

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 151
Committee Substitute Favorable 3/24/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H151-PCS40634-SU-43

Short Title: Vacation Rentals/Orange Co. Jail Construction.

(Public)

Sponsors:

Referred to:

March 5, 2015

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, TO PROTECT MEMBERS OF THE ARMED FORCES BY ALLOWING TERMINATION OF RENTAL AGREEMENTS UPON TRANSFER OR REDEPLOYMENT, TO CLARIFY THE PROCEDURE FOR AWARDING AND COLLECTING CERTAIN COURT FEES IN EVICTION PROCEEDINGS, AND TO ALLOW AMENDMENTS TO A LEASE OF REAL PROPERTY TO ORANGE COUNTY TO FACILITATE JAIL CONSTRUCTION.

The General Assembly of North Carolina enacts:

**PART I. CHANGES TO THE VACATION RENTAL ACT/SUMMARY
EJECTMENT/RESIDENTIAL RENTAL AGREEMENTS**

SECTION 1.1. 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 1.2. G.S. 42A-19(b) reads as rewritten:

"(b) Except as otherwise provided in this subsection, upon termination of the landlord's interest in the residential property subject to a vacation rental agreement, whether by sale,



* H 1 5 1 - P C S 4 0 6 3 4 - S U - 4 3 *

1 assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or
2 the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the
3 portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the
4 landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the
5 transferee's name and address. If a real estate broker is holding advanced rents paid by the tenant
6 pursuant to a vacation rental agreement at the time of the termination of the landlord's interest, the
7 real estate broker may deduct from the advanced rents transferred to the landlord's successor in
8 interest any management fee earned by the real estate broker prior to the transfer. The written
9 agency agreement between the landlord and the real estate broker shall govern when the fee has
10 been earned. If the real estate broker deducts an earned management fee from the advanced rents,
11 the landlord shall be responsible to the landlord's successor in interest for the amount deducted.
12 For vacation rentals that end more than 180 days after the recording of the interest of the landlord's
13 successor in interest, unless the landlord's successor in interest has agreed in writing to honor the
14 vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall,
15 within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining
16 after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this
17 subsection shall relieve the landlord or real estate broker of further liability with respect to any
18 payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with
19 G.S. 42A-18."

20 **SECTION 1.3.** Article 5 of Chapter 42A of the General Statutes reads as rewritten:

21 "Article 5.

22 "Landlord and Tenant Duties.

23 **"§ 42A-31. Landlord to provide fit premises.**

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

25 (1) Comply with all current applicable building and housing codes.~~codes~~codes to the
26 extent required by the operation of the codes. However, no new requirement is
27 imposed if a structure is exempt from a current building or housing code.

28 ...

29 (6) Provide a minimum of one operable carbon monoxide alarm per rental unit per
30 level, either battery-operated or electrical, that is listed by a nationally
31 recognized testing laboratory that is OSHA-approved to test and certify to
32 American National Standards Institute/Underwriters Laboratories Standards
33 ANSI/UL2034 or ANSI/UL2075, and install the carbon monoxide alarms in
34 accordance with either the standards of the National Fire Protection Association
35 or the minimum protection designated in the manufacturer's instructions, which
36 the landlord shall retain or provide as proof of compliance. A landlord that
37 installs one carbon monoxide alarm per rental unit per level shall be deemed to
38 be in compliance with standards under this subdivision covering the location
39 and number of alarms. The landlord shall replace or repair the carbon monoxide
40 alarms within a commercially reasonable time after receipt of notification if the
41 landlord is notified of needed replacement or repairs in writing by the tenant.
42 The landlord shall ensure that a carbon monoxide alarm is operable and in good
43 repair on an annual basis. Unless the landlord and the tenant have a written
44 agreement to the contrary, the landlord shall place new batteries in a
45 battery-operated carbon monoxide alarm annually and the tenant shall replace
46 the batteries as needed during the tenancy. Failure of the tenant to replace the
47 batteries as needed shall not be considered as negligence on the part of the
48 tenant or the landlord. A carbon monoxide alarm may be combined with smoke
49 alarms if the combined alarm does both of the following: (i) complies with
50 ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and
51 ANSI/UL217 for smoke alarms and (ii) emits an alarm in a manner that clearly

1 differentiates between detecting the presence of carbon monoxide and the
2 presence of smoke. This subdivision applies only to dwelling units having a
3 fossil-fuel burning heater, appliance, or fireplace and in any dwelling unit
4 having an attached garage. Any operable carbon monoxide detector installed
5 before January 1, 2015, shall be deemed to be in compliance with this
6 subdivision.

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

9 ...
10 **"§ 42A-33. Responsibilities and liability of real estate broker.**

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

- 13 (1) Manage the property in accordance with the terms of the written agency
14 agreement signed by the landlord and real estate broker.
15 (2) Offer vacation rental property to the public for leasing in compliance with all
16 applicable federal and State laws, regulations, and ethical duties, including, but
17 not limited to, those prohibiting discrimination on the basis of race, color,
18 religion, sex, national origin, handicapping condition, or familial status.
19 (3) Notify the landlord regarding any necessary repairs to keep the property in a fit
20 and habitable or safe condition and follow the landlord's direction in arranging
21 for any such necessary repairs, including repairs to all electrical, plumbing,
22 sanitary, heating, ventilating, and other facilities and major appliances supplied
23 by the landlord upon written notification from the tenant that repairs are
24 needed.
25 (4) Verify that the landlord has installed operable smoke detectors and carbon
26 monoxide alarms.
27 (5) Verify that the landlord has annually placed new batteries in a battery-operated
28 smoke detector or carbon monoxide alarm. Failure of the tenant to replace the
29 batteries as needed shall not be considered negligence on the part of the real
30 estate broker.

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

35 **SECTION 1.4.** Article 6 of Chapter 42A of the General Statutes is amended by
36 adding a new section to read:

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

38 (a) Any member of the Armed Forces of the United States who executes a vacation rental
39 agreement and subsequently receives (i) an order for deployment with a military unit for a period
40 overlapping with the rental period or (ii) permanent change of station orders requiring the member
41 to relocate on a date prior to the beginning of the lease term may terminate the member's vacation
42 rental agreement by providing the landlord or landlord's agent with a written notice of termination
43 within 10 calendar days of receipt of the order. The notice must be accompanied by either a copy
44 of the official military orders or a written verification signed by the member's commanding
45 officer. Termination of a lease pursuant to this subsection is effective immediately upon receipt of
46 the notice by the landlord or landlord's agent. All monies paid by the terminating member, with
47 the exception of nonrefundable fees paid to third parties as described in G.S. 42-16(a), in
48 connection with the vacation rental agreement shall be refunded to the member within 30 days of
49 termination of the agreement.

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

4 (c) The right to terminate a vacation rental agreement as described in subsection (a) of this
5 section shall extend to the spouse of any member of the Armed Forces of the United States. A
6 spouse exercising the right to terminate a rental agreement shall provide the same notice as
7 described in subsection (a) of this section.

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

10 **SECTION 1.5.** G.S. 42-36.2(a) reads as rewritten:

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

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

23 Upon receipt of ~~either statement by the landlord,~~ a statement described in subdivision (2) of
24 this subsection, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall
25 make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's
26 statement to the writ. If the writ is returned unexecuted because the landlord signed a statement
27 described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the
28 judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the
29 court costs."

30 **SECTION 1.6.** G.S. 42-44 reads as rewritten:

31 "**§ 42-44. General remedies, penalties, and limitations.**

32 ...

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

36 "

37 **SECTION 1.7.** G.S. 42-46 reads as rewritten:

38 "**§ 42-46. Authorized fees.** ~~late fees and eviction fees.~~

39 ...

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

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

50 (h) **Limitations on Charging and Collection of Fees.**

- 1 (1) A landlord who claims fees under subsections (e) through (g) of this section is
2 entitled to charge and retain only one of the above fees for the landlord's
3 complaint for summary ejection and/or money owed.
- 4 (2) A landlord who earns a fee under subsections (e) through (g) of this section
5 may not deduct payment of that fee from a tenant's subsequent rent payment or
6 declare a failure to pay the fee as a default of the lease for a subsequent
7 summary ejection action.
- 8 (3) It is contrary to public policy for a landlord to put in a lease or claim any fee for
9 filing a complaint for summary ejection and/or money owed other than the
10 ones expressly authorized by subsections (e) through (g) of this section, and a
11 reasonable attorney's fee as allowed by law.
- 12 (4) Any provision of a residential rental agreement contrary to the provisions of
13 this section is against the public policy of this State and therefore void and
14 unenforceable.
- 15 (5) If the rent is subsidized by the United States Department of Housing and Urban
16 Development, by the United States Department of Agriculture, by a State
17 agency, by a public housing authority, or by a local government, any fee
18 charged pursuant to this section shall be calculated on the tenant's share of the
19 contract rent only, and the rent subsidy shall not be included."

20 **SECTION 1.8.** G.S. 93A-2(c)(6) reads as rewritten:

- 21 "(6) Any salaried person employed by a licensed real estate broker, for and on
22 behalf of the owner of any real estate or the improvements thereon, which the
23 licensed broker has contracted to manage for the owner, if the salaried
24 employee's employment is limited to: exhibiting units on the real estate to
25 prospective tenants; providing the prospective tenants with information about
26 the lease of the units; accepting applications for lease of the units; completing
27 and executing preprinted form leases; and accepting security deposits and rental
28 payments for the units only when the deposits and rental payments are made
29 payable to the owner or the broker employed by the owner. The salaried
30 employee shall not negotiate the amount of security deposits or rental payments
31 and shall not negotiate leases or any rental agreements on behalf of the owner
32 or broker. However, in a vacation rental transaction as defined by ~~G.S.~~
33 ~~42A-4(3)~~, G.S. 42A-4(6), the employee may offer a prospective tenant a rental
34 price and term from a schedule setting forth prices and terms and the conditions
35 and limitations under which they may be offered. The schedule shall be written
36 and provided by the employee's employing broker with the written authority of
37 the landlord."

38 **SECTION 1.9.** This section becomes effective July 1, 2016. Nothing in this section
39 shall be construed as being applicable to or affecting any litigation pending on that date.

40
41 **PART II. FACILITATE ORANGE COUNTY JAIL CONSTRUCTION**

42 **SECTION 2.1.** Upon agreement by Orange County, the Department of
43 Administration shall amend the land lease, recorded in Book 6085 at Page 494, Orange County
44 Registry, to provide as follows:

- 45 (1) That Orange County may grant a leasehold deed of trust, with a duration of up
46 to 40 years from the original lease date, in the land and the buildings on the
47 land.
- 48 (2) That in the event of a default the mortgage holder may foreclose its security
49 interest and evict the County from the premises.

1 (3) That both the date for commencement of construction and the date for
2 completion of construction and occupation shall be extended by 18 months
3 from the dates set forth in the original lease.

4 **SECTION 2.2.** Notwithstanding Chapter 146 of the General Statutes or any other
5 provision of law, the lease amendments described in Section 1 of this act shall not require
6 Governor or Council of State Approval.

7 **SECTION 2.3.** Once the lease amendments described in Section 1 of this act have
8 been made, any term or provision of the lease that is contrary to the language of those amendments
9 shall be deemed of no effect and the terms of the lease as amended shall control.

10 **SECTION 2.4.** The lease amendments required by this act shall be in such form as the
11 Secretary of Administration, or the Secretary's designee, may approve.

12
13 **PART III. EFFECTIVE DATE**

14 **SECTION 3.1.** Except as otherwise provided, this act is effective when it becomes
15 law.