

§ 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.)