

Lease Purchase and Maintenance Deductibles

The 2nd article in a series by Robert M. Locke

Many seminar speakers advocate a “maintenance deductible” or some strategy to pass maintenance onto the tenant in their leases in an attempt to get out of the maintenance responsibility on their rental properties. This is a great theory but, in Georgia, it’s strictly prohibited by the *Landlord Tenant Act*.

This article will sound a little like the one I wrote last month but it really is the solution to the problem not a repeat of it. Properly written Lease Purchase agreements may be a solution to the maintenance deductible dilemma we uncovered in last month’s article.

For whatever reason, the Georgia legislature (Title 44 ... the Landlord Tenant Act) put a strict prohibition on landlord’s efforts to pass maintenance over to the tenant. The “repair it yourself” strategy or “the tenant gets to fund the first \$75 of any repair” is greatly restricted by language in Georgia Code 44-3-12 which states “(b) in any contract, lease, license agreement, or similar agreement, for the use or rental of real property as a dwelling place, a landlord or a tenant may not waive, assign, transfer, or otherwise avoid any of the rights, duties, or remedies contained in the following provision of law: (1) Code Section 44-7-13, relating to the duties of a landlord as to repairs and improvements; (2) Code Section 44-7-14, relating to the liability of a landlord for failure to repair” and 44-7-13 which states “*The Landlord must keep the premises in repair. He shall be liable for all substantial improvements placed upon the property by his consent.*”

You should ignore the seminar speaker and consult with a competent Georgia attorney before you attempt this technique as it carries some serious penalties dictated by the Georgia legislature.

If you get caught trying this scam, Code 44-7-14 states “***Having fully parted with possession and the right of possession, the landlord is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; provided, however, the landlord is responsible for damages arising from defective construction or from damages arising from the failure to keep the premises in repair.***” The judge hearing the tenant’s case will likely follow the law and make you personally liable for any injuries the tenant sustained while cleaning the gutters (and falling off the roof) or fixing their own electrical problems (and burning their hand). The bottom line is, repairs are the landlord’s responsibility in Georgia, and trying to pass it along to the tenant is a big no-no!

Maintenance issues on a Lease Purchase agreement are different.

With the right language in your purchase contract, **you can pass maintenance issues over to the tenant/buyer.** You must state “as additional consideration for purchasing the property, tenant agrees to ...”. If a tenant is going to take on maintenance, in opposition to the legal duty of the landlord doing it, there must be consideration. If you say this, just the right way in your agreement, you can duck the landlord’s duty to repair and “move it over” to the tenant.

Although this is a good strategy, you should still do regular inspections and work with the tenant at keeping the property in good repair. After all, you might get the property back and have to repair it if they fail to close. **Don't close your eyes and assume the tenant will keep the property in great condition.** You may wish you'd paid more attention to maintenance the day you get it back.

Watch for next month's article about "no" maintenance doesn't mean "no" maintenance.

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