

Real Estate Leasing: Alabama

by Adam J. Sigman, Crystal Walls, and Nathan Stotser, Dentons Sirote PC, with Practical Law Real Estate

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Alabama. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across several jurisdictions (see Real Estate Leasing: State Q&A Tool).

Execution and Enforceability

1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any homestead law requirements.
- There are any other important requirements in your state.

For information on Alabama's adoption of e-signatures/e-recording and remote online notarization, see Question 20.

Witnesses

Under Alabama law, a lease must either be:

- Attested by one witness.
- Properly acknowledged by an authorized officer, for example, a notary public.

(Ala. Code §§ 35-4-20 and 35-4-23.)

Two witnesses are required when the contracting party either:

- Cannot write their name.
- Has their name written for them by another person.

(Ala. Code § 35-4-20.)

Acknowledgments

If the lease is not attested by a witness, it must be properly acknowledged by an authorized officer, for example, a notary public (Ala. Code §§ 35-4-20 and 35-4-23).

Counterpart Signatures

If permitted by the lease, counterpart signatures are enforceable under Alabama law.

Homestead Laws

If a husband and wife desire to lease their homestead, both the husband and wife must sign the lease (Ala. Code § 6-10-3).

Other Requirements

Although outside of the scope of this Q&A, if the lease is a residential lease, the Alabama Uniform Residential Landlord and Tenant Act should be consulted (Ala. Code §§ 35-9A-101 to 35-9A-603).

2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

Limited Partnership

STATE OF [STATE])

COUNTY OF [COUNTY])

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [signatory title] of [LIMITED PARTNERSHIP NAME], a [DISTRICT OF LIMITED PARTNERSHIP ORGANIZATION] limited partnership, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, (s)he, as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL] [NOTARY SIGNATURE]_____
Notary Public
My Commission Expires: [DATE]

Trustee

STATE OF [STATE])

COUNTY OF [COUNTY])

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [SIGNATORY TITLE] of [NAME OF ENTITY], is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, (s) he, as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said [ENTITY TYPE].

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL] [NOTARY SIGNATURE]_____
Notary Public
My Commission Expires: [DATE]

Disclosures, Certifications, and Implied Uses

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

In Alabama commercial leases, there are no disclosures required from either the landlord or the tenant. The only certificates that either party may be required to provide to the other are those specified in the lease.

Although outside of the scope of this Q&A, if the lease is a residential lease, the Alabama Uniform Residential Landlord and Tenant Act should be consulted (Ala. Code §§ 35-9A-101 to 35-9A-603).

5. Is a lease deemed to include an implied warranty of fitness for intended use?

Under Alabama law, a lease does not include an implied warranty of fitness for intended use (*Martin v. Springdale Stores, Inc.*, 354 So. 2d 1144, 1145-46 (Ala. Civ. App. 1978)).

Term, Renewal, and Early Termination

6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

Limit on Maximum Term

Under Alabama law, the term of a lease cannot be longer than 99 years. In addition, if the lease (or a memorandum of lease) is not recorded within one year of the signing, any portion of the term of the lease greater than 20 years is invalid. (Ala. Code § 35-4-6.)

Tenant Renewal

A landlord is not required to allow a tenant to renew a lease unless the lease specifies otherwise.

Early Termination

In commercial leases, there are no requirements that allow the tenant to terminate the lease before the expiration date unless the lease expressly specifies otherwise.

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

In Alabama, the landlord is not required to provide the tenant with a notice before the effective date of a renewal if the lease term automatically renews.

Rent and Security Deposits

8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

Maximum Rent

In Alabama commercial leases, there are no restrictions on the rent a landlord may charge unless specified or provided otherwise in the lease agreement.

Operating Expenses

There are no restrictions related to commercial leases on what operating expenses may be passed through to the tenant, so long as the expenses that are to be passed through are stated in the lease.

Although outside of the scope of this Q&A, if the lease is a residential lease, the Alabama Uniform Residential Landlord and Tenant Act should be consulted (Ala. Code §§ 35-9A-101 to 35-9A-603).

9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest-bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

Commingling Permitted

In Alabama, a landlord is not required to maintain security deposits in a separate bank account for each tenant and may commingle security deposits with the landlord's other funds.

Interest-Bearing Account

A security deposit does not have to be held in an interest-bearing account.

Administrative Fees

If any interest is earned, the landlord is not required to pay the interest to the tenant unless the lease expressly specifies otherwise.

Transfer Taxes and Other Taxes

10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Rate and Calculation

Under Alabama law, transfer taxes are due when the lease (or a memorandum of lease) is recorded in the public records (Ala. Code § 40-22-1(a)). Transfer taxes

are \$1 multiplied by the tax consideration. The tax consideration is calculated as follows:

Tax consideration = Term of lease (in months) x Monthly rent x Percentage from a lease percentage chart kept by the probate court of the county where the property is located (which is based on the term of the lease) / 1000

(Ala. Code § 40-22-1(c).)

Attorneys should contact the probate court of the county where the property is located to obtain the proper lease percentage table for that county.

The tax consideration is rounded up to the nearest \$500 (Ala. Code § 40-22-1(c)).

Returns

No special returns are required to be filed on transfer taxes.

Timing

The transfer taxes must be paid when the lease (or memorandum of lease) is presented for recording. The lease (or memorandum of lease) will not be recorded if the transfer taxes are not paid. (Ala. Code § 40-22-1(a).)

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Under Alabama law, no state or local transfer taxes are triggered when a tenant undergoes a direct or indirect transfer of its ownership interest, unless the instrument transferring the ownership interest is recorded as a conveyance of property (Ala. Code § 40-22-1).

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

There are no rental or other taxes in Alabama that the landlord must collect from the tenant.

Assignment, Financing, and Transfers

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

In Alabama, a tenant generally has the right to sublease the property or assign the lease without the landlord's consent if the lease is silent about subleases and assignments. Typically, however, the ability to assign the lease or sublease the premises is restricted to a certain extent in the lease.

If the lease requires the landlord's consent before subleasing or assigning the lease, the landlord cannot "unreasonably and capriciously" withhold consent (*Homa-Goff Interiors, Inc. v. Cowden*, 350 So. 2d 1035, 1038 (Ala. 1977)).

14. If the lease does not expressly define the term "assignment" and there is no other express restriction in the lease to the contrary can the:

- Tenant's corporate ownership interests be freely transferred without the landlord's consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord's consent?

Transfer of Ownership Interests

In Alabama, a tenant's corporate ownership interests may be freely transferred without the landlord's consent if the lease does not define an assignment to include a transfer of an ownership interest in the tenant.

Security Lien or Pledge of Ownership Interests

Unless the lease expressly specifies otherwise, the tenant can place a lien on its leasehold interest or pledge its corporate ownership interest without the landlord's consent.

15. When a lease requires a landlord's consent for an assignment and defines the term "assignment" to include a transfer of the tenant's corporate ownership interests, would an indirect transfer of the tenant's interests trigger the landlord's consent requirement?

Depending on the language of the lease, an indirect transfer of the tenant's corporate ownership interests would likely trigger the landlord's consent requirement in Alabama.

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

Typically, in Alabama, if the lease is silent on whether the original tenant is released in the event of an assignment, the original tenant/assignor is not released from future liability.

17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?

In Alabama, there are no statutory restrictions on the landlord's ability to transfer real property subject to the lease. If the landlord transfers its interest in the real property, the tenant's rights and obligations remain the same unless the lease provides otherwise.

Remedies

18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

Implied Remedies

An Alabama landlord may only accelerate rent in a commercial lease if the lease expressly permits the acceleration of rent.

Self-Help

A landlord may only pursue self-help to retake possession of the premises after a default if the lease permits reentry on default.

Eviction Proceeding

The typical form of an eviction proceeding involving commercial leases is an action for an unlawful detainer.

The landlord must give notice of termination at least ten days before terminating the lease (Ala. Code § 35-9-3). In the notice of termination, the landlord must demand that the tenant surrender possession of the premises within ten days of receiving notice of demand (Ala. Code § 35-9-6).

If the tenant does not deliver possession, the landlord may pursue an unlawful detainer action in the district court of the county where the premises is located (Ala. Code § 6-6-330). The landlord's complaint must be served on the tenant at least six days before the hearing date (Ala. Code § 6-6-332(b)). If the district judge rules in favor of the landlord, the court files a writ of execution, which requires the sheriff to restore the premises to the landlord (Ala. Code § 6-6-337(a)). The tenant may file an appeal of the judge's ruling within seven days, and a trial on the appeal is scheduled within 60 days of date of the appeal (Ala. Code § 6-6-350). The landlord's right to possession:

- Will not be delayed by a tenant's appeal.
- Can only be prevented if the tenant pays all rent payable before the landlord regains possession through a writ of possession.

(Ala. Code § 6-6-351.)

Expedited Remedies

Alabama law does not provide any automatic expedited remedies for commercial leases. Therefore, the lease may provide that a landlord and tenant may do either or both of the following:

- Waive their right to a jury trial.
- Agree to resolve disputes through arbitration.

Arbitration is disfavored in Alabama.

Mitigation of Damages

Alabama law does not impose on a landlord a duty to mitigate damages without an express obligation to do so.

Automatic Termination of a Lease in a Foreclosure Action

19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

In Alabama, the tenant's interest is not subordinate to the landlord's lender's lien if the lease both:

- Existed before the landlord's lender's lien.
- Does not contain language that automatically subordinates the lease to any future landlord's lender's lien.

The lease with priority over the landlord's lender's lien would not be terminated in a foreclosure of the landlord's interest in the property.

If the lender's lien existed before the lease or has priority as specified in the lease, then the lease would be automatically terminated in the event of a foreclosure (*Prestwood v. Weissinger*, 945 So. 2d 458, 461-62 (Ala. Civ. App. 2005)).

However, the lease cannot be terminated if the landlord, tenant, and lender have executed an agreement otherwise (for example, a subordination, non-disturbance, and attornment agreement).

Electronic Signatures, Recording, and Notarization Laws

20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Note that despite adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

Alabama has adopted the UETA (Ala. Code §§ 8-1A-1 to 8-1A-20).

Electronic Recording

Alabama has adopted the URPERA (Ala. Code §§ 35-4-120 to 35-4-127).

Remote Online Notarization

Alabama allows a hybrid of RON known as remote ink notarization (Ala. Code § 36-20-73.1). Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all requirements and conditions.

An individual may personally appear before a notary by either:

- Physically appearing before a notary.
- Appearing by two-way audio-video communication technology if:
 - the parties can communicate simultaneously by sight and sound;
 - the notary public is physically located in Alabama; and
 - the two-way audio-video communication is recorded and maintained for record for seven years following the notarial act.

(Ala. Code § 36-20-73.1(c).)

To identify the signatory either:

- The notary public must have personal knowledge of the signatory's identity.
- The signatory must present two forms of valid government issued identification, including one with the face and signature of the signatory.

- The notary public must verify the signatory's identity through a review of public or private data sources.

(Ala. Code § 36-20-73.1(d).)

The two-way audio-video communication recording must contain all the following:

- The date and time of the remote notarial act.
- A description of the documents to which the remote notarial act relates.
- A statement of being physically located in Alabama by the notary public.
- A description of the identity verification process of the signatory.
- A clear image of any government identification used to identify the signatory, if applicable.
- A clear image of the act of signing observed by the notary public.

(Ala. Code § 36-20-73.1(e).)

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

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