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# Common Themes

- Words matter; and details matter.
- “We cant change the facts.”
- Plan ahead of time.
- Thoroughly review documents before signing.
- Expect things to go “south”.
- Consult an attorney.

# Areas of Practice

- Business Structure/Corporate Law
- Real Estate Closings
- Evictions/Ejectment actions
- Foreclosures
- Collections/General Litigation
- Bankruptcy
- Estate Planning

# Business Structure/ Corporate Law

- Choosing LLC or Inc. are essential to protecting your assets. Tax advantages as well.
- If you have partners/joint venture, agreements should be mandatory.
  - Buy-sell agreement
  - Operating agreement
- General counsel.

# Real Estate Closings

- Virtually just need the contract and we will take it from there.
- Some issues that we see:
  - Bankruptcy
  - Divorce
  - Estate
  - Make sure contract is completed in its entirety and signed by both sides.
- Quick closings can occur but not the norm
  - Too many risk with title issues.

# Evictions/Ejectments

- What is the difference?
  - Time
  - Court
  - Which documents determine which action is necessary.
- Do you every want an ejectment action?
  - Proper lease with an option.
- Again, we cant change the facts; or court rules

# Alabama Uniform Residential Landlord & Tenant Act

Passed in March, 2006; amended numerous  
times since then

20 other states have enacted a similar Act.

Purpose: simplify, improve quality of  
housing and make an uniform law.

# Application of Act

- Dwelling unit – a structure (including manufactured home) rented as a home, residence or sleeping place.
- Does not apply to:
  - Institutional residence (hospital, nursing homes, educational housing, etc.)
  - Lease-purchase agreements - EJECTMENT ACTION
  - Fraternal or social organization housing.
  - Hotels, motels, etc.
  - Employee housing conditional upon employment
  - Owner-occupied condominium units
  - Rental agreements primarily for agricultural purposes



# General Provisions

- Duty of good faith upon L & T.
- Absence of Agreement: T required to pay fair rental value for premises.
- Lease need not be signed or delivered
  - Do not recommend. Payment of rent; and occupancy is only needed.
  - Max. – 1 year.

# Prohibited by New Act

- Tenant agrees to waive rights under the Act.
- Confession of Judgment.
- Tenant agrees to pay L's attorney's fees and costs of collection.
- Tenant agrees to limit landlord's liability.
- L's deliberate use of rental agreement containing such provisions – actual damages, amount up to 1 month's rent and reasonable attorneys' fees.

# Security Deposit

- May not exceed one month's rent, except for special circumstances and for pets.
- Once the rental relationship has ended, security Deposit may be applied to accrued rent and damages.
- L is required to provide a refund of the deposit, itemized expenses in a written notices or both within 60 days after the rental relation ended and tenant delivers possession. Penalty = 2x deposit.
- Tenant does not provide forwarding address, landlord must mail security deposit to last known address, or to leased unit. Any deposit not claimed within 180 days is forfeited.

# Disclosure of Agents

- L is required to provide tenant, in writing, with the name and business address of any person authorized to manages premises.
- L is also required to disclose owner of the premises, or the person authorized by the owner for receiving notices and demands.

# Landlord Must Maintain Dwelling

- Make all repairs and do whatever is necessary to maintain premises in a habitable condition.
- Comply with requirements of all building and housing codes and maintain electrical, plumbing, sanitary, heating, air conditioning and other appliances.
- Must also provide removal of garbage.

# Tenant Obligations

- Comply with all building/health codes materially affecting health and safety
- Keep rented premises in clean/safe condition.
- Dispose all garbage in clean/safe manner.
- Keep plumbing fixtures as clear as their condition permits
- Use all electrical, plumbing, etc. facilities in a reasonable manner.
- Not deliberately or negligently destroy any part of rented premises.
- Do not disturb neighbor's peaceful enjoyment of the premises.

# Access to the Premises

- Tenant can not withhold access to the rented premises to the landlord in order to inspect premises, make repairs, supply services, or show to prospective tenants or purchasers
- May enter w/out consent in emergencies
- Requires 2 day notice unless an emergency

# Landlord's Failure to Deliver

- Rent shall abate until possession is delivered.
- Material noncompliance/noncompliance materially affect health and safety, tenant may deliver written demand to terminate within 14 days if breach not remedied during that period.



# Landlord Remedies

- Material noncompliance/noncompliance affecting health and safety
  - Written notice required; terminate in 14 days unless remedied.
  - If remedied by repairs or payment of damages and within 14 day period, agreement does not terminate.
  - Same breach within 6 month period, terminate after 14 day written notice.

## Landlord remedies (cont.)

- Failure to pay rent – 7 days written notice required before termination.
- L may recover actual damages and injunctive relief; if willful, may recover attorneys' fees.
- If T leaves property in the unit over 14 days after termination, L has no duty to store or protect his property.

# Periodic Tenancy

- Week: 7 days written notice to term.
- Month: 30 days written notice to term.
- T remains in possession, L needs to bring unlawful detainer action.
- Holdover is willful and not in good faith, L may recover 3 months rent or 3x actual damages.

# Collections / General Litigation

- Again, the key item is preparation
  - Make sure you obtain a credit application, or contract from other side. After the eviction period, it might be too late to obtain such information.
  - Credit Application and/or contract should have a provision for interest and attorney fees.
- Amending lawsuit after eviction
  - Need personal service.
  - Sue for past due rent, damages (not normal wear and tear), attorney fees, and court costs.