

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2016-98
HOUSE BILL 151**

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, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address. If a real estate broker is holding advanced rents paid by the tenant pursuant to a vacation rental agreement at the time of the termination of the landlord's interest, the real estate broker may deduct from the advanced rents transferred to the landlord's successor in interest any management fee earned by the real estate broker prior to the transfer. The written agency agreement between the landlord and the real estate broker shall govern when the fee has been earned. If the real estate broker deducts an earned management fee from the advanced rents, the landlord shall be responsible to the landlord's successor in interest for the amount deducted. For vacation rentals that end more than 180 days after the recording of



the interest of the landlord's successor in interest, unless the landlord's successor in interest has agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this subsection shall relieve the landlord or real estate broker of further liability with respect to any payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with G.S. 42A-18."

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

"Article 5.

"Landlord and Tenant Duties.

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

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

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

...

(6) Provide a minimum of one operable carbon monoxide alarm per rental unit per level, either battery-operated or electrical, that is listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and install the carbon monoxide alarms in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. A landlord that installs one carbon monoxide alarm per rental unit per level shall be deemed to be in compliance with standards under this subdivision covering the location and number of alarms. The landlord shall replace or repair the carbon monoxide alarms within three days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. At least every six months, the landlord shall ensure that a carbon monoxide alarm is operable and in good repair. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated carbon monoxide alarm annually and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord. A carbon monoxide alarm may be combined with smoke alarms if the combined alarm does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke alarms and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke. This subdivision applies only to dwelling units having a fossil-fuel burning heater, appliance, or fireplace and in any dwelling unit having an attached garage. Any operable carbon monoxide detector installed before January 1, 2015, shall be deemed to be in compliance with this subdivision.

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

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

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

(1) Manage the property in accordance with the terms of the written agency agreement signed by the landlord and real estate broker.

(2) Offer vacation rental property to the public for leasing in compliance with all applicable federal and State laws, regulations, and ethical duties, including, but not limited to, those prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicapping condition, or familial status.

- (3) Notify the landlord regarding any necessary repairs to keep the property in a fit and habitable or safe condition and follow the landlord's direction in arranging for any such necessary repairs, including repairs to all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by the landlord upon written notification from the tenant that repairs are needed.
- (4) Verify that the landlord has installed operable smoke detectors and carbon monoxide alarms.
- (5) Verify that the landlord has annually placed new batteries in a battery-operated smoke detector or carbon monoxide alarm. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the real estate broker.

(b) A real estate broker or firm managing a vacation rental property on behalf of a landlord client shall not become personally liable as a party in any civil action between the landlord and tenant solely because the real estate broker or firm fails to identify the landlord of the property in the vacation rental agreement."

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Limitations on Charging and Collection of Fees.

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

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

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

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

PART II. FACILITATE ORANGE COUNTY JAIL CONSTRUCTION

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

- (1) That Orange County may grant a leasehold deed of trust, with a duration of up to 40 years from the original lease date, in the land and the buildings on the land.
- (2) That in the event of a default the mortgage holder may foreclose its security interest and evict the County from the premises.
- (3) That both the date for commencement of construction and the date for completion of construction and occupation shall be extended by 18 months from the dates set forth in the original lease.

SECTION 2.2. Notwithstanding Chapter 146 of the General Statutes or any other provision of law, the lease amendments described in Section 2.1 of this act shall not require Governor or Council of State Approval.

SECTION 2.3. Once the lease amendments described in Section 2.1 of this act have been made, any term or provision of the lease that is contrary to the language of those amendments shall be deemed of no effect and the terms of the lease as amended shall control.

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

PART III. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 1st day of July, 2016.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 1:59 p.m. this 18th day of July, 2016