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Michael R. Tippett

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PROPERTY

Landlord and Tenant: Require Landlords to Give Written Notice to Prospective Residential Tenants of Recent Flooding of Leased Property; Impose Tort Liability for Noncompliance

CODE SECTION: O.C.G.A. § 44-7-20 (new)
BILL NUMBER: HB 167
ACT NUMBER: 238
GEORGIA LAWS: 1995 Ga. Laws 266
SUMMARY: The Act provides that an owner of real property who seeks to rent or lease that property for residential occupancy must notify the prospective tenant in writing, prior to execution of the lease, of the property's propensity for flooding if the property has been damaged by flooding at least three times in the five-year period preceding the date of the lease. If the owner fails to provide such notice, the owner will be liable in tort for damage to the tenant's personal property or property of the tenant's resident relative proximately caused by flooding occurring during the term of the lease.

EFFECTIVE DATE: July 1, 1995

History

HB 167 was introduced by Representatives Dorothy B. Pelote, Regina Thomas, Thomas C. Bordeaux, Jr., and Sonny Dixon, all of whom represent districts in Savannah and the surrounding Chatham County area.¹ The impetus for the bill was the recurring, severe flooding in a Savannah neighborhood known as the "Baker Street area."² This is a poor, primarily black, residential area where most of the residences are non-owner

1. HB 167, as introduced, 1995 Ga. Gen. Assem.

2. Telephone Interview with Rep. Thomas C. Bordeaux, Jr., House District No. 151 (Apr. 5, 1995) [hereinafter Bordeaux Interview].

occupied.³ Flooding in this area is particularly severe during high tides.⁴ Many of the residents who have suffered flood damage have claimed that they had no notice of the area's tendency to flood.⁵ Prior to the passage of HB 167, no legislation existed dealing with this problem.⁶

HB 167

The purpose of the Act is to require owners of real property to notify prospective tenants in writing of past incidents of flooding and the danger of future flooding.⁷ The Act amends chapter 7 of title 44 of the Code by adding section 44-7-20. The bill, as originally introduced, made a landlord's failure to provide such notice a misdemeanor; however, in the final version of the Act, sanctions for violations are civil rather than criminal.⁸

In addition, the General Assembly made a number of changes to prevent an overly broad application of the Act.⁹ For instance, the Act is limited to written rental agreements for residential occupancy.¹⁰ It also defines "flooding" as an inundation of the leased premises by an "increased water level in an established water source such as a river, stream, or drainage ditch or as a ponding of water at or near the point where heavy or excessive rain fell."¹¹ The Act also provides that only water damage to the

3. *Id.*

4. *Id.*

5. Telephone Interview with Mr. Keith Hatcher, lobbyist for the Georgia Association of Realtors (Apr. 11, 1995) [hereinafter Hatcher Interview]. Mr. Hatcher explained that many of these properties have experienced flooding as often as three or four times per year and that HB 167 is directed at those owners who simply repair flood damage and re-lease their properties without notifying the new tenants of either the prior flooding or the danger of future flooding. *Id.*

6. Bordeaux Interview, *supra* note 2.

7. O.C.G.A. § 44-7-20 (Supp. 1995). The Act applies whether the owner directly or through an agent seeks to lease property. *Id.*

8. Compare HB 167, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 44-7-20 (Supp. 1995). Rep. Bordeaux stated that the Act's authors did not intend that criminal sanctions would actually be enacted; rather, these provisions, instead of more complex civil sanctions, facilitated drafting and introducing the bill. Bordeaux Interview, *supra* note 2.

9. Hatcher Interview, *supra* note 5.

10. O.C.G.A. § 44-7-20 (Supp. 1995).

11. *Id.* Mr. Hatcher noted that the original version of HB 167 contained no definition of "flooding"; the definition in the Act tracks the language

living areas of the leased premises would trigger liability.¹² These changes were meant to exclude from the Act's coverage such incidents as water damage caused by burst pipes, flooding that only damages the exterior of the leased premises, and flooding of a unit in a multi-unit building other than the one in which a plaintiff resides.¹³

The Act requires that a property experience flooding at least three times in the five-year period preceding the date of the lease before the owner may become liable.¹⁴ This provision ensures that lessors whose property flooded many years ago will be distinguished from those whose property has flooded recently, and who presumably have greater notice of the propensity of their property to flood.¹⁵

Finally, the Act provides for tort liability against an owner who fails to provide written notification of past instances of flooding.¹⁶ The owner may be liable to the tenant and the tenant's family residing on the leased premises for damage to personal property proximately caused by subsequent flooding during the term of the lease.¹⁷

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used by the Federal Emergency Management Agency and its state counterpart. Hatcher Interview, *supra* note 5.

12. O.C.G.A. § 44-7-20 (Supp. 1995).

13. Hatcher Interview, *supra* note 5.

14. O.C.G.A. § 44-7-20 (Supp. 1995).

15. Bordeaux Interview, *supra* note 2. Without this language, the owner of property that had only experienced flooding in the distant past would be required to research the entire history of the property. Hatcher Interview, *supra* note 5. It was expected that even recent purchasers of property would have done sufficient research to determine how many times, if any, the property had flooded in the past five years. Hatcher Interview, *supra* note 5.

16. O.C.G.A. § 44-7-20 (Supp. 1995).

17. *Id.* The language making property owners liable for damage suffered by the tenant or resident relative of that person was meant to include damage suffered by any member of a family living in the leased premises and to prevent landlords from attempting to limit liability to the person who actually signed the lease. Hatcher Interview, *supra* note 5. The Act provides no indication that it would protect resident nonrelatives. *See generally* O.C.G.A. § 44-7-20 (Supp. 1995).