

House Bill 301

By: Representatives Park of the 101st, Mitchell of the 88th, Bruce of the 61st, Scott of the 76th, Schofield of the 60th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated,
2 relating to dispossessory proceedings, so as to provide for certain notices to tenants for
3 dispossessory proceedings; to provide for sufficiency of notices for termination of tenancies;
4 to provide for responses to dispossessory proceedings; to provide for stays of writs of
5 possession under certain circumstances; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Article 3 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
10 dispossessory proceedings, is amended by revising Code Section 44-7-50, relating to demand
11 for possession, procedure upon a tenant's refusal, and concurrent issuance of federal lease
12 termination notice, as follows:

13 "44-7-50.

14 (a) In all cases when a tenant holds possession of lands or tenements over and beyond the
15 term for which they were rented or leased to such tenant or fails to pay the rent when it
16 becomes due and in all cases when lands or tenements are held and occupied by any tenant

17 at will or sufferance, whether under contract of rent or not, when the owner of such lands
18 or tenements desires possession of such lands or tenements, such owner may, individually
19 or by an agent, attorney in fact, or attorney at law, demand the possession of the property
20 so rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession
21 when so demanded, the owner or the agent, attorney at law, or attorney in fact of such
22 owner, after providing actual notice pursuant to subsections (c) through (g) of this Code
23 section, may immediately go before the judge of the superior court, the judge of the state
24 court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk
25 of any other court with jurisdiction over the subject matter, or a magistrate in the district
26 where the land lies and make an affidavit under oath to the facts. The affidavit may
27 likewise be made before a notary public.

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

31 (c) Except as otherwise provided in this Code section, 14 days' notice by a landlord shall
32 be sufficient notice of termination of tenancy for the purpose of eviction of a residential
33 tenant if the termination of tenancy is due to:

34 (1) Tenant neglect or refusal to pay rent that is due and is in arrears upon demand; or

35 (2) Damage beyond normal wear and tear to the premises by the tenant, members of the
36 household, or guests.

37 (d) If the notice of termination of tenancy is due to a factor set out in subsection (c) of this
38 Code section and the breach is remediable by repairs or the payment of rent or damages or
39 otherwise, and the tenant adequately remedies the breach on or prior to the date specified
40 in the notice from the landlord, the rental agreement shall not terminate. If substantially
41 the same act or omission which constituted a prior noncompliance for which notice was
42 given recurs within 12 months, the landlord may terminate the rental agreement upon at

43 least 14 days' written notice specifying the breach and the date of termination of the rental
44 agreement.

45 (e) For all other defaults in the lease agreement, a 30 day termination notice from the date
46 such notice is given by the landlord shall be required for the purpose of eviction of a
47 residential tenant.

48 (f) This Code section shall not apply to a tenancy when the rental period is for less than
49 14 days.

50 (g) Except as provided in this Code section, three days' notice by a landlord is sufficient
51 notice of termination of tenancy to evict a residential tenant if the tenant or any other
52 person on the premises with the tenant's consent, willfully or intentionally:

53 (1) Commits a violent act;

54 (2) Engages in any criminal activity; or

55 (3) Behaves in a manner that constitutes or threatens to be a real and present danger to
56 the health, safety, or welfare of the life or property of other tenants, the landlord, the
57 landlord's representatives, or other persons on the premises."

58 **SECTION 2.**

59 Said article is further amended by revising subsection (b) of Code Section 44-7-51, relating
60 to issuance of summons, service, time for answer, and defenses and counterclaims, as
61 follows:

62 "(b) The summons served on the defendant pursuant to subsection (a) of this Code section
63 shall command and require the tenant to answer either orally or in writing within ~~seven~~ 14
64 days from the date of the actual service unless the ~~seventh~~ fourteenth day is a Saturday, a
65 Sunday, or a legal holiday, in which case the answer may be made on the next day which
66 is not a Saturday, a Sunday, or a legal holiday. If the answer is oral, the substance thereof
67 shall be endorsed on the dispossessory affidavit. The answer may contain any legal or

68 equitable defense or counterclaim. The landlord need not appear on the date of the tenant's
69 response. The last possible date to answer shall be stated on the summons."

70 **SECTION 3.**

71 Said article is further amended by revising subsection (a) of Code Section 44-7-52, relating
72 to when tender of payment by tenant serves as complete defense, as follows:

73 "(a) Except as provided in subsection (c) of this Code section, in an action for nonpayment
74 of rent, the tenant shall be allowed to tender to the landlord, within ~~seven~~ 14 days of the
75 day the tenant was served with the summons pursuant to Code Section 44-7-51, all rents
76 allegedly owed plus the cost of the dispossessory warrant. Such a tender shall be a
77 complete defense to the action; provided, however, that a landlord is required to accept
78 such a tender from any individual tenant after the issuance of a dispossessory summons
79 only once in any 12 month period."

80 **SECTION 4.**

81 Said article is further amended by revising Code Section 44-7-55, relating to judgment, writ
82 of possession, landlord's liability for wrongful conduct, distribution of funds paid into court,
83 and personal property, as follows:

84 "44-7-55.

85 (a) If, on the trial of the case, the judgment is against the tenant, judgment shall be entered
86 against the tenant for all rents due and for any other claim relating to the dispute. ~~The~~
87 Notwithstanding a judicial determination pursuant to subsection (c) of this Code section,
88 the court shall issue a writ of possession, both of execution for the judgment amount and
89 a writ to be effective at the expiration of ~~seven~~ 14 days after the date such judgment was
90 entered, except as otherwise provided in Code Section 44-7-56.

91 (b) If the judgment is for the tenant, he or she shall be entitled to remain in the premises
92 and the landlord shall be liable for all foreseeable damages shown to have been caused by

93 his or her wrongful conduct. Any funds remaining in the registry of the court shall be
94 distributed to the parties in accordance with the judgment of the court.

95 (c)(1) Following the entry of a judgment in favor of the landlord and against the tenant
96 for the possession of the premises and forfeiture of the tenancy due to nonpayment of
97 rent, the court, at the time of the show cause hearing or trial or upon subsequent motion
98 of the tenant but before the execution of the writ of possession, may stay the writ of
99 possession upon good cause and on such terms that the court deems fair and just for both
100 parties. In making this decision, the court shall consider evidence of the following
101 factors:

102 (A) The tenant's willful or intentional default or intentional failure to pay rent;

103 (B) Whether nonpayment of the rent was caused by exigent circumstances that were
104 beyond the tenant's control and that are not likely to recur;

105 (C) The tenant's ability to timely pay the judgment;

106 (D) The tenant's payment history;

107 (E) Whether the tenant is otherwise in substantial compliance with the rental
108 agreement;

109 (F) Hardship on the tenant if evicted; and

110 (G) Conduct related to other notices served within the last six months.

111 (2) The burden of proof for such relief under this subsection shall be on the tenant. If the
112 tenant seeks relief pursuant to this subsection at the time of the show cause hearing, the
113 court shall hear the matter at the time of the show cause hearing or as expeditiously as
114 possible so as to avoid unnecessary delay or hardship on the parties.

115 ~~(c)~~(d) Any writ of possession issued pursuant to this article shall authorize the removal of
116 the tenant or his or her personal property or both from the premises and, after providing the
117 tenant 24 hours to remove personal property from the premises, permit the placement of
118 such personal property on some portion of the landlord's property or on other property as
119 may be designated by the landlord and as may be approved by the executing officer;

120 provided, however, that the landlord shall not be a bailee of such personal property and
121 shall owe no duty to the tenant regarding such personal property. After execution of the
122 writ, such property shall be regarded as abandoned.

123 ~~(d)~~(e) Subject to subsection (a) of this Code section and Code Section 44-7-59,
124 applications for execution of a writ of possession shall be made within 30 days of issuance
125 of the writ of possession unless such application for said writ is accompanied by an
126 affidavit showing good cause for the delay in applying for execution of the writ. The
127 failure to execute a writ in conformity with this Code section shall require the applicant to
128 apply for a new writ.

129 ~~(e)~~(f) Nothing in this Code section shall require a sheriff, constable, or marshal to execute
130 a writ of possession within 30 days from the issuance of any order granting a writ of
131 possession, or the issuance, application, or request for the execution of the writ of
132 possession."

133

SECTION 5.

134 All laws and parts of laws in conflict with this Act are repealed.