

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 781

Short Title: Vacation Rental Act Changes. (Public)

Sponsors: Representatives Tine, Adams, Bradford, and D. Hall (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Finance.

April 15, 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 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



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

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

17"

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

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

40"

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

42 "Article 5.

43 Landlord and Tenant Duties.

44 **§ 42A-31. Landlord to provide fit premises.**

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

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

49 ...

- 50 (6) Provide a minimum of one operable carbon monoxide alarm per rental unit
51 per level, either battery-operated or electrical, that is listed by a nationally

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

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

30 ...
31 **"§ 42A-33. Responsibilities and liability of real estate broker.**

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

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

1 tenant to replace the batteries as needed shall not be considered negligence
2 on the part of the real estate broker.

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

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

9 **"§ 42A-37. Early termination of vacation rental agreement by military personnel.**

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

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

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

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

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

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

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

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

50"

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

1 "§ 42-44. General remedies, penalties, and limitations.

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

7"
8 **SECTION 8.** G.S. 42-46 reads as rewritten:

9 "**§ 42-46. Authorized fees.**~~late fees and eviction fees.~~

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

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

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

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

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