

# DISTRICT COURT

## MOBILE COUNTY, ALABAMA

### NOTICE

# NEW EVICTION PROCEDURES

**Effective January 1, 2007, Title 35 (The Sanderson Act) eviction proceedings relating to Residential Landlord Tenant Evictions were repealed by the Uniform Residential Landlord Tenant Act (URLTA).** Title 35 of the Code of Alabama 1975 was amended by adding Chapter 9A in addition to repealing the Sections 35-9-4 and 35-9-80 through 88 of the Sanderson Act. **The provisions of Title 9A dramatically change virtually everything about residential evictions.**

As is their prerogative, the legislature did not consult with this District Court regarding the changes in these actions, however, the District Court must, and will, follow this new law and it will be enforced as fairly and as strictly as is reasonably possible in order to minimize the potential confusion associated with such dramatic changes in legal practice.

After many meetings with members of the bar and also with frequent litigants, extensive review, considerable input from experienced lawyers who are recognized as extremely well-versed in this field (for whose assistance the Judges are most grateful) and quite a few hours of independent review, not to mention some fairly animated debate among the Judges, we have come to the following conclusions:

First, this statute has some provisions that are contradictory and confusing (see especially provisions 164 and 405). Also, the statute does not provide any real guidance regarding procedural steps and mechanisms to implement all of the intended reforms. It is highly likely that some kind of appellate judicial review will inevitably be required on one or more points. Perhaps there will be future legislative refinements passed. Only time will tell.

Second, in the meantime, the Court must endeavor to provide consistent, fair and speedy implementation of this new law regardless of the difficulties. Also, the Court recognizes the need for a uniform application of this law to the facts presented no matter in which courtroom the parties find themselves. It is only fair that both landlords and tenants have the benefit of sound legal advice from the lawyer of their choosing and that the lawyers should know what to expect and how to best advise their clients especially in this time of transition and some considerable confusion.

Third, the Court has decided that Default Applications will not be considered until after fourteen days have passed following valid service of process. As a practical matter, this will probably not have any effect on these cases whatsoever for the obvious reason that eviction cases are now handled according to the Alabama Rules of Civil Procedure and not in the same manner as was the case for the documents previously filed with the Sheriff's office. All pleadings (which are now Complaints and Answers, not the previously used Affidavits and Counter-Affidavits) must now be filed with the District Court Clerk's office. Further the litigants are reminded that they must ensure that they have actually acquired valid service of process to support the kind of relief that they are seeking.

Fourth, the Court has decided that (absent further edification or clarification) Section 164 will be interpreted to mean that in nearly all cases if rent has not been paid then no further hearing on efforts to enforce "any of the tenant's rights under this chapter". The Court realizes that contradictory views will be heard and they might ultimately prevail. However, the conflict between Sections 164 and 405 seems almost impossible to reconcile except in some very specific, although rather infrequent, situations. It may well be a routine practice in the very near future for the Court to be receiving Motions to Strike Defendant's Answer due to failure to pay rent ("cure") and how this will be addressed is not yet clear.

Fifth, the Court has drafted some affidavits (very similar to those previously used in the earlier Title 35 UD cases for a number of years) to assist in the process of evaluating each case for trial ... or for pre-trial if necessary. All Plaintiffs will have to complete and submit the Property Owner's Affidavit when they file an action, even if a lawyer represents them. All Defendants will have to complete and submit the Tenant's Affidavit when they file their answer, even if a lawyer represents them. (Copies of these required affidavits are attached to this document.) The Court wants to be able to determine what kind of dispute is involved at the earliest possible opportunity if for no other reason than to facilitate docket management. With almost 60,000 cases now being filed each year in Mobile County District Court that is becoming more

of a critical need than ever before. All of the Judges are willing and anxious to schedule special trial settings for the more lengthy hearings if it is at all possible for us to do that. Knowing the nature of the actual dispute in each case can greatly assist in the evaluation of that need and in general docket management. Quite frankly, however, the Court also wants to be better able to evaluate how we will handle this new eviction process and information is key to this effort overall and on a case-by-case basis.

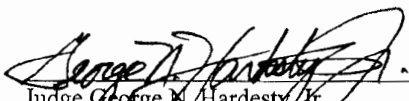
Sixth, these affidavits (referred to in paragraph above) have not been distributed up to this time and that will mean that the first 250-350 evictions of 2007 will require some kind of pre-trial determination by the Court to see if a trial will be required or if Section 164 will operate as the "trap-door" that the legislature apparently intended it to be. The exact procedure for that hearing will be brief but it will be to "frame the issues" which must be litigated. Please prepare your clients for this first step. After these first cases work their way through the system we will possibly have a different procedure or perhaps we will change that only when the Plaintiff files a "Motion to Strike Answer". This bridge has not yet been crossed.

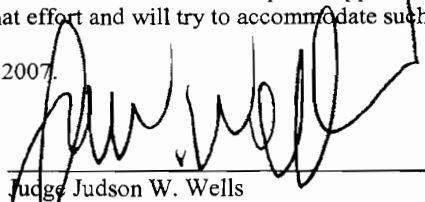
Seventh, inquiries have been made about what to expect regarding Default Applications. A default application must contain allegations that meet the requirements of the new UD statute and an affidavit that supports those allegations with specific facts sufficient to establish both the factual and jurisdictional prerequisites for the relief sought. There must be a residential landlord-tenant relationship, a breach, proper notice given (the type and length of which is fact dependent), and a detailed statement of any unpaid rent that has accrued. Please attach a copy of the lease and the notice(s) given to the tenant to the affidavit. The statement of unpaid rent is especially critical, as the Court may have to make a precise determination on that issue to provide for further appeals.

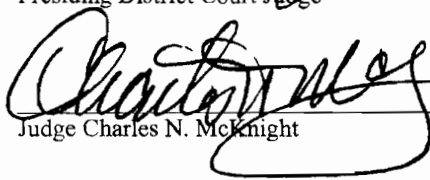
Eighth, in the event of either a trial or a default there may be a further issue regarding a Plaintiff's allegations of money damages due to both unpaid rent and waste to the premises. A Plaintiff's decision to add a money count to the complaint will have been based on those facts that give rise to a claim peculiar to the Plaintiff's fact situation at the time the lawsuit was filed. If a Plaintiff has alleged monetary damages he or she should be prepared to present proof of those specific damages at the time of trial. This could present significant problems for the Plaintiff who has not inspected the premises prior to the time of the trial. The Court clearly realizes that a Plaintiff might find themselves faced with the tactical and legal decision to (a) seek a judgment for unpaid rent and effectively waive any further damages or to (b) dismiss the money damage count without prejudice with leave to file another action later if that is actually becomes necessary. This decision could well involve substantial uncertainties; however, the case will in all likelihood not be continued for a second hearing at a later date. Please be prepared for trial according to your specific facts and the complaint that you filed.

Ninth, the Court fully intends to continue to evaluate the progress of the implementation of this new residential eviction process and will hopefully be able to make the transition work as smoothly as possible. Changes in these procedures appear to be virtually inevitable. Your comments and input are welcome and encouraged. We do not pretend to have a fully satisfactory answer to all the questions that have arisen from this new Act. Further, the Court will gladly try to assist parties who wish to challenge the decisions that have been made in this process of trying to facilitate the transition to the new URLTA proceedings. If a Plaintiff and a Defendant see a case that is ripe for appeal in order to obtain appellate clarification of a critical issue, the Court welcomes that effort and will try to accommodate such an appeal if at all possible.

Done and ordered this 14th day of February 2007.

  
Judge George N. Hardesty, Jr.  
Presiding District Court Judge

  
Judge Judson W. Wells

  
Judge Charles N. McKnight

  
Judge Michael E. McMaken