

CHAPTER 39

Rent

ARTICLE 1

General Provisions

SECTION 27-39-10. Collection of agricultural rents and advances; liens therefor not affected.

The remedy of distress given in Article 3 of this chapter shall not affect the right of a landlord to collect farm or agricultural rents by seizure or attachment of crops growing or gathered as provided by law, nor shall Chapters 33 through 41 of this Title affect liens for agricultural rents and for advances to agricultural tenants as otherwise provided by law.

HISTORY: 1962 Code Section 41-3; 1952 Code Section 41-3; 1946 (44) 2584.

SECTION 27-39-20. Validity of payment of rent for period longer than twelve months.

Any payment made in anticipation of rent for a longer period than twelve months shall not be considered a valid discount against the claims and rights of third persons.

HISTORY: 1962 Code Section 41-201; 1952 Code Section 41-201; 1942 Code Section 8804; 1932 Code Sections 8804, 8875; Civ. C. '22 Section 5270; Civ. C. '12 Section 3500; Civ. C. '02 Section 2414; G. S. 1810; R. S. 1930; 1876 (16) 92.

SECTION 27-39-30. Effect of payment of rent to grantor or conusor.

No tenant shall be prejudiced or damaged by payment of any rent to any grantor or conusor or by breach of any condition for nonpayment of rent before notice shall be given to him of such grant by the conusee or grantee.

HISTORY: 1962 Code Section 41-202; 1952 Code Section 41-202; 1942 Code Section 8816; 1932 Code Section 8816; Civ. C. '22 Section 5282; Civ. C. '12 Section 3512; Civ. C. '02 Section 2426; G. S. 1823; R. S. 1942.

SECTION 27-39-40. Action for debt may be brought for rent on lease or demise for life.

Any person having any rent in arrears or due upon any lease or demise for life or lives may bring an action of debt for such arrears of rent in the same manner as he might have done in case such rent were due and reserved upon a lease for years.

HISTORY: 1962 Code Section 41-204; 1952 Code Section 41-204; 1942 Code Section 8823; 1932 Code Section 8823; Civ. C. '22 Section 5289; Civ. C. '12 Section 3519; Civ. C. '02 Section 2433; G. S. 1827; R. S. 1946; 1898 (22) 784.

SECTION 27-39-60. Counties and municipal corporations restricted from regulating rent charged for certain dwellings.

No county or municipal corporation may enact, maintain, or enforce any ordinance or resolution which would regulate in any way the amount of rent to be charged for privately owned, single family, or multiple unit residential, or commercial rental property. This section may not be construed as prohibiting any county or municipal corporation, or any authority created by a county or municipal corporation for that purpose, from regulating in any way property belonging to the county or municipal corporation or from entering into any agreements with private persons which regulate the amount of rent to be charged for rental properties.

HISTORY: 1985 Act No. 184, Section 1.

ARTICLE 3
Collection of Rent by Distraint

SECTION 27-39-210. Commencement of proceedings for collection of rent by distress.

A landlord may enforce collection of rent due by distress in the following manner, to wit: Any magistrate having jurisdiction over the district in which the premises occupied are situate may issue, upon receipt of an affidavit of the landlord or his agent setting forth the amount of rent due, a notice directed to the tenant stating the alleged amount of rent due, including any cost, and fixing a time and place for a predistress hearing to be held not earlier than five days after the service of the notice. Such notice, together with a copy of the affidavit, shall be delivered to (a) any regular constable, (b) such special constable as the magistrate may appoint or (c) the sheriff of the county for enforcement. Such officer shall forthwith serve a copy of the notice and affidavit on the tenant by delivering the copies to him personally, or if he cannot be found, to any agent of the tenant in whose possession the property sought to be distrained is located. If neither the tenant nor any agent of the tenant can be found, the tenant may be served by leaving such copies at the tenant's place of business or at the rented premises with some person of suitable age and discretion. If, after reasonable search, the tenant cannot be located in the county, no person can be found in possession of the rented premises, and the premises have been abandoned for a period of fifteen days or more immediately prior to the date of service, the copies of the affidavit and notice may be served by leaving them affixed to the most conspicuous part of the premises and by delivering them to the clerk of court of the county in which the premises are located. If the premises have been abandoned for fifteen days immediately prior to the date of service, the tenant shall be deemed to have appointed the clerk of court as his agent for acceptance of service of the notice and affidavit.

HISTORY: 1962 Code Section 41-151; 1952 Code Section 41-151; 1946 (44) 2584; 1973 (58) 384.

SECTION 27-39-220. Predistress hearing.

The purpose of the predistress hearing is to protect the tenant's use and possession of property from arbitrary encroachment and to prevent unfair or mistaken deprivation of property. If the magistrate shall, after conducting the hearing, find that the landlord's right to distress is valid and the tenant has no overriding right to continue in possession of the property subject to distress, then the magistrate may issue his distress warrant naming the amount of rent due, with costs, and such warrant shall be delivered to an officer as set forth in Section 27-39-210.

HISTORY: 1962 Code Section 41-151.1; 1973 (58) 384.

SECTION 27-39-230. Property exempt from distress.

The following property is exempt from distress for rent:

- (1) personal clothing and food within the dwelling;
- (2) bedsteads;
- (3) bedding and cooking utensils; and
- (4) property which is owned by a third party for which the magistrate finds ownership was not transferred from the tenant to the third party for the purpose of avoiding distraint.

HISTORY: 1962 Code Section 41-152; 1952 Code Section 41-152; 1946 (44) 2584; 2000 Act No. 409, Section 3.

SECTION 27-39-240. Enforcement of distress warrant.

The officer to whom a distress warrant is delivered, after the predistress hearing, shall forthwith demand of the tenant payment of the rent with costs as enumerated in the distress warrant. If such

amount is paid the officer shall return the warrant with the amount collected to the magistrate who shall settle with the landlord. If the tenant fails or refuses to pay such rent with costs the officer shall distrain sufficient of the property upon the rented premises to pay such amount, giving the tenant a list in writing of the property distrained together with a copy of the distress warrant.

HISTORY: 1962 Code Section 41-153; 1952 Code Section 41-153; 1946 (44) 2584; 1973 (58) 384.

SECTION 27-39-250. Property of third party on premises.

If any property distrained is not the property of the tenant, the tenant shall immediately name the owner and inform the officer of the ownership, and the officer shall distrain sufficient other property of the tenant to pay the rent and costs. Even though property of the tenant must be first applied to payment of the rent and costs, all property upon the rented premises is subject to distress as provided in this section, except property mentioned in Section 27-39-230. If at any time prior to sale, as provided in Section 27-39-320, the landlord is given or receives written notice containing facts substantiating ownership that some of the distrained property is owned by a third party, the third party must receive notice, as provided in Section 27-39-210, and an opportunity to be heard, as provided in Section 27-39-220. Before the distrained property of the third party is subject to sale pursuant to Section 27-39-320, the magistrate shall find, in a hearing, that the ownership of the property was transferred from the tenant to the third party for the purpose of avoiding distraint. If the magistrate does not make this finding, the property of the third party is exempt from distraint as provided in Section 27-39-230.

HISTORY: 1962 Code Section 41-154; 1952 Code Section 41-154; 1946 (44) 2584; 1985 Act No. 85, Section 1; 2000 Act No. 409, Section 4.

SECTION 27-39-270. Property removed from premises.

Any property belonging to the tenant removed from the premises shall, if found, be subject to distraint and sale, provided such distraint be made within thirty days after such removal.

HISTORY: 1962 Code Section 41-156; 1952 Code Section 41-156; 1946 (44) 2584; 1960 (51) 1602.

SECTION 27-39-280. Distraint after expiration of lease of tenant for life of another.

When tenants pur autre vie hold over the tenements to them demised after the determination of such leases, any person having any rent in arrears or due upon any such lease may distrain for such arrears after the determination of the lease, in the same manner as he might have done if such lease had not been ended or determined; provided, that such distress be made within the space of six calendar months after the determination of such lease during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

HISTORY: 1962 Code Section 41-157; 1952 Code Section 41-157; 1942 Code Section 8821; 1932 Code Section 8821; Civ. C. '22 Section 5287; Civ. C. '12 Section 3517; Civ. C. '02 Section 2431; G. S. 1828; R. S. 1947; 1898 (22) 784; 1946 (44) 2584.

SECTION 27-39-290. Reasonableness of distress.

Any distress must be reasonable in respect to the amount of property distrained.

HISTORY: 1962 Code Section 41-158; 1952 Code Section 41-158; 1946 (44) 2584.

SECTION 27-39-300. Damages for unreasonable and excessive distress.

Any lessor or landlord who makes unreasonable and excessive distress shall be liable for all damages sustained by the tenant whose goods are distrained by reason of such excessive distress. Such damage may be recovered by an action in any court of competent jurisdiction.

HISTORY: 1962 Code Section 41-159; 1952 Code Section 41-159; 1942 Code Section 8824; 1932 Code Section 8824; Civ. C. '22 Section 5290; Civ. C. '12 Section 3520; Civ. C. '02 Section 2434; G. S. 1827; R. S. 1946; 1898 (22) 784.

SECTION 27-39-310. Giving bond to free property from distraint.

Within five days after such distraint the tenant may free the property from the lien of the distraint by giving a bond payable to the landlord in double the amount claimed, with sufficient surety or sureties approved by the court, and the issues thus joined shall be tried by the court. The landlord shall have the right to except to the surety or sureties and the surety or sureties shall justify before the magistrate as provided for justification for sureties in claim and delivery actions.

HISTORY: 1962 Code Section 41-160; 1952 Code Section 41-160; 1946 (44) 2584.

SECTION 27-39-320. Sale of distrained property.

If the tenant fails to give bond as above prescribed then the officer may sell such property at public auction to the highest bidder for cash at a designated place of sale after posting a notice of such sale for five days upon the premises and two other public places in the county stating the time and place of such sale.

HISTORY: 1962 Code Section 41-161; 1952 Code Section 41-161; 1946 (44) 2584.

SECTION 27-39-330. Tax liens on property sold under distress.

The purchaser at a sale of chattels seized under a distress warrant shall take the property subject to any lien for taxes thereon.

HISTORY: 1962 Code Section 41-162; 1952 Code Section 41-162; 1946 (44) 2584.

SECTION 27-39-340. Persons who may be purchasers at sale.

The landlord or any other person may become a purchaser at a sale of chattels under a distress warrant.

HISTORY: 1962 Code Section 41-163; 1952 Code Section 41-163; 1946 (44) 2584.

SECTION 27-39-350. Disposition of proceeds from sale.

If the property distrained brings more than the rent with costs at such sale the surplus shall be paid to the tenant, and the rent shall be paid to the landlord.

HISTORY: 1962 Code Section 41-164; 1952 Code Section 41-164; 1946 (44) 2584.

SECTION 27-39-360. Remedy of distress deemed cumulative.

The remedy of distress shall be deemed cumulative with respect to any other remedy for the collection of rent.

HISTORY: 1962 Code Section 41-165; 1952 Code Section 41-165; 1946 (44) 2584.