



Recent legislation affects property management agreements with automatic renewal clauses

[Senate Bill 770](#) was enacted into law in the 2016 legislative session. Section 16(a) (see page 12 of the bill) makes changes to [NC General Statutes Section 75-41](#), which first became law in 2007. GS 75-41 affects contracts for the sale of products or services to consumers that contain automatic renewal clauses. Specifically, the law requires that automatic renewal clauses, as well as the manner in which the consumer can terminate the contract to avoid the application of the renewal clause, must be clearly and conspicuously disclosed in the contract. In response to the enactment of GS 75-41, the automatic renewal clauses in the NC REALTORS® long-term and vacation rental management agreements (forms 401 and 402) were capitalized in order to make them “clear and conspicuous.”

The new changes to GS 75-41 require that for any automatic renewal extending more than 60 days, the party selling or leasing products or services to the consumer must provide written notice to the consumer by personal delivery, email or first class mail at least 15 days but not more than 45 days before the date the contract is scheduled to automatically renew, stating (1) the date on which the contract is scheduled to automatically renew, and (2) that the contract will automatically renew unless it is cancelled prior to that date.

We interpret GS 75-41 to apply to most, if not all, long-term and vacation rental management agreements. Property managers are “engaged in commerce” as required by the statute, and although the term “consumer” is not defined in the statute, we believe most landlords likely can be characterized as “consumers” to whom property managers sell their services. We therefore recommend that property managers comply with the new requirements, which apply to contracts entered into on or after July 26, 2016, the date Senate Bill 770 became law.

EXAMPLE: Assume a property manager entered into a 1-year property management agreement with a landlord on August 1, 2016 using NC REALTORS® form 401. The new requirements apply to this agreement since it was entered into on or after July 26, 2016. Assume paragraph 2 of the management agreement provides that it will automatically renew for a term of 1 year unless a party desiring to terminate the agreement notifies the other party in writing of the intent to terminate at least 60 days prior to the end of the 1-year term. According to paragraph 2, notice of termination would need to be given no later than June 1, 2017 to avoid automatic renewal of the management agreement for another 1-year term beginning August 1, 2017. To comply with the new requirements of GS 75-41, the management firm would need to notify the landlord in writing no later than May 16, 2017 (15 days before auto-renewal date), and no earlier than April 16, 2017 (45 days before auto-renewal date), that the management agreement is scheduled to automatically renew on June 1, 2017 for an addition 1-year term beginning August 1, 2017 unless it is cancelled prior to June 1, 2017.

NOTE: A violation of GS 75-41 renders the automatic renewal clause void and unenforceable.

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