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## Important Changes Ahead for Owners and Managers of Residential Rental Property.

The Alabama Legislature through Act 2018-473 has recently made some very important amendments to the Alabama Uniform Residential Landlord Tenant Act (§ 35-9A-101, et. seq.) that you need to be aware of if you own or manage rental properties in Alabama. These amendments will take effect June 1, 2018 and will require you to modify your current notices and procedures regarding evictions in the event of non-payment of rent, and other breaches of the lease. You may need to amend your leases as well. You need to be familiar of the following changes to the law:

### Notice of Default for Failure to Pay Rent Changed from Seven *Calendar Days* to Seven *Business Days*

Prior to these amendments, § 35-9A-421 of the Act required written notice to be provided to the tenant of any breach of the rental agreement related to the failure to pay rent. The Act also specified that the tenant may cure any such breach within seven (7) *calendar days*, and if they did so, the lease could not be terminated.

These new amendments now require that the landlord provide the notice seven (7) *business days* prior to terminating the lease for failure to pay rent. This may seem like a minor change, however, if you do not amend your current notice to provide seven (7) *business days'* notice rather than *calendar days'* notice, you may forfeit your right to evict a tenant for violating the terms of the lease. Proper notice is a prerequisite to filing an eviction action. Providing an improper notice may be grounds for dismissal of your complaint.

I have attached a copy of the form notices we recommend our clients use. Be sure to use these notice forms or amend your own accordingly. Also, you need to make sure that when you calculate the time period for the tenant to cure the

default by paying all past due rent that you do not include weekends or holidays in that calculation.

### Multiple Breaches of the Lease May Only Be Cured Twice in a Twelve-Month Period

The Legislature also reduced the number of times a breach of the lease unrelated to rent may be cured in a twelve-month period from four violations of the same offense down to two. Such violations are typically related to rules violations under the lease such as noise complaints, overnight guests, parking issues, etc. Now after the tenant has been given notice of the breach and cured a violation two times, upon the third breach of the lease, the violation will be considered to be noncurable. Thus, you may terminate the lease upon the third such violation.

In each instance of a breach of the lease *not related to the payment of rent*, the landlord is also required to provide notice of the violation and allow the tenant seven (7) *business days* to cure the violation before terminating the lease.

### List of Non-Curable Breaches Expanded

The Legislature also expanded the list of noncurable breaches found in § 35-9A-421 (d) to include the following:

1. Manufacture, cultivation, importation, transportation, possession, furnishing, administering, or use of illegal drugs in the dwelling unit or in the common areas.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.



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2. Illegal use, manufacture, importation, possession, furnishing, or discharging of a firearm or firearm ammunition on the premises of the rental property, except for the use or discharge of a firearm or firearm ammunition in cases of self-defense of a third party, or as permissible in § 13A-3-23.

(The provisions relating to criminal assault on the premises being a noncurable event of default were left unchanged.)

For these noncurable violations, you may terminate the lease after giving seven (7) *calendar days'* notice of the acts which constitute the noncurable violation. (See attached form notice for noncurable default.)

### **Lawful Possession of a Firearm is Grounds for Termination.**

The most surprising change in the law found in these particular changes is the fact that *even the lawful possession of a firearm or ammunition on the premises of rental property is grounds for termination of the lease.* (See § 35-9A-421(d) (2) above.)

Prior to these changes an unlawful discharge of a firearm was required for termination of a lease. It is one thing for a landlord to prohibit firearms in their agreement with the tenant. Parties are generally free to choose to enter contracts on their own terms. However, it is quite another for it to become the law that an otherwise law-abiding tenant may not lawfully possess a firearm, without the risk of being evicted.

I personally think this was a mistake in the drafting of the original bill. However, it will take another amendment to address this section and the Legislature is not set to be back in session until next March. Until then, just be aware that no pistol permit holder, hunter, shooting enthusiast or anyone else lawfully in possession of a firearm may do so in a rental unit without running the risk of having their lease terminated. I look for the National Rifle Association and those passionate about Second Amendment rights to address this soon.

### **Second Breach Within Six Months of the Same Breach is Now Grounds for Termination**

The new § 35-9A-421(d) also provides that if the tenant commits a violation involving "substantially the same acts or omissions" as one in which you have previously provided notice to the tenant of that particular breach, the tenant may not cure the second similar breach if the two events occur within six months of each other. In other words, once you give notice of a violation of the agreement, if the tenant commits the same violation within six months, you may terminate the lease at your option. The second breach then becomes noncurable. However, you still have to

provide a seven-calendar day notice to vacate for a noncurable default prior to your termination of the lease, and beginning your eviction proceedings.

### **Steps You Need to Take Prior to June 1, 2018**

I have attached a copy of the amendments for your review, along with the revised notices we recommend for our clients. Please get with your attorney and have them review and revise your lease forms, and notices as needed in light of these new changes. If you do not have an attorney and would like our assistance, please do not hesitate to call me at (205)344-5000 or email me at [jsmith@rosenharwood.com](mailto:jsmith@rosenharwood.com).



Jeffrey C. Smith, Esq. is a shareholder with the firm, and has been practicing law for over 23 years. Jeff's practice focuses primarily on Business and Commercial Litigation. Along with his litigation practice, he represents numerous owners and managers of residential properties throughout West Alabama. He also has extensive experience in the Construction Industry. Jeff is Board Certified in both Civil Litigation and Civil Pretrial Litigation by the National Board of Trial Advocacy.

2018 Alabama Laws Act 2018-473 (H.B. 421)

ALABAMA 2018 SESSION LAW SERVICE

2018 REGULAR SESSION

Additions are indicated by **Text**; deletions by  
~~Text~~ .

Vetoed are indicated by ~~Text~~ ;  
stricken material by ~~Text~~ .

Act 2018-473

H.B. No. 421

PROPERTY—UNIFORM AND RESIDENTIAL LANDLORD AND TENANT ACT  
—NONCOMPLIANCE WITH RENTAL AGREEMENT; FAILURE TO PAY RENT

By: Representative Sessions

Enrolled, An Act, Relating to evictions; to amend Section 35-9A-421, Code of Alabama 1975, to expand the list of non-curable lease breaches and shorten the notice period for a notice to a tenant of noncompliance with a lease from seven days to three days; and to provide that a tenant is entitled to only two curable breaches of a lease agreement within any 12-month period and that any second breach of a lease agreement that is substantially the same as a previous breach within a six-month period constitutes a non-curable breach.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 35-9A-421, Code of Alabama 1975, is amended to read as follows:

<< AL ST § 35-9A-421 >>

“§ 35-9A-421.

“(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, an intentional misrepresentation of a material fact in a rental agreement or application, or a noncompliance with Section 35-9A-301 materially affecting health and safety, the landlord may deliver a written notice to terminate the lease to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ~~seven-three~~ **seven business** days after receipt of the notice. An intentional misrepresentation of a material fact in a rental agreement or application may not be remedied or cured. If the breach is not remedied within the ~~seven-three~~ **seven business** days after receipt of the notice to terminate the lease, the rental agreement shall terminate on the date provided in the notice to terminate the lease unless the tenant adequately remedies the breach before the date specified in the notice, in which case the rental agreement shall not terminate.

“(b) If rent is unpaid when due, the landlord may deliver a written notice to terminate the lease to the tenant specifying the amount of rent and any late fees owed to remedy the breach and that the rental agreement will terminate upon a date not less than ~~seven-three~~ **seven business** days after receipt of the notice. If the breach is not remedied within the ~~seven-three~~ **seven business** days, the rental agreement shall terminate. If a noncompliance of rental agreement occurs under both subsection (a) and this subsection, the ~~seven-day three-day~~ **seven-day** notice period to terminate the lease for nonpayment of rent in this subsection shall govern.

“(c) Except as provided in this chapter, a landlord may recover actual damages and reasonable attorney fees and obtain injunctive relief for noncompliance by the tenant with the rental agreement or Section 35-9A-301.

“(d) Notwithstanding Section 35–9A–141, no breach of any of the terms or obligations of the lease may be cured by a tenant more than ~~four~~ **two** times in any 12–month period except by the express written consent of the landlord. The following acts or omissions by a tenant or occupant shall constitute a noncurable default of the rental agreement, and in such cases the landlord may terminate the rental agreement upon a ~~seven-day three-day~~ **seven-day** notice. The tenant shall have no right to remedy such a default unless the landlord consents. Such acts and omissions include, but are not limited to, the following:

“(1) ~~Possession~~ **Manufacture, cultivation, importation, transportation, possession, furnishing, administering,** or use of illegal drugs in the dwelling unit or in the common areas.

“(2) ~~Discharge~~ **Illegal use, manufacture, importation, possession, furnishing, or discharging** of a firearm **or firearm ammunition** on the premises of the rental property, except **for the use or discharge of a firearm or firearm ammunition** in cases of self-defense, defense of a third party, or as permissible in Section 13A–3–23.

“(3) Criminal assault of a tenant or guest on the premises of the rental property, except in cases of self-defense, defense of a third party, or as permissible in Section 13A–3–23.

“(4) **Any breach involving substantially the same acts or omissions as a breach for which a notice to terminate has previously been provided for by the landlord and cured by the tenant, if the second breach occurs within six months of the first breach.**”

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Approved March 28, 2018.

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**NOTICE TO TENANT  
OF TERMINATION OF TENANCY FOR NONPAYMENT OF RENT**

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To: \_\_\_\_\_  
(Tenant) (Date)

Re: \_\_\_\_\_  
(Address of rental unit)

\_\_\_\_\_  
(City, State, Zip)

You are notified that you owe rent in the amount of \$\_\_\_\_\_. If you do not pay this rent within **SEVEN BUSINESS DAYS** of the day you receive this notice, your tenancy is terminated and you must move.

If you have not paid your rent or moved out of the dwelling by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, a lawsuit will be filed to evict you.

If you deliver your rent to me, in full, on or before the end of the SEVEN-DAY period, you may stay and the tenancy will not be terminated. Partial payments will not be accepted without a written agreement between you and your Landlord.

Signed: \_\_\_\_\_  
(Landlord/Property Manager)

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**Landlord's Record of Service**

**Instructions:** Serve a copy of this notice on the tenant. Immediately fill out this section to describe how service was accomplished. Complete all statements that apply. Keep the completed original.

Tenant acknowledges receipt of this notice on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
(Tenant's Signature)

This notice was personally served on \_\_\_\_\_ by the undersigned on \_\_\_\_\_  
(Name) (Date)

I attempted to make personal service on the tenant. I knocked on the door, but no one answered. I believed the tenant was absent, so I securely affixed the notice to the entry door of the premises.

This was done on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Tenant was served by registered or certified mail, or I have mailed today a copy via first class mail to the Tenant at the address of the premises.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

**Keep a copy of this notice.**

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**NOTICE TO TENANT  
OF TERMINATION OF TENANCY FOR VIOLATION OF AGREEMENT**

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To: \_\_\_\_\_  
(Tenant) (Date)

Re: \_\_\_\_\_  
(Address of rental unit)

\_\_\_\_\_  
(City, State, Zip)

You are notified that you have seriously violated your rental agreement or your duties under the law. The violation(s) is/are specifically as follows:

\_\_\_\_\_  
\_\_\_\_\_

If you do fail to cure this breach of agreement within **SEVEN BUSINESS DAYS** from the date you receive this notice, your tenancy will terminate, and you must move. You must move out by the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by 5:00 p.m.

Signed: \_\_\_\_\_  
(Landlord/Property Manager)

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**Landlord's Record of Service**

**Instructions:** Serve a copy of this notice on the tenant. Immediately fill out this section to describe how service was accomplished. Complete all statements that apply. Keep the completed original.

Tenant acknowledges receipt of this notice on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
(Tenant's signature)

This notice was personally served on \_\_\_\_\_ by the undersigned on \_\_\_\_\_.  
(Name) (Date)

I attempted to make personal service on the tenant. I knocked on the door, but no one answered. I believed the tenant was absent, so I securely affixed the notice to the entry door of the premises.

This was done on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Tenant was served by registered or certified mail. (I have retained the receipt.)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

**Keep a copy of this notice.**

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**NOTICE TO TENANT  
OF TERMINATION OF TENANCY FOR NONCURABLE VIOLATION**

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To: \_\_\_\_\_  
(Tenant) (Date)

Re: \_\_\_\_\_  
(Address of rental unit)  
\_\_\_\_\_  
(City, State, Zip)

You are notified that you have seriously violated your rental agreement or your duties under the law. The violation(s) is/are specifically as follows which are non-curable:

- Manufacture, cultivation, importation, transportation, possession, furnishing, administering, or use of illegal drugs in the dwelling unit or in the common areas.
- Illegal use, manufacture, importation, possession, furnish, or discharge of a firearm or firearm ammunition on the premises of the rental property, except for the use of discharge of a firearm or firearm ammunition in cases of self-defense, defense of a third party, or as permissible in § 13-A-3-23.
- Criminal assault of a tenant or guest on the premises of the rental property, except in cases of self-defense, defense of a third party, or as permissible in § 13A-3-23.
- A breach involving substantially the same acts or omissions as a breach for which a notice to terminate has previously been provided for by the landlord and cured by the tenant, if the second breach occurs within six months of the first breach. You previously were provided notice of \_\_\_\_\_ on \_\_\_\_\_. You have committed the same violation on \_\_\_\_\_. Thus, your lease will be terminated on \_\_\_\_\_.

**SEVEN BUSINESS DAYS** from the date you receive this notice, your tenancy will terminate, and you must move. You must move out by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock a.m./p.m.

Signed: \_\_\_\_\_  
(Landlord/Property Manager)

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**Landlord's Record of Service**

**Instructions:** Serve a copy of this notice on the tenant. Immediately fill out this section to describe how service was accomplished. Complete all statements that apply. Keep the completed original.

Tenant acknowledges receipt of this notice on the \_\_\_\_\_ day of \_\_\_\_\_. \_\_\_\_\_  
(Tenant's Signature)

This notice was personally served on \_\_\_\_\_ by the undersigned on \_\_\_\_\_.  
(Name) (Date)

I attempted to make personal service on the tenant. I knocked on the door, but no one answered. I believed the tenant was absent, so I securely affixed the notice to the entry door of the premises.

This was done on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Tenant was served by registered or certified mail. (I have retained the receipt.)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

**Keep a copy of this notice.**