

What New Landlords Need to Know About Leasing Property



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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help owners with leasing their property. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Owners are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in leasing a house.

Renting a house can be financially rewarding. It can provide the landlord with a stream of income and the potential for property appreciation in a rising housing market. Renting can also give the property owner an alternative to selling if market conditions are not favorable. However, there can be potential pitfalls in leasing houses, particularly if the owner is new to the business. This brochure is intended to help new landlords understand some of these risks and how best to avoid them.

Confirm that Leasing is Permitted. Leasing of houses is restricted in the covenants of most condominium and some homeowners' associations. Some of those restrictions prohibit leasing of houses if a certain percentage of the houses in the community are already leased. In other cases, leases must be for a minimum lease term. Before leasing a house, the property owner should carefully review any covenants applicable to his or her property and confirm what restrictions, if any, are applicable to leasing.

Landlords Need Special Insurance. Most homeowner insurance policies only provide coverage if the house is owner occupied. If an owner is leasing out his or her property, the owner will normally need to get special insurance to cover the property while it is being leased. Owners should consult with their insurance professionals to determine what insurance and the amount of coverage that is needed. Many insurance brokers recommend that landlords: a) obtain what is known as a DP-3 policy; and b) increase the amount of liability insurance over what they had when the property was owner occupied to cover what is generally thought to be a greater risk of claims associated with leasing property.

Contractors Performing Work on Property Should Be Insured. Contractors performing work on the property should be required to carry worker's compensation insurance and general liability insurance. Landlords should obtain a certificate of insurance and a copy of the declarations page for each of the contractor's insurance policies as evidence of such insurance. Worker's compensation insurance helps protect the landlord against claims if the contractor or his employees are injured while working on the property. Liability insurance helps protect the landlord against claims for damages and/or injuries caused as a result of the work of the contractor.

Conduct a thorough background check of the tenant. It is much easier to prevent bad tenants from moving into a house than to get them out once they move in. Inexperienced landlords sometimes underestimate the risk of tenants not paying rent or damaging the house. Doing a thorough background check is an important tool to predict whether tenants will honor their contractual obligations under the lease. Even with all of the safeguards, however, there is no guarantee that the tenant will do what he or she has agreed to do in the lease.

Have a written lease. A lease for one (1) year or less is legally enforceable in Georgia even if it is not in writing. However, property owners are strongly advised not to allow any tenant to move into a house without a written lease. Verbal leases create too much potential for the parties to have different recollections of the business arrangement between the parties. Moreover, verbal leases rarely cover all of the issues that a well written lease will cover – often leaving the owner unprotected in the event of a problem tenant.

Possession of the property belongs to the tenant. Georgia law generally provides that possession of the property belongs to the tenant and not the landlord once the lease commences, except to the extent otherwise provided in the lease. Landlords and their agents do not have a right to inspect the property, put up for sale or for lease signs or show the property to other prospective tenants unless the lease specifically so provides. Therefore, it is important that the rights of the landlord and his or her agents to enter the property are clearly stated in the lease.

Fair housing laws apply to rentals. Federal and state fair housing laws prohibit discrimination in the leasing of housing on the basis of race, color, religion, sex, national origin, handicap and familial status. This means, for example, that an owner of a three-bedroom house cannot prohibit a husband and wife and their four children from renting the owner's house because the landlord is concerned that they have too many children. Such a prohibition would constitute unlawful discrimination based upon familial status under our fair housing laws. Of course, reasonable occupancy limitations such as no more than two (2) persons per bedroom are generally allowed. However, with single family dwellings, HUD will also consider other spaces that a tenant could use as a bedroom. For instance, what the landlord calls a "bonus room" may be used by a tenant as a bedroom for their children. Similarly, a handicapped person needing a service animal must be allowed this by the landlord as a reasonable accommodation – even in a home in which pets are not permitted.

The landlord cannot delegate repairs to the tenant. Georgia law requires landlords of residential properties to perform all repairs to the property. While tenants can be asked to perform maintenance, they cannot be asked in the lease to make repairs even if they are willing to do so. Therefore, for example, while a tenant can be asked to change the batteries on a smoke alarm or replace filters in a heating and air conditioning unit (since these are maintenance functions), a tenant cannot be asked to repair a broken smoke alarm or a heating and air conditioning unit.

Follow All Georgia Mandated Procedures Applicable to Landlords. Georgia law requires landlords to follow certain state mandated procedures unless the landlord: (a) is a natural person (i.e. – not a legal entity such as a corporation or limited liability company); (b) owns 10 or fewer rental units between the landlord and his/her immediate family members; and (c) the house is not professionally managed by a third party property manager. Some landlords follow these state mandated procedures even if they are not required to do so because the procedures can, in some cases, protect the landlord as well as the tenant. These state law requirements include the following:

(a) Move-In Inspection: Unless the landlord is exempt from the requirement, the landlord must give the tenant a comprehensive list of any damage to the property prior to the tenant giving the landlord a security deposit. The landlord and the tenant should each sign the list and retain a copy for their records. While not required by state law, landlords are encouraged to supplement the list with photographs and digital recordings of the property so that they have an accurate and complete record of the condition of the property at the commencement of the lease in the event of a dispute over the property's condition at the end of the lease.

(b) Move-Out Procedure: Unless the landlord is exempt from the requirement, the landlord is similarly required to give the tenant a list of damages to the property within three (3) business days after the date of the termination of occupancy. This list should identify any damage done to the property which is the basis for the tenant not getting back some or all of the tenant's security deposit. The tenant has the right to do his or her own inspection for damage within five (5) business days after the termination of occupancy. If there is agreement on the list of damages, the landlord and tenant should both sign it and keep a copy. If the tenant refuses to sign the list or disagrees with it, the tenant is supposed to sign a statement explaining the basis for his or her disagreement. While landlords may recover the cost of repairing damage to the property caused by the tenant, the landlord cannot recover for normal wear and tear.

(c) Deposit and Return of Security Deposits: Unless the landlord is exempt from the requirement, the security deposit is required to be held in an escrow account established only for that purpose. Alternatively, the landlord may post a surety bond for the security deposits in the clerk of court's office in the county in which the property is located. Tenants are also required to be notified in writing of the location of the security deposit. The security deposit must generally be returned to the tenant within 30 (thirty) days of the lease termination. Within this time frame, the landlord is required to provide the tenant with a written statement of the reasons the landlord kept any portion of the security deposit and send the balance of the deposit, if any, to the tenant.

(d) Not Following State Mandated Procedures Can Have Serious Negative Consequences: Unless the landlord is exempt from state law, there are serious negative consequences to landlords not following these state mandated procedures. Where a security deposit is not handled correctly and the landlord is not subject to an exemption, the landlord is required to return the entire security deposit even if the tenant damaged the property or failed to pay rent. This is also the case if the move-in and move-out forms are not timely prepared and signed. Finally, any landlord subject to the state mandated procedures who improperly retains the security deposit can be liable to the tenant for three (3) times the sum improperly held plus attorney's fees.

Evicting a tenant is not necessarily a quick process.

Most residential evictions are handled in the magistrate court of the county in which the property is located. After sending a letter to the tenant terminating the lease and demanding possession, a lawsuit is normally commenced by filling out certain paperwork provided by the magistrate's court. Evicting a tenant is not necessarily a quick process if the tenant resists the eviction. While the process can take as little as two to three weeks if it goes smoothly, it can take one to six months if it is contested or if the tenant files for bankruptcy. Landlords also do not always recover their attorney's fees and all of the rent owed by the tenant. Landlords who have experienced a contested eviction tend to start eviction proceedings sooner rather than later to minimize the time delays that can occur with an eviction.

Certain Military Personnel Can Get Out of Leases Early.

Under both state and federal law, certain military personnel can get out of their leases early. Georgia law, which is more protective than federal law, applies to persons who are on active duty with the U.S. military and receive change of station orders or temporary duty orders for a period in excess of three (3) months. In that case, such a person's liability for rent under a lease is limited to (a) thirty (30) days rent after written notice and proof of the assignment are given to the landlord and (b) the cost of repairing damage to the property by an act or omission of the tenant.

Landlords Must Make Special Lead-Based Paint Disclosures on Houses Built Prior to 1978.

If a landlord's house was built prior to 1978, or any portion of the house contains painted fixtures made prior to 1978, then the landlord must disclose what he or she knows about the presence of lead-based paint in the property. Failure to do this can result in stiff penalties under federal law.

Landlord May Have to Pay Capital Gains Tax.

Some landlords decide to lease because they were unable to sell their personal residences for the price they anticipated. Under current federal tax law, if a homeowner has occupied his or her home for two of the previous five years, then that property is considered the "personal residence" of the owner and the sale of their personal residence is generally not subject to capital gains taxes. If a homeowner has owned the property for several years, there is a probability that, if sold as an investment property, there will be a significant capital gains tax obligation. That homeowner could still lease his or her house for two years, then sell the house within the third year, thereby selling their "personal residence" and avoiding a capital gains tax obligation. Prior to leasing, landlords should consult with their CPA or tax advisor to better understand their tax obligations.

Be realistic in deciding whether to hire professional management.

Some property owners view managing rental properties as easy until a tenant stops paying rent or the owner gets the late night call that a plumbing line has broken and must be fixed immediately. Being a property manager is work. While some owners have the time and inclination to do that job well, others do not. While this does not happen often, some of the risks landlords face include a tenant making methamphetamines or growing marijuana in the house, a tenant dying during the lease term, or a tenant skipping out before the lease expires. A professional property manager can help reduce the risk of these occurrences. For those risks that could not be avoided, a professional manager may be able to help reduce the owner's expense. Before deciding whether to self-manage or hire a professional property manager, each owner should realistically assess whether he or she has the time and skills to be a good property manager. If an owner decides to hire a professional property manager, the owner should remember that property management is considered real estate brokerage in Georgia and can only be done by someone licensed with the Georgia Real Estate Commission.

Conclusion:

Landlord tenant law in Georgia contains many technical requirements that can be a trap for property owners unfamiliar with Georgia law. Getting educated on the law or seeking professional management assistance can avoid many of these problems. For additional information, landlords are encouraged to obtain and review the Georgia Landlord Tenant Handbook which is available at www.dca.ga.gov.