

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 781
Apr 14, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH30256-MQ-61C (03/13)

Short Title: Vacation Rental Act Changes. (Public)

Sponsors: Representative Tine.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VACATION RENTAL ACT TO CLARIFY THE ROLE OF REAL ESTATE BROKERS IN TRANSACTIONS BETWEEN LANDLORDS AND TENANTS AND TO PROTECT MEMBERS OF THE ARMED FORCES BY ALLOWING TERMINATION OF RENTAL AGREEMENTS UPON TRANSFER OR REDEPLOYMENT AND TO CLARIFY THE PROCEDURE FOR AWARDING AND COLLECTING CERTAIN COURT FEES IN EVICTION PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42A-4 reads as rewritten:

"§ 42A-4. **Definitions.**

The following definitions apply in this Chapter:

(1) Advanced payments. – All payments made by a tenant in a vacation rental agreement to a landlord or the landlord's real estate broker prior to occupancy for the purpose of renting a vacation rental property for a future period of time as specified in the vacation rental agreement.

(2) Landlord. – An owner of residential property offered for lease as a vacation rental with or without the assistance of a real estate broker.

(3) Reserved.

~~(1)~~(4) Real estate broker. – A real estate broker as defined in G.S. 93A-2(a).

~~(2)~~(5) Residential property. – An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

~~(3)~~(6) Vacation rental. – The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.

~~(4)~~(7) Vacation rental agreement. – A written agreement between a landlord or his or her real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental."

SECTION 2. G.S. 42A-16(a) reads as rewritten:

"(a) A landlord or real estate broker shall not disburse prior to the occupancy of the property by the tenant an amount greater than fifty percent (50%) of the total rent except as permitted pursuant to this subsection. A landlord or real estate broker may disburse prior to the occupancy of the property by the tenant any fees owed to third parties to pay for goods, services, or benefits procured by the landlord or real estate broker for the benefit of the tenant, including administrative fees permitted by G.S. 42A-17(c), if the disbursement is expressly authorized in the vacation rental agreement. A real estate broker may also disburse from



* D R H 3 0 2 5 6 - M Q - 6 1 C *

1 advanced rents any management fee earned by the real estate broker as determined by the
 2 written agency agreement between the landlord and the real estate broker. In the event a refund
 3 is due to the tenant, the landlord shall remain liable to the tenant for any disbursement to the
 4 real estate broker for fees earned by the broker and disbursed from the advanced rents. The
 5 funds remaining after any disbursement permitted under this subsection shall remain in the trust
 6 account and may not be disbursed until the occurrence of one of the following:

- 7 (1) The commencement of the tenancy, at which time the remaining funds may
- 8 be disbursed in accordance with the terms of the agreement.
- 9 (2) The tenant commits a material breach, at which time the landlord may retain
- 10 an amount sufficient to defray the actual damages suffered by the landlord as
- 11 a result of the breach.
- 12 (3) The landlord or real estate broker refunds the money to the tenant.
- 13 (4) The funds in the trust account are transferred in accordance with
- 14 G.S. 42A-19(b) upon the termination of the landlord's interest in the
- 15 property.

16"

17 **SECTION 3.** G.S. 42A-19(b) reads as rewritten:

18 "(b) Except as otherwise provided in this subsection, upon termination of the landlord's
 19 interest in the residential property subject to a vacation rental agreement, whether by sale,
 20 assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or
 21 the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the
 22 portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the
 23 landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of
 24 the transferee's name and address. If a real estate broker is holding advanced rents paid by the
 25 tenant pursuant to a vacation rental agreement at the time of the termination of the landlord's
 26 interest, the real estate broker may deduct from the advanced rents transferred to the landlord's
 27 successor in interest any management fee earned by the real estate broker prior to the transfer.
 28 The written agency agreement between the landlord and the real estate broker shall govern
 29 when the fee has been earned. If the real estate broker deducts an earned management fee from
 30 the advanced rents, the landlord shall be responsible to the landlord's successor in interest for
 31 the amount deducted. For vacation rentals that end more than 180 days after the recording of
 32 the interest of the landlord's successor in interest, unless the landlord's successor in interest has
 33 agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or
 34 the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the
 35 portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the
 36 tenant. Compliance with this subsection shall relieve the landlord or real estate broker of
 37 further liability with respect to any payment of rent or fees. Funds held as a security deposit
 38 shall be disbursed in accordance with G.S. 42A-18.

39"

40 **SECTION 4.** Article 5 of Chapter 42A of the General Statutes reads as rewritten:

41 "Article 5.

42 Landlord and Tenant Duties.

43 **§ 42A-31. Landlord to provide fit premises.**

44 A landlord of a residential property used for a vacation rental shall:

- 45 (1) Comply with all current applicable building and housing ~~codes~~codes to the
 46 extent required by the operation of the codes. However, no new requirement
 47 is imposed if a structure is exempt from a current building or housing code.
 48 ...
- 49 (6) Provide a minimum of one operable carbon monoxide alarm per rental unit
 50 per level, either battery-operated or electrical, that is listed by a nationally
 51 recognized testing laboratory that is OSHA-approved to test and certify to

1 American National Standards Institute/Underwriters Laboratories Standards
2 ANSI/UL2034 or ANSI/UL2075, and install the carbon monoxide alarms in
3 accordance with either the standards of the National Fire Protection
4 Association or the minimum protection designated in the manufacturer's
5 instructions, which the landlord shall retain or provide as proof of
6 compliance. A landlord that installs one carbon monoxide alarm per rental
7 unit per level shall be deemed to be in compliance with standards under this
8 subdivision covering the location and number of alarms. The landlord shall
9 replace or repair the carbon monoxide alarms within 15 days of receipt of
10 notification if the landlord is notified of needed replacement or repairs in
11 writing by the tenant. The landlord shall ensure that a carbon monoxide
12 alarm is operable and in good repair on an annual basis. Unless the landlord
13 and the tenant have a written agreement to the contrary, the landlord shall
14 place new batteries in a battery-operated carbon monoxide alarm annually
15 and the tenant shall replace the batteries as needed during the tenancy.
16 Failure of the tenant to replace the batteries as needed shall not be
17 considered as negligence on the part of the tenant or the landlord. A carbon
18 monoxide alarm may be combined with smoke alarms if the combined alarm
19 does both of the following: (i) complies with ANSI/UL2034 or
20 ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke
21 alarms; and (ii) emits an alarm in a manner that clearly differentiates
22 between detecting the presence of carbon monoxide and the presence of
23 smoke. This subdivision applies only to dwelling units having a fossil-fuel
24 burning heater, appliance, or fireplace, and in any dwelling unit having an
25 attached garage. Any operable carbon monoxide detector installed before
26 January 1, 2015, shall be deemed to be in compliance with this subdivision.

27 These duties shall not be waived; however, the landlord and tenant may make additional
28 covenants not inconsistent herewith in the vacation rental agreement.

29 ...
30 **§ 42A-33. Responsibilities and liability of real estate broker.**

31 (a) A real estate broker managing a vacation rental property on behalf of a landlord
32 shall do all of the following:

- 33 (1) Manage the property in accordance with the terms of the written agency
34 agreement signed by the landlord and real estate broker.
- 35 (2) Offer vacation rental property to the public for leasing in compliance with all
36 applicable federal and state laws, regulations and ethical duties, including
37 but not limited to, those prohibiting discrimination on the basis of race,
38 color, religion, sex, national origin, handicap, familial status, sexual
39 orientation or gender identity.
- 40 (3) Notify the landlord regarding any necessary repairs to keep the property in a
41 fit and habitable or safe condition and follow the landlord's direction in
42 arranging for any such necessary repairs, including repairs to all electrical,
43 plumbing, sanitary, heating, ventilating, and other facilities and major
44 appliances supplied by the landlord upon written notification from the tenant
45 that repairs are needed.
- 46 (4) Verify that the landlord has installed operable smoke detectors and carbon
47 monoxide alarms.
- 48 (5) Verify that the landlord has annually placed new batteries in a
49 battery-operated smoke detector or carbon monoxide alarm. Failure of the
50 tenant to replace the batteries as needed shall not be considered negligence
51 on the part of the real estate broker.

1 **(b)** A real estate broker managing a vacation rental property on behalf of a landlord
2 client shall not become personally liable as a party in any civil action between the landlord and
3 tenant if the real estate broker fails to identify the landlord of the property in the vacation rental
4 agreement with the tenant."

5 **SECTION 5.** Article 6 of Chapter 42A of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 42A-37. Early termination of vacation rental agreement by military personnel.**

8 **(a)** Any member of the Armed Forces of the United States who executes a vacation
9 rental agreement and subsequently receives (i) an order for deployment with a military unit for
10 a period overlapping with the rental period or (ii) permanent change of station orders requiring
11 the member to relocate on a date prior to the beginning of the lease term may terminate the
12 member's vacation rental agreement by providing the landlord or landlord's agent with a written
13 notice of termination within ten calendar days of receipt of the order. The notice must be
14 accompanied by either a copy of the official military orders or a written verification signed by
15 the member's commanding officer. Termination of a lease pursuant to this subsection is
16 effective immediately upon receipt of the notice by the landlord or landlord's agent. All monies
17 paid by the terminating member in connection with the vacation rental agreement shall be
18 refunded to the member within 30 days of termination of the agreement.

19 **(b)** A member's termination of a vacation rental agreement pursuant to subsection (a) of
20 this section shall also terminate any obligation a spouse or dependent of the member may have
21 under the vacation rental agreement.

22 **(c)** The right to terminate a vacation rental agreement as described in subsection (a) of
23 this section shall extend to the spouse of any member of the Armed Forces of the United States.
24 A spouse exercising the right to terminate a rental agreement shall provide the same notice as
25 described in subsection (a) of this section.

26 **(d)** The provisions of this section may not be waived or modified by the agreement of
27 the parties."

28 **SECTION 6.** G.S. 42-36.2(a) reads as rewritten:

29 **"(a)** When Sheriff May Remove Property. – Before removing a tenant's personal
30 property from demised premises pursuant to a writ for possession of real property or an order,
31 the sheriff shall give the tenant notice of the approximate time the writ will be executed. The
32 time within which the sheriff shall have to execute the writ shall be no more than five days
33 from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in
34 the writ, no earlier than the time specified in the notice, unless:

- 35 (1) The landlord, or his authorized agent, signs a statement saying that the
36 tenant's property can remain on the premises, in which case the sheriff shall
37 simply lock the premises; or
38 (2) The landlord, or his authorized agent, signs a statement saying that the
39 landlord does not want to eject the tenant because the tenant has paid all
40 court costs charged to him and has satisfied his indebtedness to the landlord.

41 Upon receipt of ~~either statement by the landlord,~~ a statement described in subdivision (2) of
42 this subsection, the sheriff shall return the writ unexecuted to the issuing clerk of court and
43 shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's
44 statement to the writ. If the writ is returned unexecuted because the landlord signed a statement
45 described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on
46 the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part
47 of the court costs.

48 "

49 **SECTION 7.** G.S. 42-44 reads as rewritten:

50 **"§ 42-44. General remedies, penalties, and limitations.**

51 ...

1 (c1) A real estate broker as defined in G.S. 93A-2 managing a rental property on behalf
2 of a landlord shall not be personally liable as a party in a civil action between the landlord and
3 tenant if the real estate broker fails to identify the landlord of the property in the rental
4 agreement.

5 "

6 **SECTION 8.** G.S. 42-46 reads as rewritten:

7 "**§ 42-46. Authorized fees-late fees and eviction fees.**

8 ...

9 (f) Court-Appearance Fee. – Pursuant to a written lease, a landlord may charge a
10 court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the
11 tenant was in default of the ~~lease;~~lease and the landlord filed, served, and prosecuted
12 successfully a complaint for summary ejection and/or monies owed in the small claims ~~court;~~
13 ~~and neither party appealed the judgment of the magistrate court.~~ If the tenant appeals the
14 judgment of the magistrate, a fee awarded by a magistrate to the landlord under this subsection
15 shall be vacated.

16 (g) Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second trial
17 fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the
18 fee, the landlord must prove that the tenant was in default of the lease and the landlord
19 prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the
20 lease.

21 (h) Limitations on Charging and Collection of Fees.

- 22 (1) A landlord who claims fees under subsections (e) through (g) of this section
23 is entitled to charge and retain only one of the above fees for the landlord's
24 complaint for summary ejection and/or money owed.
- 25 (2) A landlord who earns a fee under subsections (e) through (g) of this section
26 may not deduct payment of that fee from a tenant's subsequent rent payment
27 or declare a failure to pay the fee as a default of the lease for a subsequent
28 summary ejection action.
- 29 (3) It is contrary to public policy for a landlord to put in a lease or claim any fee
30 for filing a complaint for summary ejection and/or money owed other than
31 the ones expressly authorized by subsections (e) through (g) of this section,
32 and a reasonable attorney's fee as allowed by law.
- 33 (4) Any provision of a residential rental agreement contrary to the provisions of
34 this section is against the public policy of this State and therefore void and
35 unenforceable.
- 36 (5) If the rent is subsidized by the United States Department of Housing and
37 Urban Development, by the United States Department of Agriculture, by a
38 State agency, by a public housing authority, or by a local government, any
39 fee charged pursuant to this section shall be calculated on the tenant's share
40 of the contract rent only, and the rent subsidy shall not be included."

41 **SECTION 9.** This act becomes effective July 1, 2015. Nothing in this act shall be
42 construed as being applicable to or affecting any pending litigation.