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**GAHRA 2021 ANNUAL CONFERENCE**  
SAVANNAH, GEORGIA  
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**Stewart Duggan - Presenter**

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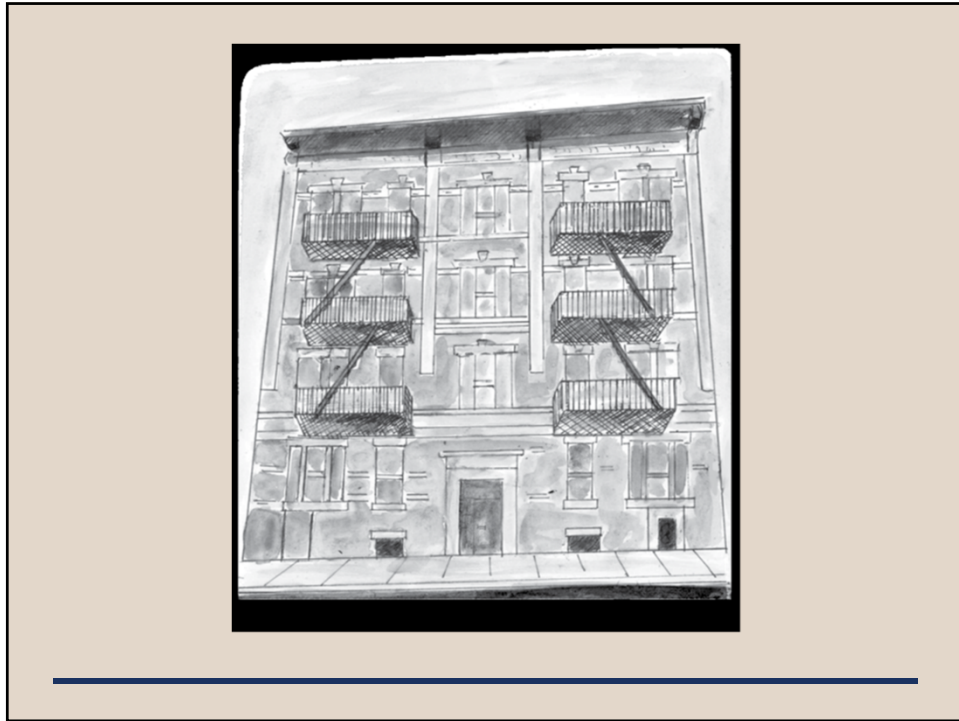
**A Refresher on:**

**Landlord-Tenant Laws**

**&**

**Lease Enforcement & Evictions**

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## Robbers and armies kept at bay in feudal times

- Between 800-1200 in **Medieval** Europe, castles and fortified towns were built and small armies formed to protect against marauding bands of robbers and armies.



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## Lords kept serfs safe – but at a cost



- Lords of the castles protected nearby small farmers – “serfs” – in exchange for a portion of their produce.

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## Landlords held the advantage for centuries

- Although the system evolved into renting housing, the power differential remained the same.
- Landlords held a decisive advantage in legal, social and economic power
- Landlords maintained the virtually unchallenged right to evict. Tenants could do little to stop it.

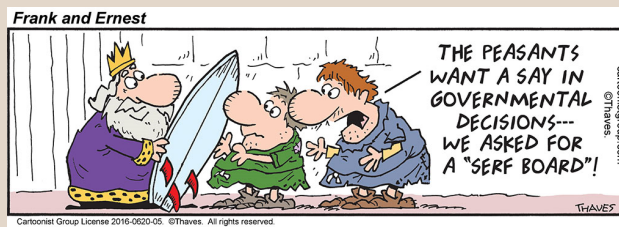


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## Post World War II shift in power from landlord to tenant

- Foundation of all tenancies is now a "habitable" or livable dwelling.
- Tenants could now withhold rent until repairs were done.
- Burden now on the landlord to meet state habitability standards.



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## Newly established tenant rights

- The landlord-tenant relationship, once negotiated privately between the parties themselves, was now carefully regulated.
- New rights now granted to tenants included:
  - Protection against unlawful access
  - Proper handling of security deposits
  - Habitable apartment
  - Protection against discrimination
  - Presumption of retaliation



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## Warranty of habitability provides tenants with defenses and counterclaims against eviction



- Landlords that don't maintain their units have "breached" the warranty of habitability. O.C.G.A. § 44-7-13
- Tenants may receive rent abatements or recoup monies based on pursuing warranty of habitability claims.

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## Being a landlord can be difficult

- Landlords can face difficulties being able to:
  - collect the rent
  - maintain the unit
  - get access to do repairs
  - minimize property damage
  - keep the peace
  - evict tenants without substantial cost, even for nonpayment



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## GEORGIA REFRESHER: LANDLORD-TENANT LAWS

- Good Dwelling Lease Agreement;
- Grievance Training;
- Dispossessory Proceedings/Lease Termination;
- Preparing for Court

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## TENANT DWELLING LEASE

- I. Important to have a good lease with clear terms
- II. Define criminal activity broadly
- III. Make sure do not have to have conviction first
- IV. Residents responsible for guests – period.

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## TENANT DWELLING LEASE, cont.

- I. Residents have no authority to authorize other persons to live in apartment unit
- II. Serious Lease Violation– define and expand
- III. Appearing for mandatory conferences – serious lease violation?
- IV. Bed Bug Policies – Full Cooperation – Addendum
- V. Non- Smoking Addendum (include vaping, warnings, etc.)
- VI. Relocation Addendum (RAD – LIHTC).
- VII. Non-Forfeiture Provisions re: Lease Enforcement - Occupancy

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## TENANT DWELLING LEASE, cont.

- VIII. Timing of payment of Maintenance Charges – grounds for termination;
- IX. No grievance afforded for criminal activity/drugs manufacture/sale;
- X. Criminal activity off the premises that impacts residents/development;
- XI. Tripping hazards or blocked egress;
- XII. Keeping unauthorized pets;

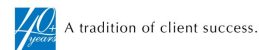
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## TENANT DWELLING LEASE, cont.

- VIII. Housekeeping policies/Expectations;
- IX. Smoke alarm or CO2 detectors missing/damaged/deactivated;
- X. 48 Hour Notice to gain access to and enter the unit.
- XI. Occupancy standards – 2 heartbeats to bedroom – generally reasonable.

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## TENANT DWELLING LEASE

- Don't be reluctant to update your lease often to fill in or to eliminate potential loopholes, gaps, etc.
- Incorporate “ban” list into lease and make it a contractual obligation for tenant to remain apprised of “ban” list.
- Not responsible for damages/losses to tenant's personal property (**Notify tenants of right to obtain Rental Insurance**)

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## Tenant's Rental Insurance

- A Landlord's property insurance typically does not cover a tenant's personal items or property that is damaged due to fire, theft, or water.
- **Notify tenants of right to obtain Rental Insurance; what it does; and where it may be purchased. Include wavier and release provisions in lease as it relates to a tenant's failure to purchase renter's insurance.**
- **Clear provisions and in BOLD.**

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## GRIEVANCE TRAINING

- Conduct periodic or annual training of grievance officers or panel participants
- Decisions based solely on facts, evidence, rules
- Neutrals – No bias in favor of PHA. No Board Members should serve as hearing officers. 24 CFR § 966.53
- Uphold/Affirm or Not Uphold

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## GRIEVANCE TRAINING

- No authority to craft own solution or remedy
- Cannot give a 2<sup>nd</sup> chance or 30-day trial
- Notify and allow access to records, where requested.
- **BUT**, only allow access to records than are directly related to the hearing or the reasons for termination. 24 C.F.R. § 966.56(b)(1).

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## GRIEVANCE TRAINING

- Consider the grievance hearing as a trial run or practice for going to Court
- Be prepared – have good, clear evidence.
- Have supporting documents ready & prepared witnesses.
- Ensure that hearing officers provide a written decision explaining what they relied upon in reaching their decision.
- Promptly communicate written decision to tenant.

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## DISPOSSESSORY PROCEEDINGS – O.C.G.A. § 44-7-50 et. seq.

- Three alternative grounds for dispossession:
  - 1. The Tenant is holding over and beyond the term;
  - 2. The Tenant fails to pay rent when due;
  - 3. The Landowner desires the premises held by a tenant at will or a tenant at sufferance.

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## DISPOSSESSORY PROCEEDINGS – O.C.G.A. § 44-7-50 et. seq.

- Good and sufficient cause is required.
- A strong factual basis that supports terms of lease.
- HUD: Serious or other repeated lease violations
- Must provide due process (last safety net).

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## LEASE TERMINATION

- Notice to the tenant of the grounds for terminating the lease – **provide factual basis.**
- Lease termination notice should cite to EVERY provision of lease that may be violated or breached. (Be Inclusive – may always discard some reasons cited.)

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## LEASE TERMINATION LETTER

- Provide tenant with a short summary of the factual basis for the lease termination – cite to lease.
- Need not list all the facts, **but** describe the event or incidents, including dates or time period, to provide adequate notice by explaining the factual basis and reasons for the eviction or lease termination.

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## LEASE TERMINATION

- Don't forget to demand possession of the premises and that tenant relinquish possession of the premises by a date certain. **REQUIRED BY LAW!**
- Don't accept partial payment if terminating for failure to pay rent or may have to dismiss and start over.

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## LEASE TERMINATION NON-PAYMENT OF RENT

- In order to dispossess a tenant based on nonpayment, the past due rent must remain unpaid when the dispossessory proceeding is commenced, and an acceptance of all or any part of the rent after its due may operate as a waiver of the Landlord's right of dispossession.

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## LEASE TERMINATION NON-PAYMENT OF RENT

- If a Landlord accepts rent which accrues under the lease subsequent to the commencement of a dispossessory action **which is based on nonpayment of rent**, such acceptance constitutes an affirmation that the lease remains in existence, and serves to effectively waive the Landlord's right to dispossess based upon nonpayment.

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## LEASE TERMINATION NON-PAYMENT OF RENT

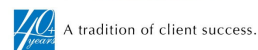
- Acceptance by the Landlord of a rental installment agreement estops the Landlord from dispossessing the tenant during the period for which rent has been paid, even if there is a substantial arrearage for prior rental periods.
- **Why?** Because Georgia law says it is inconsistent to allow a Landlord to collect rent under the terms of the lease yet still declare a forfeiture of the lease for non-payment.
- Carefully craft or draft your Repayment Agreements! (**ACOP or other written policy recommended**).

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## LEASE TERMINATION

- Again, a demand for possession of the premises is a condition precedent to the right to dispossess.
- This demand **must be made prior** to the commencement of dispossessory action.

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## GOING TO COURT

- Be prepared and go only if you believe you have a factually and legally strong case.
- Documentary evidence, including lease.
- Subpoena witnesses.
- Provide copies of videos recording.
- Subpoena police officers/police reports

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## GOING TO COURT Difficult Cases


- Be willing to negotiate for certainty of possession.
- If strike a deal, reduce to a clearly-defined consent order of dispossessory. (Include terms that allow you to return to Court.)
- Consent Order may allow for dismissal of action to help keep tenant's record clean.

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## SECURITY DEPOSIT

- Be sure to account for tenant's security deposit.
- Must return \$\$\$\$ or provide an accounting, in writing, within 30 days.
- Need to always ensure move-in/move-out checklist is timely completed and, as to move in, signed off by tenant.
- Tenant should be offered opportunity to be present for move out inspection.

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## SECURITY \$\$\$ DEPOSIT

Must complete Initial Move-In Inspection regarding condition of property – Have Tenant Sign.

Should inspect unit within three (3) business days after Tenant vacates the unit and prepare list of damages and estimated cost.

Tenant may, within five (5) days after termination of occupancy inspect the premises to ascertain the accuracy of Landlord's listing

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## SECURITY \$\$\$ DEPOSIT

If Landlord has failed to timely provide each required list (Move-In and Move-Out) along with a written statement of damages within thirty (30) days, Landlord not only **forfeits** its right to retain *all or any part of the security deposit*, but the Landlord is also **estopped** from bringing suit against the Tenant for damages to the premises. O.C.G.A. § 44-7-35(b).

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## FAILURE TO RETURN \$\$\$

Under Georgia law, a landlord's failure to return and/or properly account for security deposit may result in a civil penalty equal to **3x** the amount of the security deposit, plus an award of attorney fees and costs.  
O.C.G.A. § 44-7-35(c).

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## HUD: Service & Emotional Support Animals

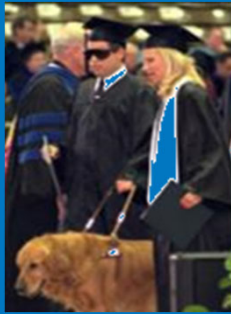
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## Service Animals & Public Access

- ▶ It's all about DOGS!!!
- ▶ What questions can/can't be asked  
boundaries can be set?
- ▶ What about other animals?



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## Important facts:

1. Only dogs will be recognized as service animals.
2. Service animals are required to be leashed or harnessed except when performing work or tasks where such tethering would interfere with the dog's ability to perform.
3. Service animals are exempt from breed bans as well as size and weight limitations.

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## What is the definition of service animal?

- “Service animal means any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- Other species of animals, whether wild or domestic, trained or untrained, are **not** service animals for the purposes of this definition. The work or tasks performed by a service animal must be **directly related** to the handler’s **disability**.


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## Examples of types of tasks...

- ▶ Tasks can be for people with physical, sensory, psychiatric, intellectual, or mental disabilities.
- ▶ Assist during seizure.
- ▶ Retrieve medicine or other items.
- ▶ Help individual with dissociative identity disorder to remain grounded.
- ▶ Prevent/interrupt impulsive or destructive behavior.
- ▶ Assist with balance, stability.
- ▶ Provide non-violent protection or rescue work.




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## Questions That CAN Be Asked for Public Access:

- Only two permissible inquiries:
  1. Is this a service animal required because of disability?
  2. What work or tasks is the animal trained to perform?




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## CAN'T ask a person...

- ▶ Can't ask about disability.
- ▶ Can't request documentation (no formal training or certification required).
- ▶ Can't ask for additional payment (no surcharges).
- ▶ Can't exclude from most healthcare settings (except operating rooms and burn units).
- ▶ Can't require demonstration that trained or under control.



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## What about emotional support or protection animals?

- ▶ Dogs whose sole function is “the provision of emotional support, well-being, comfort, or companionship” are **not** considered service dogs.
- ▶ The use of service dogs for psychiatric and neurological disabilities is explicitly protected.
- ▶ “The crime deterrent effects of an animal's presence” **do not qualify** that animal as a service animal and “an animal individually trained to provide aggressive protection, such as an attack dog, is not appropriately considered a service animal.”

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## Emotional Support v. Service Animal

- ▶ Unless the animal is individually trained to do something that qualifies as work or a task, the animal is a pet or support animal and does not qualify for coverage as a service animal. A pet or support animal may discern that the handler is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal.
- ▶ DOJ states “that an animal that is trained to ‘ground’ a person with a psychiatric disorder does work or performs a task that would qualify it as a service animal as compared to an untrained emotional support animal whose presence affects a person’s disability. **It is the fact that the animal is trained to respond to the individual’s needs that distinguishes an animal as a service animal.**”

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## Emotional Support Animals and HUD...

- Although emotional support or therapeutic animals are not trained, they still must be accommodated to ensure equal opportunity to use and enjoy a dwelling where a Tenant has a legitimate disability and documentation evidences the need for said “emotional support animal” to assist in address or alleviating a condition of disability. (Fair Housing Act).
- HUD says that “[d]isclosure of details about the diagnosis or severity of a disability or medical records cannot be required.

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## When can a service animal or emotional-support animal be excluded or removed?

- ▶ The animal is out of control and the animal’s handler does not take effective action to control it, or
- ▶ The animal is not housebroken or refuses to obey or honor reasonable restrictions or rules imposed by Landlord, etc.
  - PHA or Landlord is not responsible for care or supervision of a service animal.

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## Miniature Horses

- ▶ No Longer Allowed – doesn't meet definition of service animal – only dogs/canine



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## What about monkeys or other wild animals?

- DOJ “has decided to make clear that all wild animals, whether born or bred in captivity or in the wild, are eliminated from coverage as service animals.”

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# QUESTIONS ??????????

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