



# GEORGIA LANDLORD TENANT HANDBOOK

**A Landlord-Tenant Guide to the State's Rental Laws**

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## Introduction

This Handbook provides an overview and answers common questions about Georgia residential landlord-tenant law. The information in this Handbook does not apply to commercial or business leases.

The best solution for each case depends on the facts. Because facts in each case are different, this Handbook covers general terms and answers, and those answers may not apply to your specific problem.

While this publication may be helpful to both landlords and tenants, it is not a substitute for professional legal advice. This Handbook has information on Georgia landlord-tenant law as of the last revision date and may not be up to date on the law. Before relying on this Handbook, you should independently research and analyze the relevant law based on your specific problem, location, and facts.

In Georgia, there is not a government agency that can intervene in a landlord-tenant dispute or force the landlord or tenant to behave a particular way. Landlords or tenants who cannot resolve a dispute need to use the courts, either directly or through a lawyer, to enforce their legal rights.

The Handbook is available on the internet or in print (by request) from the Georgia Department of Community Affairs ([www.dca.ga.gov](http://www.dca.ga.gov)).

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## Relevant Law

**DISCRIMINATION PROHIBITED.** Landlords<sup>1</sup> cannot discriminate based on a person’s “protected class.” Protected classes include race, color, religion, sex, national origin, familial status<sup>2</sup> or disability. The Department of Housing and Urban Development (HUD) is the main federal agency that tenants can turn to if a landlord has discriminated against them. Discrimination can take many forms, including:

- Refusal to rent: refusing to rent to a person because he or she is a member of a protected class;
- Discouragement: Engaging in conduct that discourages a person from renting or makes housing unavailable to a person because he or she is a member of a protected class (including failing to tell the person of marketing promotions, rent reductions or privileges or services associated with the property because of their protected class);
- Different treatment: Imposing different terms and conditions on members of a protected class<sup>3</sup>;
- Separation: Steering members of a protected class to particular buildings or units away from other units;
- Exclusion: Not advertising to members of a protected class;
- Concealment: Falsely telling a member of a protected class that a unit is not available; or
- Preference: Making any statement that indicates a preference based on a protected class. Discrimination can also be indirect, such as an apartment rule that appears neutral but is applied in a way that it causes a protected group to suffer. If the business owner does not have a legitimate business justification for the rule, it is discrimination. In addition, it is illegal for anyone to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- More information on housing discrimination can be found on HUD’s website: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp).

If a tenant or applicant has a disability that requires accommodation, someone must request that the landlord make the necessary accommodations. The person with the disability, a family member, or someone else acting on the individual’s behalf, can request the accommodation.



➤ **Rights of Disabled Tenants.** The Fair Housing Act also protects individuals with disabilities. Landlords must make reasonable accommodations when necessary to allow equal access, allow reasonable changes, and satisfy certain accessibility requirements.

- **Reasonable accommodations.** Landlords must change rules, policies, practices, or services when a reasonable accommodation is necessary for a disabled person to use and enjoy a housing program or rental unit. Reasonable accommodations may be necessary at all housing stages, including applying to rent, while living in the unit, or to prevent eviction.

Disabled persons must either (1) have a physical or mental impairment that substantially limits one or more major life activities, (2) have a history of such an impairment, or (3) be viewed as having such an impairment.

<sup>1</sup> The Fair Housing Acts cover most housing. In some circumstances, the law exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members. See [“Fair Housing-It’s Your Right”](#) for more information.

<sup>2</sup> Families are protected when one or more children under the age of 18 live(s) with (1) a parent; (2) a person who has legal custody; or (3) a designee of the parent or legal custodian, with the parent or legal custodian’s written permission. “Family” also includes pregnant women and anyone in the process of securing legal custody of a child under the age of 18.

Landlords should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden.

*Examples of reasonable accommodations:* Waiving a no-pet policy for a tenant who needs an assistive animal or providing an assigned parking place close to accessible apartments for a tenant with a disability that affects her ability to walk.

- **Reasonable changes.** A landlord must allow a disabled tenant to make, at the tenant's expense, reasonable changes to his or her unit that are necessary to allow the disabled person full use of the premises. A tenant may be required to restore the premises to their original condition upon leaving the unit, if reasonable. The landlord must also permit reasonable changes to common areas to make them usable. In most cases, it would be unreasonable for the landlord to require the tenant to return the common areas to their original condition.
- **Accessibility requirements.** Newly constructed multifamily dwellings with four or more units must provide basic accessibility to persons with disabilities if the buildings were first ready for occupancy after March 13, 1991, including:
  - One entrance to the building on a route so that people with wheelchairs can access it;
  - Accessibility to public areas such as a lobby or swimming pool;
  - Doors wide enough to accommodate people in wheelchairs;
  - Accessibility to each unit (if there is no elevator, only all ground floor units must be accessible);
  - Enough reinforcement in bathroom walls to allow a tenant to install grab bars where needed;
  - Light switches and other controls located low enough for use by a person in a wheelchair; and
  - Kitchens and bathrooms designed so that a wheelchair user can maneuver within the space.

➤ **Steps to Take if You Believe You Have Been the Victim of Discrimination:**

- To determine whether you have been discriminated against, you may contact HUD's Fair Housing Initiatives Program ("FHIP"). Organizations that participate in HUD's FHIP may be able to speak to a housing provider on your behalf, conduct an investigation, including testing, to help determine if you experienced discrimination, or otherwise provide you with information and assistance.

*Georgia has two FHIP organizations: one in Hinesville, which can be reached by calling 912-877-4243, and another in Atlanta, which can be reached at 404-524-0000. More information may be found on this website:*

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/contact\\_fhip](https://www.hud.gov/program_offices/fair_housing_equal_opp/contact_fhip).

- File a complaint with HUD's Fair Housing and Equal Opportunity (FHEO) branch **within one (1) year** of the discriminatory act. To file a complaint, you must fill out a form available online at: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint). You may also send the form via email or print it and mail it to your regional FHEO office.
- You can speak with an FHEO intake specialist by calling 1-800-669-9777 or 1-800-877-8339 for TTY (text message communication for people who are deaf, hard of hearing, or speech-impaired).  
The FHEO's regional office for Georgia is located in Atlanta. You may reach your regional FHEO office by calling 404-331-5140 or 800-440-8091.
- FHEO will investigate your complaint and, if appropriate, try to reach an agreement with the landlord. If an agreement cannot be reached and FHEO has reason to believe you were discriminated against, FHEO will allow you to choose whether to have an administrative hearing with an Administrative Law Judge (ALJ) or send the case to federal court. An Administrative Law Judge can order the landlord to:
  - Compensate you for actual damages;
  - Provide injunctive or other equitable relief (for example, make the housing available to you; or stop the landlord from changing the locks or turning off utilities without a court order);
  - Pay the federal government a civil penalty; and/or
  - Pay reasonable attorney's fees and costs.

- When there is evidence of a fair housing violation, if FHEO finds that you will be harmed if it does not act quickly, the attorney general can issue an order that stops the landlord from causing further damage even before the legal process is complete.
  - As long as you have not signed an agreement and the ALJ has not started a hearing, you can file a lawsuit at your expense in federal or state court **within two (2) years** of the discriminatory action. If you win, the court may award actual and punitive damages and attorney’s fees and costs.

## Entering into a Lease and Other Tenancy Issues



A lease grants a tenant the right to use and live in the rental property temporarily, so the landlord can have the property back in the future. Searching for and finding a rental property in the right location and within your budget requires significant time and effort. However, you should not relax after finding a property and rush through the leasing process. Both you and your landlord can benefit by becoming familiar with tenancy laws and making sure the lease accurately reflects you and your landlord’s intention in your future relationship. Below is an outline of the leasing process and common tenancy issues under Georgia law.

1. **Submitting a Rental Application:** The first step most landlords require is the rental application.
  - **Application fees.** Application fees may be required and are usually not refundable, even if the application is denied or you change your mind. The fee may be applied to the first month’s rent. Always get a receipt for any fee or deposit.
  - **Information on application.** Landlords commonly request the following information: Name, social security number, current landlord’s name, employer’s name, your job title and annual income, past employment information, references, identity of nearest relative, and consent for a credit report and criminal record check.
  - **Background check.** Landlords may require you to agree to a credit and criminal background check as part of the application. Credit reporting agencies can provide information about you to a potential landlord without your consent.<sup>4</sup>
2. **Reviewing and Signing a Lease:** If the landlord accepts your application and determines that you meet the requirements to lease, the next step is to enter into a rental agreement called a lease.

- ✓ **Landlords should be careful** about language included or left out of a lease and consider consulting with an attorney who regularly handles landlord and tenant legal issues.

### Lease terms are important.

A lease is a **contract** and defines the rights and responsibilities that the landlord and tenant owe each other. Once you sign the lease, you cannot change your mind later. If the tenant changes his or her mind and decides not to move into the unit after signing the lease, the landlord can impose early termination penalties if provided in the lease.

### Pay close attention to the details!



<sup>4</sup> Refusing to rent to applicants with a criminal record may be discrimination if the refusal has an unjustified discriminatory effect on a protected class, such as Hispanics and African Americans, who have higher than average incarceration rates. To avoid discrimination, a landlord should evaluate each applicant’s history on a case-by-case basis, taking into account the nature, severity, and age of a conviction. For additional information, see HUD’s “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016), available at: [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

- ✓ **Tenants should *always* read the lease before signing.** Leases and rental agreements differ from landlord to landlord. As the tenant, you must follow the terms in a lease even if you did not understand or read it. You may request a copy of the lease to review a day or two in advance of meeting with the landlord to sign and ask an attorney for help understanding the lease if you need it. You should always receive a copy of the signed lease and store it in a safe place.

*It is a violation of the law if your lease says anything like the following:*

- The landlord removes or reduces their responsibility to maintain the property in good repair;
- The landlord removes or reduces their responsibility to respond to damages caused by the landlord's failure to keep the property in good repair;
- Requires you to pay the landlord's attorney fees if a landlord hires an attorney to enforce the lease;
- The lease says that the landlord does not have to follow local laws;
- The lease says the landlord does not have to follow Georgia security deposit law; and
- The lease says the landlord can evict you without going through the eviction process in court.

*Tenants who dislike certain provisions may ask a landlord to change or update the terms of the lease. However, a landlord has the right to refuse the request to change the lease, and the tenant must then decide whether or not to sign the lease. Below are examples of what you may want to ask about:*

- Very long lease terms with early termination penalties or fees;
- Automatic rent increases during the lease term;
- References to rules that you have not received;
- How utilities will be paid; and
- When and how the landlord can access the unit.

### **Expecting a job transfer? Moving soon?**

**If you are about to change jobs or want to purchase a home, you can ask for the right to terminate your lease. But without special written termination provisions, the tenant *cannot* terminate the lease early without penalty.**

➤ **Written vs. verbal lease.** A written lease provides clarity and helps resolve disputes. For example, you should make sure the rent amount is clear and cannot be increased during the lease term. Verbal leases often lead to misunderstandings about what you and your landlord agreed upon.

➤ **Lease length.** Leases can be made for any length of time with provisions on how to end the lease. **NOTE:** Additional requirements may apply to leases drafted for longer than a year and an attorney may need to be consulted.

➤ **Renter's Insurance.** A landlord's property insurance typically does not cover a tenant's personal items that are damaged due to fire, theft, or water, so, it is a good idea to purchase renter's insurance. Many renter's insurance policies also provide liability coverage (for example, if a guest is injured in the rental unit). Some leases may require tenants to purchase renter's insurance.

➤ **Occupancy Limits.** Georgia does not regulate the number of people who can live in rental housing. However, local ordinances may establish occupancy limits.<sup>5</sup> In addition, the landlord may choose to limit the number of people who can live in the unit. Generally, restricting two people to a bedroom is reasonable.<sup>6</sup> Occupancy limits should be clear in the lease.

➤ **Utilities.** You should ask whether you or the landlord will pay the utilities. If you are responsible for utility payments, research utility costs and consider your budget before signing a lease.

Some landlords may employ "master metering," which means multiple tenants' electric, natural gas or water usage is measured using the same meter when utility service is in the landlord's name. If you are responsible

<sup>5</sup> More information about local ordinances in Georgia can be found at: <https://www.municode.com/library/ga>.

<sup>6</sup> Landlords should make sure occupancy limits are reasonable and not used intentionally to exclude or limit families with children, or that they burden families more than other individuals, which may violate fair housing laws.



to pay that utility, the landlord will divide the cost of the utility used by all tenants and in the common areas between each tenant. You should clarify how utility bills will be calculated and paid before signing the lease.

NOTE: If you are facing eviction, it is illegal for a landlord to knowingly and willfully suspend your utilities (heat, light, and water service) until after the judge's final decision.

### ➤ **Lease with An Option to Purchase**

If you want to buy a home and expect to stay in one area or one city for a long time, you may consider a lease with an option to purchase. You may discuss this option with the landlord if the landlord wants to sell the rental property.

In addition to the rent, you will also pay for the option to purchase. The additional money may come from paying a lump sum at the start of the leasing contract, or in the form of higher monthly rent payments.

You can choose to purchase the house at any time during the leasing period, at a date specified in the lease, or when another buyer makes an offer on the house and the landlord gives you a chance to match the other buyer's price for the property.

### ➤ **Flooding**

If residential rental property has flooded at least three (3) times in the past five (5) years and damaged the living space, the landlord must, before entering a lease agreement, notify you in writing of the property's likelihood to flood. If the landlord does not give notice, then the landlord is liable to you for property damage that results from flooding during the lease.

### ➤ **Security Deposit When Moving In.** The security deposit protects the landlord if you move out of the property owing money or having damaged the unit. *If you give proper notice and vacate without owing rent or causing damage, the landlord must return the security deposit (minus reasonable cleaning costs) to you within one month.*

#### • **Security deposit rules include:**

- **Escrow Account:** Landlords who own more than ten (10) rental units, including units owned by their spouses and/or children, or who contract with a management agent, must place the security deposit in a bank "escrow" account that is only for security deposits or post bond with the superior court clerk. If kept in escrow, the landlord must give you written notice about the location of the security deposit to the tenant.
- **Transfer of Deposit:** If someone new buys the property, the former owner must either transfer the deposit to the new owner, who becomes responsible for it, or the old owner must refund the security deposit to you. If the old owner fails to take either of these actions, you can sue to recover the security deposit. Before filing a lawsuit, you should write to the old and new owners requesting information on the security deposit.
- **Refundable Deposit:** Pet deposits and advance rent deposits that are refundable under the lease are considered part of a security deposit. Application fees or deposits to hold an apartment until the lease is signed are not considered security deposits and usually are not refundable.

- **Move-in Inspection.** Some landlords show potential tenants a model unit that looks like the available unit. You should insist on seeing the actual unit you will rent before signing a lease.

A formal move-in inspection process is required for landlords who own more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent. During the inspection, you and the landlord will agree on existing damage to the property, so you are not charged for existing damage when you move out. Unless the landlord owns fewer than 10 units and does not contract with a management agent, the landlord must give you a complete list of the existing damage before accepting the security deposit and you must be allowed to inspect the unit to determine if the list is accurate. Both you and the landlord must sign the list, and you should keep a copy. Additional information on move-out inspections is discussed on page 16.

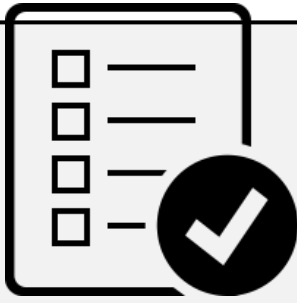
- **Promised repairs.** During inspection, if you would like something repaired, you should get the landlord to agree to the repair in writing. If the landlord only *verbally* agrees to a repair, then later denies the promise, you will have to convince the judge of the verbal agreement and ask the court to enforce it.
- **Name and address of the property owner or authorized agency.** You must receive the name and address of the property owner or authorized agent to receive legally required notices, and you should receive the name and address of the property manager at the time the lease is signed. If any changes to names or addresses occur during the lease term, the landlord should give you notice within 30 days by mail or posting it in a common area.
- **House Rules.** A lease may allow the landlord to terminate the lease or evict you for violating house rules. Most courts will uphold reasonable house rules. Before signing the lease, ask for a copy of any house rules and read them carefully. You can discuss rules you object to with the landlord before signing the lease. House rules you object to might include terms like a curfew or no guests at night.



### **CAUTION!**

The landlord will *not* be responsible to repair problems with your unit that were obvious during the move-in walk-through unless those problems make the unit unsafe or unsanitary to live in. You should inspect your rental thoroughly.





# What should be in a lease?

- ✓ Names of the tenant, the landlord or the landlord’s agent, and the person or company authorized to manage the property;
- ✓ Description of the unit, identifying the appliances included in the unit and heating and cooling sources;
- ✓ Description of the real property (if a single-family home);
- ✓ How long the lease is and when it ends;
- ✓ Amount of rent and rent payment due date, including any grace period, late charges or returned check charges;
- ✓ How the tenant will deliver rent to the landlord and whether payment may be made by check, money order or cash;
- ✓ How to terminate the lease before it ends, including any early termination fees;
- ✓ Security deposit amount;
- ✓ How and when utilities will be paid; (for example, does the landlord or tenant pay?)
- ✓ Amenities and common facilities available for the tenant’s use (for example, washer and dryer; swimming pool; communal areas);
- ✓ House Rules, including, for example, pets, guests, and noise, and consequences for rule violations;
- ✓ Parking available for the tenant’s use;
- ✓ Pest control if provided, including how often it will occur;
- ✓ Handling of tenant repair requests, including emergency requests; and
- ✓ Circumstances allowing the landlord to enter the rental unit, including notice requirements.

### 3. **Problems During a Lease:**

➤ **Repairs and Maintenance.** Residential landlords have a duty to keep a unit in a safe and habitable condition and in good repair..

*The landlord must:*

- Maintain the building structure;
- Keep electric, heating and plumbing in working order; and
- Exercise ordinary care to keep the unit and access safe for tenants.<sup>7</sup>

*Unless the lease says something else, the landlord is not responsible for:*

- Problems that were obvious during the move-in inspection, unless the problems make the unit unsafe or unsanitary;
- Carpet cleaning; or
- Providing air conditioning, appliances<sup>8</sup>, or fences (EXCEPT, if a landlord provides these, the landlord **IS** responsible to repair them.)

What if a landlord fails to repair within a reasonable time<sup>9</sup> after receiving notice?

- **File a lawsuit.** A judge may make the landlord pay for injuries if he had notice of certain problems on the property and had the opportunity to repair them but nonetheless failed to do so, and someone was hurt as a result. You may sue the landlord for damages caused by the failure to repair or, if the landlord sues you, counterclaim for damages due to the failure to repair.
- **Repair-and-deduct.** You can have a qualified and licensed professional make the required repair at a reasonable cost and subtract the cost from future rent payments. You should:
  - Notify the landlord in writing that you plan to use the repair-and-deduct remedy before arranging for the repair to be done;
  - Keep copies of repair receipts and ask the professional for a statement detailing the work performed, what was fixed; and
  - Subtract the repair costs from the next rent payment and not make other improvements to the property aside from fixing the problem.NOTE: You cannot use repair-and-deduct for common areas.

**PROCEED WITH CAUTION!** Although repair-and-deduct is an option, you should be aware that landlords can argue the repair was unnecessary or completed at an unreasonable cost. It is very important to give notice to the landlord that you are proceeding with repair-and-deduct and ideally get the landlord to agree to the cost **before beginning the repair**. If you proceed with this option, you



#### **Notice of repair required!**

Tenants must *immediately* give written notice to the landlord of any problem(s) needing repair.

Make sure the notice follows the requirements in the lease, so the landlord is aware of the problem(s).



#### **CAUTION!**

Even if the Landlord fails to make repairs, the tenant generally must continue to pay rent. If the tenant does not pay rent when it is due, the landlord can begin the eviction process.

<sup>7</sup> Landlords must take ordinary care to prevent foreseeable third-party criminal acts on tenants. To be foreseeable, the incident causing the injury must be substantially similar in type to previous criminal activities. For example, if there is a broken parking lot light and the tenant is concerned about safety, give written notice of the problem to the property manager and owner and state the safety concern because of the defect. The landlord may be liable if someone is later injured because there was an unsafe condition that the landlord knew about and did not repair. However, once the landlord has parted with possession of the premises, she is not responsible to third persons for damages resulting from the tenant's negligence or illegal use of the premises. O.C.G.A. §§44-7-13, 14

<sup>8</sup> Georgia law does not require landlords to supply appliances such as refrigerators or stoves, but local ordinances may.

<sup>9</sup> Reasonable time is determined by the seriousness of the condition and the nature of the repair.

should get estimates from multiple vendors or contractors and keep copies of those estimates along with the receipts.

- **Contact the local, county, or city housing code inspector.** Landlords must comply with local housing codes during the lease. If the county or city government condemns the leased property and prohibits residential use, you can treat the landlord as having broken the lease and move out. Before moving, you should have proof that the property was condemned and write to the landlord declaring the lease in default.

It is **ILLEGAL** for a landlord to evict you or otherwise retaliate against you for calling code enforcement. **However**, you should be aware that contacting a code inspector might further strain your relationship with the landlord and this should usually be done as a last resort.

- **Move out.** Sometimes the landlord's failure to repair can make the unit unfit to live in. The landlord's failure to repair may be a breach of the duty to keep the unit in good repair and amount to a 'constructive eviction,' which means you do not have to pay rent. True constructive eviction is rare and requires that:

- The landlord's failure to keep the unit repaired has allowed the unit to become an unfit place for you to live,
- The unit cannot be restored to a fit condition by ordinary repairs, and
- You move out of the premises.

An example of constructive eviction is a landlord who makes no attempt to repair a massive roof leak, resulting in the unit completely flooding when it rains.

**NOTE:**

If you abandon the unit, the landlord has the option of:

- (i) ending the lease,
- (ii) finding another tenant while holding you responsible for any money owed on the remaining lease term, or
- (iii) leave the unit empty and continue to collect rent from you according to the lease.

- **Other Damages.** If the landlord repairs in a reasonable time, you generally cannot recover money in court for temporary loss of a part of the unit or personal property damage (unless the damage is caused by the landlord's previous failure or delay to repair).

**NOTE:** However, you may still ask the landlord to pay for your loss and inconvenience. The property owner(s) provides a service, and you are the customer. An owner of a well-run property should want to maintain good tenant relationship and ensure that the tenant will remain until the lease expires. Consider negotiating for a future rent credit instead of cash out of pocket. Use common sense and be reasonable when approaching the landlord seeking compensation.



**CAUTION!**

A tenant cannot claim constructive eviction if the unit is in poor condition because of their actions; a constructive eviction must happen because of the landlord's actions or inaction in fixing the condition of the unit. The unit cannot be simply "uncomfortable," it must be completely uninhabitable. For example, broken air conditioning for three days is probably not a constructive eviction.

➤ **Landlord is not paying the utility bills?**

*If the landlord pays the utilities under the lease:*

Landlords receiving electric service from a Public Service Commission-regulated electric provider (example: Georgia Power or Savannah Electric Power) have special rules that require the power company to give tenants at least five (5) days written notice prior to turning off the utility. The notice must be handed to at least one adult in each unit or posted in a very visible place on the premises when personal delivery is not possible.

The electricity provider is required to accept payments from you for your portion of any past due amounts and must issue receipts to you explaining that your payments will be credited to the landlord's account. If you are seriously ill or the electricity will be turned off when the weather is extremely hot or cold, you may be able to ask the company for a later cutoff date.

**NOTE:** During an eviction case, it is illegal for a landlord to knowingly and willfully turn off utilities (heat, light, and water service) until after the judge makes a final decision.

➤ **Visitors' and Tenants' Use of the Rental Unit.** You have the right to use, occupy and enjoy the leased unit as the lease describes.

- **Visitors.** Unless the lease says you cannot, you may have visitors as long as they do not disrupt other residents. But, you should: (1) not allow visitors to spend the night too many times in a row or receive mail or deliveries at your unit without the landlord's permission, because that can make it look like the visitor is living at the unit in violation of the lease; and (2) follow any rules in the lease about how many people can be there ("occupancy limits").
- **Pets.** A violation of pet rules may allow the landlord to terminate the lease and try to evict you. Even if the landlord previously did not enforce the lease's pet rules, the landlord can change her mind and give notice of her intent to enforce the rules.
- **Noisy Neighbors.** If you have noisy or disruptive neighbors, you should contact the landlord. The police should only be contacted as a last resort. If the landlord continually refuses to address the problem, you can ask to end the lease or transfer to another unit, which a landlord should allow if the other tenants' behavior would be considered disruptive to an ordinary, reasonable person.
- **Altering the Unit.** Generally, you *cannot* substantially or permanently alter leased property without the landlord's permission. You can make minor changes, but it is best to get written approval from the landlord to avoid issues later about what counts as a minor alteration. You must put everything back to the same condition it was in when you moved in, subject to normal wear and tear. *Example:* There is a tree the tenant is worried about on the property. The tenant does not have the right to cut or destroy growing trees or make similar permanent changes to the property.

➤ **Landlord Access to the Rental Unit.** The lease will establish under what conditions a landlord may enter a unit. Typically, most leases say that the landlord can have reasonable access after giving notice. If the landlord enters at unreasonable times, like in the middle of the night, the landlord may be in breach of the lease. If the lease does not give the landlord the right to enter the unit, you could legally refuse to allow the landlord to come in, except in cases of emergency. The best practice is for you and the landlord to agree about when and how the landlord can access the rental.

## Can a tenant change the locks?



Typically, the lease will say that the tenant cannot change locks without the landlord's permission. If the lease is silent about changing locks, then technically you may change locks without the landlord's permission and not give the landlord new keys. But you must give the new keys to the landlord or restore the lock to its original condition upon leaving the unit. If you don't, the landlord may deduct the cost for the lock from the security deposit.

- **Right to Access Landlord's Files.** You do not have a legal right to demand access to the landlord's files unless you need the files for a lawsuit. But, your landlord should be willing to let you view a copy of the lease if necessary.
- **Changes to Lease Terms.** Changes to a lease must adhere to certain rules.
  - Rent can only be increased during a lease if the lease says that may happen. The terms of the lease determine whether or not a landlord can raise rent and how often they can do so.
  - If the apartment complex changes owners, the new owners are generally subject to existing leases and cannot raise rents or change rules.

4. **Subletting:** Someone who leases a unit from the original tenant is called a subtenant. The lease determines whether a tenant can sublet. Often, subletting requires the landlord's permission.

A subtenant has the right to use and occupy the rental property from the original tenant and not directly from the landlord. The subtenant may pay rent directly to the landlord but the original tenant remains responsible to the landlord for the rent and any damage caused by the subtenant.

However, the landlord may choose to treat the subtenant as his tenant, either expressly or implied from the landlord's acts and conduct. Mere acceptance of the subtenant's rent does not mean that the landlord has chosen to treat the subtenant as his tenant and release the original tenant.

5. **Early Termination:** The landlord and tenant may only end a written lease according to its terms. If you terminate the lease or abandon the property in a way the lease does not allow, you may owe the landlord money:

- **Early Termination Fees.** A lease may require the tenant to pay certain fees for ending the lease early. Early termination fees will be allowed if (1) the landlord's damages caused by the early termination are difficult or impossible to estimate accurately, (2) you and the landlord intend the fees to cover damages and not penalize you for leaving, and (3) the fees are a reasonable estimate of the landlord's damages caused by early termination. If these requirements are not met, a judge may say that the early termination fee is not allowed.
- **Duty to Continue Paying Rent.** In Georgia, if you abandon the unit or terminate the lease early without the landlord's permission, the landlord does *not* have to find another tenant or allow another person to lease the unit. Unless the lease says otherwise, the landlord can allow the unit to remain empty and hold you responsible for rent through the end of the lease. This rule applies unless the landlord accepts your leaving. For example, if the landlord retakes possession of the unit and re-rents it or allows others to live in it, he cannot hold you responsible for rent owed. But, the landlord does not accept your leaving just by accepting the keys or by entering the property.
- **Special Rules When You Stay After the Lease Ends.** If the lease expires, the landlord can require that you immediately sign a new lease with new terms or leave. If a new lease is not signed, and the landlord continues to accept monthly rent, the terms of the original lease still apply, except the landlord is required to give sixty (60) days' notice before she can terminate the lease or change the terms, and you are required to give thirty (30) days' notice before leaving.

6. **End of the Lease:** A lease can end, extend, or renew at the end of the lease term depending on what the lease says.

- **Termination.** If the lease expires or otherwise ends, the landlord can seek take back the rental property. O.C.G.A. §44-7-11.
- **Extension.** A lease may allow you to stay longer under the same lease provisions. There usually is no need to sign a new lease to extend the term. The lease may allow automatic extension at the end of the current lease unless you give notice that you want to leave. If your lease allows that, and you do not notify the landlord that you plan to leave, you could end up responsible for another lease term.

- **Renewal.** A lease may allow the tenant to renew by signing a new lease. If your lease allows that, you must give the landlord written notice of your intention to renew the lease. If you do not timely renew the lease, the landlord may treat the lease as expired at the end of the term and take back the rental property.

If you want to stay in the unit, read the lease to find out how to renew or extend the lease.<sup>10</sup> A landlord can choose not to extend the existing lease or decline to offer a new lease. A private landlord is not required to give a reason for refusing to extend or renew a lease unless the lease requires. But, the landlord cannot discriminate. If you and your landlord cannot reach an agreement on a new lease or extension, you should plan to move when the lease ends.

## 7. **Security Deposit**

**Move-out Inspection.** Landlords who own more than ten (10) rental units, including units owned by their spouse and/or children, or who employ a management agent, must provide a formal inspection of the unit on move-out or give back the security deposit.

- Within three (3) business days after the lease terminates, or a reasonable time after the landlord discovers you left, the landlord must inspect the unit and prepare a list of all damage and the estimated dollar value of such damage. The landlord must sign the list and provide it to you.
- You may inspect the unit within five (5) business days after the termination. You must sign the move-out inspection list or specify in writing the items you disagree with. It is best for you to be present there at the move-out inspection with the landlord.
- If you agree with the damage listed on the move-out inspection list, you cannot contest the landlord's keeping the security deposit to cover the damage. Therefore, it is very important to carefully read through the move-out inspection report.

**Deductions from the security deposit.** The landlord *cannot* keep the security deposit to cover normal wear and tear that occurs as a result of your using the property for its intended purpose. "Normal wear and tear" means the expected slight damages that happen over time from you and your family or guests' ordinary use of the unit. But, the landlord may keep part of the security deposit for:

- Damage caused to the premises by the tenant, members of the tenant's household, pets, or guests, that is done on purpose, by accident, or due to careless acts;
- Unpaid rent or late charges;
- Unpaid pet fees;
- Unpaid utilities that were your responsibility under the lease; or
- Damage to the landlord caused by early termination.

**Repair or replacement amount.** Example: If you damaged ten-year-old carpet to the extent that it can no longer be used, you should be charged for the value of the ten-year-old carpet and not for the cost of the new replacement carpet. Amounts withheld must be reasonable.

**Damages exceed the security deposit.** The landlord can sue you for the cost of damage exceeding the amount of the security deposit amount.

**Returning the security deposit.** All landlords, regardless of the number of units owned, must return the security deposit within one month after termination of the lease or the date that you leave the premises,

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<sup>10</sup> Information about different types of lease can be found in Appendix C.



whichever occurs last. If the security deposit is held because of damage to the unit, the landlord must send you notice within one month identifying the damage, the estimated dollar amount of the damage, and a refund, if any, of the difference between the security deposit and the amount withheld for damages.

What if the landlord does not know your new address? The security deposit and any statement of damages must be mailed to your last known address even if that is the vacated rental property. If it is returned as undeliverable and the landlord is unable to locate you after a reasonable effort, the security deposit belongs to the landlord ninety (90) days after it was mailed.

**Wrongfully withheld security deposit.** If the landlord refuses to refund the security deposit, you may try to get the security deposit back by suing in the county court where the landlord resides or where his designated agent for service resides. You may also sue for interest on the amount while it was wrongfully withheld, attorney fees, and the cost of filing the lawsuit. You can only recover amounts held by the landlord for damages that you disagreed with and noted on the move-out inspection list. The court will most likely not allow you to get back the cost of repairing items listed as damaged on the move-out inspection list and not disputed. A landlord who owns more than ten units or uses a management agent can be liable for three times the amount that was withheld plus attorney fees, unless the withholding was a mistake that occurred despite the landlord making efforts to avoid a mistake.

## Can a Guest Become a Tenant?

Even if a landlord does not charge rent, a landlord-tenant relationship might be created when the landlord gives someone the right to stay at the property. If the landlord did not set out a specific end date, there might be a tenancy-at-will. If there is a tenancy-at-will, the landlord must give the tenant sixty (60) days' notice telling them to leave. If the landlord is willing to allow the tenant to remain but wishes to begin charging rent, the tenant must be given sixty (60) days' notice to start a new tenancy-at-will requiring rent payments.

## Evictions



In Georgia, landlords cannot kick tenants out of or prevent access to a unit without first going through the court dispossession (eviction) process. Self-help evictions are illegal, even if the tenant has violated the lease. **During the eviction process, the tenant is allowed to remain in the property until there is a court decision. During this time, the landlord cannot cut off utilities either.**

**Bases for Eviction:** You can be evicted for not paying rent or for failing to move out at the expiration or termination of the lease.

**NOTE:** If the landlord tries to evict you for not paying rent, you have seven (7) days to pay the rent owed. This is a complete defense, meaning that if you do it, the landlord cannot evict you, **but** the landlord is only required to accept a late payment once in a 12-month period.

### Eviction Process:

- 1. Read the lease.** The first step when facing or pursuing eviction is to read the lease. The landlord must comply with lease terms regarding notice and termination.
- 2. Demand for possession.** The landlord must demand that you give up possession and leave. This demand should be in writing, but there is no “magic language” that the landlord has to use. The landlord can verbally ask you to leave, but she may have trouble proving when notice was given without a paper or digital record. The landlord should keep track of how and when service of the demand was made, including any evidence of service.

A demand should be dated, list the name of the tenant and premises, and may state: “You [tenant] are notified that you have violated or failed to perform terms of the Lease as follows: \_\_\_\_\_. You must surrender possession and vacate the premises within \_\_\_\_ days after service of this notice.”

- 3. File a dispossessory affidavit under oath.** If the tenant refuses or fails to leave, the landlord can file a dispossessory affidavit under oath in magistrate court<sup>11</sup> in the county where the rental property is located. The affidavit should state: (1) the name of the landlord, (2) the name of the tenant, (3) the reason the tenant is being removed, (4) verification that the landlord demanded possession of the property and was refused, and (5) the amount of rent or other money owed, if any.

NOTE: After filing a dispossessory action based on nonpayment of rent, the landlord cannot accept rent from the tenant because it would give the tenant a defense to the eviction. But, the landlord can request that the court order the tenant to pay rent into court if the eviction process takes longer than two weeks before a final decision from the court. The amount due can be shown by attaching a copy of the lease or evidence of past payments. If the tenant fails to pay, the court can issue a writ of possession, and the tenant would be subject to immediate eviction.

NOTE: In Georgia, the landlord can seize the tenant’s property to get payment of rent as soon as it is due if the tenant seeks to remove her property from the premises.

- 4. Service of the dispossessory affidavit on the tenant.** After the landlord files the dispossessory affidavit, it must be legally delivered to the tenant.

In most counties, the sheriff will serve the tenant. There are three ways a summons can be served:

- (1) Personally delivered to the tenant,
- (2) Delivered to a competent adult who resides in the unit, or
- (3) \*Most Common\* Tacked on the door of the home and sent by first class mail to the tenant’s address (“tack and mail”). The date stamped on the envelope, which shows when it was mailed, should *be the same* as the date it was tacked on the door. If the date is not the same, the tenant may be able to assert insufficient service. Tack and mail is only acceptable if no one was at home when the sheriff tried to provide personal service. If the dispossessory affidavit was served by tack and mail, and the tenant did not file an answer or appear in court, the court can still order the tenant to move, but the court cannot award rent or other money damages to the landlord.

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<sup>11</sup> Dispossessory actions are usually filed in magistrate court because they are easier to navigate, but can also be filed in municipal, state or superior court. For more information on how the Georgia courts operate, see [www.georgiacourt.gov](http://www.georgiacourt.gov), which can help you locate courts in your area. Some magistrate courts have their own websites, and a few allow filing of dispossessory affidavits online.

5. **Tenant Answer.** The summons served on the tenant should require a response either verbally or in writing within seven (7) days from the date of service. If the seventh day is a Saturday, Sunday or legal holiday, the answer must be filed on the next day that is not a Saturday, Sunday, or legal holiday. If you don't answer the eviction notice within seven days, the court can evict you and it will send the sheriff to remove you from the property.<sup>12</sup>

- **Answering the summons is important:** The answer is the tenant's chance to explain why the landlord is not legally entitled to evict.
- **What to include in the answer:** The answer must contain any counterclaims against the landlord. If you don't include these counterclaims that you have against the landlord, you may not be able to bring them up later. A counterclaim is any claim you may have against the landlord for not meeting their duties as a landlord. For example, if you claim the landlord failed to make repairs and personal property was damaged.
- **The tenant can also file in the answer:** The answer can seek foreseeable damages caused by the wrongfully filed eviction, such as time spent filing an answer, work hours missed, travel expenses and attorney fees.
- **NOTE:** Be sure that everything in your answer is true because purposefully making a false statement is a misdemeanor.
- **What happens after filing an answer:** Where an answer has been filed, even if it does not contain a legal defense, the clerk must treat it as an answer until a judge determines otherwise. Before a judge can strike an answer as legally inadequate the tenant must be given notice and opportunity for a hearing on whether the answer has legal merit.

**NOTE:** If the case cannot be decided within two weeks of when the tenant was served, the tenant must pay the court past rent owed and future rent as it becomes due. Failure pay will result in an eviction.



## Tender Defense:

You may be able to avoid eviction if you pay all rent the landlord alleges you owe plus court costs.

The amount the landlord says you owe should be on the dispossessory affidavit (eviction notice). Once you receive an eviction notice, you have seven (7) days to pay off that amount.

The landlord is *required* to accept the payment only once a year. If the landlord accepts your payment, you must file an answer to the court within the seven (7) days, saying that the landlord accepted payment.

If the landlord refuses your payment, you should file an answer stating that tender was offered but refused (you offered to pay, but the landlord refused to accept). If a court finds the landlord refused a proper offer, the court can order the landlord to accept payment and allow the tenant to remain at the property if the tenant makes payment within three days of the court's order.

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<sup>12</sup> Tenants cannot appeal a default judgment. In other words, if the tenant fails to respond to the eviction notice, the tenant will not have an opportunity to reverse judgment against him or her.

6. **Hearing.** If the tenant files an answer stating a valid defense, a hearing on the issues will be held. Once a hearing is held, the court will issue its decision. If you don't raise a valid legal defense, the court may dismiss your answer and you could be evicted without a hearing.

7. **Writ of possession.** If the court rules in the landlord's favor, the landlord should request a writ of possession that requires the tenant move after seven (7) days and pay past rent owed. The writ is a separate document from the court's order. Once a writ of possession is issued, the following occurs:

- Generally, the sheriff will supervise the landlord's removal of a tenant who refuses to leave the property. The landlord is responsible for the cost of eviction.
- When a tenant's personal property is removed, it must be placed on some portion of the landlord's land. If the landlord and officer executing the warrant agree, the property may be placed on land other than that owned by the landlord, such as the sidewalk or street. The landlord must use reasonable care in removing the property, but once removed, the landlord cannot be held liable for anything that happens to the tenant's private property. If the landlord transports the property elsewhere or leaves it in the unit, he may be sued by the tenant for taking the property.
- Once judgment has been entered in the landlord's favor, the tenant can still be removed even if the tenant pays the landlord.

## No court hearing?



The tenant may not get a hearing if she did not file an answer and assert valid defenses. Therefore, a tenant should make sure to assert all valid defenses in her answer and not wait to raise issues at the hearing.

The general rule is that when a landlord evicts a tenant and takes possession of the property, the lease is terminated, and the tenant does not owe future rent.

## 8. Appeals.

- A landlord can appeal within seven (7) days from the date judgment was entered by the court. A request for jury trial must be within thirty (30) days from the filing of the appeal. It is wise to consult an attorney when considering an appeal.
- A tenant can appeal within seven (7) days from the date judgment was entered by the court. To file an appeal, the tenant must pay court costs or obtain a court order that costs are not owed. A tenant who cannot afford to pay court costs to file an appeal can ask that the court waive payments by filing a "pauper's affidavit" or "affidavit of poverty."

An appeal prevents a writ of possession from being executed. If you wish to continue living in the unit while the appeal is pending you must pay the court all rent due according to the judge's order. If you cannot pay the rent amount, you can still appeal, but you must vacate the unit. The court may also order the tenant to pay into court the future rent as it comes due while the appeal is pending. If the tenant fails to pay, the court will order that the tenant leave the property.

# Miscellaneous

1. **Military Service Members as Tenants.** Active members of the military have protection under state and federal law. The Service Members Civil Relief Act (“SCRA”):



Affords some relief if military service makes rent payment difficult. Before a court can evict, it must find that the service member’s ability to pay rent was not materially affected by his military service. “Material effect” is when the service member does not earn sufficient income to pay the rent. If the member’s ability to pay was materially affected, the court may postpone the eviction for up to ninety (90) days unless the court decides a shorter or longer period is in the interest of justice. The military member or their dependents must request this relief. There is no requirement that service member signed the lease before entering active duty.

This rule applies when: (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty; (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and (3) The agreed rent does not exceed a certain maximum (as of Jan. 1, 2020: \$3,991.90 per month, subject to change).<sup>13</sup>

Provides an option to postpone court proceedings. If service members are unable to appear in court or at an administrative proceeding due to their military duties, they may postpone the proceeding for a mandatory minimum of ninety (90) days. The request must be in writing and (1) explain why current military duty materially affects the service member’s ability to appear; (2) Provide a date when the service member can appear; and (3) Include a letter from the commander stating that the service member’s duties preclude his or her appearance and that he is not authorized to take leave at the time of the hearing. Further delays may be granted at the court’s discretion. If the court denies additional delays, an attorney must be appointed to represent the service member.

Allows default judgments to be set aside. If a default judgment is entered against a service member during his or her active-duty service, or within sixty (60) days thereafter, the service member may **reopen the** default judgment and set it aside. The service member must show that he was harmed by not being able to appear in person and that he has good legal defenses to the claims against him.

Permits relocation and early lease termination. Service members may terminate leases without penalty that were entered into before entering military service or while in military service and that were occupied or intended to be occupied by the service member or his dependents. The service member must deliver written notice of termination to the landlord and a copy of the military orders. If the lease provides for monthly payment of rent, the lease is terminated effective thirty (30) days after the first date on which the next rental payment is due after giving notice. For example, if notice is given on March 15, the next rental payment is due April 1, so the lease is terminated effective May 1.

Georgia Law allows a service member who meets certain requirements to terminate a lease entered into on or after July 1, 2005 by giving the landlord a thirty (30) day advance written notice of termination.

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<sup>13</sup> More information about the SCRA can be found at: <https://www.military.com/benefits/military-legal-matters/scra/scra-rental-and-eviction-protection.html>.



2. **Lead Based Paint Disclosures.** Landlords who rent units built before 1978 must disclose the presence of all known lead-based paint and lead hazards in the rental unit and common areas, unless the property is determined to be free of lead-based paint by a state-certified inspector. Lofts, studios, or short-term leases of less than one hundred (100) days are exempt.



Landlords Must:

- Give the future tenant an Environmental Protection Agency (EPA) approved pamphlet entitled “Protect Your Family from Lead in Your Home” on how to identify and control lead-based paint hazards.
- Disclose any known information concerning lead-based paint or lead hazards. The landlord must also disclose information such as the location of the lead-based paint and/or lead hazards and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead hazards that are available to the landlord. For multi-unit buildings, this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
- Include a Lead Warning Statement and language in the lease or as a lease attachment that confirms that the landlord has complied with all notification requirements. Landlords, agents, and tenants must sign and date the statement.
- If a child under the age of six is found to have lead poisoning and resides in a dwelling with lead hazards, the owner must take steps to reduce the lead hazards.

If you are a tenant who did not receive the disclosure and you have been damaged by lead paint, call 1-800-424-LEAD (5323), or contact a lawyer. You may be able to recover triple the amount of your actual damages, and the landlord may be subject to other civil or criminal penalties. The landlord may offer transfers, with or without incentives, to enable you to move to a unit where lead-based paint hazards have been controlled.

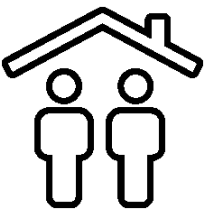


3. **Foreclosure.** If a property is foreclosed, the original landlord-tenant relationship ends and you may be subject to eviction.<sup>14</sup> Though you had a right to stay at the property legally, you lose those legal rights to the property when the house is foreclosed, and the bank becomes the new owner. Since your previous landlord no longer owns the property, the new owner can evict you because they are the only one who can give you a legal right to stay at the property.

4. **You are not automatically evicted when someone new gains ownership of the property.** The new owner may instead decide to establish a new landlord-tenant relationship with you. If the landlord wants to evict you, they still have to provide you with notice that they are going to evict you. begin the eviction process immediately. If a foreclosed property’s new owners wish to take the property from you through eviction proceedings, accepting or demanding rent from you can create a valid **month to month tenancy**.

5. **Roommates.** If you plan to rent a unit with a roommate(s), be aware of the following:

- Each roommate in a tenant relationship with the landlord can be held responsible for the *full* amount of the rent due. For example, if all the roommates sign the lease and one moves out, the others will be responsible for the full rent. However, if you end up paying more than your share of the rent, you can sue your former roommate to recover the difference.
- Landlords collect money from tenants who actually signed the lease agreement. Roommates who did not sign the lease are not liable to the landlord unless the landlord accepted payment from the roommate or other actions established a landlord-tenant relationship.



<sup>14</sup> Until December 31, 2014, The Protecting Tenants at Foreclosure Act, which was extended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, allowed tenants of foreclosed properties to remain in the foreclosed property for the remainder of the lease, or 90 days if the new owner wished to live in the foreclosed property. This law has since expired.



- Security deposits are usually divided equally among the tenants. Landlords should try to spell out the terms of the security deposit in the lease.
- Landlords do not have legal means to step in and resolve roommate disputes unless there is a lease violation or criminal act.

6. **Manufactured and Mobile Homes.** Mobile homes are considered personal property (not “real property”) unless they are permanently affixed or bolted to the land. As a result, the rules outlined in this handbook may not apply to mobile homes in the same ways.

Repairs:

- Tenants who rent a mobile home from someone who does *not* own the land under the mobile home cannot use landlord-tenant law to demand the owner of the mobile home make repairs unless the lease says so.
- The owner of the land under the mobile home is not responsible to repair the mobile home unless the landowner owns the mobile home, and it is built into the land. However, the landowner must still keep the lot and common areas of the mobile home park in good repair.

Repossession of Mobile Homes and Lots:

- When an owner only rents the mobile home but not the land, the owner must file a personal property foreclosure to repossess the mobile home. The owner may not use the eviction process.
- The owner of the land where a mobile home is located can use the eviction process to regain possession of the land.
- Abandonment: If the tenant moves out of and leaves the mobile home, the mobile home generally can be considered abandoned after being unattended on private property for a period of at least thirty (30) days without anyone making a claim to it. The best practice is for an owner who owns the land to file a dispossessory affidavit before treating the mobile home as abandoned. If you have received notice that the owner of the land has filed this affidavit, you have 90 days to request a hearing after the date on the notice.

***What if the owner of the mobile home I’m renting fails to make payments?***

Unfortunately, the mobile home can be repossessed. If the mobile home was repossessed while still containing your personal property, you should contact the person who owned the mobile home to determine how to reclaim any personal property. Georgia law sets requirements on when the personal property inside a mobile home can be disposed.



## Eviction Q&A

### What if I am being evicted?

*This section provides answers to common questions that you may have if you are facing eviction process, but it is not intended to be legal advice for a specific situation. Seeking the assistance of a licensed attorney is the best way to protect your legal interests in your case. If you cannot afford an attorney, websites such as Georgia Legal Aid (<https://www.georgialegalaid.org/>) may be able to help. HUD has also provided Rental Help on its website: <https://www.hud.gov/states/georgia/renting/tenantrights>.*

#### **Q. I've been served with an eviction. Do I have to answer?**

A. You must answer the eviction. If you do not file an answer within the time period specified on the notice you received, your landlord automatically wins the case, and an eviction will go on your record. Most counties have a pre-printed answer form or you can draft your own answer. See page 16 for a discussion of what should be in an answer.

#### **Q. What if I answer late? What if I missed the deadline because I was out of town?**

A. It is often very difficult to get an extension if you do not file an answer on time. You may be able to request permission to file an answer late if you were unaware that the notice was served. You can file a “motion to set aside the judgment” or request more time to answer. Hire an attorney if possible. You must explain why you did not file an answer and why the landlord should not be allowed to evict you. If you are granted this order, you should give a copy to the landlord and keep a copy in your rental unit in case the sheriff comes to remove you and your belongings.

Extensions are very unlikely, so you should make every effort to answer on time.

#### **Q. I am being evicted. Is there anything I can do?**

A. Yes, you may have multiple defenses, or legal responses, that can end the eviction. However, even if the landlord stops trying to evict you, and the judge dismisses the case, the landlord is allowed to file for eviction again in the future.

You must assert any and all defenses in your answer to the eviction. FAILURE TO ASSERT DEFENSES MAY ALLOW THE LANDLORD TO OBTAIN A JUDGMENT AGAINST YOU FOR FAILURE TO RAISE A DEFENSE. In other words, if you leave anything out of your answer, you will not be able to bring it up later. If possible, you should consult an attorney regarding your defenses.

If you use a pre-printed answer form from the court, you can attach additional sheets or write in defenses on the sheet they gave you. You should raise any of the following defenses relevant to your situation in your answer:

- **Lack of Notice/No Demand for Possession:** As discussed on page 15, the landlord must demand that you vacate the unit before filing for an eviction. The demand does not require any magic language, but the landlord must ask you to leave the property either in writing or verbally. If the landlord does not do this, you should indicate that you received improper notice or that no demand for possession was made.
- **Improper Service:** The landlord has to “serve” the eviction notice properly (see requirements listed on page 15-16.) If the landlord did not meet the requirements in serving the complaint, you should assert the defense that the complaint was improperly served.
- **Month to Month Lease:** If you never had a written lease (see page 6-7) or if your written lease expired and the landlord permitted you to remain in the unit (see page 13), then the landlord must give you 60 days’ notice to terminate the lease. If the landlord gave you less than 60 days’ notice, then you should assert that termination of the lease was not valid.

**NOTE:** this situation applies where the landlord is evicting you for staying in the unit despite termination of the lease. If you fail to pay rent, the landlord does not need to give a 60 days' notice before seeking eviction.

- **Amounts Owed:** Landlords will typically ask for an amount they claim you owe. Sometimes, without your knowledge, extra fees or other penalties can be added to this amount. You can assert that you do **not owe** the amounts alleged. While it will not cause the case to be tossed out completely, it will give you an opportunity to speak to the judge concerning what you might owe.
- **Complete Tender:** You may be able to avoid eviction by paying all rent the landlord alleges you owe plus court costs. If the landlord refuses, you can assert the tender defense. To be a defense, you must have made the offer to pay within seven (7) days of being served. See page 16 for additional details on this defense.
- **Not My Landlord:** If a person you do not know, or who you know lost the property to foreclosure, is filing for eviction against you, you should indicate this on the answer. As an example, in one case, a landlord asserted that the tenant owed rent, but that landlord had lost the property to foreclosure months earlier and no longer owned the property.
- **Accused of doing something “wrong” and lease terminated:** A landlord may terminate your lease and try to evict you for acts such as criminal activity, destroying or damaging property, disturbing other tenants, refusing to allow the landlord to enter your unit for maintenance according to the lease, or other house rules violations. If this occurs, you can either challenge the violation factually or show that the incident did occur but did not violate the lease. You should thoroughly read the lease to determine whether the incident in fact violates the lease.
- Tenants who live in public housing or receive a rental subsidy may have the right to an informal hearing before the landlord can pursue eviction in the courts. Tenants should consult with an attorney to learn more about their rights.
- **Accused of not paying rent, but you did drop it off according to landlord’s instructions:** If the landlord claims you did not pay rent, but you did pay according to the lease or landlord’s instructions (example: you dropped a check in the designated box at the rental office on the day it was due based on what the landlord told you), then you should assert that you paid rent.
- **Partial Payment - you paid part of this month’s rent:** The landlord cannot evict you for failure to pay if he accepted partial payment for the current month. Also, if the landlord accepts payment in the current month, he cannot evict for past unpaid months. In this situation, you should assert that you made, and that the landlord accepted partial payment.
- **Waiver:** If you normally pay rent late and the landlord accepts it, then you should assert a waiver defense. A waiver defense means that the landlord has accepted late payments in the past, so he “waived” his right to enforce on-time rent payments. You can assert this defense unless the landlord had previously told you of his intent to start requiring on-time payment again.
- **Constructive Eviction:** If you vacated the house because it was uninhabitable and stopped paying rent (see page 11) and now your landlord is trying to evict you and/or recoup money, then you should assert a constructive eviction defense.
- **Discrimination:** If you feel that you are being discriminated against on the basis of race, color, religion, sex, national origin, familial status, or disability, you should assert a defense under the federal and/or Georgia Fair Housing Act.
- **You feel that the eviction is based on your status as a victim of domestic violence, dating violence, sexual assault or stalking:** If you live in public housing or your rent is subsidized and you feel that you are being evicted based on either (1) your current or previous status as a victim of domestic violence, dating violence, sexual assault or stalking or (2) criminal activity related to an act of domestic violence by a member of your household or guest against you or an affiliated individual, then you should assert protection under the Violence Against Women Act. This situation generally arises when the perpetrator causes harm or

property damage, and perhaps even law enforcement is called, and now the landlord wants to evict the victim.

**PERSONAL LIFE EVENTS ARE NOT A DEFENSE:** It is never a defense to eviction that you did not have the money, that you lost your job, or had other financial hardship. The judge may sympathize with you, but he or she cannot stop the eviction if you did not pay your rent because of lack of funds.

**Q. I see that the answer form has a space for counterclaims. What are these? Do I have to assert them? What should I put down?**

A. Counterclaims should be asserted if you feel that the landlord did something wrong or did not do something he or she should have done and owes you damages or another remedy.

Below is a list of common counterclaims you may assert if relevant to your situation:

- **Failure to repair:** If your landlord is trying to evict you but you feel that you are owed money for the landlord's failure to repair a problem you told him about, then you should assert a failure to repair counterclaim. You should calculate the damages the landlord owes based on the unit's reduced value due to the failure to repair. For example, for each day that you could not take a hot shower, how much do you feel the value of your unit decreased? Or what is the daily value of not being able to use your washing machine due to plumbing issues? Determine the daily value or cost of the loss of use and multiply it by the number of days the problem was not repaired.  
IMPORTANT: If you are going to assert a failure to repair counterclaim, you must be able to prove you gave notice of the problem and the need for repair to the landlord and gave him a reasonable amount of time to fix it. (See page 10.)
- **Damage to personal property because of flooding or other conditions:** If your landlord is trying to evict you but you feel that he owes you money for damaged personal property, then you should assert intentional and/or negligent damage to personal property as a counterclaim. You should claim the item's value when it was damaged. You cannot claim the cost to replace personal property with a brand-new version. (See page 11 for additional information.)
- **Landlord Activities:** If your landlord is trying to evict you but you feel that your enjoyment and use of the unit or property has decreased by the landlord's actions or circumstances the landlord could control, then you should assert breach of your right to quiet enjoyment as a counterclaim. Examples of acts that fall under this counterclaim may include the landlord constantly disrupting your use of the unit or land, noisy neighbors, or not being able to use the unit or property as you intended and as allowed under the lease.

**Q. I'm going to court. How does this work?**

- **Plan ahead and arrive early:** Make a plan for how you will get to the courthouse and whether you will need childcare or time off of work. Give yourself time to exit public transportation or find (and possibly pay for) parking. You will also need time to go through court security and find the correct courtroom.
- **Calendar call:** You must be in the correct courtroom on time. When your name is called, verbally respond, and stand up (if you can) so that the court knows you are present. If you need any special accommodations in the courtroom, be sure to discuss your needs with the court prior to the hearing. You, the tenant, will be the defendant. The landlord will be the plaintiff. The purpose of calendar call is to let the court know you are there; this is not the time to dive into the facts of your case and explain your position.
- **Mediation:** Prior to the hearing, the court will explain whether it requires or suggests mediation. Mediation might allow you and your landlord to come to an agreement without having to have a hearing with the judge. Courts with a mandatory mediation process will require you and your

landlord to meet with a mediator to try to settle the case. A mediator is not a judge and will only work with the parties to see if you can reach an agreement. If you and your landlord cannot agree, you will go before the judge.

- **Presentation tips:** When you speak to the judge, keep your presentation and argument brief and concise. Be respectful and do not speak over the judge or opposing counsel. You must be fully prepared to discuss all facts and issues in the case. Your argument should focus on legal defenses. Do not focus on sympathy stories (unexpected expenses, hard times, health issues, etc.). Although the judge may be sympathetic, those issues will not bear on the legal resolution of the case. If the judge wants to know more, he will ask you more. Do not argue with the judge.
- **Evidence:** Bring a copy of your lease, photographs depicting the condition of the unit, copies of messages to/from your landlord, receipts, and any other documentation that might be useful in telling your story and proving your defenses. Note that some judges do not allow use of cell phones in the courtroom, so you may need to print copies. Call the court clerk's office ahead of time and ask whether you will be allowed to use your phone to show the judge photos or other documentation.
- **Witnesses (subpoena):** You may want to have a witness present at the hearing to speak about the facts. If the witness you want to come is willing to come to court, be sure that person arrives on time and is prepared to help tell your story. If the witness will not come willingly, you can insist on their attendance by having the court serve a "subpoena." Some courts have blank subpoena request forms you can fill out. The subpoena must state the name of the court, the name of the clerk, and the title of the case and shall demand that the recipient come to court and give testimony or provide evidence at the hearing. Once the form is completed, the subpoena may be served by (1) any sheriff or by any person not less than 18 years of age, proven by return or certificate endorsed on a copy of the subpoena, or (2) Registered or certified mail or statutory overnight delivery, proven by the return receipt. The subpoena should be served at least 24 hours before the hearing.

If you obtained a subpoena in blank from the clerk, you must present the name and address of the witness subpoenaed to the clerk at least six hours before the hearing to preserve your right to postpone the hearing in case the witness fails to appear.

Fees and mileage: You have to pay your subpoenaed witnesses \$25 a day after the hearing if the witness lives in the county where the hearing is held. If the witness lives farther away, you have to add 45 cents per mile traveled to and from the courthouse, and you have to pay the witness when you serve them. You can pay by cash, postal money order, cashier's check, certified check, or through your attorney, if you have one.

- **Judge's Order:** Be sure to get and keep a copy of the judge's order and follow what it says. Ask the judge or the court clerk to explain if you have questions.

**Hearsay:** Generally, the court will not allow you or another witness to state what a third person said. This is called "hearsay" and is not allowed. For example, you cannot generally testify about something your roommate said. If your roommate knows something that is evidence for your case, then your roommate should attend the hearing and testify. Similarly, a written statement or notarized statement is typically not admissible unless the person who wrote it is present in court. There are some common exceptions to the hearsay rule. For example, if your landlord said something directly to you, it may be admissible. Or testimony about something your roommate said can support your testimony if the landlord claims you are lying and the roommate is available to testify. Or testimony about something your roommate said can be used to hurt the landlord's credibility. There are other exceptions to the hearsay rule and an attorney can help if you have further questions.

- **Appeals:** If you decide to appeal a judge’s order, you must file an appeal within seven (7) days of the court’s judgment. The court will require that you pay court costs to file the appeal. If you cannot pay court fees, then you may file a “pauper’s affidavit.” In addition, if you want to continue living in your unit while waiting for the appeal hearing, you must pay any rent the court ordered you to pay in addition to the monthly rent when it comes due. If you cannot pay these amounts, you must move from the rental property or the court will allow the landlord to remove you. After filing the appeal, your case will be sent to state or superior court. These courts can be more complicated than eviction court and you may need to obtain the assistance of an attorney to succeed.

**Q. What is a move-out agreement?**

A. You and your landlord can make a move-out agreement either informally or as part of mediation. A move-out agreement settles the case and may become part of the court order. Typically, the agreement will reduce the amount of money you owe to the landlord if you agree to move out by a certain date. The agreement could also confirm what you owe and give you extra time to move out. If you do not move out according to the terms of the agreement and the agreement was made a part of the court order, the landlord can immediately seek a “writ of possession” to have you removed from the property without another court hearing.

The agreement may also allow you to stay if you pay a certain amount by a certain date. If you do not pay, and the agreement was made a part of the court order, then the landlord can immediately seek a “writ of possession” to have you removed from the property without another court hearing.

You and your landlord should be careful that the language in the agreement accurately reflects what you both agreed to do. Agreements should also settle any counterclaims you might have. Make sure your counterclaims are addressed in the agreement, or they will be presumed dismissed. If you want to be able to raise a counterclaim later, your agreement should say that you can file those counterclaims in the future.



## Text of Callout Boxes

*The text of callout boxes in this document is provided below to accommodate screen reader accessibility.*

**p. 3:** If a tenant or applicant has a disability that requires accommodation, someone must request that the landlord make the necessary accommodations. The person with the disability, a family member, or someone else acting on the individual's behalf, can request the accommodation.

**p. 5: Lease terms are important!** A lease is a contract and defines the rights and responsibilities of the landlord and tenant. Once you sign the lease, you cannot later change your mind. If the tenant changes his mind and decides not to move into the unit after signing the lease, the landlord can impose early termination penalties as may be provided in the lease.

**p. 6: Expecting a job transfer? Moving soon?** If you are about to change jobs or want to purchase a home, you can ask for the right to terminate your lease. But without special written termination provisions, the tenant cannot terminate the lease early without penalty.

**p. 8: CAUTION!** The landlord will *not* be responsible to repair unit defects that were obvious during the move-in inspection unless it makes the unit unsafe or unsanitary; so, tenants should inspect thoroughly.

**p. 9: Notice of repair required!** Tenants must *immediately* give written notice of any problem(s) needing repair to the landlord. Make sure the notice adheres to requirements in the lease and keep a copy of the notice to later prove that the landlord was aware of the problem(s).

**p. 9: CAUTION!** Even if the Landlord fails to make repairs, the tenant generally *must continue to pay rent*. If the tenant does not pay rent, the landlord can consider it a breach of the lease and take action.

**p. 11: CAUTION!** A tenant cannot claim constructive eviction if the unit's condition results from another tenant or individual's act; the condition must result from the landlord's actions. The unit cannot be merely "uncomfortable," it must be completely uninhabitable. For example, inoperable air conditioning for three days or air conditioning that does not meet the tenant's comfort standards will probably not be considered constructive eviction.

**p. 12: Can a tenant change the locks?** Typically, the lease will state that the tenant cannot change locks without the landlord's permission. If the lease is silent about changing locks, then technically the tenant may change locks without the landlord's permission and not give the landlord new keys. However, the tenant must give the new keys to the landlord or restore the lock to its original condition upon vacating the unit. If the tenant does neither, the landlord may deduct the replacement cost for the lock from the security deposit.

**p. 13: What if the tenant stays in the unit after a lease expires?** It is best to negotiate the new lease before the old lease expires. If the lease expires, the landlord can require that the tenant immediately sign a new lease with new terms or vacate. If a new lease is not signed, and the landlord continues to accept monthly rent, a tenancy-at-will is created, and the terms of the original lease still apply except the landlord can only terminate or change the terms with a sixty (60) day notice and the tenant can only terminate with a thirty (30) day notice.

**p. 15: Can a Guest Become a Tenant?** Even if a property owner does not charge rent, a landlord-tenant relationship might be created when the property owner gives someone the right to stay at the property. If the property owner did not set out a specific end date, there might be a tenancy-at-will. If there is a tenancy-at-will, the tenant must be given sixty (60) days' notice telling them to leave. If the property owner is willing to allow the tenant to remain but wishes to begin charging rent, the tenant must be given sixty (60) days' notice to start a new tenancy-at-will requiring rent payments.

**p. 16: Tender Defense:** A tenant may be able to avoid eviction by paying all rent the landlord alleges is owed plus court costs. The amount owed should be stated on the dispossessory affidavit and the tenant must offer payment within seven (7) days of receiving the dispossessory affidavit. The landlord is required to accept the payment up to once a year. If the landlord accepts payment, the tenant must file an answer within the seven (7) days that the

landlord accepted payment. If the landlord refuses payment, the tenant should file an answer stating that tender was offered but refused. If a court finds the landlord refused a proper tender, the court can order the landlord to accept payment and allow the tenant to remain in possession if the tenant makes payment within three days of the court's order. See O.C.G.A. § 44-7-52.

**p. 17: No hearing?** The tenant may not get a hearing if she did not file an answer and assert valid defenses. Therefore, a tenant should make sure to assert all valid defenses in her answer and not wait to raise issues at the hearing.

**p. 17:** The general rule is that when a landlord evicts a tenant and takes possession, the lease is terminated, and the tenant does not owe future rent.

**p. 20: What if the owner of my mobile home fails to make payments?** Unfortunately, the mobile home can be repossessed. If the mobile home was repossessed while still containing the tenant's personal property, the tenant should contact the person who owned the mobile home to determine how to reclaim any personal property. Georgia law sets requirements on when the personal property inside a motor vehicle can be disposed. See O.C.G.A. § 44-14-411.1.

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