

The State of South Carolina



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July 22, 1986

The Honorable Robert W. Hayes, Jr.
Member, House of Representatives
P. O. Box 904
Rock Hill, South Carolina 29731

Dear Representative Hayes:

In a letter to this Office you questioned the effect of the recently-enacted State Residential Landlord and Tenant Act, R.355, as to a landlord's use of distress proceedings to collect outstanding rent which is owed to the landlord. Distress is the remedy provided by Sections 27-39-210 et seq. of the Code by which a landlord may request a magistrate to have a sheriff or constable seize certain property of a tenant to be held until such time as the rent is paid. If the rent remains unpaid, the distrained property may be sold and the proceeds applied toward satisfaction of the rent due.

In Section 36 of the Residential Landlord and Tenant Act, the General Assembly provided in part:

(b) A landlord may enforce collection of rent by distress only pursuant to Chapter 39, Title 27 of the 1976 Code; however, the tenant may raise defenses to the issuance of a distress warrant pursuant to the provisions of this act or the rental agreement and may take advantage of the property exemptions found in Section 15-41-200 of the 1976 Code. 1/

1/ Such provision should be read in association with Section 44 of the Act which states:

... Article 3, Chapter 39, Title 27 of the 1976 Code (the statutes providing for the

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As stated, any of the defenses provided a tenant by the referenced Act may be raised by a tenant in a distress proceeding. Such tenant remedies are particularly set forth in Article 4, Part I of the new Act. Moreover, as provided by Section 36, the property exemptions set forth in Section 15-41-200 may be utilized by a tenant in such an action. Section 15-41-200 of the Code specifically exempts certain real and personal property from attachment, levy and sale under any mesne or final process issued by a court. Included in the various exemptions provided by such provision is the following

(B) The debtor's interest, not to exceed two thousand five hundred dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

Other exemptions are also provided which cover motor vehicles, jewelry, cash, and implements, professional books, and tools pertaining to a trade. Such exempted property is in addition to that provided by Section 27-39-230. Such statute provides that personal clothing, food within a dwelling, bedsteads, bedding, and cooking utensils are generally exempt from distress.

The applicability of the exemptions provided by Section 15-41-200 to distress proceedings is a significant change by the General Assembly in the landlord-tenant relationship in this State and should be particularly noted as to their effect on distress proceedings. However, such Act further provides that it takes effect one hundred twenty days after approval by the Governor and is applicable only to leases or rental agreements entered into or extended or renewed on or after such date.

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remedy of distress) ... (is) ... not applicable to the leasing or renting or to leases or rental agreements concerning any real property insofar as ... (such provisions) ... are inconsistent with the provisions of this act, including the rights and remedies of landlords and tenants thereto.

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Governor Riley approved the legislation on March 10, 1986. I am informed that the 120 day period makes the new legislation effective as of July 8, 1986.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson/an

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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