

EJECTMENT OR EVICTION

A primer on Alabama Law

It is a property owner's worst nightmare; a tenant who does not pay his rent and refuses to move out of the property or an owner who has been foreclosed but refuses to vacate. These "Squatters" are both a financial burden and a legal quagmire for a landlord or purchaser at a foreclosure sale.

Alabama's Uniform Residential Landlord-Tenant Act, §35-9A-101 et seq. has established a streamlined procedure for evictions in Alabama in an effort to restore possession of the property to the landlord in a more efficient, faster manner. But eviction proceedings in District Court are not always available to be employed.

A simple Tenant who defaults in the payment of rent is subject to an action for eviction. However, if the possessor of the property claims either legal or equitable title to the subject property, under Alabama law, the Landlord or foreclosure purchaser is required to pursue an ejectment action. *Ex parte McKinney*, 87 So. 3d 502 (Ala. 2011). In the modern era with the proliferation of alternative financing arrangements, including Bonds for Title, leases with various options and the like, a landlord can occasionally attempt an eviction. The eviction will most likely be dismissed due to the court's lack of subject matter jurisdiction. If any equity/ownership is provided to the tenant as they make their monthly payment, then an ejectment action would be the proper vehicle to get the terminate their interest in the property.

Unlike an eviction action which can be prosecuted in District Court, an ejectment action must be filed and prosecuted in Circuit Court. Discovery, which is generally not allowed in District Court, is available in Circuit Court and an ejectment action in Circuit

Court carries the possibility of a jury demand and a jury trial. *Ex parte Moore*, 880 So. 2d 1131 (Ala. 2003).

Legal or equitable title to the subject property is determined at the time of the termination of the Party's possessory interest. Therefore in a foreclosure situation, an ejectment action is always required and an eviction action is not proper. Likewise, anytime a lease contains an option to purchase or any other option other than a straight up lease for a specific term, you must proceed in ejectment. Only a residential lease, where the tenant has failed to pay the rent when due, is capable of being handled in the abbreviated eviction process in District Court.

While an eviction is begun by filing a unlawful detainer form that is brief and simple, an ejectment action is begun by filing a drafted complaint in Circuit Court. In an eviction action the Defendant has 7 days to respond after they are served with the complaint. In an ejectment action the Defendant has 30 days to respond. In an eviction action, the tenant can be properly served by posting a copy of the complaint on the entrance to the dwelling whereas in an ejectment action, the Defendant must be personally served with a copy of the complaint. (However, in an eviction action, in order to take a judgment against the Defendant for money damages, the Defendant must be personally served.) In an ejectment action, the full range of discovery is available to both the Plaintiff and Defendant and cases in Circuit Court take a great deal longer to get to trial than eviction actions in District Court.

The key is this analysis is to know what you are getting into. Properly drafting the terms of the lease will allow you to always evict, which in my opinion is the preferably way to proceed but the documentations have to allow for it. If

you decide to make the tenant responsible for more than rent and late fees if applicable (i.e. taxes and insurance; utilities for the property are fine), then you will probably find yourself in Circuit Court with more expenses and a longer process because an ejectment action will be your only option to get the property back. As for foreclosures, you are stuck with the ejectment but just know that is the case when you buy a property at the sale.

This is a brief summary of the differences between eviction actions and ejectment actions and hopefully sets forth a guide as to when an eviction or ejectment is proper.

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