

Welcome

Our Presentation

Will Begin at 12pm

- All viewers are muted. Audience cameras cannot be turned on.
- Who's with us today? Feel free share your nonprofit's name in the chat box.

Setting Up Your
Nonprofit and Your
Housing Participants for
Success:
Best Practices to Avoid
Eviction

March 21, 2024



Josh Archer,

Managing Partner

Katherine Carey,

Associate

Keith Dutton,

Director of Operations/Chief
Compliance Officer

Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

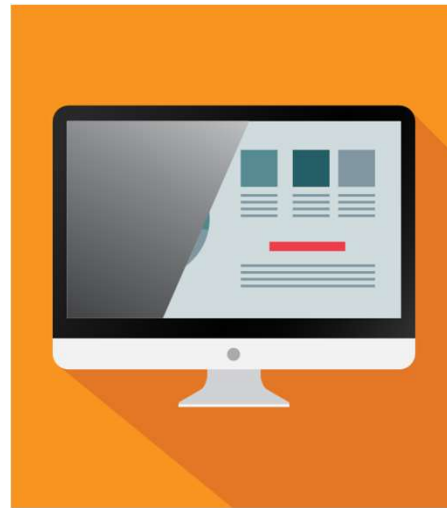
Visit our website at www.pbpatl.org to apply.

PBPA Learning Center for Georgia Nonprofits

www.pbpatl.org/resources

ARTICLES

WORKSHOPS



WEBCASTS

PODCASTS

Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Agenda

- Overview of Presentation
- Speaker Introductions
- Setting Expectations with Housing Participants Early
- Strategies to Address Issues and Avoid Eviction
- Overview of Georgia Landlord-Tenant Law
- Overview of Eviction Process

Questions are welcome at any time!

Speakers

- **Josh Archer**, Managing Partner, Balch & Bingham LLP
- **Katherine Carey**, Associate, Balch & Bingham LLP
- **Keith Dutton**, Director of Operations & Chief Compliance Officer, 3Keys



History: 3Keys was organized in Atlanta, Georgia, in 1988 by private citizens. It began with a mother's desire to provide housing and supportive services to help her son live with his mental illness, without living his life on the streets. Together with her friends, they appealed to top civic and business leaders whose lives and loved ones were affected by mental illness. Since our founding with a single housing program of 48 units, 3Keys has since expanded to a nationally-recognized nonprofit provider of permanent supportive housing with the capacity to provide housing to approximately 580 individuals at any given time.

Mission: To develop and manage affordable permanent housing with on-site supportive services for adults facing the challenges of mental illness and homelessness.

Vision: To lead in supportive housing solutions for the mentally ill and the most vulnerable homeless populations in Metro-Atlanta.

Who We Serve: The individuals served in our programs are diverse subgroups of individual adults over the age of 18, (male or female) from diverse races and ethnicities, as well as veterans. Many of our residents face a dual diagnosis which often includes substance abuse and addiction, developmental disabilities, and/or HIV/AIDS. Prior to residing at 3Keys, residents are known to have come from hospitals, behavioral health institutions, emergency shelters, correctional facilities, the streets or other locations not equipped for habitation who generally have no income.

For Atlanta's homeless population, having a key to their own home can mean a new lease on life. Inspired by the vision of Rosalynn Carter, we believe there are three keys to enabling individuals with mental illness to live lives of purpose and dignity:

HOUSING. HELP . HOPE



Setting Expectations Early

- Written lease agreements
 - Incorporate lease into holistic program participation agreement (such as a contract with the nonprofit including program(s) description (including access to living facilities) and rights/responsibilities of nonprofit and participants)
 - Providing notice(s) that end of lease is approaching
- Screening/participant policies
- Lease Addendums are as important as the lease agreement.
- Clearly conveying the rules and regulations each tenant must abide by.
 - Leave no gray areas
 - Ensure tenants understand each page by adding an initial after each section of the rules and regulations have been reviewed.
 - The Rules and Regulations should be easy to understand.

Strategies to Address Issues

- Providing lease violations or late rent violations are critical for justification for eviction
- **NONPROFITS WANT TO AVOID EVICTION**
 - Its more financially feasible to work with a tenant than go through the eviction process
- **3Keys uses an Eviction Prevention strategy**
 - We offer payment plans
 - Suggest reputable payee's to residents
 - We have an appeals process for anyone that receives a termination.

Strategies to Address Issues (cont.)

- EVICTION CAN BE UNAVOIDABLE
 - In those cases we:
 - File the eviction.
- Using the Courts in Our Favor:
 - Court can be a time to mediate with the tenant
 - Set a payment plan through the courts
 - Offer the tenant to get a payee to avoid eviction
- When all else fails:

EVICTION IS THE LAST RESORT

Eviction Prevention Example

- Bob has not paid rent by the 5th of the month.
- Strategies used for Bob
 - An Affordable Payment plan.
- Bob did not comply with the payment plan and is now two months behind. Bob:
 - Received a termination notice by the 6th with an option to appeal.
- During the appeal
 - Bob agreed to get a payee to avoid termination.

Georgia Landlord-Tenant Law

- Creation of landlord-tenant relationship:
 - No written lease or rent is required for relationship to exist. *McCullough v. Reyes*, 287 Ga. App. 483, 486 (2007).
 - No particular duration required.
 - “The relationship of landlord and tenant is created when the owner of real estate grants to another person, who accepts such grant, the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor.” O.C.G.A. § 44-7-1(a).

Georgia Landlord-Tenant Law: Types of Tenants

- **Tenants at will:** “Where no time is specified for the termination of a tenancy, the law construes it to be a tenancy at will.” O.C.G.A. § 44-7-6.
 - “Sixty days’ notice from the landlord or 30 days’ notice from the tenant is necessary to terminate a tenancy at will.” O.C.G.A. § 44-7-7.
- **Tenants at sufferance (holdover tenants):** “If a landlord has terminated a tenant's lease and the tenant holds over, he becomes a tenant at sufferance.” *Solon Automated Servs., Inc. v. Corp. of Mercer Univ.*, 221 Ga. App. 856, 859 (1996).
 - **Not entitled to any notice** before the landlord can terminate the tenancy. *See Willis v. Harrell*, 118 Ga. 906, 909–10 (1903).
 - Tenancy at sufferance can be converted back into a tenancy at will by “[a]nything that indicates the permission of the landlord for the tenant to remain in possession will have this effect.” *Carruth v. Carruth*, 77 Ga. App. 131, 135 (1948).

Georgia Landlord-Tenant Law

Tenant v. Squatter:

- Tenant enters and possesses the property under some claim of right.
- Squatters have no claim of right and enter the property in bad faith.

Overview of Eviction Process

Dispossessory Proceeding Timeline:

- Give notice and opportunity for tenant to vacate.
- File dispossessory proceeding in the magistrate, state, or superior court of the county where the property is located.
 - Forms generally available on County courts' websites
- Sheriff serves the tenant with the affidavit.
- Tenant has 7 days from service date to file Answer or otherwise respond (in writing or orally and written down by court clerk, if tenant cannot write).

MAGISTRATE COURT OF FULTON COUNTY PROCEEDING AGAINST TENANT HOLDING OVER

 PLAINTIFF'S NAME, ADDRESS & PHONE NO.
 VS.

 DEFENDANT'S NAME & ADDRESS (Include, PHONE NO.)

- PLAINTIFF'S ATTORNEY: NAME, ADDRESS & PHONE _____
1. Defendant is in possession as Tenant of premises at the address in Fulton County as stated.
 2. Plaintiff/Affiant is the () Owner () Attorney () Agent () Lessee of the owner of said Premises.
 3. Tenant: () Fails to pay the rent which is now past due.
 () Holds the premises over and beyond the term for which they were rented or leased to him.
 () other grounds: _____
 4. Plaintiff desires and has demanded possession of the premises.
 5. Defendant has failed and refused to deliver possession of the premises.
- WHEREFORE, Plaintiff DEMANDS** (check and complete all that apply):
 (a) Possession of the premises.
 (b) Past due rent of \$ _____ for the month(s) of _____
 (c) Rent accruing up to the date of judgment or vacancy at the rate of \$ _____ per _____
 (d) other: _____

Sworn to and subscribed on _____, 20 _____

Signature of Affiant _____

Name of Affiant (Print or Type) _____

Phone Number/ Email Address _____

Witness the Honorable Chief Judge of said Court: The above affidavit was sworn to and subscribed before the undersigned Deputy Clerk by affiant as provided by O.C.G.A.

Magistrate/Deputy Clerk/ Notary Public _____

SUMMONS
 TO THE CONSTABLE MARSHAL OF FULTON COUNTY or his lawful deputies and to Sheriff of Fulton County of his lawful deputies.
GREETINGS: The Defendant must file either an oral or written Answer at room TG100, 185 Central Ave., S.W. Atlanta, Georgia 30303 between 8:30 A.M. and 5:00 P.M. **OR** electronically at <http://www.odysseyflega.com> (convenience fee applies) **within seven (7) days from the date of the actual service** unless the seventh day is a Saturday, a Sunday, or a Court holiday, in which case the Answer may be made on the next day which is not a Saturday, a Sunday, or a Court holiday. If the Answer is oral, the substance thereof shall be endorsed on the dispossessory affidavit. The Answer may contain any legal or equitable defense or counterclaim. If no valid legal or factual Answer is filed, a writ of possession may be issued pursuant to O.C.G.A. § 44-7-53. **If no Answer is made, a writ of possession shall issue instantan.**
 This _____ day of _____, 20 _____ DEPUTY CLERK

.....
ENTRY OF SERVICE (Marshall/Sheriff/Private)
 I certify that I have served the foregoing Dispossessory Affidavit & summons on the Defendant by delivering a copy of same:
 () Personally
 () Defendant not found at/within Address on said Summons and Affidavit
 () Notoriously upon an individual residing at the premises (Name) _____, Deponent further states that the person served was of suitable age and discretion, and- Race _____ Gender _____ Age _____ Weight _____ Height _____
 () Tack and Mail: By posting a copy to the door of the premises. **AND** depositing a copy in the U.S. Mail, First Class in an envelope properly addressed, said copy containing notice to the Defendant to Answer at the hour & place in said summons.

DATE OF SERVICE _____
 DEFENDANT TO FILE ANSWER ON OR BEFORE _____
 PROCESS SERVER: - Print name: _____, Officer's Radio/Badge Number _____
 Signature: _____ (Must be NOTARIZED if served by Private Process Server)

Revised May 2018



Overview of Eviction Process

Dispossessory Proceeding Timeline (cont.):

- If tenant answers within 7 days of service:
 - Court will schedule hearing.
 - At hearing, generally parties asked to attempt resolution before presenting cases.
 - If you resolve, you will present the proposed resolution to the judge for approval
 - If no resolution, matter will be heard and ruled upon by judge, who will sign order and issue writ, if applicable.
 - Possibility of appeal (7 days).
- If tenant does not answer within 7 days of service:
 - Tenant has waived their right to respond, and landlord can seek dispossessory writ immediately.

Overview of Eviction Process

- What landlords **cannot** do during dispossession proceedings:
 - **No “self-help”**
 - “It shall be unlawful for any landlord knowingly and willfully to suspend the furnishings of utilities [heat, light, and water service] to a tenant until after the final disposition of any dispossession proceedings by the landlord against such tenant.” O.C.G.A. § 44-7-14.1 (a)–(b).
- Can tenant stay while waiting for hearing?
- Can tenant stay while waiting for eviction?
- Many courts have FAQs about dispossession proceedings on their websites.
- Many counties are experiencing a backlog in evictions, so there may be a considerable delay in getting the eviction done if tenant does not vacate property after court order.

Questions?

Pro Bono Partnership of Atlanta

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Upcoming Webcasts &
Workshops Calendar

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