

West's Code of Georgia Annotated [Currentness](#)

Title 44. Property

▢ [Chapter 7. Landlord and Tenant](#)

→ [Article 1. In General](#)

→ **§ 44-7-1. Relation of landlord and tenant exists, when; leases for less than five years**

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

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

§ 44-7-2. How relationship created

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

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

(1) [Code Section 44-7-13](#), relating to the duties of a landlord as to repairs and improvements;

(2) [Code Section 44-7-14](#), relating to the liability of a landlord for failure to repair;

(3) Ordinances adopted pursuant to [Code Section 36-61-11](#);

(4) Article 3 of this chapter, relating to proceedings against tenants holding over;

(5) Article 4 of this chapter, relating to distress warrants;

(6) Article 2 of this chapter, relating to security deposits; and

(7) Any applicable provision of Chapter 11 of Title 9 which has not been superseded by this chapter.

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

§ 44-7-3. Disclosure of ownership

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

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

(2) The person authorized to manage the premises.

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

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

§ 44-7-4. Ordinances relating to security standards authorized

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

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

§ 44-7-5. Implied contract to pay rent

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

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

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

§ 44-7-7. Notice to terminate tenancy at will

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

§ 44-7-8. Emblements, right of tenant at will to

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

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

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

§ 44-7-10. Delivery of possession

The tenant shall deliver possession to the landlord at the expiration of his term; and, if he fails or refuses to do so, a summary remedy pursuant to Article 3 of this chapter is given to the landlord.

§ 44-7-11. Rights of tenants

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

§ 44-7-12. Removal of trade fixtures by tenant

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

§ 44-7-13. Repairs and improvements, duties as to

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

§ 44-7-14. Liability of landlord for negligence of tenant and for failure to repair

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

§ 44-7-14.1. Unlawful to suspend furnishing of utilities to tenant until final disposition of dispossessory proceeding

- (a) As used in this Code section, the term "utilities" means heat, light, and water service.
- (b) It shall be unlawful for any landlord knowingly and willfully to suspend the furnishing of utilities to a tenant until after the final disposition of any dispossessory proceeding by the landlord against such tenant.
- (c) Any person who violates subsection (b) of this Code section shall, upon conviction, be assessed a fine not to exceed \$500.00.

§ 44-7-15. Casualties not to abate rent

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

§ 44-7-16. Interest on rent contracts

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

§ 44-7-17. Portion of crop paid for rent exempt from other liens against tenant

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

§ 44-7-18. Leases for purposes of prostitution void; definitions of terms

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

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

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

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

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

§ 44-7-19. Regulation of rents

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

§ 44-7-20. Landlords required to give prospective residential tenants written notice of any previous flooding

When the owner of real property, either directly or through an agent, seeks to lease or rent that property for residential occupancy, prior to entering a written agreement for the leasehold of that property, the owner shall, either directly or through an agent, notify the prospective tenant in writing of the property's propensity of flooding if flooding has damaged any portion of the living space covered by the lease or attachments thereto to which the tenant or the tenant's res-

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

§ 44-7-21. Brokerage commission agreements

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

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

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

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

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

§ 44-7-22. Termination of residential rental or lease agreements; active duty service members

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

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

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

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

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

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

(5) The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

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

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

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

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

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

§ 44-7-30. Definitions

As used in this article, the term:

- (1) "Nonrefundable fee" means any money or other consideration paid or given by a tenant to a landlord under the terms of a residential rental agreement which the parties agreed would not be refunded.
- (2) "Residential rental agreement" means a contract, lease, or license agreement for the rental or use of real property as a dwelling place.
- (3) "Security deposit" means money or any other form of security given after July 1, 1976, by a tenant to a landlord which shall be held by the landlord on behalf of a tenant by virtue of a residential rental agreement and shall include, but not be limited to, damage deposits, advance rent deposits, and pet deposits. Such term shall not include nonrefundable fees, or money or other consideration which are not to be returned to the tenant under the terms of the residential rental agreement or which were to be applied toward the payment of rent or reimbursement of services or utilities provided to the tenant.

§ 44-7-31. Security deposits to be placed in escrow accounts

Except as provided in [Code Section 44-7-32](#), whenever a security deposit is held by a landlord or such landlord's agent

on behalf of a tenant, such security deposit shall be deposited in an escrow account established only for that purpose in any bank or lending institution subject to regulation by this state or any agency of the United States government. The security deposit shall be held in trust for the tenant by the landlord or such landlord's agent except as provided in [Code Section 44-7-34](#). Tenants shall be informed in writing of the location of the escrow account required by this Code section.

§ 44-7-32. Surety bond in lieu of escrow account

(a) As an alternative to the requirement that security deposits be placed in escrow as provided in [Code Section 44-7-31](#), the landlord may post and maintain an effective surety bond with the clerk of the superior court in the county in which the dwelling unit is located. The amount of the bond shall be the total amount of the security deposits which the landlord holds on behalf of the tenants or \$ 50,000.00, whichever is less. The bond shall be executed by the landlord as principal and a surety company authorized and licensed to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the landlord with [Code Section 44-7-34](#) and the return of the security deposits in the event of the bankruptcy of the landlord or foreclosure of the premises and shall run to the benefit of any tenant injured by the landlord's violation of [Code Section 44-7-34](#).

(b) The surety may withdraw from the bond by giving 30 days' written notice by registered or certified mail or statutory overnight delivery to the clerk of the superior court in the county in which the principal's dwelling unit is located, provided that such withdrawal shall not release the surety from any liability existing under the bond at the time of the effective date of the withdrawal.

(c) The clerk of the superior court shall receive a fee of \$ 5.00 for filing and recording the surety bond and shall also receive a fee of \$ 5.00 for canceling the surety bond. The clerk of the superior court shall not be held personally liable should the surety bond prove to be invalid.

§ 44-7-33. List of existing damages; inspection of premises at termination; list of damages, dissent from; action to recover security deposit

(a) Prior to tendering a security deposit, the tenant shall be presented with a comprehensive list of any existing damage to the premises, which list shall be for the tenant's permanent retention. The tenant shall have the right to inspect the premises to ascertain the accuracy of the list prior to taking occupancy. The landlord and the tenant shall sign the list and this shall be conclusive evidence of the accuracy of the list but shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent.

(b) Within three business days after the date of the termination of occupancy, the landlord or his agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall have the right to inspect

the premises within five business days after the termination of the occupancy in order to ascertain the accuracy of the list. The landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent. If the tenant terminates occupancy without notifying the landlord, the landlord may make a final inspection within a reasonable time after discovering the termination of occupancy.

(c) A tenant who disputes the accuracy of the final damage list given pursuant to subsection (b) of this Code section may bring an action in any court of competent jurisdiction in this state to recover the portion of the security deposit which the tenant believes to be wrongfully withheld for damages to the premises. The tenant's claims shall be limited to those items to which the tenant specifically dissented in accordance with this Code section. If the tenant fails to sign a list or to dissent specifically in accordance with this Code section, the tenant shall not be entitled to recover the security deposit or any other damages under [Code Section 44-7-35](#), provided that the lists required under this Code section contain written notice of the tenant's duty to sign or to dissent to the list.

§ 44-7-34. Return of security deposit

(a) Except as otherwise provided in this article, within one month after the termination of the residential lease or the surrender and acceptance of the premises, whichever occurs last, a landlord shall return to the tenant the full security deposit which was deposited with the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and tear which occurred as a result of the use of the premises for the purposes for which the premises were intended, provided that there was no negligence, carelessness, accident, or abuse of the premises by the tenant or members of his household or their invitees or guests. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention thereof. If the reason for retention is based on damages to the premises, such damages shall be listed as provided in [Code Section 44-7-33](#). When the statement is delivered, it shall be accompanied by a payment of the difference between any sum deposited and the amount retained. The landlord shall be deemed to have complied with this Code section by mailing the statement and any payment required to the last known address of the tenant via first class mail. If the letter containing the payment is returned to the landlord undelivered and if the landlord is unable to locate the tenant after reasonable effort, the payment shall become the property of the landlord 90 days after the date the payment was mailed. Nothing in this Code section shall preclude the landlord from retaining the security deposit for nonpayment of rent or of fees for late payment, for abandonment of the premises, for nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach, provided the landlord attempts to mitigate the actual damages.

(b) In any court action in which there is a determination that neither the landlord nor the tenant is entitled to all or a portion of a security deposit under this article, the judge or the jury, as the case may be, shall determine what would be an equitable disposition of the security deposit; and the judge shall order the security deposit paid in accordance with such disposition.

§ 44-7-35. Remedies for noncompliance of landlord

(a) A landlord shall not be entitled to retain any portion of a security deposit if the security deposit was not deposited in an escrow account in accordance with [Code Section 44-7-31](#) or a surety bond was not posted in accordance with [Code Section 44-7-32](#) and if the initial and final damage lists required by [Code Section 44-7-33](#) are not made and provided to the tenant.

(b) The failure of a landlord to provide each of the written statements within the time periods specified in [Code Sections 44-7-33](#) and [44-7-34](#) shall work a forfeiture of all his rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises.

(c) Any landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees; provided, however, that the landlord shall be liable only for the sum erroneously withheld if the landlord shows by the preponderance of the evidence that the withholding was not intentional and resulted from a bona fide error which occurred in spite of the existence of procedures reasonably designed to avoid such errors.

§ 44-7-36. Exemptions

[Code Sections 44-7-31](#), [44-7-32](#), [44-7-33](#), and [44-7-35](#) shall not apply to rental units which are owned by a natural person if such natural person, his or her spouse, and his or her minor children collectively own ten or fewer rental units; provided, however, that this exemption does not apply to units for which management, including rent collection, is performed by third persons, natural or otherwise, for a fee.

§ 44-7-37. Limitation on rent liability of military personnel

Notwithstanding any other provision of this chapter, if a person is on active duty with the United States military and enters into a residential lease of property for occupancy by that person or that person's immediate family and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of three months, any liability of the person for rent under the lease may not exceed:

- (1) Thirty days' rent after written notice and proof of the assignment are given to the landlord; and
- (2) The cost of repairing damage to the premises caused by an act or omission of the tenant.

§ 44-7-49. Writ of possession; limitations

As used in this article, the term "writ of possession" means a writ issued to recover the possession of land or other property and such writ shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property.

§ 44-7-50. Demand for possession; proceedings on tenant's refusal to deliver

(a) In all cases where a tenant holds possession of lands or tenements over and beyond the term for which they were rented or leased to the tenant or fails to pay the rent when it becomes due and in all cases where lands or tenements are held and occupied by any tenant at will or sufferance, whether under contract of rent or not, when the owner of the lands or tenements desires possession of the lands or tenements, the owner may, individually or by an agent, attorney in fact, or attorney at law, demand the possession of the property so rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession when so demanded, the owner or the agent, attorney at law, or attorney in fact of the owner may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts. The affidavit may likewise be made before a notary public, subject to the same requirements for judicial approval specified in [Code Section 18-4-61](#), relating to garnishment affidavits.

(b) If issued by a public housing authority, the demand for possession required by subsection (a) of this Code section may be provided concurrently with the federally required notice of lease termination in a separate writing.

§ 44-7-51. Summons to be served on defendant; time to answer; defenses and counterclaims

(a) When the affidavit provided for in [Code Section 44-7-50](#) is made, the judge of the superior court, the state court, or any other court with jurisdiction over the subject matter or the judge, clerk, or deputy clerk of the magistrate court shall grant and issue a summons to the sheriff or his deputy or to any lawful constable of the county where the land is located. A copy of the summons and a copy of the affidavit shall be personally served upon the defendant. If the sheriff is unable to serve the defendant personally, service may be had by delivering the summons and the affidavit to any person who is sui juris residing on the premises or, if after reasonable effort no such person is found residing on the premises, by posting a copy of the summons and the affidavit on the door of the premises and, on the same day of such posting, by enclosing, directing, stamping, and mailing by first-class mail a copy of the summons and the affidavit to the defendant at his last known address, if any, and making an entry of this action on the affidavit filed in the case.

(b) The summons served on the defendant pursuant to subsection (a) of this Code section shall command and require the tenant to answer either orally or in writing within seven days from the date of the actual service unless the seventh day is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. If the answer is oral, the substance thereof shall be endorsed on the dispossessory affidavit. The answer may contain any legal or equitable defense or counterclaim. The landlord need not appear on the date of the tenant's response. The last possible date to answer shall be stated on the summons.

(c) If service is by posting a copy of the summons and the affidavit on the door of the premises and mailing a copy of the summons and the affidavit to the defendant, as provided in subsection (a) of this Code section, the court shall have jurisdiction to enter a default judgment for possession of the premises in the absence of an answer being filed, but in such instance a default judgment for money owed may not be entered unless the defendant files an answer or otherwise makes an appearance in the case.

§ 44-7-52. Offer of payment by the tenant

(a) Except as provided in subsection (c) of this Code section, in an action for nonpayment of rent, the tenant shall be allowed to tender to the landlord, within seven days of the day the tenant was served with the summons pursuant to [Code Section 44-7-51](#), all rents allegedly owed plus the cost of the dispossessory warrant. Such a tender shall be a complete defense to the action; provided, however, that a landlord is required to accept such a tender from any individual tenant after the issuance of a dispossessory summons only once in any 12 month period.

(b) If the court finds that the tenant is entitled to prevail on the defense provided in subsection (a) of this Code section and the landlord refused the tender as provided under subsection (a) of this Code section, the court shall issue an order requiring the tenant to pay to the landlord all rents which are owed by the tenant and the costs of the dispossessory warrant within three days of said order. Upon failure of the tenant to pay such sum, a writ of possession shall issue. Such payment shall not count as a tender pursuant to subsection (a) of this Code section.

(c) For a tenant who is not a tenant under a residential rental agreement as defined in [Code Section 44-7-30](#), tender and acceptance of less than all rents allegedly owed plus the cost of the dispossessory warrant shall not be a bar nor a defense to an action brought under [Code Section 44-7-50](#) but shall, upon proof of same, be considered by the trial court when awarding damages.

§ 44-7-53. Failure to answer; issuance of writ of possession; answer and trial

(a) If the tenant fails to answer as provided in subsection (b) of [Code Section 44-7-51](#), the court shall issue a writ of possession instanter notwithstanding [Code Section 9-11-55](#) or [Code Section 9-11-62](#). The court, without the intervention of a jury, shall not require any further evidence nor hold any hearings and the plaintiff shall be entitled to a verdict and judgment by default for all rents due as if every item and paragraph of the affidavit provided for in [Code Section 44-7-50](#) were supported by proper evidence.

(b) If the tenant answers, a trial of the issues shall be had in accordance with the procedure prescribed for civil actions in courts of record except that if the action is tried in the magistrate court the trial shall be had in accordance with the procedures prescribed for that court. Every effort should be made by the trial court to expedite a trial of the issues. The defendant shall be allowed to remain in possession of the premises pending the final outcome of the litigation; provided, however, that, at the time of his answer, the tenant must pay rent into the registry of the court pursuant to [Code Section 44-7-54](#).

§ 44-7-54. Payment of rent into court

(a) In any case where the issue of the right of possession cannot be finally determined within two weeks from the date of service of the copy of the summons and the copy of the affidavit, the tenant shall be required to pay into the registry of the trial court:

(1) All rent and utility payments which are the responsibility of the tenant payable to the landlord under terms of the lease which become due after the issuance of the dispossessory warrant, said rent and utility payments to be paid as such become due. If the landlord and the tenant disagree as to the amount of rent, either or both of them may submit to the court any written rental contract for the purpose of establishing the amount of rent to be paid into the registry of the court. If the amount of rent is in controversy and no written rental agreement exists between the tenant and landlord, the court shall require the amount of rent to be a sum equal to the last previous rental payment made by the tenant and accepted by the landlord without written objection; and

(2) All rent and utility payments which are the responsibility of the tenant payable to the landlord under terms of the lease allegedly owed prior to the issuance of the dispossessory warrant; provided, however, that, in lieu of such payment, the tenant shall be allowed to submit to the court a receipt indicating that payment has been made to the landlord. In the event that the amount of rent is in controversy, the court shall determine the amount of rent to be paid into court in the same manner as provided in paragraph (1) of this subsection.

(b) If the tenant should fail to make any payment as it becomes due pursuant to paragraph (1) or (2) of subsection (a) of this Code section, the court shall issue a writ of possession and the landlord shall be placed in full possession of the premises by the sheriff, the deputy, or the constable.

(c) The court shall order the clerk of the court to pay to the landlord the payments claimed under the rental contracts paid into the registry of the court as said payments are made; provided, however, that, if the tenant claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the landlord without delay only that portion of the funds to which the tenant has made no claim in the proceedings or may make such other order as is appropriate under the circumstances. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the landlord to the tenant shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the landlord without delay the remaining funds in court and all payments of future rent made into court pursuant to paragraph (1) of subsection (a) of this Code section unless the tenant can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

§ 44-7-55. Judgment and satisfaction

(a) If, on the trial of the case, the judgment is against the tenant, judgment shall be entered against the tenant for all rents due and for any other claim relating to the dispute. The court shall issue a writ of possession, both of execution for the judgment amount and a writ to be effective at the expiration of seven days after the date such judgment was entered, except as otherwise provided in [Code Section 44-7-56](#).

(b) If the judgment is for the tenant, he shall be entitled to remain in the premises and the landlord shall be liable for all foreseeable damages shown to have been caused by his wrongful conduct. Any funds remaining in the registry of the

court shall be distributed to the parties in accordance with the judgment of the court.

(c) Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.

§ 44-7-56. Appeal

Any judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7 of Title 5, provided that any such appeal shall be filed within seven days of the date such judgment was entered and provided, further, that, after the notice of appeal is filed with the clerk of the trial court, the clerk shall immediately notify the trial judge of the notice of appeal and the trial judge may, within 15 days, supplement the record with findings of fact and conclusions of law which will be considered as a part of the order of the judge in that case. If the judgment of the trial court is against the tenant and the tenant appeals this judgment, the tenant shall be required to pay into the registry of the court all sums found by the trial court to be due for rent in order to remain in possession of the premises. The tenant shall also be required to pay all future rent as it becomes due into the registry of the trial court pursuant to paragraph (1) of subsection (a) of [Code Section 44-7-54](#) until the issue has been finally determined on appeal.

§ 44-7-57. Applicability of article to croppers and servants after termination of employment

This article shall apply to croppers and servants who continue to hold possession of lands and tenements after their employment as croppers or servants has terminated and in the same manner as it relates to tenants.

§ 44-7-58. False statements

Anyone who, under oath or affirmation, knowingly and willingly makes a false statement in an affidavit signed pursuant to [Code Section 44-7-50](#) or in an answer filed pursuant to [Code Section 44-7-51](#) shall be guilty of a misdemeanor.

§ 44-7-59. Removal of tenant's manufactured home, etc., after writ of possession has been entered

If the court issues a writ of possession to property upon which the tenant has placed a manufactured home, mobile home, trailer, or other type of transportable housing and the tenant does not move the same within ten days after a final order is entered, the landlord shall be entitled to have such transportable housing moved from the property at the expense of the tenant by a motor common carrier licensed by the Public Service Commission for the transportation of manufactured housing. There shall be a lien upon such transportable housing to the extent of moving fees and storage expenses in favor of the person performing such services. Such lien may be claimed and foreclosed in the same manner

as special liens on personalty by mechanics under [Code Sections 44-14-363](#) and [44-14-550](#), except that storage fees not to exceed \$4.00 per day shall be expressly allowed.

§ 44-7-70. Power of landlord to distrain for rent

The landlord shall have power to distrain for rent as soon as the same is due if the tenant is seeking to remove his property from the premises.

§ 44-7-71. Application for distress warrant

When rent is due or the tenant is seeking to remove his property, the landlord, his agent, his attorney in fact, or his attorney at law may, upon a statement of the facts under oath, apply for a distress warrant before the judge of the superior court, the state court, the civil court, or the magistrate court within the county where the tenant may reside or where his property may be found.

§ 44-7-72. Summons to be served on defendant; time of hearing

When the affidavit provided for in [Code Section 44-7-71](#) is made, the judge of the superior court, the state court, the civil court, or the magistrate court before whom it was made shall grant and issue a summons to the marshal or the sheriff or his deputy of the county where the tenant resides or where his property may be found. A copy of the summons and the affidavit shall be personally served upon the defendant. If an officer is unable to serve the defendant personally, service may be given by delivering the summons and affidavit to any person who is sui juris residing on the premises. The summons served on the defendant pursuant to this Code section shall command and require the tenant to appear at a hearing on a day certain not less than five nor more than seven days from the date of actual service.

§ 44-7-73. Offer of payment by tenant

In an action for nonpayment of rent, the tenant shall be allowed to tender to the landlord, within seven days of the day the tenant was served with the summons pursuant to [Code Section 44-7-72](#), all rents allegedly owed plus the cost of the distress warrant. Such a tender shall be a complete defense to the action.

§ 44-7-74. Answer; distress warrant granted on failure to answer; trial

(a) At or before the time of the hearing, the defendant may answer in writing. The defendant may answer orally at the time of the hearing. If the answer is oral, the substance thereof shall be endorsed upon the affidavit. The answer may contain any legal or equitable defense or counterclaim.

(b) If the tenant fails to answer, the court shall grant a distress warrant; and the plaintiff shall be entitled to a verdict and judgment by default for all rents due as if every item and paragraph of the affidavit provided for in [Code Section 44-7-71](#) were supported by proper evidence, which verdict shall be in open court or chambers and without the intervention of a jury.

(c) If the tenant answers, a trial of the issues shall be had in accordance with the procedure prescribed for civil actions in courts of record except that if the action is tried in the magistrate court the trial shall be had in accordance with the procedures prescribed for that court. Every effort shall be made by the trial court to expedite a trial of the issues. The defendant shall be allowed to remain in possession of the premises and his property pending the final outcome of the litigation, provided that he complies with [Code Section 44-7-75](#).

§ 44-7-75. Payment of rent into court

(a) At the time the tenant answers, the tenant shall pay into the registry of the trial court all rent admittedly owed prior to the issuance of the summons; provided, however, that, in lieu of such payment, the tenant shall be allowed to submit to the court a receipt indicating that the payment has been made to the landlord. In the event that the amount of rent is in controversy, the court shall determine the amount of rent to be paid into court in the same manner as provided in subsection (b) of this Code section.

(b) The tenant shall pay into the registry of the trial court all rent which becomes due after the issuance of the summons and shall pay said rent as it becomes due. If the landlord and tenant disagree as to the amount of rent, either or both of them may submit to the court any written rental contract for the purpose of establishing the amount of the rent to be paid into the registry of the court. If the amount of rent is in controversy and no written rental agreement exists between the tenant and the landlord, the court shall require the amount of rent to be a sum equal to the last previous rental payment made by the tenant and accepted by the landlord without written objection.

(c) If the landlord is also seeking a dispossessory warrant against the tenant pursuant to Article 3 of this chapter, money paid into court under [Code Section 44-7-54](#) shall fully satisfy the requirements under subsections (a) and (b) of this Code section.

(d) After the date of the service of the summons as provided in [Code Section 44-7-72](#), the tenant shall not transfer, convey, remove, or conceal his property without either posting bond as provided in [Code Section 44-7-76](#) or complying with subsections (a) and (b) of this Code section.

(e) If the tenant shall fail to comply with any of the provisions of this Code section, the tenant shall not be entitled to retain possession of his property pending a trial on the merits as provided by [Code Section 44-7-74](#) unless he posts bond as provided by [Code Section 44-7-76](#). Failure to comply with any provision of this Code section shall in no way affect the tenant's ability to litigate the issues raised in his answer but shall only affect the possession of the property pendente lite. If judgment is against the tenant, the property involved shall be seized by the marshal, the sheriff, or the

deputy, as the case may be, and held thereby for levy and sale after judgment as provided by [Code Section 44-7-79](#).

(f) The court shall order the clerk of the court to pay to the landlord the amounts paid into the registry of the court as such payments are made; provided, however, that, if the tenant claims that he is entitled to all or a part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the landlord without delay only that portion of the funds to which the tenant has made no claim in the proceedings. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a final determination of the issues.

§ 44-7-76. Bond

In all cases where the tenant may desire to transfer, remove, or convey any of his property after the service of summons, the tenant shall post bond with good security for a sum equal to the value of the property or the amount of the rent alleged to be due, whichever is less, to be estimated by the judge, for the delivery of the property at the time and place of sale if the property shall be found subject to such rent. Upon the approval of the bond by the judge, the tenant may convey, transfer, or remove his property without restriction.

§ 44-7-77. Judgment and satisfaction

(a) If, on the trial of the case, the judgment is against the tenant, the judgment shall be entered against the tenant for all rent due and for any other claim relating to the dispute and the distress warrant shall be granted.

(b) If the judgment is for the tenant, he shall be entitled to remain in the premises and in possession of his property and the landlord shall be liable for all foreseeable damages shown to have been caused by his wrongful conduct. Any funds remaining in the registry of the court shall be distributed to the parties in accordance with the judgment of the court. If the tenant has been deprived of the possession of his property pendente lite pursuant to subsection (e) of [Code Section 44-7-75](#), the court shall order that the property be returned immediately to the tenant.

§ 44-7-78. Appeal

Any judgment by the trial court shall be appealable to the appellate court pursuant to Chapters 2, 3, 6, and 7 of Title 5. If the judgment of the trial court is against the tenant and the tenant appeals this judgment, the tenant shall remain in the premises and in possession of his property; provided, however, that the tenant shall comply with all provisions of [Code Section 44-7-75](#) or [44-7-76](#) until the issue has been finally determined on appeal.

§ 44-7-79. Execution and levy

Whenever a distress warrant is granted pursuant to this article, the distress warrant may be levied by the marshal, the

sheriff, or the deputy on any property belonging to said tenant whether found on the premises or elsewhere; and the marshal, the sheriff, or the deputy shall advertise and sell the property in the same manner as in the case of levy and sale under execution.

§ 44-7-80. Lien of landlord to attach from time of affidavit; priorities

The landlord's lien for his rent shall attach from the time that the affidavit is made pursuant to [Code Section 44-7-71](#); but it shall take precedence over no lien of older date except as to the crop raised on the premises.

§ 44-7-81. Claims by third persons, how interposed and tried

A third person may make a claim to the distrained property by giving the oath and the bond as is required in cases of other claims. Such a claim shall be returned and tried as is provided by law for the trial of the right of property levied upon by execution.

§ 44-7-82. Tenant's mobile home, effect of law on

(a) As used in this Code section, the term “mobile home” means a movable or portable dwelling over 32 feet in length and over eight feet wide which is constructed to be towed on its own chassis and to be connected to utilities and is designed without a permanent foundation for year-round occupancy. A mobile home may consist of one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may consist of two or more units separately towable but designed to be joined into one integral unit.

(b) A tenant's mobile home, as defined in subsection (a) of this Code section, shall be considered “property,” as that term is used in this article.

§ 44-7-100. Nature of relationship

Where a person is employed to work for part of the crop, the relationship of landlord and tenant does not arise. The title to the crop, subject to the interest of the cropper therein, and the possession of the land remain in the owner of the land.

§ 44-7-101. Title to cropper's crop in landlord

Whenever the relationship of landlord and cropper exists, the title to and right to control and possess the crops grown and raised upon the lands of the landlord by the cropper shall be vested in the landlord until the landlord has received his part of the crops so raised and has been fully paid for all advances made to the cropper in the year the crops were

raised for the purpose of raising the crops.

§ 44-7-102. Right of landlord to recover crops disposed of without his consent

In all cases where a cropper unlawfully sells or otherwise disposes of any part of a crop or where the cropper seeks to take possession of such crops or to exclude the landlord from the possession thereof while the title thereto remains in the landlord, the landlord shall have the right to repossess the crops by any process of law by which the owner of the property can recover it under the laws of this state.

§ 44-7-103. Illegal sale by cropper; refusal to deliver by landlord

(a) Any cropper who sells or otherwise disposes of any part of the crop grown by him without the consent of the landlord before the landlord has received his part of the crop and payment in full for all advances made to the cropper in the year the crop was raised for the purpose of raising such crop shall be guilty of a misdemeanor.

(b) Any landlord who fails or refuses, on demand, to deliver to the cropper the part of the crop or its value to which the cropper is entitled after payment for all advances made to him as provided in subsection (a) of this Code section shall be guilty of a misdemeanor.

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