease, license agreement, or similar agreement, oral or written, for the use or rental of real property as a dwelling place, a landlord or a tenant may not waive, assign, transfer, or otherwise avoid any of the rights, duties, or remedies contained in the following provisions of law:

- (1) Code Section 44-7-13, relating to the duties of a landlord as to repairs and improvements;
- (2) Code Section 44-7-14, relating to the liability of a landlord for failure to repair;
- (3) Ordinances adopted pursuant to Code Section 36-61-11;
- (4) Article 3 of this chapter, relating to proceedings against tenants holding over;
- (5) Article 4 of this chapter, relating to distress warrants;
- (6) Article 2 of this chapter, relating to security deposits; and
- (7) Any applicable provision of Chapter 11 of Title 9 which has not been superseded by this chapter.

(c) A provision for the payment by the tenant of the attorney's fees of the landlord upon the breach of a rental agreement by the tenant, which provision is contained in a contract, lease, license agreement, or similar agreement, oral or written, for the use or rental of real property as a dwelling place shall be void unless the provision also provides for the payment by the landlord of the attorney's fees of the tenant upon the breach of the rental agreement by the landlord.

§ 44-7-3. Disclosure of ownership and agents; effect of failure to comply

(a) At or before the commencement of a tenancy, the landlord or an agent or other person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing the names and addresses of the following persons:

- (1) The owner of record of the premises or a person authorized to act for and on behalf of the owner for the purposes of serving of process and receiving and receipting for demands and notice; and

(2) The person authorized to manage the premises.

In the event of a change in any of the names and addresses required to be contained in such statement, the landlord shall advise each tenant of the change within 30 days after the change either in writing or by posting a notice of the change in a conspicuous place.

(b) A person who enters into a rental agreement on behalf of an owner or a landlord or both and who fails to comply with the disclosure requirements in paragraphs (1) and (2) of subsection (a) of this Code section becomes an agent of the owner or the landlord or both for serving of process and receiving and receipting for notices and demands; for performing the obligations of the landlord under this chapter; and for expending or making available, for the purpose of fulfilling such obligations, all rent collected from the premises.

§ 44-7-4. Local ordinances relating to security of premises occupied by tenants; cumulative effect of this Code section

(a) Municipalities and counties may establish by local ordinance minimum security standards not in conflict with applicable fire codes to prevent the unauthorized entry of premises occupied by a tenant as a dwelling place and may require landlords to comply with such standards.

(b) This Code section shall be cumulative to and shall not prohibit the enactment of other general and local laws, rules and regulations of state or local agencies, and local ordinances on this subject.

§ 44-7-5. When implied contract to pay rent arises

When, in an action for rent, title is shown in the plaintiff and occupation by the defendant is proved, an obligation to pay rent is generally implied. However, if the entry of the defendant on the premises was not under the plaintiff or if the possession of the defendant is adverse to the plaintiff, no such implication arises.

§ 44-7-6. Tenancy at will -- Creation when no time period specified

Where no time is specified for the termination of a tenancy, the law construes it to be a tenancy at will.

§ 44-7-7. Tenancy at will -- Notice required for termination

Sixty days' notice from the landlord or 30 days' notice from the tenant is necessary to terminate a tenancy at will.

§ 44-7-8. Tenancy at will -- Right of tenant to emblements

The tenant at will is entitled to his emblements if the crop is sowed or planted before the landlord gives him notice of termination of the tenancy, if the tenancy is terminated by the judicial sale of the estate by the landlord or by death of the landlord or tenant, or if for any other cause the tenancy is suddenly terminated.

§ 44-7-9. Estoppel to dispute landlord's title or attorn to another

The tenant may not dispute his landlord's title or attorn to another claimant while he is in actual physical occupation, while he is performing any active or passive act or taking any position whereby he expressly or impliedly recognizes his landlord's title, or while he is taking any position that is inconsistent with the position that the landlord's title is defective.

§ 44-7-10. Delivery of possession at end of term; summary remedy

The tenant shall deliver possession to the landlord at the expiration of his term; and, if he fails or refuses

to do so, a summary remedy pursuant to Article 3 of this chapter is given to the landlord.

§ 44-7-11. Specific rights of tenants

The tenant has no rights beyond the use of the land and tenements rented to him and such privileges as are necessary for the enjoyment of his use. He may not cut or destroy growing trees, remove permanent fixtures, or otherwise injure the property. He may use dead or fallen timber for firewood and the pasturage for his cattle.

§ 44-7-12. Removal of trade fixtures during term; when abandoned

During the term of his tenancy or any continuation thereof or while he is in possession under the landlord, a tenant may remove trade fixtures erected by him. After the term and his possession are ended, any trade fixtures remaining will be regarded as abandoned for the use of the landlord and will become the landlord's property.

§ 44-7-13. Landlord's duties as to repairs and improvements

The landlord must keep the premises in repair. He shall be liable for all substantial improvements placed upon the premises by his consent.

§ 44-7-14. Tort liability of landlord

Having fully parted with possession and the right of possession, the landlord is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; provided, however, the landlord is responsible for damages arising from defective construction or for damages arising from the failure to keep the premises in repair.

§ 44-7-14.1. Landlord's duties as to utilities

(a) As used in this Code section, the term "utilities" means heat, light, and water service.

(b) It shall be unlawful for any landlord knowingly and willfully to suspend the furnishing of utilities to a tenant until after the final disposition of any dispossession proceeding by the landlord against such tenant.

(c) Any person who violates subsection (b) of this Code section shall, upon conviction, be assessed a fine not to exceed \$500.00.

§ 44-7-15. Effect of destruction of tenement on obligation to pay rent

The destruction of a tenement by fire or the loss of possession by any casualty not caused by the landlord or from a defect of his title shall not abate the rent contracted to be paid.

§ 44-7-16. Accrual of interest on rent owed

All contracts for rent shall bear interest from the time the rent is due.

§ 44-7-17. Exemption from liens against tenant of crops paid as rent

When it is agreed that the tenant shall pay to the landlord as rent a part of the crop produced on the lands rented from the landlord and the tenant, in good faith, delivers the part of the crop agreed on in discharge of his rent, such part of the crop so delivered shall be discharged from the lien of any judgment, decree, or other process whatsoever against the tenant.

§ 44-7-18. Effect of leases for purposes of prostitution or assignation

(a) As used in this Code section, the term:

(1) "Assignment" means the making of any appointment or engagement for prostitution or any act in furtherance of such appointment or engagement.

(2) "Prostitution" means the offering or giving of the body for sexual intercourse, sex perversion, obscenity, or lewdness for hire.

(3) "Tourist camp" means any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(b) All leases and agreements letting, subletting, or renting any house, place, building, tourist camp, or other structure for the purpose of prostitution or assignment shall be void.

§ 44-7-19. Restrictions on rent regulation by local governments

No county or municipal corporation may enact, maintain, or enforce any ordinance or resolution which would regulate in any way the amount of rent to be charged for privately owned, single-family or multiple-unit residential rental property. This Code section shall not be construed as prohibiting any county or municipal corporation, or any authority created by a county or municipal corporation for that purpose, from regulating in any way property belonging to such county, such municipal corporation, or such authority from entering into any agreements with private persons, which agreements regulate the amount of rent to be charged for such rental properties.

§ 44-7-20. Notification to prospective tenant of property's propensity toward flooding

When the owner of real property, either directly or through an agent, seeks to lease or rent that property for residential occupancy, prior to entering a written agreement for the leasehold of that property, the owner shall, either directly or through an agent, notify the prospective tenant in writing of the property's propensity of flooding if flooding has damaged any portion of the living space covered by the lease or attachments thereto to which the tenant or the tenant's resident relative has sole and exclusive use under the written agreement at least three times during the five-year period immediately preceding the date of the lease. An owner failing to give such notice shall be liable in tort to the tenant and the tenant's family residing on the leased premises for damages to the personal property of the lessee or a resident relative of the lessee which is proximately caused by flooding which occurs during the term of the lease. For purposes of this Code section, flooding is defined as the inundation of a portion of the living space covered by the lease which was caused by an increased water level in an established water source such as a river, stream, or drainage ditch or as a ponding of water at or near the point where heavy or excessive rain fell. This Code section shall apply only to leaseholds entered into on or after July 1, 1995.

§ 44-7-21. Written brokerage agreement as binding obligation; notice of commission rights form

(a) Where a landlord or tenant has entered into a written brokerage commission agreement for the payment of compensation or promise of payment to a real estate broker in consideration of brokerage services rendered in connection with the consummation of a lease, then, notwithstanding any rule or construction of law under which such written brokerage commission agreement might otherwise be considered the personal obligation of the original landlord or tenant specifically named in the lease, such written brokerage commission agreement shall, pursuant to the terms of this Code section, constitute a binding contractual obligation of such landlord or tenant, as the case may be, and of their respective grantees, successors, and assigns. Upon any sale, transfer, assignment, or other disposition, including, without limitation, by reason of the enforcement of any mortgage, lien, deed to secure debt, or other security instrument, of a landlord's interest in real property or upon any sale, assignment, transfer, or other disposition of a tenant's leasehold interest, the succeeding party shall be bound for all obligations occurring after the sale, transfer, assignment, or other disposition with the same effect as if such succeeding party had expressly assumed the landlord's or tenant's obligations relating to the written brokerage commission agreement if:

- (1) A written brokerage commission agreement is incorporated into the lease;
- (2) The real estate broker has complied with subsection (b) of this Code section;
- (3) The succeeding party assumes the benefits of the tenancy, rental amount, and term of the lease;
- (4) The written brokerage commission agreement has not been waived in writing by the broker.

The conveyance or transfer of the real property coupled with the continuing assumption of the tenancy, rental amount, and term of said lease shall constitute conclusive evidence of the succeeding landlord's or tenant's agreement to pay such periodic commission payments under the written brokerage commission agreement.

(b) A real estate broker shall be entitled to the protections afforded by this Code section only upon the broker's recording a notice of commission rights in the deed records in the office of the clerk of the superior court in the county in which the real property or leasehold interest is located within 30 days of the execution of the lease incorporating the written brokerage commission agreement. Said notice of commission rights must be filed before conveyance of the real property, must be signed by the broker or by a person expressly authorized to sign on behalf of the broker, and must follow substantially the following form:

" NOTICE OF COMMISSION RIGHTS

The undersigned licensed Georgia real estate broker does hereby publish this NOTICE OF COMMISSION RIGHTS pursuant to Code Section 44-7-21 of the Official Code of Georgia Annotated to establish that the lease set forth below contains a written brokerage commission agreement providing for the payment or promise of payment of compensation for brokerage services.

Owner

Landlord

Tenant

Lease date

Lease term

Project name or building

Legal Description: All that tract or parcel of land lying and being in the State of Georgia, County of _____, being more particularly described on Exhibit 'A' attached hereto and made a part hereof. (A full and complete legal description is required for this form to be valid.)

Given under hand and seal this _____ day of _____, _____.

Signed, sealed, and

delivered in the

presence of:

Broker:

(Seal)

Unofficial Witness

Name:

Notary Public

Georgia Real Estate

(Notary Seal Attached)

License No.

"

(c) The real estate broker must file a release of commission rights within 30 days of receipt of the final payment of commissions due under the written brokerage commission agreement.

(d) This Code section shall only apply to leaseholds of all or a portion of commercial real estate as that term is defined in Code Section 44-14-601 which are entered into on or after July 1, 1997.

(e) Notwithstanding any provision of this Code section to the contrary, this Code section does not create an interest in the real property which is the subject of the lease.

§ 44-7-22. Termination of a residential rental agreement by a service member

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member may terminate his or her residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(1) The service member is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(2) The service member is released from active duty or state active duty after having leased the rental premises while on active duty status and the rental premises is 35 miles or more from the service member's home of record prior to entering active duty;

(3) After entering into a rental agreement, the service member receives military orders requiring him or her to move into government quarters;

(4) After entering into a rental agreement, the service member becomes eligible to live in government quarters and the failure to move into government quarters will result in a forfeiture of the service member's basic allowance for housing;

(5) The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such

orders are for a period exceeding 60 days; or

(6) The service member has leased the property but prior to taking possession of the rental premises receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(c) The notice to the landlord pursuant to subsection (b) of this Code section shall be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer.

(d) In the event a service member dies during active duty, an adult member of his or her immediate family may terminate the service member's residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the service member was on active duty or a written verification signed by the service member's commanding officer and a copy of the service member's death certificate.

(e) Upon termination of a rental agreement under this Code section, the service member is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The service member is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this Code section. Notwithstanding any provision of law to the contrary, if a service member terminates the rental agreement pursuant to this Code section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(f) The provisions of this Code section shall apply to all residential rental or lease agreements entered into on or after July 1, 2005, and to any renewals, modifications, or extensions of such agreements in effect on such date. The provisions of this Code section may not be waived or modified by the agreement of the parties under any circumstances.