

# Lease of Real Property

## CHAPTER 43-32

### LEASE OF REAL PROPERTY

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- 43-32-1. Leasing of real property defined.**

Leasing is a contract by which one (the lessor or landlord) gives to another (the lessee or tenant) temporary possession and use of real property for reward and the lessee agrees to return such property to the lessor at a future time.

**Source:** SDC 1939, § 38.0401.

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**43-32-2. Limited term of lease--Agricultural land--Municipal lots.**

No lease or grant of agricultural land for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

No lease or grant of any municipal lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid.

**Source:** CivC 1877, § 203; CL 1887, § 2719; RCivC 1903, § 226; RC 1919, § 296; SL 1921, ch 277; SDC 1939, § 38.0403; SL 1977, ch 343; SL 1992, ch 60, § 2.

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**43-32-3. Hiring of real property presumed for one year--Exception.**

A hiring of real property, other than lodgings in places where there is no usage on the subject, is presumed to be for one year from its commencement unless otherwise expressed in the hiring.

**Source:** CivC 1877, § 1116; CL 1887, § 3739; RCivC 1903, § 1435; RC 1919, § 1059; SDC 1939, § 38.0411.

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**43-32-4. Hiring of lodgings--Length of term--Presumption.**

A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the hiring is presumed to be monthly.

**Source:** CivC 1877, § 1117; CL 1887, § 3740; RCivC 1903, § 1436; RC 1919, § 1060; SDC 1939, § 38.0412.

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**43-32-5. Lease of real property for more than one year--Written contract necessary.**

No agreement for the leasing of real property or an interest therein for a longer period than one year is valid unless the same, or some note or memorandum thereof, be in writing, signed by the lessor or his agent thereunto authorized in writing.

**Source:** CivC 1877, § 993; CL 1887, § 3617; RCivC 1903, § 1311; RC 1919, § 856; SDC 1939, § 38.0402.

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**43-32-6. Obligations of lessor of real property--Tenant's remedies against lessor.**

A lessor shall deliver the leased premises to the lessee and secure his quiet enjoyment thereof against all lawful claimants.

If the lessor of residential property unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may sue for injunctive relief, recover possession by suit, or terminate the rental agreement and, in any case, recover from the lessor damages in an amount equal to two months rent and the return of any advance rent and deposit paid to the lessor by the lessee.

**Source:** SDC 1939, § 38.0404; SL 1976, ch 267, § 1; SL 1982, ch 299.

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**43-32-6.1. Maximum security deposit for residential premises--Larger deposit by mutual agreement.**

Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, shall be deemed to be a security deposit. A lessor of residential premises may not demand or receive a security deposit, however denominated, in an amount or value in excess of one month's rent except that a larger deposit may be agreed upon between the lessor and the lessee where special conditions pose a danger to maintenance of the premises.

**Source:** SL 1976, ch 267, § 2.

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43-32-7. Repealed by SL 1983, ch 13, § 29

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**43-32-8. Residential lessor to keep premises in repair--Disrepair caused by lessee--Agreements for repairs in lieu of rent--Liability to third persons unaffected.**

In every hiring of residential premises, whether in writing or parol, the lessor shall keep the premises and all common areas in reasonable repair and fit for human habitation and in good and safe working order during the term of the lease except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control. The lessor shall maintain in good and safe working order and

condition all electrical, plumbing, or heating systems of the premises, except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control.

The parties to a lease or hiring of residential premises may not waive or modify the requirements imposed by this section; however, the lessor may agree with the lessee that the lessee shall perform specified repairs or maintenance in lieu of rent

The provisions of this section shall be in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease. Nothing in this section shall be construed to alter the liability of the lessor or lessee of residential premises for injury to third parties.

**Source:** CivC 1877, § 1114; CL 1887, § 3737; RCivC 1903, § 1433; RC 1919, § 1057; SDC 1939, § 38.0409; SL 1976, ch 267, § 4.

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#### **43-32-9. Failure of lessor to repair premises--Lessee's remedies.**

If within a reasonable time after notice to the lessor of conditions requiring repair to make the premises fit for human habitation and to place the same in good and safe working order which the lessor ought to repair he neglects to do so, the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions.

If the cost of necessary repairs exceeds one month's rent, after written notice stating the specific reason for the withholding, the lessee may withhold payment of rent and immediately deposit it in a separate bank or savings and loan account, written evidence of such action to be provided to the lessor upon deposit, maintained only for the purpose of making repairs until such time as the lessor makes the repairs, at which time the lessee shall release the deposit to the lessor or until sufficient money is accumulated in the account for the lessee to cause the repairs to be made and paid for.

**Source:** CivC 1877, § 1115; CL 1887, § 3738; RCivC 1903, § 1434; RC 1919, § 1058; SDC 1939, § 38.0410; SL 1976, ch 267, § 5.

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#### **43-32-10. Preservation of premises by lessee.**

In every hiring of residential premises, whether in writing or parol, the lessee shall preserve the premises, appliances, appurtenances, and other leased personalty in good condition, and repair all deteriorations or damage thereto occasioned by his negligent, willful or malicious conduct or such conduct of persons acting under his direction or control.

**Source:** SDC 1939, § 38.0404; SL 1976, ch 267, § 6.

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#### **43-32-11. Use of premises when leased for particular or specified purpose--Responsibility of lessee--Rescission of contract.**

If premises are leased for a particular and specified purpose the tenant must not use the premises for other purposes; and if he does, the landlord may hold him responsible for the safety of the premises during such use, at all events, or he may treat the contract as thereby rescinded.

**Source:** SDC 1939, § 38.0419.

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**43-32-12. Time for payment of rent--Agricultural and wildland--Lodging--Termination of hiring.**

When there is no contract or usage to the contrary, the rent of agricultural and wildland is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

**Source:** CivC 1877, § 1120; CL 1887, § 3743; RCivC 1903, § 1439; RC 1919, § 1063; SDC 1939, § 38.0414.

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**43-32-13. Modification of lease--Written notice by landlord, effect--Termination by tenant.**

In all leases of lands or tenements or of any interest therein from month to month the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, modify the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. The tenant may terminate his lease effective the first day of the next month by providing notice of termination to the landlord within fifteen days of receipt by the tenant of the notice of modification.

**Source:** CivC 1877, § 261; CL 1887, § 2777; RCivC 1903, § 284; RC 1919, § 354; SDC 1939, § 38.0417; SL 1980, ch 298.

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**43-32-14. Retention of possession by lessee after expiration of hiring--Acceptance of rent by lessor--Renewal of hiring--Terms.**

If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

**Source:** CivC 1877, § 1118; CL 1887, § 3741; RCivC 1903, § 1437; RC 1919, § 1061; SDC 1939, § 38.0415.

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**43-32-15. Renewal of hiring of real property presumed unless notice given of termination.**

A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in § 132-14 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the same at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

**Source:** CivC 1877, § 1119; CL 1887, § 3742; RCivC 1903, § 1438; RC 1919, § 1062; SDC 1939, § 38.0416.

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**43-32-16. Tenant receiving notice of adverse proceedings--Duty to inform landlord.**

Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver to him, if in writing.

**Source:** CivC 1877, § 1121; CL 1887, § 3744; RCivC 1903, § 1440; RC 1919, § 1064; SDC 1939, § 38.0418.

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#### **43-32-17. Attornment of tenant to stranger, validity--Consent of landlord--Judgment.**

The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

**Source:** CivC 1877, § 1121; CL 1887, § 3744; RCivC 1903, § 1440; RC 1919, § 1064; SDC 1939, § 38.0418.

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#### **43-32-18. Termination of lease by landlord before end of agreed term--Use of premises by tenant contrary to agreement--Neglect of tenant to make repairs.**

A landlord may terminate a lease and reclaim the premises before the end of the agreed term:

- (1) When the tenant uses or permits a use of the premises in a manner contrary to the lease agreement; or
- (2) When the tenant does not within a reasonable time after request make such repairs as he may be bound to make.

**Source:** SDC 1939, § 38.0420.

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##### **43-32-18.1 . Eviction of tenant--Limitations.**

A lease governing residential property may not include any term that authorizes the eviction of a tenant who calls or otherwise seeks assistance from law enforcement or other emergency responders because of an alleged incident of domestic abuse, unlawful sexual behavior, or stalking.

Nothing in this chapter authorizes the eviction of a tenant solely because the tenant or a member of the tenant's household is the victim of alleged domestic abuse, unlawful sexual behavior, or stalking.

**Source:** SL 2020, ch 190, § 1.

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#### **43-32-19. Termination of lease by tenant--Causes.**

A tenant may terminate a lease before the end of the term if:

- (1) The landlord does not, within a reasonable time after written request, fulfill obligations, if any, as to placing and securing the tenant in quiet possession of the premises or putting the premises into good condition or repairing the same;
- (2) The greater part of the leased premises or that part which was, and which the landlord had at the time of leasing, reason to believe was the material inducement to the tenant to enter into the lease, is destroyed, from any other cause than the ordinary negligence of the tenant; or
- (3) The tenant meets the provisions of § 43-32-19.1.

**Source:** SDC 1939, § 38.0421; SL 2020, ch 190, § 2.

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**43-32-19.1 . Domestic abuse--Unlawful sexual behavior--Stalking--Termination of lease--Notice requirements.**

If a tenant or a member of the tenant's household is the victim of alleged domestic abuse, unlawful sexual behavior, or stalking, the tenant may terminate the lease and vacate the rental unit without penalty for early termination on or before a specified date, provided:

- (1) The tenant notifies the landlord in writing that the termination is due to the tenant's fear of imminent danger or injury to the tenant or to a member of the tenant's household; and
- (2) The tenant attaches to the notice:
  - (a) A police report regarding an alleged incident of domestic abuse, unlawful sexual behavior, or stalking, signed during the thirty-day period immediately preceding the date of the notice;
  - (b) A protection order issued during the thirty-day period immediately preceding the date of the notice, in response to an alleged incident of domestic abuse, unlawful sexual behavior, or stalking; or
  - (c) Documentation signed by a licensed health care provider indicating that:
    - (i) During the thirty-day period immediately preceding the date of the notice, the provider examined the tenant or a member of the tenant's household;
    - (ii) The examination was within the provider's scope of practice; and
    - (iii) As a result of the examination, the provider has reasonable cause to believe that the tenant or a member of the tenant's household was a victim of alleged domestic abuse, unlawful sexual behavior, or stalking.

A tenant who provides a notice of termination in accordance with this section is not liable to pay any otherwise applicable early termination fee or the rent applicable to the month following that in which the tenant vacates the premises.

**Source:** SL 2020, ch 190, § 3.

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**43-32-19.2 . Contact information--Disclosure--Limitation.**

If in accordance with a termination authorized by § 43-32-19.1 a tenant provides to the landlord a forwarding address or other contact information, the landlord may not disclose that information to any person except with the consent of the tenant or as required by law.

**Source:** SL 2020, ch 190, § 4.

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**43-32-20. Assignment of lease by lessee--Breach of agreement--Recovery of possession--Remedies of lessor-Exception--Security for loan.**

Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

**Source:** CivC 1877, § 260; CL 1887, § 2776; RCivC 1903, § 283; RC 1919, § 353; SDC 1939, § 38.0408.

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### **43-32-21. Assignment of lease by lessor--Breach of agreement--Remedies of lessee--Covenants excepted.**

Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

**Source:** CivC 1877, § 260; CL 1887, § 2776; RCivC 1903, § 283; RC 1919, § 353; SDC 1939, § 38.0408.

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### **43-32-22. Termination of lease--Agreed term--Mutual consent--Acquisition of superior title by tenant.**

A lease is terminated:

- (1) By the expiration of the agreed term;
- (2) By the mutual consent of the parties;
- (3) By the tenant acquiring a title to the leased premises superior to that of the landlord.

**Source:** SDC 1939, § 38.0423.

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### **43-32-22.1. Continuation of farm lease absent notice--Time for notice--Termination without notice in case of default--Grassland included.**

In the case of farm tenants, occupying and cultivating agricultural land of forty acres or more, under an oral lease, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other by September first, whereupon the tenancy shall terminate March first following. The tenancy may not continue because of absence of notice if there is default in the performance of the existing rental agreement. For the purpose of this section, agricultural land includes grassland, either native or tame.

**Source:** SL 1977, ch 342; SL 1991, ch 365; SL 1994, ch 340.

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### **43-32-23. Termination of lease at pleasure of either party--Death or incapacity to contract--Exception.**

If a lease is terminable at the pleasure of one of the parties, it is terminated by notice to the other of such party's death or incapacity to contract. In other cases it is not terminated by such death or incapacity.

**Source:** SDC 1939, § 38.0422.

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### **43-32-24. Return of security deposit after termination of tenancy--Withholding--Itemized accounting--Forfeiture of withholding rights--Punitive damages.**

Every lessor of residential premises shall, within two weeks after the termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from such deposit only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within forty-

five days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of residential premises who fails to comply with this section shall forfeit all rights to withhold any portion of such deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of residential premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

**Source:** SL 1976, ch 267, § 3; SL 1984, ch 281, § 1.

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#### **43-32-24.1. Commercial security deposits.**

For the purposes of this section, the term, commercial premises, means any real property for lease that does not consist of residential property, agricultural land, or any quantity of municipal lots. A lessor of commercial premises shall, within sixty days after the termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return any security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from the deposit only the amounts reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within ninety days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of a commercial premises who fails to comply with this section shall forfeit all rights to withhold any portion of the deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of commercial premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

**Source:** SL 2019, ch 193, § 1.

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#### **43-32-25. Small amount of tenant's property left on premises presumed abandoned--Disposal by lessor.**

The property of a lessee, the total reasonable value of which does not exceed five hundred dollars, left on leased residential premises by the lessee for ten days after the lessee has quit the premises, is presumed to have been abandoned by the tenant and the lessor of the residential premises may dispose of the abandoned property.

**Source:** SL 1976, ch 267, § 7; SL 2008, ch 227, § 1.

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#### **43-32-26. Storage of tenant's valuable property left on premises--Lien--Disposal as abandoned after waiting period.**

The property of a lessee, of a total reasonable value exceeding five hundred dollars, left on leased residential premises by the lessee after the lessee has quit the premises, shall be stored by the lessor. The lessor shall have a lien on the property to the extent of the costs of handling and storing the property. After storing the property for thirty days or more the lessor may treat the property as abandoned and dispose of it.

**Source:** SL 1976, ch 267, § 8; SL 2008, ch 227, § 2.

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### **43-32-27. Cause of action against lessor for retaliatory conduct.**

A cause of action may arise in favor of a lessee and against a lessor of residential property, including a manufactured or mobile home community owner, for retaliation by the lessor against the lessee if the lessor increases rents above fair market value; if the lessor decreases electric, gas, water, or sewer services; or if the lessor gives the lessee notice to vacate the premises when such notice is not based upon a breach of the terms of the lease; subsequent to any of the following special events:

- (1) The lessor has received written notice from the lessee or a governmental agency that the lessee has complained to a governmental agency charged with responsibility for enforcement of a building or housing code violation applicable to the premises and materially affecting health and safety, and the complaint is determined to be reported in good faith; or
- (2) The lessee has given written notice to the lessor of a condition requiring repair pursuant to § 43-32-9; or
- (3) The lessee has organized or become a member of a tenant's union or organization.

It shall be a defense to this cause of action that the notice to vacate the premises was given by the lessor more than one hundred eighty days after the occurrence of a special event. The failure of the lessor to renew any written lease prior to or upon its expiration, is not retaliation.

**Source:** SL 1994, ch 341, § 1.

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### **43-32-28. Retaliatory conduct--Remedies--Attorney's fees.**

If the lessor acts in violation of § 43-32-27, the lessee is entitled to the remedies provided in § 43-32-6. The court may award the lessee reasonable and customary attorney's fees. A lessee seeking attorney's fees shall provide the court with counsel's verified itemized statement of costs incurred and legal services rendered.

**Source:** SL 1994, ch 341, § 2; SL 2020, ch 191, § 1.

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### **43-32-29. Rights and remedies preserved.**

All other rights or remedies of the lessor and the lessee pursuant to any other provision of the law are preserved, except as modified by §§ 43-32-27 and 43-32-28.

**Source:** SL 1994, ch 341, § 3.

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### **43-32-30. Disclosure of knowledge of existence of prior manufacturing of methamphetamines.**

In any hiring of a residential premises, any lessor who has actual knowledge of the existence of any prior manufacturing of methamphetamines on the premises shall disclose that information to any lessee or any person who may become a lessee. If the residential premises consists of two or more housing units, the disclosure requirements provided by this section only apply to the unit where there is knowledge of the existence of any prior manufacturing of methamphetamines.

**Source:** SL 2004, ch 272, § 1.

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### **43-32-31. Notice to vacate and remove mobile or manufactured home from leased property.**

Any person who leases real property to an owner of a mobile or manufactured home shall, if the property is developed for an alternate use, give no less than ninety days notice to vacate and remove the home from the real property. The provisions of this section do not apply if the notice is based upon a breach of the terms of a lease.

**Source:** SL 2008, ch 228, § 1.

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### **43-32-32. Reasonable notice of landlord's intent to enter--Contents.**

Except in case of an emergency or if it is impracticable to do so, a landlord or landlord's agent shall give the tenant reasonable notice of the landlord's intent to enter and enter only at reasonable times. Twenty-four hours written notice is presumed to be a reasonable notice unless alternate methods of notification or times for entry are mutually agreed upon between the landlord and tenant in the lease. The notice shall specify date or dates of entry, a period of time during normal business hours for entry, and the purpose of intended entry. The notice shall also specify a means for which the tenant may request to reschedule the entry.

**Source:** SL 2014, ch 191, § 4.

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### **43-32-33. Service animal and disability defined.**

For the purposes of §§ 43-32-34 to 43-32-36, inclusive, the term, service animal, refers to any animal that serves a role for an individual with a disability as an emotional support animal, any therapy animal, or any assistance animal, and the term, disability, is a physical or mental impairment that substantially limits one or more major life activities of a person.

**Source:** SL 2018, ch 259, § 1.

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### **43-32-34. Landlord permitted to require documentation of disability requiring service animal-Exceptions.**

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling unit, if the tenant asserts a disability requiring under any provision of law that a service animal or assistance animal be allowed as an accommodation on the rented premises. A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord.

**Source:** SL 2018, ch 259, § 2.

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### **43-32-35. Service animal documentation requirements.**

The supporting documentation shall confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. The documentation shall originate from a licensed health care provider who does not operate in this state solely to provide certification for service or assistance animals.

**Source:** SL 2018, ch 259, § 3.

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**43-32-36. Eviction for false claims of disability requiring service animal or fraudulent documentation-- Damages.**

If a person is found to have knowingly made a false claim of having a disability that requires the use of a service animal or assistance animal or of knowingly providing fraudulent supporting documentation in connection with such a claim, a lessor may evict a lessee and the lessor is entitled to a damage fee, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.

**Source:** SL 2018, ch 259, § 4.

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**43-32-37. Ejection--Hotel, campground, or RV park premises.**

A hotel, campground, or RV park establishment may eject a person from the establishment premises, without return of the person's rental payment, as per the establishment's cancellation policy, for any of the following reasons:

- (1) Nonpayment of the business's charges for accommodations or services;
- (2) The person is engaged in disorderly conduct, as described in § 22-18-35, or has been the subject of complaints from other guests;
- (3) The person is using the premises for an unlawful act;
- (4) The person brought onto the premises any explosive or destructive device, as those terms are defined in § 22-1-2;
- (5) The person is not a registered guest of the establishment;
- (6) The person has exceeded the limitations for guest room or site occupancy established by the establishment;
- (7) The person has obtained the accommodation under false pretenses;
- (8) The person is a minor and is not under the supervision of the adult who has obtained the accommodation;
- (9) The person has violated any federal, state, or local laws or regulations relating to the establishment; or
- (10) The person has violated any rule of the business that is posted in a conspicuous place at or near the guest registration desk or inside each guest room, as applicable, of the establishment; except that no rule may authorize the establishment to eject or refuse or deny service in violation of chapter 20-13.

**Source:** SL 2022, ch 164, § 1.