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# Tenant Consumer Issues in Florida

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# Consumer Laws at a Glance

- Florida Residential Landlord Tenant Act (FRLTA), Fla. Stat. Chapter 83.
  - Florida Consumer Collection Practices Act (FCCPA), *Fla. Stat. Sec. 559.55 et seq.*
  - Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 et seq
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# FRLTA - Fla. Stat. Chapter 83

- This is the statute that controls all regular residential tenancies in Florida. Mobile homes have different rules.
  - **83.54 Enforcement of rights and duties; civil action; criminal offenses.**—Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.
  - **83.55 Right of action for damages.**—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.
  - **83.47 Prohibited provisions in rental agreements.**—
    - (1) A provision in a rental agreement is void and unenforceable to the extent that it:
      - (a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.
      - (b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.
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# FRLTA - Security Deposit

- Security Deposits are strictly regulated. (Fla. Stat. 83.49)
  - Unless you are evicted or abandon the property, the landlord *must* give you a security deposit letter within 30 days of moving out.
  - The Lease must have the disclosure listed in 83.49 or similar for a fee-in-lieu for 83.491.
  - Security Deposit deductions *cannot happen* until they send you a letter.
  - No “automatic deductions” either. (Auto cleaning fee, administrative fee, etc.)
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## FRLTA - Security Deposit Continued.

- You have a *right* to dispute the security deposit deductions.
- You do not have an *obligation* to do so.
- You can still sue if you don't dispute first.

“If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.” Fla. Stat. 83.49.

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# FRLTA - Air Conditioning

- Under the FRLTA, you do not have a right to air conditioning in Florida under **Fla. Stat. 83.51**.
  - You have the right to “A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, *including, but not limited to*, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord” under **Fla. Stat. 83.67 - Prohibited practices**.
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# FRLTA - Junk Fees/Weird Leases

- You can always file suit against a landlord to get a declaratory judgment about a lease provision.
  - Many corporate landlords have new, ridiculous fees that a county judge might find illegal.
  - This is a person-to-person determination. Small claims court is there for your benefit.
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## FRLTA - Evictions

- Three Day Notices under Fla. Stat. 83.45 must only demand rent.
  - Must be for three days, not including weekends or holidays.
  - If the landlord accepts payment of *some* of the rent, they will have to issue a new three day notice. If the amount changes, they must issue a new three day notice.
  - It should actually give you notice.
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# FRLTA - Evictions

- Your obligation to pay rent, unless you question the amount of rent owed, *continues during the eviction*.
  - Make sure to call the clerk and pay the rent into the registry.
  - **Do not pay the property management company or landlord directly, because you can get an eviction judgment that way.**
  - Keep good notes and good copies of documents.
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# FRLTA - Evictions

- Filing an eviction does not mean you have to leave.
  - Filing an eviction does not give the landlord or property management right to throw your stuff out or lock you out.
  - Filing an eviction does not prevent you from getting housing elsewhere.
    - In fact, some cases evictions are dismissed and can be sealed like criminal records.
  - **You are only legally obligated to leave when the writ is issued after a judgment of eviction and the sheriff shows up.**
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## FCCPA (State) - Debt Collection

- Two-Year Statute of Limitations (*from the last debt collection communication*).
  - Covers *any person, company, entity, etc.* trying to get money from a consumer for any “personal, family, or household” purpose.
  - Fla. Stat. 559.72 is the violation list.
  - Fla. Stat. 559.77 is remedies. (Up to \$1000 statutory fine, actual damages, costs and attorney’s fees).
  - *No Set Off Defense, Fee Shifting (Unless Frivolous)*
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# FCCPA Violations

## Fla. Stat. 559.72(1)- (19)

- (7) - Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct **which can reasonably be expected to abuse or harass the debtor or any member of her or his family.**
  - (9) - Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other **legal right** when such person knows that the right does not exist.
  - (18) - Communicate with a debtor if the person knows that the debtor **is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address**, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.
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- (1) Simulate in any manner a law enforcement officer or a representative of any governmental agency.
  - (2) Use or threaten force or violence.
  - (3) Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).
  - (4) Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless the debtor gives her or his permission in writing to contact her or his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained.
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(5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.

(6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days.

(7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.

(8) Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

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(10) Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not.

(11) Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.

(12) Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.

(13) Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.

(14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.

(15) Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.

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(16) Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to “Deadbeat, Jane Doe” or “Deadbeat, John Doe.”

(17) Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor’s time zone without the prior consent of the debtor.

(a) The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor’s telephone is located in a different time zone.

(b) If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone of the debtor’s last known place of residence, unless the person reasonably believes that the debtor’s telephone is located in a different time zone.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, unless the debtor’s attorney fails to respond within 30 days to a communication from the person, unless the debtor’s attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

(19) Cause a debtor to be charged for communications by concealing the true purpose of the communication, including collect telephone calls and telegram fees.

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# Least Sophisticated Consumer

Debt communications should be viewed “from the perspective of a consumer whose circumstances makes him relatively more susceptible to harassment, oppression, or abuse.” Jeter v. Credit Bureau, Inc., 760 F.2d 1168, 1179 (11th Cir. 1985). Ordinarily, “whether conduct harasses, oppresses, or abuses will be a question for the jury.” *Id.* at 1179. The purpose of the least-sophisticated consumer standard is to ensure the protection of the gullible as well as the shrewd. See LeBlanc v. Unifund CCR Partners, 601 F.3d 1185 (11th Cir. Fla. 2010) [22 Fla. L. Weekly Fed. C647a].

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**FCCPA and FDCPA are *fee shifting statutes*.  
Unless you bring a frivolous claim, if you  
prevail, the opposing side must pay  
attorney's fees and costs.**

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# Connecting the FCCPA with Landlord Tenant Matters

The Lease Controls the Landlord-Tenant Relationship.

- Compare the **Letters** to the **Lease**.
  - Compare the **Fees** to the **Lease**.
  - Compare the **Lease** to the **Law**.
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# Tenant Background Screening

- Housing denials for civil (*esp. evictions*) and criminal history (felons)
  - Most don't maintain files, prepare report in response to an application.
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# Tenant Screening - FRCA Issues

- Similar names causing bad matches/mixed file
  - Outdated or incomplete information, i.e. cases that were expunged or sealed.
  - Obsolete information, i.e. arrests more than 7 years old
  - Misleading presentation, i.e. displaying date probation ended rather than date of conviction; not marking eviction case dismissed
  - Blatant inaccuracies, i.e. reporting a misdemeanor as a felony
  - Not knowing who prepared the report or what exactly was the reason for denial
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# Tenant Screening Mistakes

- Information that belongs to someone other than your client
  - Reporting of dismissed/expunged/sealed criminal records or failure to note court order of expungement
  - Wrong disposition or failure to note favorable disposition
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## 7 Year Window

Report cannot contain: – “Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.” – “Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.”

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# First Step

- Contact landlord/ apartment complex to ask who tenant screening company is.
  - Send out a 1681g request in writing for a copy of the tenant screening report..
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# Fair Credit Reporting Act (FCRA)

- Focuses on the reporting of consumer information (including payments, evictions, number of address changes, etc.)
  - Requires setup, unlike FCCPA, FDCPA etc. - You must dispute to start the clock.
  - Disputes can be online, over the phone, or in writing and must be **to the credit bureaus themselves.**
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# FCRA Dispute Process - Pt 1.

- *Maximum Possible Accuracy* is the standard for information on a tenant's credit or consumer report. 15 U.S. Code § 1681e(b).
  - If it is not accurate or could lead someone to believe something inaccurate, it can be disputed.
  - **Tenants and Consumers cannot dispute something they don't like or is negative for them.**
  - Pull not only the big three (Experian, Equifax, Trans Union), but also *rental-specific reporting agencies* like RentGrow, AmRent, Appfolio, Inc., SafeRent Solutions, etc.). Every CRA must allow for a free report at least once a year.
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**The Consumer Financial Protection  
Bureau has a list of these companies.**

[https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-companies-list\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2023.pdf)

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## FCRA Dispute Process - Pt 2.

- Once the specific information is disputed with the consumer reporting agency (CRA), then the clock begins. It will take approximately 30 days to receive a response to the dispute. (Under the CARES Act, this was 60 days).
  - A CRA must send your dispute to the furnisher (the account owner on the report), who then must engage in a “reasonable investigation,” and report back whether to keep, change, or delete the disputed information.
  - **Damages do not start until the dispute is investigated.**
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# Apartment Debt Collectors

- Hunter Warfield
- National Credit Systems (NCS)
- Rent Recovery Solutions
- Axiom
- Corporate Landlords are Frequent Violators (Jacksonville Wealth Builders (JWB), etc.)
- Florida Beach Coast, Ben Spivey, and Other Bad Guys



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**Questions?**

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