

## Article 3.

### Handling and Accounting of Funds.

#### **§ 42A-15. Trust account uses.**

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if these payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit these payments in a trust account in a federally insured depository institution or a trust institution authorized to do business in this State no later than three banking days after the receipt of these payments. These payments deposited in a trust account shall not earn interest unless the landlord and tenant agree in the vacation rental agreement that the payments may be deposited in an interest-bearing account. The landlord and tenant shall also provide in the agreement to whom the accrued interest shall be disbursed. (1999-420, s. 1; 2014-115, s. 3; 2015-93, s. 3; 2017-25, s. 2(b).)

#### **§ 42A-16. Advance payments uses.**

(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. The funds remaining after any disbursement permitted under this subsection shall remain in the trust account and may not be disbursed until the occurrence of one of the following:

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

(b) Funds collected for sales or occupancy taxes and tenant security deposits shall not be disbursed from the trust account prior to termination of the tenancy or material breach of the agreement by the tenant, except as a refund to the tenant.

(c) The tenant's execution of a vacation rental agreement in which he or she agrees to the advance disbursement of payments shall not constitute a waiver or loss of any of the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to reimbursement. (1999-420, s. 1.)

#### **§ 42A-17. Accounting; reimbursement.**

(a) A vacation rental agreement shall identify the name and address of the federally insured depository institution or trust institution in which the tenant's security deposit and other advance payments are held in a trust account, and the landlord and real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property.

(b) Except as provided in G.S. 42A-36, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant.

(c) A vacation rental agreement may include administrative fees, the amounts of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.

(d) A vacation rental agreement may include a cleaning fee, the amount of which shall be provided in the agreement, reasonably calculated to cover the costs of cleaning the residential property upon the termination of the tenancy. (1999-420, s. 1; 2005-292, s. 1; 2012-17, s. 6; 2017-25, s. 1(c).)

#### **§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any long distance or per call telephone charges and cable television charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes. (1999-420, s. 1.)

#### **§ 42A-19. Transfer of property subject to a vacation rental agreement.**

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take title to the property subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor those terms, but the tenant shall be entitled to a refund of payments made by him or her, as provided in subsection (b) of this section.

Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after transfer of the property, the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. In lieu of providing the

grantee a copy of each vacation rental agreement, where the landlord or the landlord's agent utilizes a standard form vacation rental agreement, the landlord may provide the grantee with a copy of the part of each vacation rental agreement that contains information unique to the tenancy, the amount to be paid by the tenant, and the parties' signatures, along with one copy of the rest of the standard form vacation rental agreement. However, the landlord shall not be required to provide the grantee with copies of the vacation rental agreements if in anticipation of acquiring the property the grantee has engaged the landlord's rental agent to continue to manage the property after the transfer and the landlord authorizes the rental agent to provide the information to the grantee and the grantee approves. Not later than 20 days after transfer of the property, the grantee or the grantee's agent shall:

- (1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.
- (2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.
- (3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

Notwithstanding any other provision of this section, if the grantee engages as the grantee's broker and rental agent for the property the broker who procured the tenant's vacation rental agreement for the landlord, the grantee shall have no obligation under subdivisions (1), (2), and (3) of this subsection with regard to those tenants whose vacation rental agreements must be honored under this section or with regard to those tenants whose vacation rental agreements the grantee has agreed in writing to honor.

(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.

(c) Repealed by Session Laws 2000-140, s. 41, effective July 21, 2000.

(d) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies with the requirements of this section shall have no further obligations to the tenant. (1999-420, s. 1; 2000-140, s. 41; 2005-292, s. 2; 2016-98, s. 1.2.)

**§§ 42A-20 through 42A-22. Reserved for future codification purposes.**