



NORTH CAROLINA REAL ESTATE COMMISSION

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April 28, 2020

VIA ELECTRONIC MAIL ONLY

Ms. Trisha Howarth
President
North Carolina Vacation Rental Managers
8 Marina Wynd
Bald Head, NC 28461

Re: *North Carolina Real Estate Commission Memorandum regarding N.C. Gen. Stat. §§ 42A-1 et seq.*

Dear Ms. Howarth:

As President of the North Carolina Vacation Rental Manager's Association ("NCVRMA") you requested that the North Carolina Real Estate Commission ("NCREC") address the issue of whether guest refunds are required under the North Carolina Vacation Rental Act (the "VRA") when a vacation rental home is fit, habitable and accessible. Janet Thoren, the Director of Regulatory Affairs concludes that North Carolina real estate brokers and landlords as defined by N.C. Gen. Stat. §§ 42A-1 *et seq.*, are **not** required to refund monies when a vacation rental home is fit, habitable and accessible.

On March 19, 2020, the NCREC issued a statement opining that under the VRA, N.C. Gen. Stat. §§ 42A-1 *et seq.*, landlords and real estate brokers must provide refunds to tenants who will no longer be able to use their vacation rental homes due to State of North Carolina municipal COVID-19 response measures restricting access.¹ N.C. Gen. Stat. §§ 42A-17(b) states, in relevant part, "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 reasonable comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant." In interpreting this section in light of COVID-19 response measures, the NCREC relied heavily on the language "cannot provide" to determine that tenants are due a refund when State of North Carolina governmental restrictions impair a tenant's ability to access the property. This interpretation is consistent with the principle of North Carolina law, which generally provides that if a landlord is unable to provide a tenant access, even through no fault of the landlord, then the tenant is excused from the contract and does not owe the landlord the agreed upon rent.²

¹ Dare County State of Emergency Declaration (Mar. 17, 2020)

² In North Carolina's general landlord tenant statute, N.C. Gen. Stat. §§ 42-1 *et seq.*, the General Assembly did not expressly write in a duty to deliver the premises, however, the Assembly also did not bar this duty. On the other hand, with the Vacation Rental Act, the Assembly expressly added the language "to provide" which captures the common law duty to deliver possession, and that without possession no rent is owed. When read together with the common law, the provisions of the VRA show the General Assembly's express intent that no tenant should have to pay for a vacation which they did not get to use.

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In anticipation of the expiration of certain municipal governmental restrictions currently denying vacationers access to vacation rental properties, the NCREC, together and in consultation with the North Carolina Attorney General's Office, concludes that landlords and brokers do **not** owe a duty to refund rents when the property is fit, habitable and accessible. Absent any other violations of either the VRA, other applicable North Carolina law, or specific contractual terms between the landlords, brokers and tenants, a tenant is not entitled to a refund of rents when there are no North Carolina civil authority actions denying access to the vacation rental property.

In summary, unless and until the State of North Carolina and/or the municipalities organized thereunder, lift or allow to expire either travel restrictions or civil authority declarations denying access to North Carolina vacation rental homes, refunds are required. However, once those travel restrictions expire and/or are abandoned and access is returned, tenant refunds are not statutorily required. Of course, given the current situation, all parties are urged to cooperate as much as possible to find mutually agreeable resolutions whenever possible.

If you have any further questions or concerns regarding the NCREC's position in this matter, please contact the Regulatory Affairs Division.

Sincerely,

Jeffrey Malarney
Chairman

North Carolina Real Estate Commission